

# **Report of the Strategic Director (Service Delivery)**

**[Section 1: Planning Applications](#)**

**[Section 2: Appeals](#)**

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

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## 1. Planning Applications

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

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

1. The issues of fact raised by the report of the Strategic Director (Service Delivery) 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 Strategic Director (Service Delivery), 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.

## Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

**Item No.** 1.1

**Ref. No.** [DMPA/2020/1467](#)

**Valid date:** 04/01/2021

**Applicant:** Pete and Linda Jesper and  
Anderson

**Agent:** IBA Planning Limited

**Proposal:** **Proposed change of use of part of the site from agriculture to construct (self-build) infill dwelling, and creation of new access within existing residential curtilage on Land between The Cedars and The Stables, Shardlow Road, Aston On Trent, Derby, DE72 2AN**

**Ward:** Aston

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

*This report was deferred at the meeting on 20th July 2021 to allow Members to undertake a site visit. All parts of the report remain unaltered.*

This application is presented to the Committee at the request of Councillor Watson, as local concern has been expressed about a particular issue and because there are unusual site circumstances to be considered by the Committee. The application only need to be presented to Committee in the event of a recommendation for refusal.

#### **Site Description**

The site is situated outside of the village 'Limits to Development', on the eastern side of the recreation ground. There are two isolated dwellings which sit on the north side of Shardlow Road; namely The Stables, and The Paddocks/The Cedars.

There is a bend in the road further to the east which limits visibility to the left out of the access. Visibility to the right is good. There are open fields opposite to the south of the site. There is a mature tree in the front garden close to the hedgerow, part of which, would need to be removed to create the access. The footpath is close to the hedge and there is also a grass verge to the carriageway.

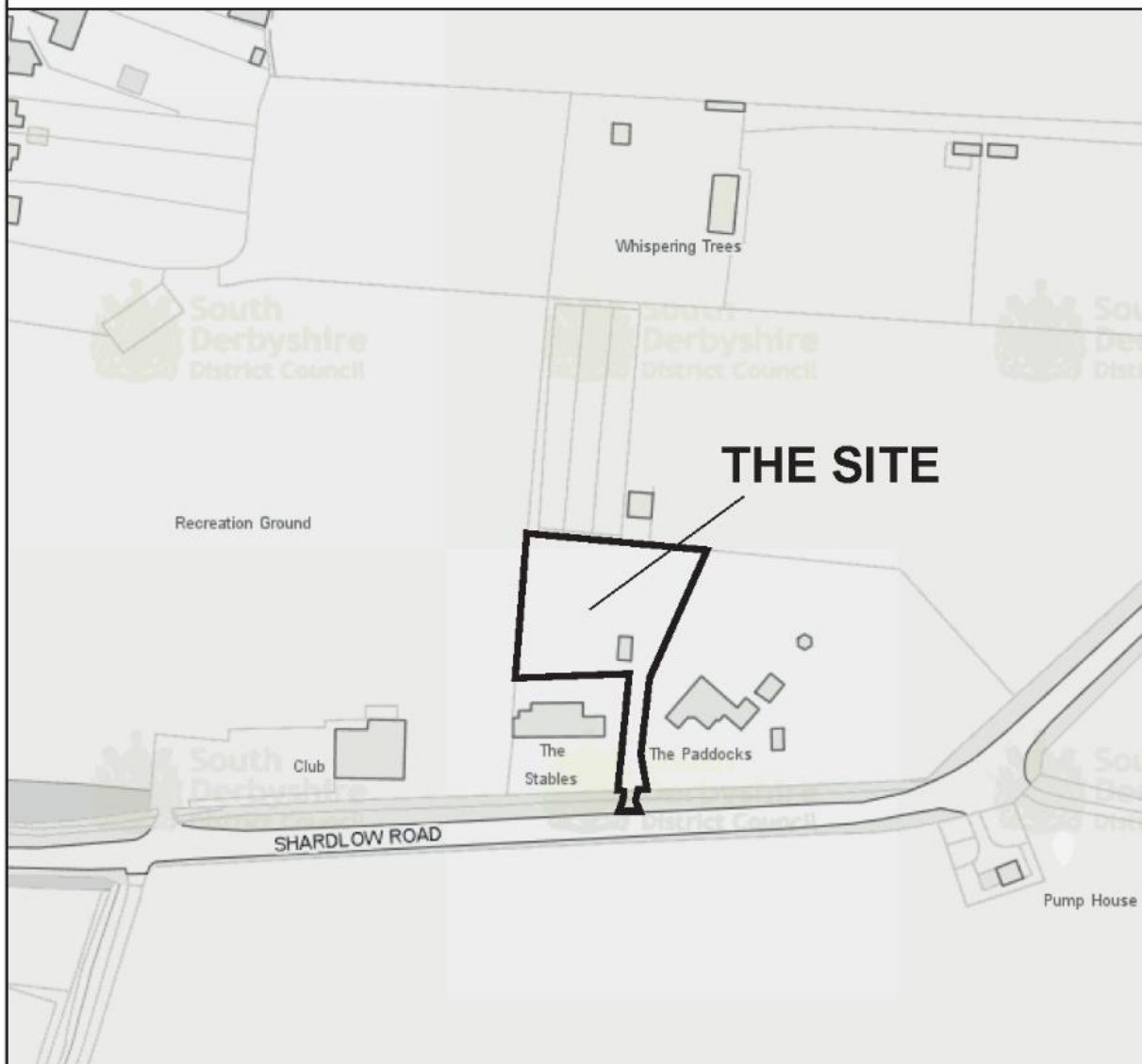
The applicant's house is a much extended 1 and a 1/2 storey dwelling sitting at an angle to the road. The adjacent property, The Stables is a small single storey bungalow set back parallel to the road. This has a relatively small back garden which sits adjacent to the site of the application site. To the west of the site is the village recreation ground, which also has a modern two storey social building situated on it towards its south eastern corner. There are several mature trees along the boundary with the site, within the recreation ground area, some of these have branches which overhang into the site.

The application site is a small holding with some agricultural buildings and animals situated on the land to the north of the application site. The applicant has a grassed area behind the house which is domestic in appearance and mown up to a 1.5m high wooden fence which visually separates it from the domestic appearance of the land. There is planning history at the site and the 2011 application have set the boundaries between the domestic curtilage and the remaining agricultural land.

#### **The proposal**

The proposed access to the dwelling would be situated between two of the dwellings sitting north of the Shardlow Road and run close to the western boundary of The Cedars before turning left to open out in the plot where the dwelling would be situated.

**DMPA/2020/1467 - Land between The Cedars and The Stables, Shardlow Road, Aston on Trent, Derby DE72 2AN**



**South  
Derbyshire  
District Council**

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**South Derbyshire District Council. LA 100019461.2020**



The proposed 3 bedroomed single storey dwelling would be set within the plot with a south west south orientation. There would be a car port at the front of the dwelling. There would be rooms with a southern orientation to take account of solar gain.

The proposed design takes a contemporary approach using a Passiv Haus approach to reduce carbon footprint.

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

The applicant's consider that the proposal whilst being outside the 'Limits to Development', is allowed by policy BNE5 of the South Derbyshire Local Plan on the basis that the proposal is considered as infill development, and that the proposal would not impact on landscape character and would not affect heritage assets, best and most versatile land or biodiversity interests.

The proposed development has been designed to be low profile and not be prominent within the landscape being situated behind The Stables. It has been designed to be redolent of an agricultural/horticultural outbuilding. The building would replace some of the existing garden buildings. The dwelling by virtue of its design could be considered to be an exceptional dwelling allowed in the countryside under paragraph 79 of the National Planning Policy Framework. The building takes a fabric first approach to reduce its environmental impact within its lifetime.

The proposal would not detrimentally effect trees outside of the site boundary, and additional trees would be planted within the site. The Preliminary Ecological Appraisal identifies the absence of any significant ecological interest. The development would be drained sustainably to reduce surface water run off. A wetland habitat would be created which would dually function as an attenuation basin.

The proposal would also add to the provision of self build dwellings within the Borough, which is supported by policy H20 of the Local Plan.

### **Relevant planning history**

9/2011/0089. Change of use from agriculture to garden and erection of replacement poultry store. Approved.

9/2011/0390. Extensions and alterations to raise roof to provide loft conversions. Approved.

### **Responses to consultations and publicity**

The County Highway Authority note that Shardlow Road is a classified road, mainly rural in character with footway and grass verge fronting the site. They requested some amendments to the proposal to provide better pedestrian and vehicular visibility splays and width on plans and position of the existing signage which may affect the splays.

The Local Lead Flood Authority has no objection to the proposal and suggests informatives be added regarding sustainable drainage.

Derbyshire Wildlife Trust has noted that the proposal would result in the loss of a number of the orchard fruit trees within the site but there is little scope for compensatory planting as shown on the submitted plans. However, there is likely that there is no detrimental effect on protected species.

The Derbyshire Beekeepers Association notes that the proposed landscape scheme includes native plants and trees which would add to the foraging of bees and other insects in the area.

The Tree Officer notes that the proposal is close to mature trees within the Sports Recreation Ground, which are outside the site. These have roots and branches which overhang the site. There is potential for detrimental impact from the development to the trees. Some of the trees within the recreation ground are worthy of protection.

The Environmental Health Officer has no objection subject to the imposition of an appropriate condition relating to the hours of operation of construction and deliveries.

The Landscape Architect has no objection to the proposal subject to a detailed planting scheme to show new tree and hedgerow planting and protection of existing hedgerow and trees. This can be conditioned.

A number of representations of support have been received from residents of Aston and Chellaston. These can be summarised as follows:-

- a) The proposed Passive House design is innovative and attractive. The proposal would accommodate modern building techniques which would result in a zero carbon dwelling, and uses solar panels, ground source heat pumps, solar gain and rainwater harvesting for the benefit of the development.
- b) The proposal would not be detrimental to the appearance of the area, and will fit well into the landscape. The proposal will protect existing trees, and will provide additional hedgerow and add to the quality of the landscape and enhance it for the wildlife. The proposal protects and enhances its setting.
- c) Although the proposal is outside the village, it will be attractive and add to the quality of development in the vicinity through its innovative design and exterior and interior appearance. It will be a credit to the village.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): Policy S1 Sustainable Growth Strategy; Policy S2 Presumption in Favour of Sustainable Development; Policy S3 Environmental Performance; Policy S4 Housing Strategy; Policy S6 Sustainable Access; H1 Settlement Hierarchy; Policy SD1 Amenity and Environmental Quality; SD3 Sustainable Water Supply, Drainage and Sewerage Infrastructure; Policy BNE1 Design Excellence; Policy BNE3 Biodiversity; Policy BNE7 Trees, Woodland and Hedgerow; and Policy INF2 Sustainable Transport.
- Local Plan Part 2 (LP2): Policy SDT1 Settlement Boundaries and Development; BN5 Development in Rural Areas, and BNE7 Trees, Woodland and Hedgerows.

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue(s) central to the determination of this application is/are:

- The principle of a new dwelling in this countryside location;
- The effect of the proposal on the character and appearance of the site and surrounding area;
- The effect of the proposal on the highway network;
- The effect of the proposal on the residential amenity of nearby occupiers; and
- The effect of the proposal on the environment.

## Planning assessment

### The principle of a new dwelling in this countryside location

The site is located outside of the 'Limits of Development' of Aston Upon Trent. The boundaries of the settlement run behind Shirley Park and Willow Close to the west of the Recreation ground. This makes sense in terms of the eastern end of the main part of the village before it opens out into the countryside. The two dwellings on Shardlow Road which the proposed access bisects, are stand alone dwellings, built around the 1960's/70s.

The applicant has secured extensions and additions to The Paddock (now known as The Cedars) in previous years to allow some first floor accommodation. There was also an application from 2011 which provided details of a proposal for use of land as an agricultural unit with provision for poultry sheds and other buildings in connection with a typical small holding. It was also agreed as part of the approval for a small extension of the residential curtilage of the property.

However, there were concerns raised at the time about the extent of the domestication of the land, and a plan was agreed which only extended a small area of increase in garden land up towards a fence line to the north of the applicant's land, and limited in width. The western extent of the extension of the garden area was approximately in line with the rear apex of the dwellinghouse.

Only the part of the site which provides the new access up to and past the house is part of the existing domestic curtilage before it changes to land which is authorised as agricultural use and not forming part of the domestic curtilage of either The Stables, or The Cedars but is land within the countryside.

The site is therefore part of the open countryside. In terms of strategic housing policy, Aston on Trent is identified as a Key Service Village in policy H1 Settlement Hierarchy. Residential development of all sizes is considered acceptable in principle within the settlement boundaries. Housing development is also acceptable adjacent to settlements as an exceptions or cross subsidy site.

The recent re-assessment of a proposal for 3 dwellings at Church Street, Hartshorne (9/2018/0968) at appeal confirmed that the dwellings were not for affordable housing, or a cross subsidy site, and therefore the development would not comply with policy H1 or BNE5. That development was similarly, not essential to a rural based activity. That development which was adjacent to a settlement was not considered a suitable location for development and in conflict with policies S1, S4, H1 of the Local Plan Part 1 2016, and policies SDT1 and BNE5 of the Local Plan Part 2 2017.

The proposed development site is not situated adjacent to the settlement boundary. It is situated on the eastern side of the village recreation site and therefore is within the countryside. The two dwellings which front Shardlow Road whilst being situated relatively close to the village, are nevertheless dwellings which are ribbon developments in a countryside location. The development is not proposed as an exception (affordable housing), and is not part of a cross subsidy scheme.

The applicant considers that the development is acceptable on the basis of policy BNE5 Development in Rural Areas on the basis that this development can be considered as 'infill' development. It is considered that the siting of this proposed dwelling is not considered to be consistent with an infill development. There is no obvious gap between The Stables and The Cedars. The proposed dwelling does not have a street frontage and to all intents and purposes, it is more accurately described as backland development. It is not backland development within a residential curtilage, but within the countryside outside of, and detached from, the 'Limits to Development' of the settlement of Aston on Trent.

The Council currently has a five year supply of housing. Decisions should be made in compliance with the requirements of the development plan unless material considerations indicate otherwise. The Local Plan should be read as a whole, and sets out the strategic policies of the Council. It allows for development within the countryside in strict circumstances essential to a rural activity, or for residential development which is identified as a exception where there is a particular need. Development in this instance cannot be said to be compliant with those strategic policies identified within the Local Plan.



The proposal is therefore unacceptable development in the open countryside. It is not an acceptable location for development, and would be an unsustainable development. It is considered that the proposal is contrary to policies S1, S2, S4, and H1 of the South Derbyshire Local Plan Part 1 2016, and policies SDT1 and BNE5 of the South Derbyshire Local Plan Part 2 2017.

#### The effect of the proposal on the character and appearance of the site and surrounding area

The proposed dwelling would be situated in a backland location almost directly behind the existing dwelling known as The Cedars. There would only be glimpsed views for drivers and highway users travelling along Shardlow Road. Its single storey nature would mean it would not stand out or be prominent to road users. There would be some medium distanced views of the dwelling from Shardlow Road when travelling south towards the village before turning the corner near The Paddocks.

The greatest effects in terms of visual appearance would be from the public recreation ground to the west of the site. The proposal would be seen beyond the hedgerow and mature trees and would provide an urbanisation of the site which is located within the countryside. There would be minor detrimental impacts on the visual amenity of the site through this urbanisation of a countryside location which has an agricultural use, albeit there are some aspects of a domestication of this part of the agricultural holding, which appear to fall outside of the 2011 permission.

The proposal would result in some minor detrimental impacts by introducing an urban domestic development within a countryside location, particularly when viewed from the local recreation ground and views towards the east, increasing the depth of what is isolated ribbon developments along Shardlow Road. For this reason, it adds to the detrimental impact of the proposal in the open countryside harming its intrinsic nature and qualities and being situated outside of the 'Limits to Development' of the settlement of Aston on Trent.

In conclusion, it is a development which is not allowed within this countryside location and is therefore contrary to the policies aiming to manage the balance between appropriate rural development, and protecting the intrinsic beauty and character of the open countryside.

#### The effect of the proposal on the highway network

The proposal as submitted would provide an additional new access onto Shardlow Road. Traffic speeds along here can be quite high as vehicles leave the village or come from Shardlow, and turn the corner towards the village. Nevertheless, the proposal shows that the visibility splays can be achieved in accordance with the speed limit without obstruction on both sides. The visibility splay lies within the highway on both sides of the access. The access and the amount of parking is considered acceptable. Vehicles can turn and leave in a forward gear. The Highway Authority recommend conditional approval and on this basis, it is considered that the scheme would not result in significant detriment to highway safety.

It is concluded that the proposal complies with policy INF2 of the South Derbyshire Local Plan Part 1 2016 and paragraphs 109 and 110 of the NPPF.

#### The effect of the proposal on the residential amenity of nearby occupiers

The proposal would be single storey and sit directly behind the single storey dwelling at The Stables. By its nature therefore there would be no overlooking between the two dwellings. The proposed siting of the main habitable windows would be some 30m separation. There is a 1.8m high hedge which separates the two dwellings. There is the opportunity if required to provide further boundary treatments to prevent direct views. The proposed distance together with the single storey aspect of the proposal means there would be no overlooking, loss of sunlight or overbearing impact on the existing dwelling.

There would be some additional detrimental impacts from traffic which would go past the side of the existing dwelling. This will have a detrimental impact on residential amenity over the existing scenario. There would also be likely to be increased noise and disturbance from normal residential use of a garden and the domestication of what is part of an agricultural use of the land. However, there are several metres between an adjacent habitable room in The Stables, and the new driveway, and whilst

there would be minor detrimental impacts on the amenity of those residents from normal domestic activities, it is not in itself likely to result in significant harm to their amenity. On this basis, it is not considered that there would be significant harm caused to the residential amenity of these occupiers sufficient to refuse the scheme.

It is therefore concluded that the proposal would comply with policy SD1 of the South Derbyshire Local Plan Part 1 2016.

#### The effect of the proposal on the environment

The submitted plans show how the proposal would incorporate methods of drainage which would be by way of soakaway, and also make the use of rainwater through recycling and use of water butts, and retention on the site, rather than impacting on land outside of the site. It is accepted that the submitted urban drainage system to deal with surface water is acceptable in principle, including a grass sedum roof, rainwater harvesting, permeable surfaces for the driveway, and a bio-retention pond. These have the potential to manage the treatment of water on the site to achieve an equal or lower rate of discharge than the current greenfield run off rate and design out any peak storm water surge. On this basis, the proposal is acceptable subject to a condition requiring further details of this scheme as a pre-commencement condition in accordance with the informative advice of the Local Lead Flood Authority in the event of a permission being granted.

There are mature trees situated outside of the site boundary, but which have roots and branches which overhang the site. None of the trees on the site, or the adjacent site are currently protected. There is an opportunity to impose a Tree Preservation Order if considered necessary. The submitted Arboricultural Assessment identifies the trees and also notes the presence of the new dwelling situated some metres away from the edge of the canopies of the mature trees within the recreation grounds site. There is also a large tree close to the proposed access into the site.

It is considered that a 'no dig' construction could be provided near the tree in accordance with an agreed Arboricultural Method Statement (AMS). It is acknowledged that most of the private drive would have a gravel non bound surface, and it is considered that there would be no significant detrimental long term impacts upon this mature tree.

In terms of the trees within the recreation ground, the proposed building would be situated beyond the root protection area of the trees. It is considered that it could be constructed without significant detrimental effects on the health of these trees. There maybe effects in terms of throwing shade onto the rear garden of this dwelling, but this is an issue with the applicants and future residents would need to accept. There are no significant trees within the site which would prevent the development. It is considered that in the event of the proposal being acceptable an AMS could be required to be submitted.

The proposed development has the potential to have detrimental impacts on the environment through carbon emissions from vehicles at the site. To reduce CO2 emissions, it is recommended that an electricity charging point is put within the development site to allow for a lower future energy demand and to meet climate change targets. This can be dealt with through the imposition of a condition. Similarly, a condition can be imposed which reduces the demand for water consumption per person within the dwelling.

It is concluded that the proposal therefore is capable of complying with policies S3, and SD3 of the South Derbyshire Local Plan Part 1 2016, and policy BNE7 of the South Derbyshire Local Plan Part 2 2017.

#### Conclusions

It is concluded that whilst the proposed building could help to meet the Councils self build plots need, and be constructed to a high degree of environmental construction standards, this, of itself, does not outweigh the detrimental impacts from the unsustainable location outside the 'Limits to Development' of the village, being detrimental to the intrinsic openness of the countryside, and being contrary to the

strategic aims of the Council's policies as set out in S1, S2, S4 and H1 of the South Derbyshire Local Plan Part 1 2016 and policies SDT1 and BNE5 of the South Derbyshire Local Plan Part 2 2017.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

**Recommendation:**

**Refuse** planning permission for the following reason:

The proposed dwelling would be located within the open countryside, outside the Limits to Development of the village of Aston on Trent, and would result in a development in an unsustainable location. The proposal would result in the unacceptable backland development of isolated ribbon developments, along Shardlow Road, resulting in further urbanisation and harm to the intrinsic character and beauty of the open countryside, particularly when viewed from the adjacent recreation ground. The proposals would be contrary to policies S1, S2, S4, H1 and BNE4 of the South Derbyshire Local Plan Part 1 2016 and policies SDT1 and BNE5 of the South Derbyshire Local Plan Part 2 2017, and paragraph 170 of the National Planning Policy Framework.

**Item No.** 1.2

**Ref. No.** [DMPA/2021/0315](#)

**Valid date:** 25/03/2021

**Applicant:** Liam Kelly

**Agent:** Wardell Armstrong LLP

**Proposal:** The installation of up to 10MWp of solar photovoltaic panels and associated works, including substations, inverters, access tracks, security fencing and cameras at Land at SK1930 5342, Hawthorn Farm, Scropton Road, Scropton, DE65 5PR

**Ward:** Hilton

### **Reason for committee determination**

The item is presented to the Committee for the following reasons: at the request of Councillor Patten as the committee should debate the issues in this case which are very finely balanced; due to the receipt of in excess of four letters of objection against a major planning application; and at the discretion of the Head of Planning and Strategic Housing.

### **Site Description**

The site lies on arable agricultural fields to the north of the village of Scropton which is approximately 2km from the larger village of Hatton. The fields are currently used for grazing and have strong hedgerow boundary treatments. The site is generally flat with a 2m variant in levels. Access to the site is taken from a short track leading off Scropton Road. Within the site are PROW no. 11 and 17 which run east-west and north-south and overhead lines (PHL) which run east-west.

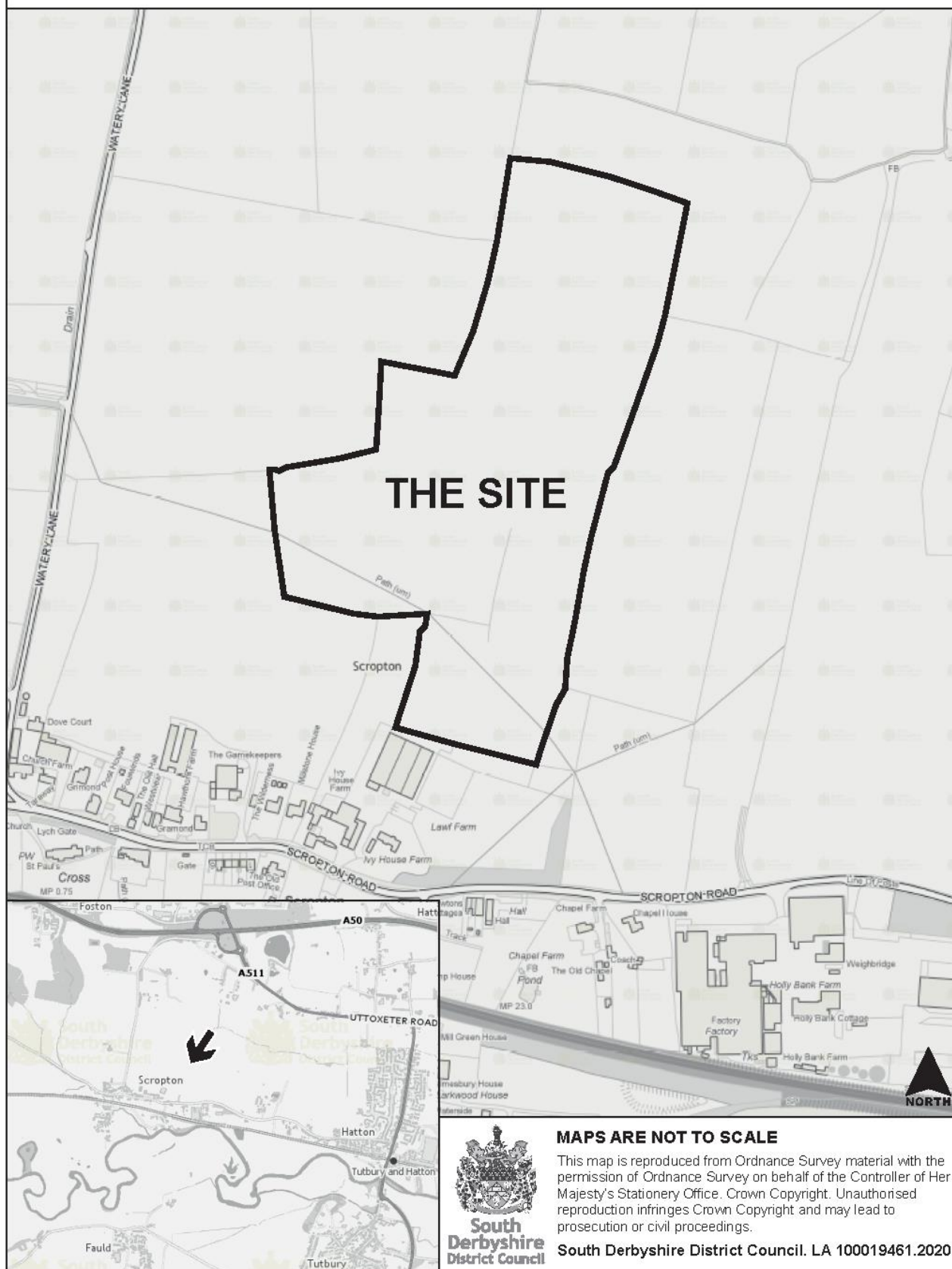
### **The proposal**

The proposed development is to install up to 10MWp of solar photovoltaic panels and associated works, including substations, inverters, access tracks, security fencing and cameras. The proposals shall comprise primarily of solar panel modules which convert sunlight directly into electricity. The proposals include:

- Installation of PV panels, approximately 0.8m off the ground; with a maximum height of approximately 2.63m from ground level at a tilt angle of 15 degrees. Panels would have matt dark blue appearance and would not be reflective.
- Panels to be installed in arrays of 3 panels;
- Construction of ancillary works include access tracks;
- Temporary construction compound;
- Pole mounted CCTV cameras positioned around the perimeter fencing;
- 2m high fencing during construction period becoming 2.4m high fencing when operational;
- 4no. transformer substations (3no. 20ft and 1no. 40ft);
- A customer cabin;
- A Distribution network Operator (DNO) substation; and
- 27no. inverters (installed beneath the solar panels)

It is proposed an array of approximately 14,118 freestanding solar panels generating a maximum output of 10MWp electricity will feed directly into the Local Electricity Distribution network. The solar park is proposed to be an unmanned facility with underground cabling feeding into the control building from across the site and will be housed within the cavities of the buildings foundations. The inverters will change the power generated from the solar panels into DC power that can be used by the wider utility (WPD). Each inverter will be connected to a few dozen solar panel modules which would limit the single point of failure in the event issues are experienced. Inverters are proposed to be connected to one of 4no. transformers located within the site fencing which will be built to the standard specification

**DMPA/2021/0315 - Land at SK1930 5342, Hawthorn Farm, Scropton Road, Scropton, Derby DE65 5PR**



of WPD to meet their requirements. It is proposed that the solar panels will be constructed from toughened glass set in an aluminium frame. Beneath the glass is a non-reflective layer, electrical connections, silicon and a backing layer. This will minimise reflective glint and glare from the panels. It is proposed that the panels will be arranged in an east to west alignment facing south to maximise sunlight exposure. The panels themselves will be mounted on frames with a front height of approximately 0.8m and a maximum back panel height of approximately 2.63m creating a tilt angle of approximately 15 degrees. The proposed site area is approximately 9.62ha, however the equipment will be within the fenced area of approximately 8.15ha. It is proposed that the panels will be set back from the perimeter fencing to prevent overshadowing from adjoining vegetation and to provide a wildlife buffer. It is proposed that there will be a separation of approximately 2.3m between each row to ensure that panels are not overshadowed. The piles supporting the panels were mounted into the ground so minimal excavation is necessary. It is proposed perimeter fencing will be erected to restrict access to the site comprising of 2.4m high deer or similar fencing, which will be selected to minimise the visual impacts in keeping with the site location. The proposed access to the site will be made from Scropton Road with the entrance strip to the site from an existing track off Scropton Road which runs for 75m. During construction a purpose-built track would run to the site itself then entering a south western corner of the west field, likely to be crushed gravel to prevent flooding. A temporary construction track is proposed on part of PROW 11. It is considered that the construction of the scheme will take approximately 3 to 4 months. The proposed lifespan of the development is 30 years. Following the operational life of the development the site is proposed to be decommissioned which will involve the removal of all the materials and equipment that have been on site during the operational phase, which is anticipated to take 1-2 months and after which the site will be restored to its former condition of arable land, a contract that the applicants have entered into with the landowners. It is also proposed that detailed information boards will be placed along perimeter fencing of the PROW's to provide details of the scheme and information on biodiversity for the purposes of education.

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

Planning, Design and Access Statement February 2021 – The applicants GS Vogt Ltd (also proposed to maintain and manage the operation of the site) state they propose a very similar development to that approved under 9/2015/0688 however due to advances in solar PV technology in recent years the development will have a larger capacity yield of up to 10MWp electricity, along with the associated minor modifications to panel design and site layout. The applicant stated that they have worked with farmers and landowners to identify potential solar sites and only those considered to be as close to being 'constraint -free' and suitable for the nature of the proposed development have been entered into the planning process. The applicants state that this site was chosen for the development of solar energy as it has a sufficient area of flat open ground, a good level of solar irradiance and is free from constraints such as statutory environmental designations and overshadowing and is also well located to facilitate the connection to the National Grid. They state the proposals shall comprise primarily of solar panel modules which convert sunlight directly into electricity. It is considered that the proposed layout has taken into account positions of existing tree and hedgerows and that these will be retained. It is also considered that the solar park will not impact the PROWs running through the site and that access will still be possible to them through fenced enclosure. It is proposed access to them will still be possible during the construction period of the development. The applicants consider that the development would not significantly impact the landscape character of the area as the impacts are restricted to its immediate setting and the other proposed landscaping and habitats enhancements would assist in mitigation adverse effects of the scheme and reinforce local character. The applicants consider that the development would allow for additional biodiversity enhancements of the site as a result of the installation of species-rich grassland which will have a higher net biodiversity value than the current site use. The applicants state that the development will generate around 9,196,00 kilowatt hours of renewable energy per year to power 2,478 homes and for a 30-year lifespan this will offset 4300 tonnes in carbon dioxide emissions. The applicants consider the development to be in compliance with local and national planning policies in particular those promoting renewable energy generation.

Soils and Agriculture Assessment February 2021 – This notes that the land in SDDC for over half is land classified as Grade 3 (potential to be BMV) with 20% classified as Grade 2 (BMV) and 13% Grade

4 (non-BMV). The site is split between Type 1 light texture soils at moderate risk of erosion and Type 2 medium textured (clay-rich) as at low or very low risk of erosion. Due to the mitigation measures proposed throughout the site the potential loss of soil resources from the Site is considered to be less than 5% as a result of unavoidable track-out from construction vehicles wheels and that overall this is a negligible loss and thus the impact of the development is not significant. Mitigation methods are proposed to minimise impacts to the soils highlighted for the construction period of the development and to allow for retention through appropriate grass herbage mix planting (which is said to have been undertaken in March 2016) to help prevent erosion from water run-off from the PV's during its use as a solar farm so it can return to arable agriculture following this. It is said that the construction period will be managed so that works are programmed when the soil is dry to minimise damage during handling or trafficking typically between April and September. No cumulative effects on land use, soil resources or land classification are expected due to the proposed development. The applicants conclude that 'due to the potential for the continued use of the majority of the land within the Site for agricultural purposes; the negligible area of temporary land loss due to the maintenance track and infrastructure; and the low levels of disturbance to the soil resources, the proposed Solar Farm would have no significant effects on agricultural or soil resources. They consider that as SDDC 'comprises a high proportion of good quality land, therefore relocation of the proposed development is unlikely to change the outcome of the impact on soils and agriculture, with a potential to impact higher quality land (Grade 2) which provides higher agricultural value than that of the current proposed site'. Overall it is concluded that 74% of the land is Class 3a (good quality) and 26% Class 3b (moderate quality).

Archaeology and Cultural Heritage Assessment (incl. Geophysical Survey Report) December 2020 –

The applicants assessment includes baselines information from the Derbyshire Historic Environment Record, Historic England data sets, the Derbyshire Record Office, a Site walkover survey and a geophysical survey. The assessment concludes that in respect of potential buried archaeological remains there is no evidence to reasonably indicate the potential for presence of unknown remains which would preclude development and in accordance with a previous permission the proposals should be granted (on archaeological grounds). No further survey works are recommended on a prior to determination basis and a suitable planning condition could be attached to the western part of the Site where remains of potential prehistoric date are anticipated from the results of the geophysical survey to secure suitable future prior to commencement survey works/watching briefs. It is not considered that the development would adversely affect any designated heritage assets through changes within their setting with no harm identified to them. The applicants therefore consider that the proposals comply with legislation and policy on archaeological and heritage grounds subject to the use of planning conditions.

Preliminary Ecological Appraisal Update Report February 2021 – In this document the applicants undertook a PEA which comprised a desk study and extended Phase 1 Habitat Survey. This Appraisal identified the following ecological features may be subject to adverse effects in the absence of mitigation: running water (wet ditches), NERC s.41 Hedgerows; Reptiles; Nesting Birds skylark; bats; badger; brown hare and hedgehog. As a result additional assessments, surveys and pre-construction checks were recommended as necessary to fully inform the planning application: pollution prevention measures; retention of NERCs 41 hedgerows and broadleaf scattered trees; vegetation clearance and solar panel implementation to be undertaken outside of bird nesting season; pre-construction nesting bird checks; sensitive lighting scheme for bats; pre-construction check for badger setts; and precautionary working method to avoid potential impacts to reptiles, brown hare and hedgehog. The appraisal recommended wet ditches are protected by 10m buffers to prevent pollution run off through measures within a CEMP, the same buffers are recommended for hedgerows. As it is considered that there is unlikely GCN in and around the site solely Precautionary Working Method Statement will be included in any Biodiversity Method Statement to minimise risk of incidental harm to amphibians and reptiles (also for Brown Hare). The Appraisal also recommends for nesting bird such as skylark present on the site that works not be undertaken during nesting bird season or otherwise a presence check 48 hours before work commences by an Ecologist, plus other skylark enhancement. It is also stated that the mature or scattered trees etc. will be retained as they are suitable for foraging and commuting for bats and that for further mitigation lighting and any removal of trees would require prior approval or future surveys. It is considered that the solar farm would not result in any impacts to statutory or non-statutory designated sites. The applicants opinion is that the recommended mitigation measures will

ensure that the development would not affect protected or notable habitats or species and that these should be delivered through a Biodiversity Method Statement and managed long term through an appropriate management plan such as log piles for invertebrates etc; enhancement of species poor hedgerow and infilling of gaps adding native fruit trees for birds; bat boxes into existing trees and grassland management by sheep within site, though not April to July to allow plants to flower and set seed for skylark. The applicants consider that the proposals offer opportunities to enhance the biodiversity value of the site in line with local and national planning policy.

Biodiversity Management Plan February 2021 – This follows on from the Preliminary Ecological Appraisal (PEA) December 2020 (WA,2021) and the Phase I habitat plan assessment in the appendices of that document (GM10971-001). The applicants consider that the management, methodology, precautionary methods and mitigation provided within this document are suitable for protecting habitats and species present within the locality and that as a result of the management plan it is envisaged that there will be an overall net increase in the nature conservation value of the Site. The applicants consider that the mitigation measures and habitat enhancement opportunities the development will facilitate will meet local BAP objectives and contribute to nature conservation targets for Lowland Derbyshire. The plan provides details of badger mitigation in the instance that badgers re-occupy the site between the period the assessments and surveys were made and before construction starts on site. The BMP contains general aims alongside specific objectives to provide on-site mitigation and the increase of overall biodiversity value on site as a result of development. The specific objectives listed are: objective 1 - to maintain and enhance existing habitat connectivity throughout the Site by maintaining structural diversity and linear vegetation features; objective 2 – to maintain value of the site for protected and notable species present in the locality by providing suitable habitat for breeding and access into the Site for foraging and commuting; objective 3 – to enhance plant species richness across the site post construction through native wildflower planting underneath solar arrays and objective 4 – to ensure the continued use of habitats within and adjacent to the proposed site by foraging and commuting species in the locality during the construction and operation phases of the proposed solar farm. The BMP also includes how the different operatives in developing the proposals will be instructed on how best to manage and mitigate for biodiversity at the different stages of the development appropriate for their various roles such as: Ecological Clerk of Works; Site Manager and Site Operatives.

Construction Traffic Management Plan February 2021 – The applicants consider that the existing highway network: A50 dual carriageway running east to west to the north of the site, Watery Lane (two way – national speed limit) which runs from the A50 junction south and Scropton Road (two way – 30mph) are suitable for use as points of access onto the track where the site starts for both maintenance of the development for its lifetime and during the construction period. For the construction period of the development it is proposed to use Leathersley Lane (two way – national speed limit then 30mph through Scropton Village) and the A50 following communications historically between the LPA (2015), CHA and the applicants. The site access will be made directly onto Scropton Road where there will be adequate visibility splays and sufficient width for HGV movements which will be managed by staff on site during construction. It states that there will be a temporary construction compound constructed to the west of the site entrance to the solar field which will include cabins, site office and dry room for operatives. To minimise impacts on the highway deliveries will be restricted to the quiet periods between morning peak and mid-afternoon school run with no other significant uplifts long term in traffic movements or intensification on the highway (maximum 2no. additional two way trips per day). A specific haulage route has been proposed from Scropton Lane and from the west via Watery Lane and the A50. Normal non-delivery traffic and vehicles will arrive before peak periods. It is considered that the proposed development will not create any significant adverse effect on the current operation of the highway network.

Dust Management Plan February 2021 – This Dust Management Plan was prepared in line with condition 16 of 9/2015/0688 (expired). It provides details of the activities most likely to lead to dust and fine particulate matter (PM10) during the construction phase are identified and proposed mitigation measures, to minimise the risk of effects for the closest sensitive receptors and concludes that subject to the mitigation measures described and low number of vehicle trips it is considered that any effects are 'not significant' noting also sensitive receptors such as dwellings in an otherwise rural area, are



located 95m to the south in an area with no known air quality issues. The mitigation measures include: contact for air quality management; air quality/dust complaints log with reduction measures and time column; training of employees; daily on-site and off-site inspections for dust monitoring, site access road and proximity to residential properties; solid screens and barriers around high potential dust areas with cleaning; materials with dust potential to be removed as soon as possible; vehicle engines to be off when stationary; cutting etc. to have dust suppression; drop height minimisations; wheel washing facilities and covering of vehicles. Subject to these methods of construction management and mitigation the applicants consider that the development would be in compliance with local and national planning policy.

Flood Risk Assessment and Sequential Test (incl. Surface Water Management Plan) – The assessment considers that the development of a solar farm considering Table 2 of the PPG would be a 'Less Vulnerable' development. The EA Flood Map for Planning shows the site to be located in Flood Zone 3 adjacent to the River Dove benefiting from flood defences. Nearby watercourses include an unnamed watercourse near Watery Lane which passes beneath Leathersley Lane within 2no. culverts before discharging into Foston Brook to the south of the railway, an unnamed stream to the north of the site and Foston Brook 800m to west of the site which flows into the River Dove 420m from the site. In terms of the Flood Risk Sequential Test it states that in order for the solar farm development to be financially viable it must be located within 2.5km of the point of connection (PoC) proposed by the Distribution Network Operator (DNO). It states that the PoC is located to the north of the River Dove and the Crewe to Derby railway, it would not be feasible to locate the solar farm to the south of these features as the connection would be less financially feasible. The proposed development seeks to extend an existing site owned by the Client and, consequently, no alternative sites are available in respect to NPPG in guiding development to Flood Zone 1 where possible. The applicants consider due to buildings, transport infrastructure, watercourses and woodland all having buffers between 10 and 20m applied to them this further restricts areas where the development can be located. Taking these points into account result in the Exception Test not being required to be applied. The site is generally flat and the existing drainage regime is assumed to be drainage to ground, drains or overland flows (eastern) though some small field drains to the western and south-western boundaries exist. The nearest foul drain according to Severn Trent Water which is a 100mm diameter pipe pumped foul drain to the north-western end of the site 10m from the boundary and a public surface water sewer 140m south of the site in Leathersley Lane. The Flood Risk setting is considered to be 3a and therefore does not constitute 'Functional Floodplain (Flood Zone 3b)'. The ground condition survey confirms the site to be superficial alluvium deposits consisting of clay, silt, sand and gravel. The MAGIC map states these to be 'Secondary A' aquifer defined by A as 'permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers'. The bedrock geology is recorded as mudstone a 'secondary B; aquifer defined as 'predominantly lower permeability layers which may store and yield limited amounts of groundwater due to localised features such as fissures, thin permeable horizons and weathering'. The assessment makes note of historical flood events in the village of Scropton such as 1981 and 2000 where Foston Brook overtopped flooding properties and high-water levels from River Dove noting also field runoff and poor highway drainage maintenance contributed. The assessment makes reference to a 2012 report for Flood Risk in Scropton. Further not specifically defined locations of flooding in the wider Derbyshire area are also listed. The assessment confirms the site is not at risk of tidal flooding. In terms of fluvial flooding Foston Brook and River Dove respectively 440m to the west of the site and to the south, this risk based on improved defences @ a 1 in 100 year standard protection of flooding and flood level data modelling plus distance of the site from the catchment, the overall fluvial flood risk from these is considered low. The assessment concludes that the risk of flooding of the site from sewers, groundwater and artificial sources is low. In terms of the flood risk from the development this is considered to be low as the panels will be supported on metal posts driven into the ground without a concrete base with a minimal surface area which would not affect present character of the ground and rain falling off them will run onto the ground and disperse by a combination of infiltration, transpiration, evaporation and runoff, mimicking the existing greenfield characteristics. Providing that the grass is maintained underneath the development would not significantly impact runoff volumes and rates with no net increase reaching the site boundary as a result of the panels. It is not considered that the fixed plant, cabins and access tracks due to their limited area will impede or increase runoff and will be directed to ground for infiltration or to soakaway (or combination). In terms of fluvial flood risk as a

result of the development due to the unmanned nature of the site with limited visits the risk to humans as a result maintaining this in the instance of loss of floodplain or fluvial flooding is considered to be low. In terms of surface water risk as a result of the development linear swales/open ditches are proposed before site boundaries to prevent flows to the wider area. Management of grass under the panels will be important for this. The construction of the tracks serving the site are not confirmed but assumed to be permeable free-draining material that would not impede infiltration. Taking all this into account the applicants consider that from a flood risk perspective, the site is suitable for the proposed development.

Landscape and Visual Impact Appraisal February 2021 – concludes that the proposed solar scheme would not result in prominent effects upon the surrounding landscape beyond ; 800m to the north and east, 400m to the south and 350m to the west. The assessment notes the site to be wholly located within the 'Lowland Village Farmlands' LCT of the Trent Valley Washlands as defined within the Landscape Character of Derbyshire County Landscape Character Assessment. The site itself would experience direct landscape effects that would be prominent, these would be reduced during the operational phase and reversible in the long term. Additional planting would be beneficial to the landscape character in the long term alongside retention of all trees and hedgerows throughout. The development would result in prominent effects from one settlement within the study area, for some properties within Scropton village. One property it is considered would experience severely adverse effects, on account of proximity and lack of existing screening. A limited number of other properties, within close-proximity it is considered would experience prominent effects; Over time with new planting and management these effects would be reduced. There would be no prominent views from the road, the national cycle network, or recreational receptors and visitor attractions. Footpath routes across the site would experience prominent views, though site assessment indicated that these footpaths are not well used, marked or defined. Footpaths beyond the immediate area would not experience prominent views. The addition of land at Hawthorn Farm to the existing solar scheme adjacent Leathersley Lane would not result in prominent cumulative landscape or visual effects due to the intervening distance, low-lying topography and vegetation. It is suggested that the track across the field to the site would be gravelled for construction purposes, with a reinforced grass system established in the operational period. The applicants consider most landscape impacts would be in the 2/3 month construction period when construction activities are on site.

Statement of Community Involvement February 2021 – The applicants state that community consultation of the potential future application and proposals was undertaken by means of a website launched on 11th January 2021, emails to the Foston and Scropton Parish Council and Cllr Patten, Parish Council meeting on 2nd February 2021 and letter drop 19th January 2021. It is stated that 1no. response to the website was received raising concern at potential blocking/diversion of a PROW onto a dangerous country lane and potential overhead pylons. In response to the Parish Council meeting the applicants noted topics raised following a presentation and Q&A covered: footpaths; flood risk and permeability; cumulative impact of construction vehicles due to the planning application for housing DMPA/2019/1198; impact of the grid connection on internet connectivity; maintenance of the site and vandalism. The applicants consider due to the appraisals conducted, either there will be no impacts on these elements or they will be temporary with mitigation proposed to ensure impacts are limited to nothing or negligible.

Assessment of Alternatives February 2021 – The site is acknowledged to be Grade 3a (74%) and Grade 3b (26%) agricultural land following DEFRA mapping. The applicants note that the main constraints within the search area are woodland, surface water and buildings also noting avoidance of: landscape designations including AONB; Green Belt Land; designated heritage assets and avoidance of high value ecological designations. In addition the suitability of locating a solar park to generate the required yield also encompasses appropriate topography, stand-offs from railways, rivers, flood zones less than 3 roads and hedgerows was also considered in selecting this site. From research of alternatives within 2.5km of the grid connection and a private wire connection to Avaro Foods it is noted that consent of the landowner is an important factor in the deliverability of a project and that GS Vogt Lt'd preferred approach is to deal with a single landowner which provides a further constraint to find 9.62ha of land suitable for 10MWp solar park in the grid connection area – which Hawthorn Farm provides. The applicants conclude that the proposals represent a farm diversification scheme and that

agricultural use will continue throughout the life of the solar park and as such no agricultural land will be lost as a result of the scheme. The applicants consider that biodiversity will be enhanced within the site and on decommissioning the land will be restored in line with current best practice at the time and that the barriers to development such as site access and ecological impacts have been demonstrated and are considered to be manageable. The applicants consider finding alternative sites that satisfy all these criteria and where the landowner can accommodate the proposed development is difficult. The applicants argue that if an alternative site could be found that is suitable for PV development then this should be developed as well as, rather than instead of the Hawthorn Farm site. The site is considered to be most viable when the grid connection as it is by far the closest site to the PoC and Avara Foods. The report also considers roof top mounted solar, though they note there is no planning policy requirement to demonstrate the overall need for renewable energy proposals and no specific policy requirement to sequentially consider rooftop ahead of ground-based. The report includes an assessment of large-scale roofs in the search area suitable for the scale and orientation of the panels on the roof, the two most suitable being the Nestle Factory in Hatton and Keuhne and Nagel Distribution Centre. The Nestle Factory was discounted due to scale and orientation issues noting the site themselves have ground mounted solar PV which may suggest roof mounted was not suitable and thus used redundant land to deliver their renewable energy strategy. The Keuhne and Nagel Distribution Centre was discounted due to the presence of skylights in the roof structure and that the A50 is located between the building and the PoC and would make the connection less viable as it would have to cross the road. The smaller factories with suitable roofs were discounted due to roof size included Dove Valley Park, JCB Power Systems, Dairy Crest and Trauma UK. The report concludes that the constraints identified severely limit the available land within the surrounding districts for solar PV development and indeed, in avoiding nature conservation sites, Green Belt and AONB land, the vast majority of the three districts not constrained by these designations is agricultural land classified at grade 3 and 4. The report concludes that the site has been demonstrated as preferable to the alternative sites identified as it is available, deliverable and avoids impacts on ecological or landscape designations.

### **Relevant planning history**

DMOT/2021/0137 - Screening Request relating to proposed installation of photo-voltaic panels, inverters and transformers to produce renewable electricity on – Not EIA development – February 2021

DMPA/2020/0339 - Certificate of Lawfulness for existing development to determine if application ref. 9/2015/0688, relating to the installation of photo-voltaic panels, inverters and transformers to produce renewable electricity, was lawfully commenced at – negative certificate issued – November 2020

DMPA/2019/1198 – Erection of 10 no. dwellings – under consideration

9/2015/0688 - proposed installation of photo-voltaic panels, inverters and transformers to produce renewable electricity on – approved with conditions – 16th December 2015 – conditions discharged 3, 4, 5, 6 and 20 dated 5th May 2016

### **Responses to consultations and publicity**

Environmental Health – no objection subject to conditions covering – Dust Management Plan

Environment Agency – no objections but referred it to the LLFA as the area benefits from flood defences has in recent years experienced surface water flooding, and therefore they should assess pluvial flood risk to adjacent properties and land does not result from this development by ensuring SUDs systems are implemented within the development and thereby preventing an increase surface water run-off/discharges from the site.

Derbyshire Wildlife Trust – no objections subject to use of planning conditions as follows: implementation of measures within Biodiversity Management Plan and as shown on Landscape Planting Plan to provide an overall net gain in biodiversity.

County Highways Authority – no objection subject to conditions covering: implementation of

Construction Management Plan; plant storage as per plan GSV1002-100E; wheel cleaning facilities; HGV haulage route inspections; CTMP and highways works remedial works programme submission for decommissioning.

LLFA – no objections subject to conditions: prior to commencement detailed design and associated management/maintenance plan of surface water drawing; prior to commencement detailed assessment in respect of destination for surface water; prior to commencement details of surface water management during construction phase and prior to first use verification report by drainage engineer. Informatives are also suggested.

Peak and Northern Footpath Society – object for the following reasons:

- The effect on users of the footpaths which cross the site would be “substantially adverse”.
- It seems the developers would be content to make the public walk along fenced corridors to cross the site.
- The development might be good in terms of the sustainable production of energy, but for the people who use these paths for informal recreation to benefit their health and wellbeing, particularly to link to the extensive network of paths in the countryside to the north of the site, the development would be disastrous.
- If the development must use this site, it would be possible to legally divert the paths so that their use by the public remains enjoyable.

Derbyshire County Council Archaeology – no objection subject to conditions securing prior to commencement archaeological field evaluation (trial trenching) and subsequent recording depending on the results of the trenching due to the potential presence of below ground archaeological features or probable prehistoric origins.

East Midlands Airport – no objection subject to informatives in respect of crane and tall equipment notifications.

Derbyshire County Council Minerals Officer – no objection - as the development would be a temporary use of the land, it would not lead to the permanent sterilisation of the sand and gravel resource; the sand and gravel would still be available once the development has been removed. Also, the site has not been put forward, or identified as being required, for sand and gravel extraction in this plan period to 2038. Therefore there are no objections.

Derbyshire Planning Policy Officer – no objection – considers the proposals will help SDDC and County as a whole meet carbon budgets and provide net zero carbon energy contributing to UK 2050 goal. They also consider that while the site is large it is relatively well screened by existing field boundaries with scattered hedgerow trees to be retained as part of the development and as such the site is not visually prominent when viewed from the village and as such they do not consider the development to be disproportionately large in comparison to the scale and nature of Scropton village. They recommend the development is carried out in accordance with the Biodiversity Management Plan and Landscape Planting Plan. They would have liked to see more creative access and educational solutions for local community in respect of on-going community involvement. They also commented that while existing footpaths through the site are to be maintained, public access to the site appears to be limited and restrictive. Sought conditions for: associated battery storage for storing excess energy and to help balance grid.

Derbyshire County Council Landscape Architect – no objection – they consider that the site looks to have been carefully selected as it does not abut any local roads or obvious locations that overlook the site including Scropton village. They also note the two footpaths crossing the site are relatively short sections and the panels are proposed to be set back so that relatively generous rides are created. They state that while the LVIA suggests theoretically large areas of potential visibility may be possible due to flat low-lying landscape, actually the site is well screened by existing field boundaries with scattered hedgerow trees and these will be retained in proposals noting proposed height of panels around 3m. They also note where there are gaps in hedgerows these are proposed to be replanted incorporating further hedgerow trees which would also reinforce wider landscape character area. They consider that

while there will be significant adverse visual impacts from the footpaths crossing the site as acknowledged in the LVIA, these are relatively short sections with other routes available locally. The officer seeks a planning condition be attached to any approval to include scheme for long-term management of all hedgerows around the site to ensure that they maintain their screening value throughout the lifetime of the solar farm (30 years).

Designing Out Crime Officer – no objection subject to conditions as follows: further details of CCTV systems for the site and purposes of monitoring as per previous permission.

11 no. letters of objections have been received from the public during the original consultation period raising the following comments:

Principle of the development:

- a) The development is proposed on good farmland currently in use for growing of food crops and as such it is at the expense of food crop production.
- b) The development is unnecessary as renewable energy targets have already been met.
- c) 35GW capacity has already been consented and a further 18GW of capacity in the planning system according to the Renewable Energy Planning Database (REPD) and therefore would exceed the Treasury's cap on subsidy spending.
- d) The development is not required and would waste valuable local authority resources and remove good quality agricultural land (3a) and instead place solar panels on buildings/other land.
- e) The solar farm is small scale so what is the need for it.
- f) It is SDDC duty to ensure the Counties agricultural land is not diminished where there is no genuine reason noting solar parks already exist at Ashton Heath Farm - Sudbury 0.75m, Rolleston Park Farm – Tutbury 2.5m, Dove View – Marchington (application in) 5m, Toyota – Burnaston 6.4m, Drakelow Power Station 9.7m.
- g) The NPPF directs use of brownfield land first.
- h) The argument that grass and grazing land can be created under the panels is not accepted as at other sites like Ashton Heath Solar Panel Farm only weeds grow and nothing to say that would not be different in this instance. Strong planning conditions would be required to cover this to cover: responsible parties for cleaning up the site reverting back to agricultural use; materials used are recyclable; provision in place for this if the company goes out of business or landowner dies etc.
- i) Too much development like DMPA/2019/1198 for 10 houses and 9/2018/0064 extension to Avara Food factory has been granted in Scropton and it is diminishing the village.
- j) Scropton identified as possible site for sand and gravel which is out for consultation which combined would have a huge impact on the village.
- k) The landowner has an alternative site that this site could be housed on.
- l) Unclear how many panels would be involved ie. 14118, 14820 and 16770 are the numbers stated in the various supporting documents.
- m) The fields are grass and not used for equestrian or grazing use as applicant claims, nor is there a wall between Hawthorn Farm and Lawfl Farm, the wall is behind existing sheds to stop cattle encroaching neighbouring fields.

Impacts of the development on biodiversity and nature conservation:

- a) Arable crop land is key to the conservation and sustainability of the biodiversity of our environment, therefore the development may potentially impact ecology as a result of the installation of solar photovoltaic panels, presumably ground mounted.
- b) The removal of vegetation including trees, hedgerows etc. has negatively impacted biodiversity efforts and nature conservation.

Impacts of the development on pollution:

- a) There is a lack of recycling opportunities for solar panel recycling and to grant permission for this will add to this issue and add to burden on resources adding to scarcity issues in the future.

- b) Toxic materials and hazardous products used during the manufacturing process of the solar panels can affect the environment.
- c) The solar farm will require maintenance dependent on fossil fuel powered vehicles.
- d) To decommission the farm it will require significant time and energy to return the land to its pre-disturbed state and the changes made may not be reversible.
- e) If the solar panels break contaminated effluent may run into fields and then cause issues to peoples health long term.

Impacts of the development on landscape and visual character:

- a) Several developments have negatively impacted the character of the area with vast amounts of hedges, trees and shrubs removed.
- b) As per the LVIA the landscape will be impacted by: alterations to the site access track during the construction period; temporary construction compound and stockpile area; construction of the solar farm; installed solar panels across the site; the transformer substations; grid connection via a substation; permanent site access and onsite tracks and surrounding security fences.
- c) The large area required would interfere with existing land uses and impact on the area and surrounding uses.
- d) Erection of 2.4m high deer fencing would not be in keeping with the area especially when leaves are shed from trees/hedges. This is the same for the significant industrial equipment, substations etc. close to residential properties.
- e) Significant negative visual impacts for neighbouring residents due to the presence of so many solar panels including restricting rural views enjoyed from the public footpaths.
- f) Significant landscaping conditions would be required to provide adequate landscaping conditions and management so that future landscaping requirements do not fall to local people to manage which may cause conflicts.
- g) CCTV mounted on 4m poles above the deer fencing will be visually intrusive and detract from local area character and that of the landscape, noting CCTV is not normally seen in Scropton.
- h) Poor visual amenity for immediate neighbouring residents due to difference between rural outlook and industrial solar panels.
- i) Footpaths should not be obstructed as a result of this development, fencing in of the PROW's (numbers 11 and 17) not appropriate.
- j) There is no way that the landscaping proposed could effectively screen the development.
- k) The cumulative visual impact of several solar parks in the immediate two mile area should be taken into account as per Planning Practice Guidance from the DCLG on page 40 for Renewable and low carbon energy.
- l) Confusing statements in documents about angles of tilt for the panels like that between Planning Design and Assessment and Soils and Agriculture Assessment.
- m) Statements about the provision of solar grass soils are not true.
- n) The site is mostly flat with some undulation so can be seen readily.

Impact of the development on amenity:

- a) Serious concerns raised for residents living directly adjacent to the solar farm as impact of the development would be huge on quality of life.
- b) No information within supporting documents talks about noise, how will noise of equipment be abated to control for neighbouring residents.
- c) How will noise from construction period be managed which is due to take place over 8-12 weeks.
- d) All of the equipment solar panels, substations, CCTV poles, perimeter fencing, hedgerows and inverters less than 100m of residential properties.
- e) It is not clear from the submission whether the noise levels quoted are for the whole facility or individual bits of equipment and it is not clear whether abatement can be sought.

Impact of the development on flood risk and water management:

- a) The site is located wholly within Flood Zone 3 and residents are therefore concerned about possible increase in flooding due to the loss of natural drainage of the site and increasing run-off and ill-maintained highways such as Watery Lane.
- b) If the development is approved then substantial planning conditions should be attached to ensure: minimal vegetation disturbance during construction; re-vegetate asap to establish and maintain ground cover with post construction timeline; conduct regular inspections and maintenance of the site to ensure vegetation cover is adequate.
- c) The development will reduce the ability of the ground, due to the provision of solar panels, to absorb water through greenfield means and this will therefore pass via the channels and discharge into nearby houses, resulting in higher insurance premiums to cover this.
- d) The existing flooding problems will be exacerbated by heavy construction periods and steel rods.
- e) Flood risk mapping and recording does not mirror situation on site including agricultural fields and Foston Brook, noting this caused issue to the footpaths making it hard to cross in inclement weather.
- f) Applicants flooding information is unclear which event on Watery Lane are they referring to when talking about ditches being cleared etc. to the lane.
- g) Up to date floods information should be provided.
- h) There is conflicting 'evidence' in the Soil and Agriculture Assessment about on-site flooding, residents note it has flooded and water regularly leaks from the soil.
- i) Scropton has flooded three times this year.

Impact of the development on highways safety:

- a) The number of additional vehicles will have a significant impact on the volume of HGV's travelling through the village and will cause traffic build up, intensification, delays and impact quality of road surface, not acceptable in a small village.
- b) Noise, dust and general disturbance from construction vehicles will impact safety and amenity.
- c) HGV route shown in Traffic Management Plan at Watery Lane and Scropton Road is the worst route for HGV's to use as the edges of these highways are being eroded and pushed back into the Brook running its length causing frequent flooding to this stretch of highway. It is therefore not suitable and should not be used for construction traffic.
- d) If permission is granted construction management hours should be amended to ensure highways safety, traffic management and manage amenity.
- e) There are already highways issues as a result of HGV's cutting through the village to avoid flooded roads or to go between nearby industrial sites or when the A50 is overloaded.
- f) The access of Main Street is an unclassified road barely wide enough for a white line.

Other issues:

- a) Solar panel farms present a fire risk.
- b) Application contains a number of inaccuracies/misleading statements.
- c) Cllr Billings previously supported residents in not supporting the application citing that following site visit to the closest residential property to full comprehend the severity of impact to neighbours they could not support it.

2no. letters of support have been received from the public during the original consultation period, raising the following comments:

- a) Great that more environmentally friendly initiatives are to be installed and supports the move away from fossil fuels.
- b) No issues with visibility of the panels as it cannot be seen from the highways and would not impact anyone.

2no. letters of support were received from the applicants during the original consultation period which cannot be counted as formal letters of support.

Foston and Scropton Parish Council – object to the application for the following reasons: the entrance and exit between 2no. blind bends on the Main Road though Scropton which will constitute a traffic hazard.

3no. letters of objections have been received during the re-consultation period raising the following comments:

Impacts of the development on landscape and visual character:

- a) The 40ft transformer, 20ft transformer station and customer cabin are situated to the southern end of the site close to the main gate and as they will be placed on a concrete plinth they will be more intrusive on visual and landscape character of the area. No details of concrete plinth provided.
- b) The number of proposed CCTV cameras on 3m posts will cause visual clutter and will also be on concrete bases and thus taller than shown and will cause detriment to landscape character. No detail of concrete plinth provided.
- c) The CCTV is not required as following neighbouring solar farm thefts many years ago there haven't been any since, so why is this required here considering how they will look and that nothing could screen them. Crime is also low anyway in Scropton village.
- d) The deer fencing proposed, possibly to be painted green is not indicative of the immediate area and should be amended.
- e) No details have been provided of external lighting.
- f) The visual impact of neighbouring residential properties along the south and south-western boundaries of Scropton will be severely adverse and will appear like a prison compound due to volume of panels, fencing, gates and security features and is not small-scale rural development supporting a village.
- g) Uncertain how tall the proposed landscaping planting will grow and consider the amounts proposed are insufficient for their purpose. Even if they grow to 3m there is not indication of how they will be spaced to secure the sufficient screening cover.
- h) Insufficient tree planting to southern boundary, but to the south-western boundary closest to the applicant has denser planting.
- i) The hedgerow planting will not provide sufficient screening for many years due to time taken to establish, with the slowest growing species to southern boundaries nearest to sensitive end receptors.
- j) The meadow/tussocky grassland species proposed is unlikely to work due to slow germination and growth and unlikely to flower in first season. Aston House Solar Farm used tussocky grass and it appears as if disused industrial estate not in keeping with wider area.
- k) Unsure how weed growth will be managed to maintain various grass options proposed for planting, concern it will turn into scrubland. How can livestock use this?
- l) What trees are within the existing orchard?
- m) The 2no. types of PV panels and module frame specifications have not been confirmed.
- n) Colour of gates, fences etc. have not been confirmed which could cause inappropriate colours to be chosen.
- o) The heights of gates and fences are too tall and overbearing for immediate residents, footpath users etc.
- p) No specification of information boards along fencing adjacent to PROWS provided.
- q) What is the plan for decommissioning the development in respect of landscaping, other than restoring to its previous use.

Impact of the development on amenity:

- a) Residential properties are sensitive noise receptors and the siting of the various compounds, cabins and transformer stations is closest to these receptors and may cause noise issues for these residents as a result.
- b) The dust management statement says there will be dust plumes visible, how will this be acceptable on peoples health during construction phase. Environmental Health were incorrect not to raise issue on this basis.
- c) Whilst it is said the panels will not be reflective 100% absorption of light is not possible and adjacent neighbours may experience glare issues which may cause nuisance.

Impact of the development on flood risk:

- a) Leathersley Lane running westward out of Scropton to A515 junction at Sudbury was not known to flood and following erection of solar farm on north side of that road in Sudbury the road now regularly floods near the installation.



- b) The Environment Agency response does not take into account recent flood events in 2020/21 on Watery Lane and Leathersley Lane which had to close for flood events. Why have they not raised objection considering the amount of reports from residents to the relevant authorities over the years.

Impact of the development on highways safety:

- a) The previous permissions using the same entrance route and highways access had to be modified for highways safety reasons as a result of accidents.

Impact of the development on archaeological potential:

- a) What methods are in place to ensure the developer complies with the archaeological directive that nothing can be commenced until recording scheme has been agreed and undertaken.

2no. letters of support have been received from the public during the re-consultation period raising the following comment:

- a) Great investment for the future.
- b) The development will help address the Council's and wider climate change goals and the development should be completed as soon as possible to help build a better future for the next generation.

2no. letters of support were received from the applicants which cannot be counted as formal letters of support.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD6 (Sustainable Energy and Power Generation), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF5 (East Midlands Airport), INF7 (Green Infrastructure)
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas), BNE6 (Agricultural Development), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage)
- Derby and Derbyshire Minerals Local Plan – MP17

The relevant local guidance is:

- Trees and Development SPD
- Landscape Character of Derbyshire – Trent Valley Washlands

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF) 2021
- Planning Practice Guidance (PPG): Renewable and low carbon energy

The relevant legislation is:

- The Town and Country Planning Act 1990

The relevant emerging plan:

- Derbyshire Minerals Plan

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- The principle of the development

- The impact of development on agricultural land
- The impact of the development on local character
- The impact of the development on trees, hedgerows, landscape character and footpaths
- The Impact of the development on biodiversity
- The impact of the development on highways safety
- The impact of the development on residential amenity
- The impact of the development on minerals safeguarding
- The impact of the development on designated heritage assets and archaeology
- The impact of the development on East Midlands Airport operations
- The impact of the development on flood risk and water management

### **Environmental Impact Assessment (EIA)**

The development has been screened under the EIA Regulations. The proposal is considered to fall within paragraph 3a of the Schedule 2 to those Regulations, being an installation for production of energy. However, having taken into account the criteria of Schedule 3 to the Regulations, the proposal is not considered to provide any fundamental alterations of the conclusion previously reached that significant environmental effects would not arise in the context and purpose of EIA. Accordingly the application is not accompanied by an Environmental Statement.

### **Planning assessment**

#### **The principle of the development**

The most applicable policies to consider are S1, S2, S3, E7 and SD6 of the LP1 and SDT1, BNE5 and BNE6 of the LP2.

SDT1 of the LP2 provides definition of the limits of a settlement, ie. settlement boundaries. According to Appendix A the proposed access road located at the south-west of the red edge which leads to the wider solar park compound to the north, is in part located within the Scropton settlement boundary, with the majority however being located beyond settlement boundaries in agricultural fields. Scropton settlement is defined as a Rural Village. The majority of the site is therefore located in a rural area/open countryside location. To this end policy BNE5 of the LP2 'Development in Rural Areas' is relevant which states that 'outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is:

- allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28; or
- otherwise essential to a rural based activity; or
- unavoidable outside settlement boundaries; or
- considered to be infill that is in keeping with the character of the locality and represents the infilling of a small gap not for normally more than two dwellings, within small groups or housing; and
- will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.'

Following on from this it is important to consider policy SD6 of the LP1 which states that 'A The Council will support renewable and other energy developments and ancillary buildings or infrastructure subject to the following considerations:

- that the environmental effects of the proposal have been appropriately considered and schemes will not give rise to unacceptable impacts on landscape or townscape character, ecology, the historic environment or cultural heritage assets.
- that proposals will not give rise to unacceptable impacts on local amenity, or give rise to safety concerns, as a result of noise, shadow flicker, electromagnetic interference, emissions to the air or ground, odour or traffic generation and congestion.'

Following on from the above are paragraphs 152-158 and 174 of the NPPF and related NPPG – Renewable and low carbon energy paragraph 013.

Paragraph 158 of the NPPF states 'When determining planning applications for renewable and low carbon development, local planning authorities should:

- not require applicants to demonstrate the overall need for renewable or low carbon energy, and

recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and

b. approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas.'

The Planning Policy Guidance on Renewable and Low Carbon Energy states that:

"The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively". It then details the particular factors to consider which are: use of brownfield land and if greenfield land is proposed using poorer quality land in preference to higher quality land, encouraging biodiversity improvements around arrays, temporary nature of development, visual and landscape impact, security measures, mitigation measures and energy generation.

In respect of the above considerations a development of 9.53ha could be considered, as with 9/2015/0688, as being unavoidable in the countryside and thus the impacts on loss of agricultural land, character, landscape, ecology and flood risk in this case require assessment in order to inform whether the development is in compliance with the aforelisted policies and guidance and also if sufficient mitigation is proposed. Noting that the site is in a rural location and would offer employment albeit of small number over the lifetime of the development for those servicing the site it could also be considered as a site of Rural Development in terms of E7 subject to highways, amenity, local character and visual impacts being considered.

It is stated that the development would generate around 9,196,00 kilowatt hours of renewable energy per year to power 2,478 homes and for a 30-year lifespan this will offset 4300 tonnes in carbon dioxide emissions. This exceeds the previously approved solar farm on this site which would have generated enough power to supply 1370 homes based on an average annual consumption of 3,300 kWh of electricity per house. Notwithstanding public comments received stating that the development is not required it must be noted there is no requirement for applicants to demonstrate the need for renewable or low carbon energy generation subject to other considerations such as the impacts being acceptable. The proposals would go a long way towards achieving both local and national targets for renewable energy and contribute to cutting greenhouse gas emissions.

#### The impact of the development on agricultural land

Paragraph 013 of the NPPG makes reference to 'encouraging the effective use of land by focusing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value'. Paragraph 013 of the NPPG includes reference to the speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP to the solar PV industry on 25 April 2013 and written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015 which both include reference to where a proposal involves greenfield land the local authority should consider 'whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvement around arrays'. It is also worth stating that the Council do not have allocated areas for solar PV farms specifically within the Local Plans and as such the suitability of sites will be taken on a case by case basis based on 'only most compelling evidence' as per Government guidance. Policies BNE4 of the LP1 and SDT1 and BNE5 of the LP2 are also relevant.

Within the supporting documents it is concluded that the site comprises 74% Grade 3a and 26% Grade 3b land, which would be 9.53ha of Best and Most Versatile Agricultural land, which is clarified in the accompanying Soils and Agricultural Land and Assessment of Alternatives report. The definition of Grade 3a land is 'Land capable of consistently producing moderate to high yields of a narrow range of arable crops. The definition of Grade 3b land is 'Land capable of producing moderate yields of a narrow range of crops, principally cereals and grass'. The applicants state that the site comprises primarily arable land which is currently used for grazing constrained by its odd shape and strong

hedgerows/trees boundary treatments alongside footpaths 11 and 17 and the Overhead Lines which run east-west. During site visits the odd shape of the site was noted and whilst active grazing was not witnessed, grass crop was. The supporting documents provide an assessment of alternatives including that of brownfield roof areas of surrounding buildings within a 2.45km radius and other greenfield sites. For the roof areas, which would be a priority for consideration above greenfield/agricultural placement, both were discounted as due to the size of roof space, construction and/or orientation could not accommodate the necessary equipment to generate required yield with highways infrastructure such as the A50 presenting a physical barrier, alongside a distance barrier to point of connection and the Avara private line proposed. The locality has undulating land, variable soil types and flood plains.

In the sequential assessment of sites and considerations it was also noted that other Grade 4 land was considered in the search area, but they were ruled out for this type of development and other sustainable energy generation projects due to their relationship with the flood plain, clearances required from trees/roads etc reducing available area and proximity to connections and that this combined with viability issues covering ease of dealing with a single land owner in a less constrained portion of land, concluded this site was best for development. It is proposed that during the lifespan of the development, stated as around 30 years that the agricultural practice on the site would switch between arable to grazing with appropriate grass planted under and between the solar panel farm. To this end in practical terms it is considered that on the whole the development would not lead to significant implications on Best and Most Versatile Agricultural land, noting also that the management plan could be secured by condition to ensure upon the decommissioning of the site it is returned to the state to which it was assessed and returned back further into agricultural use. The development subject to conditions and informatives is considered to be in compliance with the listed policies and guidance.

#### The impact of the development on trees, hedgerows, landscape character and footpaths

The site lies within the National England, National Character Area 68 Needwood and South Derbyshire Claylands within the sub-division of Lowland Village Farmlands and Riverside Meadows. The site and the surrounding area (1-2km) is low lying land associated with the River Dove floodplain. As noted by the DCC Landscape Architect in their comments the immediate landscape 'has no particular sensitivities as defined in the Derbyshire County Council study to identify Areas of Multiple Environmental Sensitivity (AMES) and scores just above average for its tranquillity. Typically this is the landscape associated with settlement owing to its slightly elevated nature relative to the adjoining floodplain so in that regard this is a landscape where you would expect to see some development.'

The most applicable policies to consider are S1, S2, SD6, BNE1, BNE3, BNE4 and INF7 of the LP1 and SDT1, BNE5 and BNE7 of the LP2 and the Landscape and Trees SPD/guidance documents. As with the previous permission, the supporting LVIA identifies that the impact on the surrounding landscape is limited to that within 800m of the site and over time this impact would be reduced by hedging increasing to 3m in height. The nearest viewpoints benefit from an existing screen of hedging and from long distance views the proposal would be imperceptible, noting that the site appears carefully selected in that it is set away from nearby highways, tracks and roads and main points of the village of Scropton that are otherwise orientated towards the site. Thus, the cumulative impact in respect of similar developments in the area would be minimal. Therefore, due to existing screening and the sites low lying topography and that of the surrounding area, plus the enhancements to the landscaping from hedgerow gap planting and hedgerow tree planting with maintenance schedule, the proposal is not considered to have a significant impact on the landscape character of the area and as such is in compliance with the listed policies and guidance.

There are two public footpaths that traverse the site, footpath 11 through the southern part of the site and footpath 17 through the south-western part of the site and along the western boundary. The proposal is to provide paths enclosed by deer / wire mesh stock fencing of a height of 2.4 m. In this case the footpaths are not well used and the experience of users would alter for short lengths with the panels not immediately adjacent to the path. The longest section affected of FP17 would be enclosed by a fence to the east, an existing hedge to the west and would be 10m in width. The panels adjacent to the footpaths would be a suitable distance from the fencing and as such the impact on the footpaths would not be significant. The impacts on these routes are also reduced by the low-lying topography as the views of the surrounding countryside are confined due to existing hedge and tree screening. To this

end subject to securing the retention of the existing and proposed landscape features and as suggested by the DCC Landscape Architect a 30- year landscape long-term management plan including for all hedgerows around the site to ensure effective screening in line with the supporting landscape plan, it is considered that the development is in compliance with the relevant policies and guidance.

In respect of trees and hedgerow protection during the construction period and beyond, noting those existing are scheduled for retention the supporting Planning/Design and Access Statement provides general details of how the root protection areas and trees/hedgerows will be protected and how the development has been placed to avoid these existing features with buffers to these to be retained moving forward. To ensure tree protection during the construction period a tree protection plan condition will be attached to any approval of the development.

#### The impact of the development on biodiversity

The site is agricultural with several hedgerows, trees, woodland and water bodies either within the site, at its boundaries or nearby that may offer habitat, foraging or commuting potential for various species. To this end policies S1, S2, SD6, BNE3 and BNE4 of the LP1 and policies SDT1, BNE5 and BNE7 of the LP2 are relevant for consideration. The application is supported by various ecological assessments, landscape plans and a Biodiversity Management Plan. The application package has been enhanced in comparison to the previous permission and provides further specific detail in respect of biodiversity mitigation, enhancement and gains in a manner so as to minimise use of planning conditions should the development be rendered acceptable. This information has been reviewed by the Derbyshire Wildlife Trust who note that 'all habitats of value including an orchard and scattered trees have been retained and incorporated with the scheme and appropriate mitigation measures have been recommended to minimise impact upon notable habitats and species. The provision of suitable skylark habitat and gaps under perimeter fencing to allow movement of mammals such as badger and brown hare are particularly welcomed. Overall, we concur that the implementation of the mitigation and habitat creation/ enhancement measures recommended in the submitted Biodiversity Management Plan and shown on the Landscape Planting Plan should provide an overall net gain in biodiversity.'

In respect of leaving 500mm gaps in the fencing for biodiversity as the DWT officer notes, the Designing Out Crime officer raised concern that the gaps seem excessive and should be reduced to assist crime prevention without harming occasional wildlife transitions. Whilst this is noted, the size stipulated should be provided due to the types of wildlife in the area and that the other security efforts advanced and to be secured via condition should effectively secure the site. It is considered subject to the use of conditions and informatives that the development is in compliance with the relevant policies and guidance.

#### The impact of the development on highways safety

The most applicable policies to consider are S1, S2, S6, E7, SD1, SD6, BNE1 and INF2 of the LP1 and BNE5 of the LP2. Between them these policies seek that new development upholds highways safety and where intensification on the highways network is predicted either during construction or for the lifetime of the development that appropriate mitigation is suggested and implemented on site or developer contribution secured for off-site projects. It is proposed the site will be served by an access track from Scropton Road which in part already exists. The construction of this during the construction period is said will be permeable gravel and then a grass style concrete system implemented for the lifespan of the development. Several comments were received from the public raising concern about the width and visibility of the access onto Scropton Road, intensification on the highways network, the proposed route of haulage and the quality of the roads and also the impact of heavy goods vehicles on amenity, pollution and damage to the existing highways infrastructure. The County Highways Authority (CHA) were consulted on the application and raised no objection to the development subject to conditions. CHA reviewed the application including the Construction Traffic Management Plan, which includes routing options via Watery Lane and Leathersley Lane and they note that whilst they would have preferred to see HGV traffic approach from the north, it is not considered that traffic approaching from the east would be so detrimental as to justify an objection or requirement for the document to be altered, particularly as traffic generated by the site will only occur during construction. To this end they recommended conditions to cover implementation of Construction Management Plan; plant storage as

per plan GSV1002-100E; wheel cleaning facilities; HGV haulage route inspections; CTMP and highways works remedial works programme submission for decommissioning. It is therefore considered subject to conditions and informatives that it is in compliance with the listed policies covering highways safety.

#### The impact of the development on residential amenity

Whilst the site is positioned within the countryside not immediately adjacent to Scropton village and its settlement boundaries the closest neighbouring uses comprise rural businesses and residential dwellinghouses and equestrian/agricultural uses. To this end policies S1, SD1 and SD6 of the LP1 are relevant. Lawf Farm comprises the closest residential property approximately 90m from the site, however, the existing farm buildings to the north of the property screen the development. Other dwellings and uses accessed from Scropton Road are between 130-200m from the boundary of the site. As noted in the previous officer report there is tree screening adjacent to Scropton Road which exists to the east of Lawf Farm and there is a small bund to the rear of the Gamekeeper's Cottage that serves to reduce its visual impact. However, additional tree planting is proposed to the northern, southern and western boundaries of the site where there is the potential for impacts on visual amenity. Due to the total height of the panels and the level topography of the site, long term visual impacts are unlikely to be significant. In respect of glint and glare, the Planning Statement states that the PV "panels themselves have been designed to reflect as little light as possible in order to maximise operational efficiency and output, and have therefore been proven to have a negligible impact in terms of glint or glare". In this case, due to the distance between the panels and the nearest residential properties, the flat nature of the site and existing screening, any glint or glare impact is not considered to be likely to be significant. In terms of noise whilst a Noise Impact Assessment did not support this application, it did support the previous permitted application. It is considered due to the distance of the various components of the scheme such as the transformers, customer cabin and various inverters from the nearest sensitive noise receptors (residential dwellings) to the south in Scropton village that noting background noise levels that subject to a condition limiting the cumulative noise generated from the fixed plant and machinery forming part of the proposals not exceeding 47dB(A) at 10m from the site boundary, to ensure that noise from the development is within acceptable levels of tolerance for nearby uses. It is considered that noise during the construction period can be controlled via condition in respect of Construction Management and hours to ensure for the limited period of construction impacts on amenity are mitigated. In respect of the CCTV equipment and the comments from the Designing Out Crime Officer a condition will be added to ensure details of the specifics of monitoring of the site in respect of crime and neighbouring amenity considerations are provided for the lifetime of the development. Subject to conditions and informatives it is considered that the development is in compliance with the listed policies.

#### The impact of the development on minerals safeguarding

The site is noted as being located within a sand and gravel minerals safeguarding area. The most applicable policies to consider are S2, SD5 and SD6 of the LP1 and the Derby and Derbyshire Minerals Plan. Policy SD5 of the LP1 states that 'B. The Council will not permit other development proposals in mineral safeguarding areas where they might sterilise economically workable mineral deposits, except where development conforms with the criteria set out in the minerals safeguarding policy included in the Derbyshire Minerals Local Plan. C. Within South Derbyshire extensive minerals resources are located along the Trent Valley (sand and gravel and within the South Derbyshire Coalfield. The Local Plan has a key role in helping to safeguard commercially viable minerals resources and ensuring that new development does not lead to the sterilisation, or prejudice the future working of, important mineral reserves.' Whilst it is acknowledged from County that the aforelisted plan is out of date and a new plan up to 2038 being worked on, they were approached for comment as per policy SD5 and due to its location within the Mineral Consultation Area (MCA). The MCA ensures that minerals of economic importance are safeguarded and are taken into account in the assessment of applications for non-mineral development to avoid their needless sterilisation. The DCC Minerals officer states that MP17 of the Minerals Plan reads that the minerals planning authority will resist proposals for development which would sterilise economically workable minerals deposits, except where there is considered to be an overriding need for the development and it is shown that prior extraction of the mineral cannot reasonably be undertaken or is unlikely to be practicable or environmentally acceptable. The DCC Minerals officer considers that as this would be a temporary use of the land and that the panels could

be removed that it is unlikely that it would lead to the permanent sterilisation of the sand and gravel resource as the sand and gravel would still be available once the development has been removed. They also note the site has not been put forward or identified as being required for extraction of these materials within the period of the new emerging Minerals Plan to 2038. The DCC Minerals Officer therefore does not raise objection to the development on this basis and therefore the development is in compliance with the listed policies and guidance in respect of minerals safeguarding.

#### The impact of the development on designated heritage assets and archaeology

The most applicable policies to consider are S1, SD6 and BNE2 of the LP1 and BNE5 and BNE10 of the LP2. The closest designated heritage assets to the site edged red are Grade II The Old Hall, Grade II Lychgate and Churchyard walls to Church of St Paul, Grade II Church of St Paul and its cross. Given the set back nature of the site plus existing natural landscaping and that planned it is not considered due to the distance from the assets and the available screening that any impacts on them or their significance would result from the proposed development.

The site is also located within an area of archaeological potential and as such this and the previous application were supported by archaeological assessments. The assessments note that from geophysical surveys that there is potential for presence of below ground archaeological features of probably prehistoric origin and that these features were focused in the western area of the site. The Derbyshire County Council Archaeologist has reviewed this and the previous application. The Archaeology officer notes that previous advice issued was and that this western area be subject of no dig construction during the erection of the panels and that if this was not possible that this area of the site be the subject of archaeological field evaluation and recording by means of an appropriate scheme of works. The Archaeology officer commented that the current proposals indicate that the archaeologically sensitive area on the west of the site is to be the focus of an access track, construction compound and security fencing and that these works involved in all of which could damage or destroy any archaeological remains in that area. To this end the Archaeology Officer recommends that this area is subject of archaeological field evaluation (trial trenching) and subsequent recording depending on the results of the trenching, executed through the use of suitable prior to commencement style planning conditions and relevant informatives.

#### The impact of the development on East Midlands Airport operations

The most applicable policies to consider are S2, SD6 and INF5 of the LP1. INF5 seeks to ensure that new development does not detrimentally impact the safe operations of East Midlands Airport range of service including physical airport and flight path areas. Whilst the site is approximately 24km from the physical edge of the airport grounds it is within a flight path approach area and as such PV/Solar panels do have the potential to cause issues for glint and glare for pilots operating aircraft. In addition the biodiversity and additional landscaping may also encourage bird life that could also hamper safe operations of aircraft. To this end East Midlands Airport were approached for comment and consider that for this renewable energy project within 30km of the aerodrome safeguarding zone that they have no objection to the development subject to informatives in respect of crane/tall equipment licencing by informative only. The development is considered to be in compliance with the relevant policies and guidance in respect of airport operations.

#### The impact of the development on flood risk and water management

This site lies within Flood Zone 3 of the Flood Map for planning (Rivers and Sea), an area with a high risk of flooding if it were not protected by the Lower Dove Flood risk management Scheme completed in 2013. The most applicable policies to consider are S1, S2, SD2, SD3 and SD6 of the LP1. A perimeter swale is proposed in relation to surface water flooding and the Lead Local Flood Authority have no objections subject to conditions. The LLFA consider the conditions they request are required to ensure adequate flood risk and water management of the site noting the historical and ongoing flood risk in Scropton and that to ensure any excess runoff resulting from the development will be managed within the site with the information to be submitted to include design calculations for the swales and existing watercourse that borders the site. Therefore, subject to conditions and informatives it is considered that the development is in compliance with the listed policies.

#### **Conclusion:**

It is considered that the proposals are in accordance with the development plan and the advice in the NPPF and NPPG as the evidence has sufficiently justified that in the case of the use of agricultural land, the selected site is of poorer quality. It is also considered that the development would assist in sustainable energy generation goals as listed in policy at local and national level and attribute somewhat to addressing the climate change emergency. It is considered that whilst the site is large scale and would present a different aesthetic to relatively flat arable agricultural fields that in the wider sense of landscape character and visual effects, due to the screened nature of the site by existing landscaping including hedgerows and trees set for retention, landforms and buildings plus the landscaping enhancements proposed and the general siting away from prominent viewpoints, that the impact of the development on these matters would not be significant. The landscaping planned plus other enhancements alongside maintenance is considered would result in net gains subject to their implementation as per Biodiversity Management Plan and detailed landscaping proposals by planning condition. It is considered that safe access to the site both during construction and the lifetime management of the development can be achieved and that there would only be a limited nominal intensified use of the surrounding highways network restricted predominantly to the construction period, therefore, as such, the development is considered to be in compliance with highways policies and guidance. In addition subject to conditions and informatives it is considered that the development would not increase flood risk to the wider area. 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. It is therefore recommended that the application is approved 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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## **Recommendation**

**Approve** subject to the following conditions:

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

Reason: To conform with Section 91 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 following plans/drawings unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.
  - GM10971-002 Site Location Plan Rev A as received by the Local Planning Authority on 18th March 2021.
  - GM10971-010 Site Location Plan Rev A as received by the Local Planning Authority on 18th March 2021.
  - GM10971-014 Existing Site Layout Rev A with Topographical Information as received by the Local Planning Authority on 18th March 2021.
  - GM10971-020 Fence Details Rev A as received by the Local Planning Authority on 22nd February 2021.
  - GM10971-021 Gate Detail Rev A as received by the Local Planning Authority on 22nd February 2021.
  - GM10971-023 Substation DNO and Solar Park Rev A as received by the Local Planning Authority on 22nd February 2021.
  - PV Layout GSV1002-100 Rev E as received by the Local Planning Authority on 6th July 2021.
  - CCTV GSS100A\_001 as received by the Local Planning Authority on 22nd February 2021.
  - 20ft Substation Details GSS1002-202 as received by the Local Planning Authority on 6th July



2021.

-40ft Substation Details GSV1002-203 as received by the Local Planning Authority on 6th July 2021.

-Customer Cabin Details GSV1002-201 as received by the Local Planning Authority on 6th July 2021.

-Inverter details as attached to the appendices of the Wardell Armstrong letter dated 6th July 2021 IJP/GM10971/LET-006 as received by the Local Planning Authority on 6th July 2021.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. The development hereby approved shall be implemented as per the methodology as stipulated within the Dust Action Plan GM10971 REP-002 Version 0.2 dated February 2021 as received by the Local Planning Authority on 22nd February 2021, unless as otherwise agreed first by submission for approval in writing to the Local Planning Authority on a prior to execution basis.

Reason: In the interests of pollution control and amenity protection during the construction period of the development.

4. During the construction period of the development hereby approved, the details for routing HGV vehicles, deliveries, site access, manoeuvring and signage contained in the Construction Traffic Management Plan GM10971 010 V1.0 dated February 2021 as received by the Local Planning Authority on 22nd February 2021 shall be adhered to, unless as otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of highways safety, residential amenity and pollution control.

5. Prior to any other works commencing on site, a site compound shall be provided for the storage of plant and materials, site accommodation, parking and manoeuvring of site operatives' and visitors' vehicles, located in accordance with drawing GSV1002-100 PV Layout Rev E as received by the Local Planning Authority on 6th July 2021. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period. Upon completion of the development and prior to its first use the temporary construction compound shall be removed and the area made good.

Reason: In the interests of highways safety, pollution control, visual amenity, landscape character and amenity protection during the construction period of the development hereby approved.

6. No construction or related activity shall take place on the site outside the following hours: 0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Bank Holidays with the exception of work needed during an emergency.

Reason: In the interests of residential amenity protection during the construction period of the development.

7. Throughout the construction period of development hereby approved vehicle wheel cleaning facilities shall be provided and retained within the site within the Temporary Construction Compound as shown on drawing GSV1002-100 Rev E PV Layout and as stated within the Construction Traffic Management Plan February 2021 GM10971 010 V1.0 as received by the Local Planning Authority on 6th July 2021 and 22nd February 2021 respectively. 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 highways safety, pollution control and amenity protection during the construction period of the development.

8. Prior to the commencement of the development hereby approved, the condition of the HGV/haulage routes shall be inspected and recorded by representatives of the applicant and the Highway Authority and, within 28 days of the completion of the works, details of the remedial works shall be submitted to and approved in writing by the Local Planning Authority. The

approved reinstatement works shall be carried out within 3 months of the completion of the works.

Reason: In the interests of highways safety.

9. Prior to any works commencing in relation to the decommissioning of the site, a Construction Traffic Management Plan, site access, routing and remedial works program shall be submitted to and approved in writing by the Local Planning Authority and implemented throughout the decommissioning period.

Reason: In the interests of highways safety, pollution control and residential amenity during the decommissioning period of the development.

10. Prior to the commencement of the development hereby approved, construction details of the temporary track(s) used for the construction period of the development shall be submitted to and approved by the Local Planning Authority in writing. The details shall include no dig solutions where proposed in the vicinity of root protection areas of trees and hedgerows or as otherwise advised due to archaeological remains. The approved temporary track(s) shall be implemented on site in accordance with the approved details on a prior to erection of solar panels and associated equipment basis.

Reason: In the interests of highways safety during the construction period of the development hereby approved.

11. Prior to the first use of the development hereby approved for the generation of electricity the construction details of the maintenance track as shown on drawing GSV1002-100 Rev E PV Layout as received by the Local Planning Authority on 6th July 2021 shall be submitted to and approved in writing by the Local Planning Authority. The details shall include no dig solutions where proposed in the vicinity of root protection areas of trees and hedgerows or as otherwise advised due to archaeological remains. The maintenance track details shall be implemented on site on a prior to first use of the development basis and maintained in good working order for the lifetime of the development thereafter in accordance with the approved details.

Reason: In the interests of highways safety, visual amenity and tree/hedgerow protection.

12. Prior to the commencement of the development hereby approved details of the diversion of and safe management of the public rights of way (even if not being diverted) running through the site during the construction period shall be submitted to and approved in writing by the Local Planning Authority. Information boards should be provided at suitable points at the entrance and sections of the PROWs crossing the site in respect of the proposed development for its construction period with details of this also submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of preservation of the public rights of way and in the interests of public safety during the construction period of the development.

13. The development hereby approved is granted for a limited period only, expiring 30 years after the date on which electricity is first generated by the installation, on or before which date the solar panel arrays and associated buildings, structures, tracks, infrastructure, gates and fencing shall be removed and the site reinstated to the satisfaction of the Local Planning Authority as per its former agricultural use state unless, prior to that date, permission has been granted for an extended period pursuant to an application made to the Local Planning Authority in that regard. The solar panel array operator shall inform the Local Planning Authority in writing within 10 working days of the first date on which electricity is first generated.

Reason: In the interests of the visual amenities and landscape character of the rural area beyond settlement boundaries, so not to risk redundant equipment, structures, buildings and boundary treatments being left in place in perpetuity, compromising the productive use of the land and the character and appearance of the area thereafter.

14. Prior to the erection of the following elements of the development hereby approved the colour, specification and external facing finishes shall be submitted to and approved in writing by the Local Planning Authority: solar panels, module frames, fencing; gates, CCTV poles, CCTV equipment, customer cabin, transformers, inverters and substation DNO. These listed elements of the development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity and landscape character in a rural area.

15. Prior to the erection of any equipment part of the development hereby approved requiring pad/foundations/bases on which to be sited, details of these aspects and their construction/colour shall be submitted to and approved in writing by the Local Planning Authority. The pad/foundations/basis on which equipment shall be sited shall be implemented on site in accordance with the approved details.

Reason: In the interests of visual amenity, landscape character and archaeology.

16. Prior to the erection of any battery or other storage in relation to excess energy generation or balancing of electrical grid in respect of the development hereby approved, details of this shall be submitted to and approved in writing by the Local Planning Authority. The battery or other storage shall be implemented on site in accordance with approved details and maintained in good working order for the lifetime of the development thereafter.

Reason: In the interests of residential amenity, visual amenity, pollution control and landscape character.

17. Prior to the commencement of the development hereby approved the proposed ground and finished floor levels shall be submitted to the Local Planning Authority for approval in writing. The topographical levels for the development shall be implemented on site as per the approved details.

Reason: In the interests of visual amenity and landscape character in a rural area.

18. Following the construction period of the development the noise levels from inverters, fixed plant and machinery forming part of the development hereby approved shall not exceed 47 dB(A) at 10 metres from the site boundaries.

Reason: In the interests of residential amenity.

19. Prior to the erection of any sources of external lighting associated with the development hereby approved (including during the construction period) details shall be submitted of their specification, dimensions, siting and colour to the Local Planning Authority for approval in writing. The external lighting scheme shall be implemented on site in accordance with the approved details and maintained in good working order thereafter. If a lighting scheme is approved solely for the construction period this shall be removed prior to the first use of the development hereby approved.

Reason: In the interests of visual amenity, landscape character and nature conservation in a rural area.

20. Prior to the installation of any solar panel modules forming part of the development hereby approved, details of the CCTV active monitoring provision shall be submitted and approved in writing by the Local Planning Authority and implemented in accordance with the approved details on a prior to first use of the development basis. The monitoring as mentioned within the Planning Design and Access Statement should be expanded upon.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions to promote the well-being of the area and to reflect local and national planning policies on secure design and crime prevention in new developments.

21. Prior to the commencement of the development hereby approved a Written Scheme of Investigation for archaeological work shall be submitted to and approved by the local planning authority in writing. No development shall take place 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
- 1.The programme and methodology of site investigation and recording
  - 2.The programme for post investigation assessment
  - 3.Provision to be made for analysis of the site investigation and recording
  - 4.Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - 5.Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

22. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 21.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

23. The development hereby approved 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 approved under condition 21 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

24. Prior to the commencement of the development hereby approved a tree protection scheme that follows on from the information provided in the supporting Planning Design and Access Statement shall be submitted to and approved by the Local Authority in writing. The scheme shall include details of the fencing/protection scheme and its siting. The approved tree protection measures shall be implemented on site on a prior to commencement basis and retained in place for the duration of the construction period. 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 shall be burnt within 20 meters 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 that the retained trees and hedgerows are not harmed during the construction of the development.

25. The development hereby approved shall be implemented in accordance with the measures recommended in the Biodiversity Management Plan February 2021 GM10971 V1.0 011 as received by the Local Planning Authority on 22nd February 2021 and as shown on the Landscape Planting Plan drawing GM10971-013 Revision B as received by the Local Planning Authority on 2nd August 2021.

Reason: In the interests of landscape character and biodiversity protection, enhancement and net gains.

26. Prior to the first use of the development hereby approved an updated Landscaping Plan shall be submitted to and approved by the Local Planning Authority. The updated drawing shall be based on the Landscape Planting Plan Figure 9 GM10971-013 Revision B as received by the Local Planning Authority on 2nd August 2021 and shall provide further information as to where the planting noted on the plan will be specifically sited and relevant spacing, details of the connections at the boundaries and through the site for public rights of way, ie. gates/ stiles etc. and details/siting of information boards along the perimeter fencing of the public rights of way. The approved landscaping plan details shall be implemented on site in accordance with the approved details in the first planting and seeding seasons following the first use of the development or the completion of the development, whichever is the sooner and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of landscape character, promoting healthy lifestyles and visual amenity in a rural area.

27. Prior to the first use of the development hereby approved a landscape management plan (LMP) shall be submitted to and approved in writing by the Local Planning Authority. The LMP shall include long-term design objectives to cover the lifespan of the development of 30 years, management responsibilities (including contact details and means of informing the Local Planning Authority of any change to those details) and maintenance schedules for all landscape areas to include long term maintenance of hedgerow and tree screening both as existing and as proposed. Where relevant, the maintenance schedules shall include means to annually review the condition of any hard surfaces, fixed equipment or furniture (including public information boards), and replace/upgrade those surfaces, equipment and furniture on a rolling programme. The landscape management plan shall be carried out as approved.

Reason: In the interest of the visual setting of the development and the landscape character and visual amenity surrounding area over the lifetime of the development.

28. Prior to the commencement of the development hereby approved a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- a. GS Vogt Limited Hawthorn Farm Solar Farm Flood Risk Assessment GM10971-0008 Version 1.0 February 2021 and drawing GM10971-018 Rev B Surface Water Management Plan 2<sup>nd</sup> August 2021. Figure 9 LANDSCAPE PLANTING PLAN. GM10971-013 Revision B 30<sup>th</sup> July 2021, including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team such as the agents email dated 7th July 2021.
  - b. and DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015),
- shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage for the development shall be executed on site on a prior to first use basis in adherence to the approved details.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

29. Prior to the commencement of the development hereby approved a detailed assessment shall be submitted to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate

with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

I. into the ground (infiltration);

II. to a surface water body;

III. to a surface water sewer, highway drain, or another drainage system; IV. to a combined sewer.

30. Prior to commencement of the development, details shall be submitted for approval in writing to the Local Planning Authority which demonstrate how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any construction works.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

31. Prior to the first use of the development, a verification report carried out by a qualified drainage engineer shall be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Non-statutory technical standards for sustainable drainage and CIRIA standards C753.

32. The open land within the curtilage of the site shall not be used for storage of any form or nature.

Reason: In the interests of the visual amenities of the area and the openness of the land in a rural area.

#### Informatives:

- a. Pursuant to Section 149 and 151 of the Highways Act 1980, the applicant/developer must take all necessary action 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/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- b. Foston and Scropton Public Footpaths 11 and 17 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section. If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.
- c. The required phases of archaeological recording of the site outlined in the conditions attached to this decision notice, are in line with the requirements of the NPPF which requires developers to record and advance understanding of the significance of any heritage assets which are to be lost to development.

The fieldwork should be conducted by a suitably qualified archaeological consultancy (ie a CIFA registered organisation), to a written scheme of investigation to be agreed with ourselves. It is strongly recommended that the developer commissions the archaeological recording scheme soon after any grant of outline permission. It is vital that sufficient time is allowed to complete all the required phases of recording prior to the commencement of any ground preparation or building of the scheme.

- d. Due to the historical and ongoing flood risk in Scropton, in order to recommend discharge of the above conditions, the LLFA will need to be sure that any excess runoff resulting from the development will be managed within the site. Detailed design calculations will need to be provided for the proposed swales and the existing watercourse which borders the site.

- e. Please refer to the informatives from the Lead Local Flood Authority as per the feedback given on 27th July 2021.
- f. Due to the location of this development within the operational and safeguarding zone of East Midlands Airport a crane or tall equipment licence may be required from the Civil Aviation Authority on a prior to commencement basis, separate to planning.

**Item No.** 1.3

**Ref. No.** [DMPA/2020/1266](#)

**Valid date:** 19/01/2021

**Applicant:** S Cruise

**Agent:** JMI Planning

**Proposal:** Demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access at Silsden, Coton Road, Walton On Trent, Swadlincote, DE12 8NL

**Ward:** Seales

### **Reason for committee determination**

This item is presented to the Committee at the request of former Councillor Amy Wheelton (Councillor at the time of request) as local concern has been expressed about a particular issue.

### **Site Description**

The application site is within the village of Walton on Trent and comprises an area of land of approximately 4000 square metres. It is located on the western side of Coton Road, 45m south of the junction with Main Street. The application site is entirely within Walton on Trent's Conservation Area. The application site is roughly rectangular in shape, with a 106m wide frontage to Coton Road and a depth of 55m at the widest point. The site slopes up from Coton Road towards the centre of the site with a height difference of two metres, there is also an increase in levels across the width of the site increasing from north to south, again there appears to be a difference of two metres from one end of the site to the other. The site currently comprises a vacant detached bungalow (known as Silsden) sited close to the northern boundary and set back 13m from the road it has a fenced rear garden and several outbuildings. It is constructed from red brick with a tiled gable roof, there is off street parking at the front and side of the dwelling, with access off Coton Road. More than half of the site is an area of undeveloped land to the south of Silsden, which is mostly grass and low level vegetation, overall the site has well vegetated boundaries with mature hedgerows and also features a number of tall mature trees within the site, most of which run along the rear boundary, but notably there is a large Sycamore adjacent to the access for Silsden which offers high public amenity value along this part of Coton Road. The site is bound by residential properties at either side and to the front, with dwellings located either side of Coton Road forming a linear settlement pattern.

### **The proposal**

The proposal is for full planning permission for the demolition of the existing bungalow and outbuildings on site and the erection of four new dwellings, comprising two detached two storey dwellings and a pair of semi-detached two storey dwellings which replace the existing bungalow. The proposal utilises the existing vehicular access for Silsden and also a new vehicular access point, both of which are off Coton Road.

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

The Planning and Heritage Statement seeks to demonstrate the design principles and concepts that underpin the development proposals indicating how the scheme will contribute towards the creation of a high-quality sustainable development. The proposed design and layout have been informed by a thorough assessment of the site and appreciation of the local context, with particular attention to the natural and built environment and that the proposal has been considered in accordance with the design principles set out in the current design guidelines. The statement concludes that the proposal is a sustainable development fully in accordance with the national planning guidance set out in the National Planning Policy Framework and at a local level.



**DMPA/2020/1266 - Silsden, Coton Road, Walton on Trent, Swadlincote  
DE12 8NL**



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**South Derbyshire District Council. LA 100019461.2020**

The Arboricultural Report includes an assessment of trees on site, the trees are categorised based on their condition and life expectancy. The report details the trees suitable for retention and those that require removal and also any preliminary management recommendations. The report also includes construction methods and recommendations, given that the site is within the conservation area and therefore all of the trees are protected, the protection measures outlined within the report are vital to their long term protection and ensuring they are not damaged during any of the construction works on site.

The Bat Emergence Surveys found that whilst there was evidence of bats on the site as recorded during the dawn survey, there was no evidence from the survey of bats using the dwelling or outbuilding as a place of shelter. It is recommended that where feasible within the development design, consideration should be given to the provision of bird/bat boxes or bat bricks on the new buildings and/or retained trees once works are completed.

The Speed Survey and map shows the recordings in a table and graph for speed measurements taken at two points along Coton Road, for a period of seven days from 23/04/2021 to 29/04/2021. The data includes measurements for both north and south bound directions of travel, with vehicle flow, average speed and vehicle class all recorded. These results were then used to determine the required visibility splay lines from the new access point.

### **Relevant planning history**

9/1989/0002 The erection of three houses on approx. 0.27 hectares of land to the south east of Silsden - Approved 13/09/1989

9/2018/0799 The felling of trees - No objection to works 10/09/2018

9/2019/0051 The erection of a dwelling with detached garage and removal of outbuildings to facilitate new access on land at - Approved June 2019

### **Responses to consultations and publicity**

Severn Trent have raised no objections but recommended a condition for drainage plans for the disposal of surface water and foul sewage.

County Highways Authority have considered that previous concerns raised regarding the visibility available at the accesses to the site have now been addressed and, as such, there are no objections subject to conditions being attached to any permission granted.

Derbyshire Wildlife Trust advise that the assessment that has been carried out for bats meets guidance within Circular 06/2005 and, as such, sufficient information regarding these protected species has now been submitted to enable the Local Planning Authority to reach an informed decision in accordance with the guidelines and to discharge its duty in respect of the requirements of The Regulations 2019. No evidence of roosting bats was found and as such, they advise that bats should not present a constraint to the proposed development. They fully support the recommendation in the report for the incorporation of bat enhancement measures within the development to enhance the local bat population. Such measures will enable the development to achieve a net gain for biodiversity in line with the objectives of the National Planning Policy Framework and policy BNE3 of the South Derbyshire Local Plan.

Environmental Health has no objections to the proposals in principle.

The Council's Conservation Officer considers that subject to conditions to control finer design details and landscaping, they would be satisfied that the proposal would 'preserve' the special architectural and historic character and appearance of the conservation area as is described as a 'desirable' objective within section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990.

Walton on Trent Parish Council considers that the proposed mass and scale of the new dwellings would have a detrimental impact on the character and appearance of the Conservation Area, further increased by the plot being elevated above Coton Road. Concerns over the detrimental impact on the neighbouring property, due to the difference in buildings heights. The size of houses will be out of keeping with the existing housing along Coton Road and would therefore be harmful to the street scene. The previous approval was considered less harmful. Concerns over the safety of the proposed site access, further increased by the parking of vehicles on Coton Road and how narrow the road is. Concerns about the loss of the hedgerow to facilitate sight lines for the new access and the impact of construction on the environment especially the wildlife. It is good to see the proposal is only to remove one decaying tree.

10 objections have been received, raising the following comments:

- a) The development would result in the loss of habitat for animals and birds.
- b) The development would be detrimental to the conservation area.
- c) Walton on Trent does not required additional housing.
- d) Concerns over highway safety as Coton Road is a busy road and very narrow.
- e) Concerns over the constricted site access and construction traffic.
- f) Concerns over the height of the proposed dwellings and the impact it would have on light and privacy of neighbours.
- g) The views into and out of neighbouring properties will be fundamentally changed from fields to housing.
- h) The Sycamore tree at the front of the site should be protected by a TPO.
- i) Concerns over the amount of parking on Coton Road and the impact this would have on the development.
- j) The development would increase congestion and increase the risk to pedestrians.
- k) The traffic survey was conducted at the wrong time of day and therefore is not accurate.
- l) The proposed dwellings are not in keeping with other properties.
- m) The development offers no benefit or enhancements to the village.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), and INF8 (The National Forest).
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Walton on Trent Conservation Area Character Statement (CACS)

The relevant national policy and guidance is:

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

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of Development;
- Heritage and Design Matters;
- Neighbouring Amenity;
- Highway Safety; and
- Biodiversity.

## **Planning assessment**

### Principle of Development

The site is located within the Walton on Trent settlement boundary, a 'Rural Village' as identified by Policy H1 and is also situated within Walton on Trent's Conservation Area (CA) boundary which runs along Coton Road to the south. Within rural villages development of a limited nature within the settlement boundary will be considered appropriate. The site is within a built up residential area, with neighbouring dwellings on either side and on the opposite side of Coton Road, two of the dwellings are proposed on the same site as an existing dwelling with the other two dwellings within the grounds of this existing dwelling. The principle of the proposed development for the erection of four new dwellings (net increase of three) on the site is considered to be acceptable, appropriate development as it is compliant with Policies H1 and SDT1 (which sets the settlement boundary) i.e. new development within the settlement boundary.

### Heritage and Design Matters

The proposal looks to erect a pair of semi detached dwellings in place of an existing detached bungalow and a further two detached dwellings on land to the south. The garden is unusually large in size for the size of the host dwelling and its central village location. It features a number of large mature trees and dense vegetation along its boundaries, with a number of trees also scattered within the middle of the site. The boundary that runs along the Coton Road features a dense, tall hedgerow and provides a green feature along this part of the highway. The site is elevated above the level of the highway, and as a result of the size of the hedgerow, views into the site are therefore limited from the public realm. The trees and vegetation that feature in the site helps to soften the built form and contributes to a more 'green' character, visible from within the CA. Whilst the site is entirely within the CA there are no listed buildings nearby.

There is a previous planning permission for the site which proposed the retention of the existing bungalow and the construction of one new dwelling within the garden of the plot (9/2019/0051). In a broad sense, the proposed unit 3 sits roughly where the previously approved new dwelling would have been located, unit 4 sits further to the south and the semi detached pair (units 1-2) sit where the current bungalow is located within the site. Units 2, 3 and 4 utilise a new shared access point to Coton Road which effectively is the same as the approved new access for the single additional dwelling previously approved.

This application proposes the demolition of the existing bungalow. This is a mid twentieth century bungalow which appears on the early 1970's OS maps but likely wasn't of any great age at that point. The building is somewhat striking with its front bow windows and is made more prominent by its elevated position relative to the road, although it is distinctly different to the bulk of the historic properties which make up the special character and appearance of the conservation area and has characteristics which are 'of its time'. The Conservation Officer is not of the view that the demolition of the existing bungalow would be inherently harmful to the special character and appearance of the conservation area as the building has no great historic interest and limited architectural value.

The semi-detached dwellings which would replace the bungalow are pulled slightly nearer to Coton Road. As the site slopes upwards away from the road the existing bungalow has a striking elevated position, it also has a ridge height which sits at a similar level to two storey properties on the neighbouring site to the north. By pulling the proposed two-storey semi-detached houses slightly nearer to the road this helps to minimise the apparent height of units 1 and 2. There is a limit to how far forward the building can be drawn owing to the position of the existing and proposed accesses to the site and so this has been used to its fullest practical extent.

Unit 3 would be less prominent, visible mostly via the proposed new access and across the frontage of units 1 and 2. The final proposed dwelling of unit 4 would have very limited presence in the street scene when viewed from the public realm. Whilst some street elevations and 3D models have been submitted to support the application, these seem to underplay how substantial the existing planting is along the sites frontage. Properties along Coton Road to the south of the site and opposite are generally viewed in glimpses through trees and over hedges, roof slopes are the most visible element and it is often only via pedestrian paths and driveways that more than the roofs of buildings can be seen. The proposed development would be viewed in much the same way and as such would fit well with the street scene and character in this part of the village. The traditional features proposed such as chimneys, forward gables and eyebrow dormers work well to ensure that the roof scape, which would be the most visible element of the proposal, is varied and attractive. Conditions to control finer design details such as the proposed windows and doors would be attached to any consent granted to ensure that detailing is appropriate to the scale and form of openings proposed and also that the proposed facing materials are appropriate for the setting and also match the use of materials typically found throughout South Derbyshire.

The conservation officer has considered that the proposal would preserve the special character and appearance of the conservation area and achieve the desirable objective in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the scheme as a whole is also considered, subject to finer details to be secured via conditions on any consent granted, to achieve a standard of 'good design'. As such the proposal complies with the requirements of policies BNE1, BNE2 and BNE10 and the SPD in relation to its design and heritage impact.

#### Neighbouring Amenity

In relation to the impacts of the proposed development on the residential amenities of neighbouring occupiers that surround the site, there are dwellings either side of the application site. When assessing the impact on the neighbouring dwelling; No. 8 Coton Road to the north of the site, when measuring the 45 degree sector view from the closest ground floor primary window on the rear elevation of No.8, to the proposed blank side elevation of unit 1 it would measure a distance of approximately 13.3m, therefore complying with the minimum distance requirement of 12m as set out within the SPD, therefore there are no concerns of the development being overbearing on this property.

When assessing the impact on neighbouring dwelling; No.32 Coton Road to the south of the site, when measuring a 45 degree sector view from ground floor windows on their rear elevation, none of the proposed dwellings would fall within the sector view, therefore there are no concerns in regards to their amenity being demonstrably impacted as a result of the development.

The proposal would comply with the minimum distance requirement as set out in the SPD when measured against all of the neighbouring dwellings that surround the site as detailed above, as such it is considered that the proposed dwellings would not demonstrably impact the residential amenities of neighbouring properties that surround the site and therefore the proposal is compliant with Policies SD1, BNE1 and the minimum distances as set out in the SPD.

#### Highway Safety

Vehicular access for unit 1 is proposed via the existing access for Silsden off Coton Road and for units 2, 3 and 4 via a new access point which is also off Coton Road. The original proposal was to utilise the existing access for both units 1 and 2, but this was met with objections raised by the County Highways Authority, as this would result in the increased use of an existing substandard access. Also, the new access was not shown to comply with current standards of width or visibility contrary to the best interests of highway safety. Following these objections, the applicant amended the proposal so that the new access served three units and therefore there would be no intensification of the existing substandard access, a speed survey was also undertaken. The results of the speed survey allowed for reduced visibility splays which were calculated in accordance with the guidance contained in Manual for Streets (1 and 2), as shown on the proposed site plan. As a result, the County Highway Authority have confirmed that the applicant has now addressed previous concerns regarding the visibility available at the accesses to the site and, as such, there are no objections subject conditions being included in any consent in the interests of highway safety.

Sufficient space has been proposed within the site to ensure adequate off street parking and turning space is available for all dwellings. Vehicle movements generated by the proposal are unlikely to have a negative impact on the capacity of the wider highway network, as a result of three further dwellings on this site. As such the site access is considered suitable enough to facilitate the proposed additional dwellings and would not adversely impact on highway safety to a point where which would it would reasonably justify refusal of the application, in accordance with paragraph 111 of the NPPF and as such the proposal would comply with the requirements of Policy INF2.

### Biodiversity

A supporting bat report with emergence surveys has been carried out on the site as a result of the existing dwelling requiring demolition in order to accommodate two new dwellings. The surveys found that whilst there was evidence of bats on the site as recorded during the dawn survey, there was no evidence from the survey of bats using the dwelling or any outbuildings as a place of shelter. These findings have been assessed by Derbyshire Wildlife Trust, who have raised no objections based on this information being submitted, subject to the proposed bat mitigation and compensation as detailed within the report being secured via a suitable planning condition. On the basis of this, it is considered that the duty under the requirements of The Conservation of Habitats and Species Regulations 2017 have been discharged in order for an informed decision to be made.

In terms of the impact to the trees on site, a tree removal list has been submitted which shows that, with the exception of two trees, that all trees proposed for removal were identified for removal under the previous grant of planning permission and as such all trees that border the site which offer public amenity value are to be retained. Details of the protection measures during construction for the trees to be retained have been submitted in support of the application and would be ensured via condition under any consent granted. In addition, a landscaping scheme is considered necessary to ensure that further planting is carried out along the sites frontage.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

### **Recommendation:**

**Approve** subject to the following conditions:

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

Reason: To conform with Section 91 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 Drawing No.'s 03 Rev A, 04 Rev A, 05, 06, 07 and the Tree Removal List (dated 10/06/2021); unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. No development, including preparatory works, shall commence until space has been provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, and parking and manoeuvring of employees and visitors vehicles, to prevent debris being carried onto highway. Once implemented, the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

4. No development, including preparatory works, shall commence until the new vehicular access to Coton Road has been constructed. The access shall be laid out generally in accordance with the revised application drawing (1040-FC/03 Rev A), have a minimum width of 4.25m, be constructed as a splayed vehicular crossover in accordance with Derbyshire County Council's standards, surfaced in a solid bound material for the at least the first 5m into the site from the highway boundary, provided with measures to prevent surface water escaping from within the site onto the public highway and provided with visibility sightlines of 2.4m x 42m in the southerly direction and 2.4m x 34m in to the north. The area forward of the sightlines shall be cleared and maintained throughout the lifetime of the development clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

5. No development, including preparatory works, shall commence until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

6. No construction of a building or hard surface, setting of site levels or installation of services/utilities shall take place until drainage plans for the disposal of surface water and foul sewage from the site have been submitted to and approved by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling served by the foul water drainage system.

Planning Practice Guidance and section H of the Building Regulations 2010 detail surface water disposal hierarchy. The disposal of surface water by means of soakaways should be considered as the primary method. If this is not practical and there is no watercourse available as an alternative other sustainable methods should also be explored. If these are found unsuitable, satisfactory evidence will need to be submitted, before a discharge to the public sewerage system is considered.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

7. Any gates shall be set back at least 5m into the site from the highway boundary and open inwards only.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

8. The new access shall be used for construction purposes and the existing access temporarily closed to prevent any increase in the use of the substandard access.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

9. Upon completion of the development, the existing access shall be used to serve Plot 1 only. Access to Plots 2, 3 & 4 shall be via the new access, the subject of Condition 4 above.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

10. Prior to the first occupation of any dwelling hereby permitted, the car parking and manoeuvring space shall be laid out in accordance with the application drawing (1040-FC/03 rev A) and maintained throughout the lifetime of the development free from any impediment to its designated use.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

11. Prior to the first occupation of any dwelling hereby permitted, the bin store for use on collection day shall be provided in accordance with the application drawing and maintained throughout the lifetime of the development free from any impediment to its designated use.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety, and to ensure appropriate waste/refuse facilities are provided for the occupiers of the development.

12. Except in an emergency, no demolition, site clearance, construction, site works or fitting out shall take place other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby permitted shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected or constructed on the site without the prior grant of planning permission pursuant to 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 proximity to existing features on or adjacent to the site, and the effect upon neighbouring properties and/or the street scene.

14. No removal of trees, hedges, shrubs, buildings or structures shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. Thereafter, no trees, hedges, shrubs, buildings or structures shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

15. No development, including preparatory works, shall commence until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

16. Prior to their incorporation in to the buildings hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

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



17. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

18. Prior to their incorporation in to the buildings hereby approved, details of the eaves, verges, windows (including roof lights), cills, lintels and doors shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, windows, cills, lintels and doors shall be constructed in accordance with the approved drawings

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

19. Prior to the occupation of a dwelling a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. Details of soft landscaping should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each respective dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

20. The development shall be carried out in accordance with the bat enhancement measures detailed in the Bat Emergence Surveys report prepared by S. Christopher Smith dated 20th July 2021. Such measures shall be implemented as construction proceeds and completed prior to the first occupation of the development and retained as such thereafter.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

21. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

22. Prior to the first occupation of a dwelling a recharge point for electric vehicles shall be provided at a ratio of 1 charging point per dwelling with dedicated on plot parking. Individual charging points shall be provided with an IP65 rated domestic socket 13amp socket directly wired to the consumer unit with 32 amp cable to an appropriate RCD, located where it can later be changed to a 32amp EVCP. Shared charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the

Local Planning Authority. Alternative provision to the above specification must be first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging point(s) shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

Informatives:

1. 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> email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.
2. Where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the highway. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
3. 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.
4. 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 (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
5. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

**Item No.** 1.4

**Ref. No.** [DMPA/2021/0744](#)

**Valid date:** 20/05/2021

**Applicant:** Andrew Bennett

**Agent:** None

**Proposal:** The erection of a single storey rear extension and ramped access at 8 Edward Street, Hartshorne, Swadlincote, DE11 7HG

**Ward:** Woodville

### **Reason for committee determination**

This item is presented at Committee as South Derbyshire District Council are the applicants, as the property is Council owned.

### **Site Description**

The application site is a two storey semi detached property located within a residential area. The frontage is enclosed by a low level wall, with the rear garden being enclosed by timber fencing. There is currently a single storey flat roof projection to the side which appears to be part of the original dwelling. There is a dropped vehicular crossing providing access to an area of hard standing within the site for at least one vehicle and no on street parking restrictions. There is an electric sub station adjacent the eastern boundary, with no residential neighbours to the rear.

### **The proposal**

The application seeks permission for the erection of a single storey extension to the rear. This is proposed to be constructed using materials to match the existing property and has been designed with a pitched roof and matching fenestration detailing.

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

Non submitted, save for the Proposed Plans.

### **Relevant planning history**

None.

### **Responses to consultations and publicity**

None received.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), INF2 (Sustainable Transport); and BNE1 (Design Excellence).
- Local Plan Part 2 (LP2): H27 (Residential Extensions and Other Householder Development).

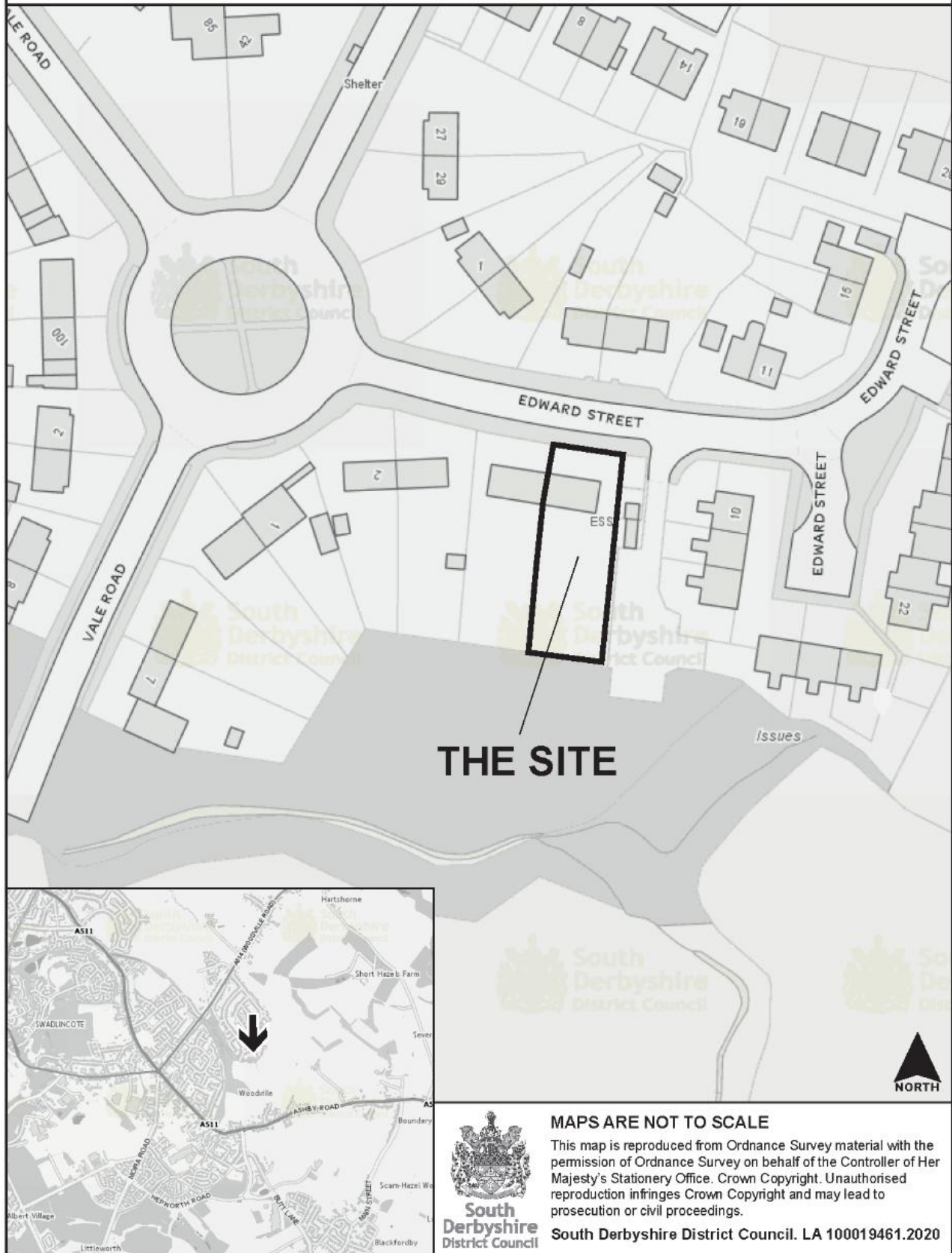
The relevant local guidance is:

- South Derbyshire Design Guide SPD (Design SPD)

The relevant national guidance is:

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

DMPA/2021/0744 - 8 Edward Street, Hartshorne, Swadlincote DE11 7HG



## Planning considerations

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Design; and
- Impacts on amenity

## Planning assessment

### Design

The extension is to the rear of the property such its design has limited potential to impact on the character of the area; indeed it appears something not dissimilar could be achieved under householder permitted development rights. By virtue of its modest size, it reads as a subservient part, generally complimentary to the scale of the host. In addition, proposed materials will match those of the existing. Taking on board the points raised above, it is considered that the proposal complies with the requirements of policies BNE1 and H27.

### Impacts on amenity

The proposal is considered to comply with the space around dwellings requirements of the SPD, neither so big as to appear unduly oppressive to the neighbours or overlook windows to where privacy levels would be significantly reduced. The build is significantly set away from the closest shared boundary and that helps lessen its impact. It is considered that the proposal complies with the requirements of policies SD1 and H27 such that there would be no demonstrable impact on the amenity of the occupants of nearby dwellings.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## Recommendation:

**Approve** permission subject to the following conditions

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

Reason: To conform with Section 91 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 following drawing(s);  
Proposed Plans Ref 5292 AMB 02; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

**Item No.** 1.5

**Ref. No.** [DMPA/2021/0217](#)

**Valid date:** 05/02/2021

**Applicant:** Andrew Bennett

**Agent:** None

**Proposal:** The formation of a hard surface to facilitate a vehicular access on land north of 80 Chestnut Avenue, Midway, Swadlincote, DE11 0EN

**Ward:** Midway

### **Reason for committee determination**

This item is reported to the Committee as the Council is the applicant.

### **Site Description**

The application effects land and property owned by the Council's Housing department and the Public Highway. The overall site is generally flat, slightly lower than the road level. The Highway of which vehicular access is required from/to is 'non-classified'.

### **The proposal**

The proposal is to create a vehicular access and single (3m wide) driveway from the public highway, to No 80 Chestnut Avenue. The current front garden of No. 80 would then be part-altered to be used to park a car and the current pathway(s) thereafter altered to facilitate easier pedestrian access to the house for the occupants.

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

None of relevance.

### **Relevant planning history**

No relevant history.

### **Responses to consultations and publicity**

County Highways Authority - no objection.

No comments received by members of the public in response to the publicity undertaken.

### **Relevant policy, guidance and/or legislation**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development); SD1 (Amenity and Environmental Quality); INF2 (Sustainable Transport); and BNE1 (Design Excellence).
- 2017 Local Plan Part 2: H27 (Residential Extensions and Other Householder Development).

National Guidance:

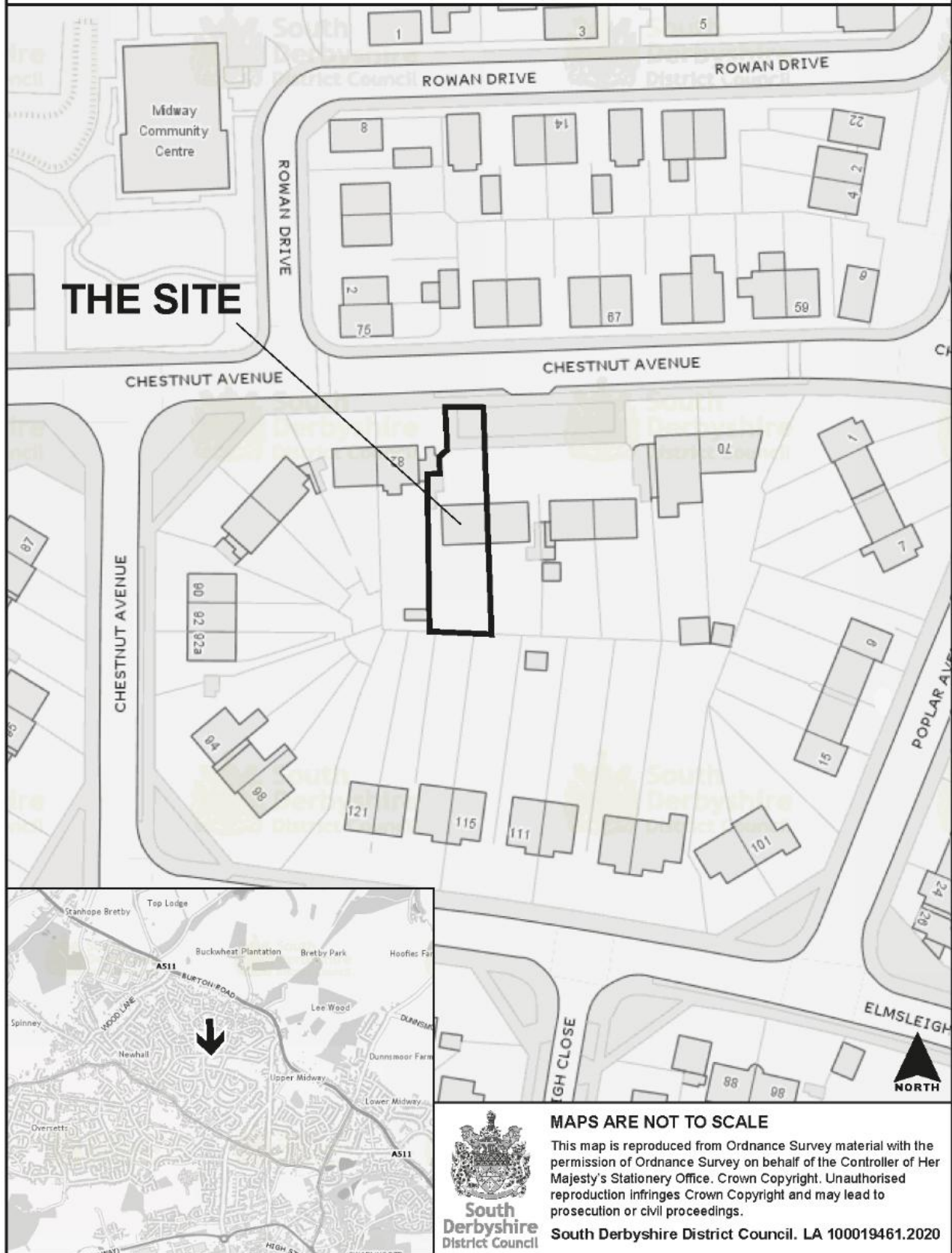
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Local Guidance:

- South Derbyshire Design Guide SPD (Design SPD)



**DMPA/2021/0217 - 80 Chestnut Avenue, Midway, Swadlincote DE11 0EN**



## Planning considerations

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Impacts on the character of area; and
- Highway safety

## Planning assessment

### Impacts on the character of the area

The proposal mirrors that carried out at adjacent premises 78 and 76 Chestnut Avenue, in the fact that it looks to create a vehicular access/cross over from the public highway, across some grass verge owned by the Council's Housing Department and then onto the presently grassed frontage at No 80 Chestnut Avenue. It should be noted that this type of development would normally be permitted but for the fact that the access is not direct from the highway to the residence but over an area of third party (Housing owned) land. As such a pseudo change of use is required to allow for the cross over. Given it has been achieved, as mentioned at the adjacent two premises without undue detriment, and with other accesses in the locality, it would be difficult to argue that the development would be out of character. Some of the Housing owned land would be retained as grass which avoids over intensification of tarmac/hardstand, which is considered important both from an amenity and biodiversity perspective.

Plans thereafter show the use of permeable surfacing for all the 'driveway' elements whilst the alterations to the pathways within the curtilage of No 80 is considered to be of a de-minimis level and improves safe access for the occupants from the car to the house.

### Highway Safety

As above, the County Highway Authority (CHA) offer no objection. The proposal would allow a car to be parked off the road, and there is some benefit to that, where immediate, safe parking on the highway is at a premium. Notice has been taken of the telegraph pole adjacent to the new drive but it is considered far enough away from passing cars for its safe retention not to be put in doubt. A condition to limit parking here to the drive based space only, would reduce the potential for conflict in that regard.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## Recommendation:

**Approve** subject to the following conditions and informatives.

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

Reason: To conform with Section 91 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 drawing(s) 5323 AMB; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.



3. The parking space hereby permitted shall be provided for parking of private motor vehicles associated with the residential occupation of the property, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: To maintain a reasonable level of off-road parking provision.

4. There shall be no parking of motorised vehicles other than on the approved driveway space. Vehicles shall not park on the tarmac crossover or grass land to the fore of the site, as that land is privately owned, the crossover simply allowing access to the property and is not an extension of its curtilage.

Reason: To reduce impacts in regards passing pedestrians and to reduce the potential to cause conflict with the telegraph pole here, in the interests of highway safety

Informatives:

- g. 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 by email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk), telephone Call Derbyshire on 01629 533190 or via the County Council's website Vehicle accesses, crossovers and dropped kerbs - Derbyshire County Council.

## 2. Planning and Other Appeals

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

Reference	Place	Ward	Outcome	Decision level
<a href="#">9/2019/0406</a>	Bent Lane, Church Broughton	Hilton	Dismissed	Delegated
<a href="#">E/2018/00110</a> <a href="#">and</a> <a href="#">DMPA/2019/1408</a>	Acresford Road Netherseal	Seales	Allowed	Committee



## Appeal Decision

Site Visit made on 27 April 2021

**by K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

**Appeal Ref: APP/F1040/W/21/3266212**

**Greenacre, Bent Lane, Church Broughton, DERBY, DE65 5BA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J Bailey (J Bailey & Son) against the decision of South Derbyshire District Council.
- The application Ref 9/2019/0406, dated 12 April 2019, was refused by notice dated 6 July 2020.
- The development proposed is erection of buildings to house boarding kennels and associated storage, use of part of paddock for dog exercising and formation of a parking area.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council has indicated that, due to administrative issues, it is unable to provide copies of the representations originally submitted at application stage. I have therefore had to rely upon the Council's summary of the representations received in its committee report and the representations made by interested parties at appeal stage.
3. The appellant sought to submit an additional noise report relating to a different site in support of their case at a late stage in the appeal. In determining the appeal, in the interests of fairness, I can only take into account matters that have been properly placed before the main parties and interested parties. This document is indicated to relate to the main issue with which interested parties are concerned. To accept this evidence at this late stage would deprive those who should have been consulted the opportunity of such consultation. Having regard to the principles of *Wheatcroft*<sup>1</sup>, I have not taken this evidence into account, and have determined the appeal on the basis of the evidence that was before the Council at the time of its decision.

### Main Issue

4. The main issue is the effect of the proposed development on the living conditions of neighbouring occupants, with respect to noise and disturbance.

### Reasons

5. The site is located in open countryside to the north of the A50 road, with open fields to the north and south. A cluster of residential development within a former farmhouse and outbuildings is located to the west, separated by one

<sup>1</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

field. To the east are Church Broughton Tennis Club, Broughton Heath Golf Club and two further dwellings.

6. The application site comprises a bungalow with a large garden laid to grass to the rear and extending some distance to the side, where it appears akin to a paddock. The proposal seeks to construct boarding kennels and associated storage, parking areas and access. The main building would contain 14 kennels and would be constructed in blockwork with timber boarding and a tile roof. Openings would be orientated north and south. Acoustic fencing would be erected around a proposed outdoor exercise area and parking area.
7. Policy E7 of the South Derbyshire Local Plan Part 1 (June 2016) (the LP1) supports development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries, provided they support the social and economic needs of the rural communities in the District. The policy sets several criteria for supporting new buildings, including that a sound business case is made; that the local highway network is capable of accommodating the traffic generated; that it will not give rise to any undue impacts on neighbouring land; that it is well designed and appropriate in scale; and that visual intrusion and impact on the character of the locality is minimised.
8. The Council accepts that the appellant has made a persuasive business case, highlighting the need for additional high quality dog kennels in the area. Having regard to the evidence put forward, I have no strong reasons to disagree. The Council also found the proposal acceptable with respect to its design and highway safety. The outstanding matter, therefore, is the effect of the proposal on neighbours' living conditions, with respect to noise and disturbance. Policy SD1 of LP1 is also applicable in this respect, in that it supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.
9. During the application, permission was granted for a dwelling in the field next to Greenacre. This prompted the Council to request a revised noise impact assessment (NIA) during the course of the application. It is this latter report<sup>2</sup> I have considered. The appellant's NIA concludes that the noise generated by the proposed use would not exceed recorded background noise, given proposed internal acoustic insulation in the kennel building and acoustic fencing to the exercise area.
10. There is disagreement between the main parties as to the methodology best employed to measure the impact of dogs barking. The Council's environmental health officers (EHOs) initially requested the appellant follow the methodology set out under BS8233. However, the Council now raises the possibility that the methodology set out under BS4142 may be more appropriate than the BS8233 methodology used for the appellant's NIA, as it compares specific source levels to background levels to assess the degree of impact, and applies a rating to the noise based on distinctive characteristics such as tonality, impulsivity and intermittency, as opposed to the average noise levels assessed by BS8233. Interested parties have expressed similar views.
11. I understand that BS8233 is based on assessing noise without a specific character, such as general traffic noise. Consequently, the methodology for

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<sup>2</sup> Noise Impact Assessment by NoiseAssess, Ref 12523.03.v1, March 2020

BS8233 focuses on average noise levels over long periods, and may not account for sporadic noise of specific character, such as dogs barking. I acknowledge that the IOA report<sup>3</sup> referred to by the Council did not recommend a preferred methodology, and it states that the BS4142 standard advises against its use for assessment of domestic animal noise. However, it is not clear from the evidence whether this applies only to animals in domestic settings or also more commercial settings like kennels.

12. The appellant following BS8233 at the initial request of the EHOs is noted. I also note the appellant's misgivings about the application of BS4142 due to the influence of noise from the A50. However, the purpose of an NIA is to demonstrate whether the source and type of noise would affect nearby properties, and it follows that the methodology used should be able to accurately measure this, and factor in other sources of noise. The NIA has been prepared by professional consultants who will be aware of the limitations of BS8233 with respect to noise of a specific character, into which category dogs barking must surely fall. It should therefore be assessed as such, if not through BS8233 or BS4142, then through a bespoke methodology, given the absence of an industry standard.
13. In this case, the NIA assesses average noise levels for dogs barking for 30 minutes per hour in the inner runs of the kennels, and 5 minutes per hour in the outer runs and within the exercise area. The data indicates two dogs barking over a period of 15 seconds to measure 84.6 dBL<sub>Aeq</sub>. The data then shows noise from dogs barking at neighbouring properties as ranging between 18 and 45 dBL<sub>Aeq,1hr</sub>, below the recorded background noise levels of 47 dBL<sub>Aeq,1hr</sub>, and in some cases significantly so.
14. However, the reality is that noise produced by the kennels is unlikely to be continuous in the manner of traffic noise, but sporadic and unpredictable, and it is these sporadic incidents which would represent the worst case scenario and be perceived by neighbouring occupants as a potential source of disturbance. The data presented in the NIA does not clearly indicate what the noise levels would be at various receptors during specific incidents of dogs barking or whether factors such as tonality, impulsivity and intermittency have been considered.
15. The data presented by the NIA may not be inaccurate when following the methodology of BS8233, but it seems inevitable that it lowers the recorded results when averaged out with periods of quiet. This does not assist in explaining what the worst case would be for neighbours when dogs are barking simultaneously. Without this, it is not known whether the proposed acoustic measures would be effective in attenuating this noise. Having observed the site and the proximity of neighbouring dwellings and gardens, I am doubtful that noise from multiple dogs in the kennels or the exercise area would not register above the background noise and so be imperceptible to those living next to the site, as is concluded by the NIA. Dogs bark in many scenarios, including when in strange environments and in the presence of other dogs, both of which are likely to occur in kennels. There would also be barking in the parking area when dogs arrive and depart, which would be audible in the adjacent gardens even with fencing in place.

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<sup>3</sup> Institute of Acoustics (IOA) - "The Assessment of Dog Barking Noise from Boarding Kennels".



16. The NIA is based on confident assumptions that barking would be kept to a minimum, but these seem to me ambitious. My doubts in this respect are informed in part by my observations of Crowfoot Kennels as part of my site visit, where I listened from a distance of around 100 metres. Dogs were barking continuously and, even at this distance, the noise was not only audible, but loud and penetrating. It appears that acoustic mitigation was not proposed as part of the Crowfoot Kennels scheme, but having observed such intrusive noise at a greater distance than would be the case for the appeal scheme, I am concerned that the appellant's assumptions as to the frequency and vigour with which barking would take place are underestimates, and it would be more frequent in reality than accounted for in the NIA. Moreover, I have few details about what measures would be put in place to control barking should it continue for longer than anticipated, if it triggered more dogs to join in, or if barking takes place at night.
17. In reaching a view, I acknowledge that the 28-dog capacity of the kennels is unlikely to be fully utilised, and that the appellant is prepared to accept a condition limiting occupancy to a maximum of 21 dogs. However, this does not alter my conclusions on the potential noise impact of the development. Moreover, I do not place significant weight on the CIEH Noise Survey 2018/19 referred to by the appellant, which contains broad-brush figures not specific to kennels. Reference is also made to permission being granted to house large animals across the road from the appeal site, but I have no details of this before me to consider, and it is therefore a matter of negligible weight.
18. For these reasons, I find that the evidence before me does not demonstrate satisfactorily that the kennels, even with proposed acoustic measures, would reduce to an acceptable level what would be disruptive and harmful noise that would have a significant adverse effect on neighbours' enjoyment of their properties. Given my findings, I am not satisfied that these concerns could be overcome by a planning condition limiting noise to a specific decibel level.
19. Therefore, I conclude that the proposal would cause significant harm to the living conditions of neighbouring occupants due to noise and disturbance. This would conflict with Policies SD1 and E7 of the LP1, which together support development which does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments, and does not give rise to any undue impacts on neighbouring land.
20. These policies are consistent with the National Planning Policy Framework, which indicates that developments should create places with a high standard of amenity for existing and future users, and also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions, including mitigating and reducing to a minimum potential adverse impacts resulting from noise from new development, and avoiding noise giving rise to significant adverse impacts on health and the quality of life.

#### **Other Matters**

21. Reference is made to the fact that there is a condition on the existing bungalow limiting its occupation to those mainly employed in agriculture. On the evidence before me, I have no reason to think that this condition is, or would be, in breach were permission to be granted. Nor, so far as I am aware, is there any

condition restricting development of the type sought on the land. These are not matters, therefore, that weigh against the proposal.

22. The appellant also refers to permitted development rights which would allow them to make temporary use of the land to host a significant number of dog shows without any mitigating measures with respect to dog numbers or barking. However, I have no evidence that this either has occurred in the past or is likely to occur in the future, and it is not comparable in nature to the appeal proposal. Therefore, I afford very limited weight to this as a potential fall-back position.
23. I recognise that interested parties have raised concerns in respect of other matters, including visual impact and highway safety, notwithstanding the Council's conclusions. However, on the evidence before me, including my own observations of the site and highway network in the area, I do not have reason to find further harm in these respects that would need to be factored into the planning balance. As such, I do not address these matters further.

### **Planning Balance**

24. The proposal would create a facility for which the appellant has demonstrated a local need, particularly for overnight accommodation, and I acknowledge the letters of support submitted. There would also be work created for local builders and the creation of two full-time positions. The proposal would therefore deliver social and economic benefits for the area. Having regard to its scale and the contribution it would make to the range of kennel facilities in the area, I afford moderate weight to these benefits overall.
25. However, these benefits would be insufficient to outweigh the identified harm to neighbours' living conditions, and resulting conflict with the development plan, to which I afford significant weight.

### **Conclusion**

26. The proposal would result in conflict with the development plan, taken as a whole, and material considerations in this case do not indicate that permission should be forthcoming in spite of this conflict. For the reasons given, therefore, and taking all matters into consideration, the appeal is dismissed.

*K. Savage*

INSPECTOR



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## Appeal Decisions

Hearing Held on 16 March 2021

Site visit made on 18 March 2021

**by Sarah Dyer BA BTP MRTPI MCMi**

an Inspector appointed by the Secretary of State

Decision date: 7<sup>th</sup> JUNE 2021

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### **Appeal A Ref: APP/F1040/C/20/3251536**

**Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Ms Ellen McDonagh against an enforcement notice issued by South Derbyshire District Council.
  - The enforcement notice was issued on 8 April 2020.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for the siting of one gypsy/traveller pitch to two pitches, along with the erection of two amenity buildings, the creation of hard surfacing and alterations to widen the site access.
  - The requirements of the notice are:
    1. Cease the use of the land for the siting of caravans to create a gypsy/traveller site, except for the implementation of planning permission 9/2018/0616.
    2. Permanently remove all caravans from the site, except for those granted planning permission under approval 9/2018/0616.
    3. Dig out and remove the rubble/hardcore material from the land, with the exception of that which can remain in the area approved under 9/2018/0616. (Approved plan attached, dated 12 Jun 2018)
    4. Dismantle and remove the timber amenity building and timber shower block from the land.
    5. Remove the concrete bases that the timber amenity building and timber shower block are sited on from the land.
    6. Deposit the waste and material arising from compliance with steps 3 and 5 at an authorised waste transfer station.
  - The period for compliance with the requirements is 12 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Appeal B Ref: APP/F1040/W/20/3248284**

**Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms B and E McDonagh against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2019/1408, dated 6 December 2019, was refused by notice dated 27 February 2020.
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- The development proposed is extension of existing Traveller pitch to create additional pitch and erection of amenity building and associated parking area.
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## **Decisions**

### **Appeal A**

1. It is directed that the enforcement notice be:
  - corrected by the deletion of the text in section 3 and its substitution with the following text:

Without planning permission, the material change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture.
  - varied by the deletion of requirement 6 in section 5 and its substitution with the following text:

'Remove from the site any surplus material arising from compliance with steps 3 and 5'.

Subject to these corrections Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act

### **Appeal B**

2. The appeal is allowed and planning permission is granted for the change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access at Land at SK2913 6212, Acresford Road, Netherseal, Swadlincote, South Derbyshire DE12 8AP in accordance with the terms of the application, Ref. DMPA/2019/1408, dated 6 December 2019 and the plans submitted with it, subject to the conditions set out in the attached schedule.

### **Procedural Matter**

3. The local Councillor appeared at the Hearing and there were a number of objections/comments from local residents regarding the unauthorised development. The Councillor expressed concerns that some residents may not have been able to access the virtual event for technical reasons but I have been able to take account of their written submissions and I do not consider that any of the interested parties has been substantially prejudiced by any inability to access the event.

### **Preliminary matters**

4. Following the submission of the planning application, which is the subject of Appeal B, the Council agreed a revision to the description of development with the appellants as follows:

‘Change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access.’

The Council determined the application on the basis of the revised description and I have determined the appeal accordingly.

5. The Council confirmed that since the planning decision was issued in relation to Appeal B and the notice was served in relation to Appeal A, it has withdrawn its second reason for the refusal of planning permission which related to the impact of the proposed development on the River Mease Special Area of Conservation (SAC). A copy of the Habitats Regulations Assessment (HRA) which the Council has carried out has also been sent to me.
6. Whilst clarification that the Council is not presenting a case in relation to one of its reasons for refusal would ordinarily result in that matter falling away as a main issue for a subsequent appeal, this case is different. The potential for an adverse impact upon a European Site, which includes a SAC, still needs to be considered under the Habitats Regulations and I am required to carry out an ‘appropriate assessment’ as the decision maker in this regard. For this reason, I have dealt with the issue of impact on the SAC as a main issue.
7. Both parties also agreed that the site would be occupied by people who meet the definition of gypsies and travellers as set out in the Planning Policy for Traveller Sites (PPTS) and that the PPTS is material to the consideration of both appeals. Matters relating to human rights, the public sector equality duty and the best interests of children are integral to my decision and I have concluded on them in my determinations of the appeals.

### **The Notice**

#### *The site plan*

8. The site plan which accompanies the notice identifies the land which accommodates the two pitches, amenity buildings, access and parking/turning space but it also includes other land in the appellant’s ownership (the other land). The Council says that it included the other land in the site to ensure that the requirement for the removal of hardcore/rubble set out in the notice applies to this area and that material is not moved onto it. At the Hearing I raised the question of whether the site plan should be amended to align it with the site plan for the planning application.
9. Neither the Council nor the appellant had any objections to the site plan being amended to relate to the pitches, amenity buildings, access, and parking/turning area only, however the Council did not consider this to be necessary. The Council has provided an amended site plan and neither party consider that injustice would arise should I decide to substitute the current enforcement site plan for it.

10. I have given further consideration as to whether the site plan should be amended to exclude the other land. On reflection I have decided that the site plan should include all of the land in the appellant's ownership because there is a service link across the other land towards the A444 and access to the other land from the site. Consequently, I have not substituted the site plan for that which was agreed by the parties.

*The breach of planning control*

11. During the Hearing the parties agreed that the breach of planning control could be corrected to include reference to 'engineering operations' to more clearly describe the hard surfacing and alterations to widen the site access. A further correction is necessary to align the breach and requirement (3), to provide further clarity. This can be achieved through a correction to include the deposit and regrading of rubble and hardcore material as a descriptor of the creation of the hard surfacing.
12. The breach as set out on the notice relates to a material change of use, and the Council consider the buildings and operations which have been carried out on the site to facilitate the use as opposed to being separate operational development. The breach also refers to a change in the use of land from a use for the siting of one gypsy/traveller pitch. Whilst the appellant says that the approved scheme for the development of one pitch (Council Ref. 9/2018/0616) (the approved planning application) was implemented, it is not necessary for this use to be referred to in the notice. There is a ground (a) appeal in this case, therefore, the planning history of the site is a matter which can be given weight in relation to the merits of the appeal scheme.
13. As I have decided not to amend the site notice, the use of the land beyond the pitches and parking/turning area needs to be described as part of the breach. Such a change widens the terms of the notice to relate to a mixed use. Therefore, I have sought comments from the parties on this point along with the corrections which I have referred to in paragraphs 11 and 12 above.
14. The appellant has no objection to the correction of the breach, and I have not received any comments from the Council.
15. As corrected the breach would read as follows:
- Without planning permission, the material change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture.

*The works which have taken place on site*

16. Both parties advised at the Hearing that the development which has been carried out on site to date goes beyond that which is the subject of the planning application, but neither specified what the differences are. The appellants confirmed that they are not seeking consent for what is currently on the site and it was accepted that some works would need to be undone. Consequently, I have dealt with Appeal B on the basis that the planning application seeks approval for proposed development and does not seek to



regularise the development which has taken place on site. In that context the planning application which is the subject of Appeal B is not retrospective.

17. At my site visit I saw two amenity buildings, of timber construction, in roughly the locations shown on the plan accompanying the planning application, but the caravans were not in the same configurations to those shown on that plan. Beyond the pitches was an area of land which was open and unused, and vehicles were parked around the caravans.
18. Fences have also been erected around the two pitches and the open area, separating them from the agricultural land within the site, and for a short length adjacent to the A444. The erection of fences is not referred to in the notice either in terms of the allegation or the requirements.
19. I have given consideration as to whether it would be appropriate for me to amend the requirements of the notice to secure the removal of the fences, to bring those matters within the scope of the DPA. However, the inclusion of the fences would increase the scope of the requirements and the effect of the fences on the character and appearance of the area is not a matter which the appellant has had the opportunity to address. Therefore, such amendments would cause injustice.

#### **Ground (a) and the Deemed Planning Application (DPA)**

20. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.
21. The DPA is derived from the breach of planning control as set out in the notice. In this case I have corrected the description of the breach, therefore the DPA is for 'the change of use of the land to a mixed use as a gypsy/traveller site with two pitches, along with the erection of two amenity buildings, engineering operations comprising the creation of hard surfacing through the deposit and regrading of rubble and hardcore material and alterations to widen the site access to facilitate the use, and agriculture'.

#### **Main issues**

22. The main issues in this case are:

- The effect of the development on:
  - the landscape character of the surrounding area; and
  - the River Mease Special Area of Conservation (the SAC).
- Whether or not there are any material considerations, including Planning Policy for Travellers Sites (PPTS) which outweigh any harm which arises from the development.

#### **Reasons**

##### *Character and Appearance*

23. The Council confirmed that the relevant planning policies for the consideration of character and appearance are Policy BNE4 and Policy H22 of the South Derbyshire Local Plan Part 1 2016 and Policy BNE5 of the Local Plan Part 2 2017 (the Local Plan). There is no dispute between the parties that these

policies are consistent with the National Planning Policy Framework (the Framework). The Council also clarified that the site is not subject to any specific landscape designation and that the designation of the SAC has no direct bearing on the consideration of character and appearance.

24. Policy BNE4 seeks, amongst other things, to protect and enhance the character of South Derbyshire's landscape through careful design and sensitive implementation of new development. It establishes that development which has an unacceptable impact on landscape character and cannot be satisfactorily mitigated will not be permitted. Policy BNE5 also requires that development in rural areas does not unduly impact on landscape character.
25. Policy H22 deals specifically with sites for gypsies and travellers and travelling show people. It includes a criterion, amongst other criteria, that development does not result in an unacceptable impact on the surrounding landscape, unless capable of sympathetic assimilation.
26. The appellant did not identify any particular shortcomings in terms of the analysis of the Council's description of the character and appearance of the site context. The key issue between the parties was in relation to the impact of the development in comparison with that which has already been approved on the site (the approved scheme).
27. The approved scheme is for one pitch on a smaller site and with a limited extent of hardstanding. By comparison the development to which the notice relates occupies a larger site and the nature of the development is more complex, comprising a mixed use which includes two pitches, two amenity buildings and extensive hard surfacing. There has been no change to the appearance of that part of the site which is in agricultural use. Therefore, the assessment of the impact on the character of the landscape needs only to address the effect of the gypsy/traveller site element of the mixed use.
28. Acresford Road follows a meandering downward slope towards its junction with the A444. The Council's Landscape and Visual Impact Appraisal (LVIA) includes photos which show that the existing built form follows Measham Road off the A444 and that the Cricketts Inn and other buildings are on the opposite side of Acresford Road close to the junction, this gives the appearance of buildings being clustered around the road junction. As Acresford Road rises away from the A444 buildings become sporadic in nature but there is a large detached house on the brow of the hill, Coronation House.
29. The A444 is subject to a steady stream of traffic whereas Acresford Road is a quiet rural lane bounded by hedges. As described by the Council at the Hearing some of the roadside hedges appear to be managed and have been cut back, which affords views over them. The hedge along the roadside edge of the site is generally higher than the surrounding hedges and when the hedge plants are in leaf it would provide extra screening of the site. In the Winter/early Spring the high fences which surround the site would be very visible through the hedge.
30. There are partial footpaths on both sides of the A444, however the speed and frequency of traffic mean that it is not a pleasant environment for pedestrians. Nevertheless, as a result of the level of the road as it crosses Hooborough Brook and a gap in low level planting there is a clear view of the site from this

- direction which would be experienced by passengers in vehicles and anybody on foot or cycle.
31. The most visually intrusive element of the development at present are the high fences surrounding the pitches and parking/turning area and the fence alongside the A444, which are alien features in the landscape. However, these fences are not before me for consideration.
32. The site is larger than that which has planning permission, consequently, a more extensive area has been subject to the creation of hard surfacing through the deposit and regrading of rubble and hardcore material. Notwithstanding the presence of the fences, the significant difference in the height of the land occupied by the pitches and turning/parking area and the agricultural land on the wider site is very marked. This is apparent in the view of the site from the A444 and has an unacceptable impact on the surrounding landscape.
33. I observed that most of the caravans on the site were set parallel to Acresford Road and that two were positioned adjacent to the access drive in the same alignment. Without the screen effect of the fence the caravans beside Acresford Road would be visible through the hedge when it is not in leaf. They would form a solid visual barrier against the road and the pavement which runs alongside it. Parts of the other two caravans are already visible above the fences in the view from the A444 and their position on the site would be very prominent without the screening effect of the fences. Thus, the layout of the caravans contributes to the unacceptable impact on the landscape.
34. I have given consideration to whether the layout of the site could be subject to a planning condition of the form that would require a layout to be agreed with the Council. However, on its own a revised layout would not overcome the totality of the harm that I have found and I cannot be certain that a satisfactory layout could be secured.
35. Even if some of the hard surfaced area could be lawfully retained in accordance with the planning permission for the single pitch, this would only address part of the site. I have given consideration as to whether I could impose a condition on a grant of permission for the DPA to secure the removal of material from the land and regrading to reduce the impact of the hard surfaced areas but there is no evidence before me that such works would overcome the unacceptable impact which I have identified. In the light of this I am also unconvinced that such a condition would meet the tests of being precise and enforceable.
36. I have also considered whether I could impose a landscaping condition to mitigate the impact of the development in its setting. However, given the significant impact of the hard surfacing works and in the absence of any detailed proposals for landscaping I am not persuaded that even when trees and other planting matured it would successfully mitigate the impact of the development.
37. In order to achieve a satisfactory solution, in combination the layout and hard surfacing would need to be significantly altered and proposals for detailed landscaping brought forward. There is no certainty that the imposition of planning conditions and compliance with them would successfully achieve this.
38. This is not a site which is located in undeveloped, open countryside. However, the development to which the notice relates has led to a change in the



appearance of the land over a larger area than the approved scheme and the introduction of additional caravans, buildings, and hard surfacing. I consider the development has an unacceptable impact on landscape character. This impact cannot be satisfactorily mitigated by the imposition of planning conditions and it follows that the development is not capable of being satisfactorily assimilated into the surrounding landscape.

39. I conclude that the development has a harmful effect on the landscape character of the surrounding area, which is contrary to Policies BNE4, BNE5 and H22 of the Local Plan.

*River Mease SAC*

40. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in view of that site's conservation objectives. Circular 06/2005 sets out that the decision on whether or not an appropriate assessment is necessary should be made on a precautionary basis.
41. The River Mease is defined as a Special Area of Conservation (SAC) because it is an important conservation site due to the habitats which it provides and the species which are present. A SAC falls within the definition of a European site.
42. Policy BNE3 of the Local Plan states that planning proposals that could have a direct or indirect effect on sites of ecological importance, which includes the River Mease SAC, will be refused where mitigation measures/compensation cannot sufficiently offset significant harm. Policies BNE5 and H22 also restrict development which has an unacceptable impact on biodiversity.
43. In this case the Council has carried out a Habitats Regulations Assessment (HRA) which has been considered by Natural England. The HRA includes recommended mitigation measures which are proposed to address any likely effects of the development on the SAC. In addition to onsite works, which are capable of being secured by planning conditions, the mitigation includes the payment of £633 in accordance with the River Mease Developer Contributions Scheme (DCS2). The DCS2 ensures that the effects of any additional phosphates generated by the drainage associated with the development are offset.
44. Subject to the mitigation measures set out in the HRA being secured Natural England has no objections. The appellant has provided the DCS2 contribution via a unilateral undertaking (UU) in a form which the Council finds to be satisfactory. However, the UU is linked to the planning application made under the Council's reference DMPA/2019/1408 and not the DPA.
45. I find that a unilateral undertaking is necessary to make the development acceptable, directly related to the development and, on the basis that the agreed formula for calculation of the DCS2 contribution has been applied, that it is fairly and reasonably related in scale and kind to the development. Were I to be allowing the DPA I would have sought a further UU in respect of that application and I am confident that the appellants would have entered into such an agreement.
46. The HRA has been provided and I have comments in support of the mitigation measures proposed in the HRA from Natural England, which is the appropriate

body to advise on matters relating to impacts on a SAC. I have, in my role as decision maker, therefore been able to carry out the appropriate assessment.

47. I have a statutory duty to ensure that there would be no adverse effect upon the integrity of the SAC and the evidence before me leads me to that finding. Therefore, I conclude that, subject to the mitigation measures which can be secured, including a further UU in respect of the DPA, the development would not have a harmful effect on the River Mease SAC and that in such circumstances it would be in accordance with Policies BNE3, BNE5 and H22 of the Local Plan.

*Material considerations*

*Need for/supply of gypsy and traveller sites*

48. The PPTS, which is itself a material consideration, makes it clear that a relevant matter in the consideration of planning applications for traveller sites is the existing level of local provision and need for sites.
49. Notwithstanding that the need for Gypsy and Traveller sites was not quantified, there is no dispute between the parties that there is a need for such sites within the Council area. Whilst the Council argues that it takes a positive approach to the provision of such sites, nevertheless it accepts that it has no adopted policy in terms of site allocations, and it has no 5 year supply of deliverable sites.
50. The Council says that the work which it has commenced in terms of site allocation has been impacted by the Covid-19 and that it may become more expedient to allocate sites through a revised Local Plan. As it stands the Council accepts that it is reliant on the provision of new sites through the planning application process.

*Availability (or lack) of alternative accommodation*

51. This is also defined as a relevant matter in the PPTS. In this case, there is no evidence that the appellant has an alternative site available to her and her family and the Council's Planning Committee, when it determined the planning application which is the subject of Appeal B, was advised that there were no alternative sites available and no spaces on existing sites in the area.
52. Consequently, in view of the requirements of the notice at least one family would be likely to have to relocate to the roadside. This would make access to education and health services more difficult for that family and it is also not in the public interest to have a family living on the road with no access to drainage or facilities for the storage of waste etc.

*Other personal circumstances*

53. The development allows the expansion of the area of caravan pitches to accommodate a larger family group allowing a degree of mutual support and co-operation which is acknowledged as of importance to the Gypsy and Traveller community. The site will also provide a stable base from which both families can access essential services such as schools and healthcare. This is particularly important in this case given that two of the children on the site need to attend regular hospital appointments.



54. Some of the children on the site attend the local school and it is anticipated that as they grow up other children will be pupils there. The Headteacher has confirmed that the children who currently attend are thriving and occupation of the site would give the same opportunity to the younger children.
55. The personal circumstances of the appellant has an effect on the scale of the development because there is a particular wish to provide separation between the parking and turning area and the pitches which arises from an event in the family's history. Whilst this part of the development increases the scale of it, the appellant's reasoning is understandable.

*The Planning Balance*

56. Policy H of the PPTS is a reminder that planning law requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
57. In this case I have concluded that the development is contrary to the development plan in terms of those policies which seek to protect landscape character and one of the criteria against which the development of gypsy and traveller sites are judged. This harm arises in particular as a consequence of the site layout and the deposit and regrading of rubble on the site to create the hard surfacing. This impact has not been shown to be capable of being successfully mitigated through changes to the site layout in combination with works to the hard surfaced areas or landscaping and planning conditions could not be reasonably imposed to secure such mitigation. This matter attracts significant weight against allowing the appeal and granting the DPA.
58. Policy H22 of the Local Plan contains seven other criteria against which sites for gypsies and travellers are assessed. The evidence and my site visit have shown that these criteria have been met or could be met by the imposition of planning conditions. These matters weigh in favour of this site being an appropriate one for a gypsy and traveller site, but the weight is limited given that the development is not wholly in accordance with policy H22.
59. It has also been shown that subject to mitigation measures, there will be no harmful impact on the River Mease SAC. This has a neutral impact in the planning balance.
60. The Local Councillor who attended the hearing, highlighted objections from local residents in respect of the effect of the development on the landscape and the River Mease SAC, which I have already addressed. She also referred to concerns about the cutting down of trees on the site during the nesting season and an increase of anti-social behaviour by children living on the site. With regard to the effects on nesting birds, this matter is controlled by legislation which falls beyond planning control and therefore is not a matter before me. There is no substantive evidence to suggest that there would be any increase in anti-social behaviour were I to allow the appeals. Consequently, these matters attract no weight and have a neutral effect in the planning balance.
61. The need for gypsy and traveller sites, the lack of alternative accommodation and the other personal circumstances of the appellant all weigh in favour of allowing the appeal and granting the DPA.
62. Drawing all of the relevant considerations together, and in view of the significant weight that I have attached to the harmful effect of the development

on landscape character, I do not find that those matters which weigh in favour of the appeal and the approval of the DPA, outweigh the scale of harm which I have identified. The planning balance in relation to the development, which is the subject of the enforcement notice, as corrected, does not justify a decision other than in accordance with the development plan.

#### **Human Rights and the Best Interests of the Children**

63. The occupiers of the caravans are members of the Gypsy and Traveller community which is recognised as having special needs which are protected through positive obligations in terms of their human rights. Furthermore, the caravans are occupied as residential accommodation which are the homes of two families.
64. My decision to dismiss Appeal A, to uphold the enforcement notice (as corrected) and to refuse the DPA would lead to the loss of one of the pitches, which would affect the ability of the appellant to live a Gypsy way of life and result in the loss of their home. This would be an interference with the appellant's rights under the Human Rights Act 1998.
65. I have concluded that the harm arising from the development which is contrary to the development plan is not outweighed by the material considerations, including the need for gypsy and traveller sites and the personal circumstances of the appellant in this case. I have considered whether the imposition of conditions, in the form of works on site and landscaping, allowing the residents to stay on the site, would protect the public interest by means which would have less interference with an individual's rights. However, in this case, given the significant works necessary and the lack of certainty that a satisfactory outcome in terms of the effect on the landscape could be achieved through such works and other mitigation, I am of the view that the imposition of planning conditions would not adequately protect the public interest.
66. There are children on the site and any action which resulted in some of them not being able to live at the site would not be in the best interests of those children. Living on the roadside in particular would make access to school and hospital appointments difficult. The best interests of the children are a primary consideration and no other consideration is more important, however they are not a determinative factor.
67. In this case whilst allowing Appeal A and granting the DPA would be in the best interests of the children, this does not outweigh the harm which I have found in terms of the impact of the development on landscape character.
68. In reaching these conclusions in terms of the Public Sector Equality Duty and in respect of human rights and the Best Interests of the Children, I am mindful of my intention to allow Appeal B which would afford the option to the appellants of implementing a planning permission which would allow both families to remain on the site.
69. The time for compliance with the enforcement notice, which is upheld under Appeal A, allows the opportunity for the appellants to implement the planning permission for two pitches thus enabling both families to remain on site. In this context my determination of both appeals provides both appellants with an option to stay on the site and strikes a fair balance and would be a proportionate response in terms of my positive obligations under the Human

Rights Act and the Best Interests of the Children and discharges my obligations under the Public Sector Equality Duty.

Conclusion on ground (a) and the DPA

70. For the reasons given above, I conclude that the appeal under ground (a) (Appeal A) should not succeed and that the DPA should not be granted.

**Ground (f)**

71. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
72. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use of the land to cease, I consider the purpose is to remedy the breach of planning control.
73. Under their ground (f) appeal in respect of Appeal A the appellant requested that requirements 3 and 6 of the notice be amended to accord with a recent appeal decision at the same site (Refs. APP/F1040/C/19/3237351, 3237352 and 3237353) (the 2020 appeal decision). The Council says that it received the 2020 appeal decision at the same time that the notice was served and that had it received it earlier it would have amended the requirements to accord with the changes made by the Inspector in that case. On this basis the Council concedes ground (f) of the enforcement appeal, subject to requirements 3 and 6 being amended to the form of words used in the 2020 appeal decision.
74. The 2020 appeal decision was in respect of the issuing of an enforcement notice by the Council for the formation of a concrete base and engineering operations to alter land levels at the site.
75. Requirement 3 of the notice to which the 2020 appeal decision relates (the 2019 Notice), originally required the removal of rubble with the exception of that which could remain in the area under the approved scheme. The Inspector amended requirement 3 to require compliance with the terms, including the conditions and limitations, of that approved planning permission.
76. Under section 57(4) of the Planning Act 1990 where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. This is already addressed by the reference to the approved planning permission in requirement 3, and also in requirements 1 and 2.
77. The previous Inspector was not considering the use of the land, only the operational development which had taken place. In deciding to vary the requirement in terms of the removal of material from the land she had concluded on the basis of the evidence that the amount of material was not in excess of that allowed for under the extant planning permission. This provided justification for the variation of the requirement in that case to refer to the terms, including the conditions and limitations of the planning permission.



78. In contrast I am dealing with the use of the site and there is no information before me regarding the amount of material which has been brought onto the site and whether or not any of it is in accordance with that agreed by the Council in the context of the approved planning application. For that reason, the reference to the approved planning application in requirements 1, 2 and 3 is sufficient to highlight the appellant's rights under section 57(4) of the Act and no variation or correction of the requirements is necessary.
79. In relation to requirement 6, the previous Inspector corrected the notice to remove reference to 'an authorised waste transfer station' on the basis that this would be addressed by other legislation and there is no need to impose it as a requirement. I take the same view and shall vary the notice.

Conclusion on ground (f)

80. It has been shown that the requirements of the notice exceed what is necessary in relation to requirement 6 and the appeal under ground (f) succeeds to this limited extent.

#### **Conclusion in respect of Appeal A and the DPA**

81. For the reasons given above, I conclude that the appeal under ground (a) (Appeal A) should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

#### **Appeal B**

82. Appeal B relates to the refusal of planning permission by the Council for change of use of land for the siting of two gypsy/traveller pitches in lieu of one pitch previously approved under application ref. 9/2018/0616, along with the erection of two amenity buildings, the creation of a hard surfaced parking area and access drive, engineering operations to amend the site levels, along with alterations to the site access (the planning appeal).
83. The key difference between the planning appeal and the appeals against the enforcement notice is that the planning application was supported by plans which provide certainty about matters such as site layout, land levels and the proposed boundaries to the pitches and parking/turning area.

#### **Main Issues**

84. The main issues in this case are:
- The effect of the development on:
    - the landscape character of the surrounding area; and
    - the River Mease Special Area of Conservation (the SAC).
  - Whether or not there are any material considerations, including Planning Policy for Travellers Sites (PPTS) which outweigh any harm which arises from the development.

## Reasons

### *Character and Appearance*

85. In common with Appeal A the relevant policies are Policies BNE4, BNE5 and H22 of the Local Plan and the key issue between the parties is the impact of the development for which planning permission is sought in comparison with what has already been approved on the site.
86. Planning permission was sought for a more extensive development than the approved scheme, both in terms of the size of the site and the number of pitches. Consequently, the proposed development would have a greater impact on the character of the landscape than the approved scheme.
87. However, in terms of the land levels, those shown on the submitted sections A-A and B-B show a gentle slope across the site. Consequently, the proposed new tree and other planting on the boundary between the parking/turning area and the agricultural land running towards the A444 would be effective in screening the site from that direction to a significant extent.
88. The proposed site layout places the two mobile homes perpendicular to Acresford Road, such that the enclosing effect of caravans visible through the hedge would be limited. The layout shown on the plans would also provide a much stronger sense of connection between Acresford Road and the natural landscape alongside Hooborough Brook. Although there would still be a touring caravan close to the access drive close to the middle of the site this would not significantly impinge on the views from the A444.
89. In terms of the boundary treatment shown on the plans, the proposed two metre high timber screen fence along Acresford Road would reduce the degree of visual connection between the road and the countryside to some degree. However, the post and rail fence which would define the boundary towards Hooborough Brook and the tree planting referred to above would be highly compatible with the rural context.
90. Drawing all of these strands together, whilst the development would have some adverse impact on the character of the landscape, most of this impact would be capable of being mitigated by adhering to the submitted plans, in terms of site levels, layout and boundary treatment and compliance with planning conditions. It follows that the development could be satisfactorily assimilated into the surrounding landscape and that it would not unduly impact on the character of the landscape.
91. For the reasons set out above I conclude that whilst the development, by virtue of its scale and extent, would have a harmful effect of on the landscape character of the surrounding area, the degree of harm would not be unacceptable and that subject to the imposition and discharge of relevant planning conditions, it would be in accordance with Policies BNE4, BNE5 and H22 of the Local Plan.

### *River Mease SAC*

92. There is no evidence before me nor any dispute between the parties that the impact of the development which is considered under Appeal B would be any different in terms of its impact on the River Mease SAC than that the subject of Appeal A. Consequently, I shall adopt the reasoning set out above in relation to

Appeal A, for my consideration of Appeal B and I conclude that the development would not have a harmful effect on the River Mease SAC. In such circumstances the development would be in accordance with Policies BNE3, BNE5 and H22 of the Local Plan.

#### Other matters

93. The need for gypsy and traveller sites, the lack of alternative accommodation and the other personal circumstances of the appellants all weigh in favour of allowing appeal B and granting planning permission.
94. I have addressed the matters which were raised by the Local Councillor and local residents in relation to the removal of trees and anti-social behaviour in my determination of Appeal A. These matters do not attract any weight in my determination of Appeal B.

#### Conditions

95. The conditions which were suggested by the Council sought to address the development which has already been carried out on the site. However, I have regarded the planning application which is the subject of Appeal B as seeking consent for proposed development with no retrospective element. For this reason, extensive re-drafting of the suggested planning conditions and additional conditions has been necessary.
96. As some of the conditions are pre-commencement conditions, I have sought and obtained the written agreement of the appellants to their inclusion.
97. Condition 1 is the standard three-year condition for the commencement of development and condition 2 requires that the development is carried out in accordance with the approved plans, which provides certainty.
98. In this case the impact of the development on landscape character is a particularly sensitive issue. It will be seen from my assessment that I have relied on the plans and sections particularly in terms of site layout and levels together with landscaping to establish that the development will have a satisfactory impact on the landscape character of the surrounding area. Adherence to the site sections and site layout shown on the submitted plans is necessary to ensure that the position of the caravans, amenity buildings and parking/turning area are controlled in terms of their impact on the landscape. For that reason, conditions are necessary to ensure that the site layout and site levels are delivered in accordance with the approved plans and that they are retained. (Conditions 3 and 4).
99. Although there is some information shown on the plans in respect of tree, hedge and shrub planting full details of landscaping are necessary to ensure that it provides an appropriate level of screening and integration of the pitches and hardstanding into the landscape. (Condition 5). A condition is also necessary to require that any trees or plants which die are replaced to maintain the effectiveness of landscaping in the long term. (Condition 6).
100. A condition to require the submission and approval of full details of boundary fencing to Acresford Road is necessary to ensure that the appearance of the fencing is compatible with the landscape character of Acresford Road. (Condition 7).



101. It is necessary for conditions 5 and 7 to be pre-commencement conditions to ensure that the layout of the site, the site levels and the landscaping can be implemented effectively and to enable landscaping/fencing to be established on site as soon as practicable following the implementation of the planning permission.
102. Conditions are required, in addition to those relating to landscaping and boundary treatment to ensure that the mitigation measures necessary to protect the River Mease SAC are implemented as set out in the HRA (Conditions 8, 9, 10 and 11). Conditions 9, 10 and 11 need to be pre-commencement conditions because given the importance of the SAC it is essential that the mitigation measures form an integral part of the detailed design of the site and that the site is developed, from the outset, in a way which protects the SAC.
103. The submitted plans show the shower room of timber construction and there are no details, shown on the plans, of the materials to be used to construct the amenity block. The appellants indicated that they wish to construct these buildings with facing brick, so I have included a condition to facilitate this or another material which is acceptable to the Council (Condition 12).
104. There is no street lighting along Acresford Road and while some external lighting on site will be necessary for the security of residents, excessive external lighting or floodlighting would be harmful to the character and appearance of the surrounding countryside. For this reason, an external lighting condition is necessary (Condition 13).
105. My decision has been made on the basis that the future occupiers of the site will be gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 14).
106. Since the grant of planning permission is for use of land including for the siting of two pitches it is necessary to condition the maximum number of caravans and types of caravans on each pitch. (Condition 15) Similarly as there is an extensive area of hard standing for parking it is necessary to control the potential for adverse effects arising from the use of this area on the amenity of neighbouring residents and users of Acresford Road. For that reason, I have included conditions to limit the number and size of any commercial vehicles (Condition 16) and to preclude any commercial activities including the storage and burning of materials (Condition 17).

#### **Conclusion in respect of Appeal B**

107. For the reasons set out above, Appeal B is allowed, and planning permission is granted as set out in the Formal Decision.

*Sarah Dyer*

Inspector

### Schedule of conditions

#### Appeal B

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan drawing ref. M.19.02 Revision A, the Amenity Block Elevations and Floorplans, Site sections A-A and B-B, and the Site Location Plan.
3. The site shall be laid out in accordance with Block Plan drawing ref. M.19.02 Revision A and shall be retained in that layout thereafter.
4. The site sections shall be delivered in accordance with the Site sections A-A and B-B and shall be retained thereafter.
5. No development shall commence until a landscape scheme for tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. All tree, hedge and shrub planting shall be carried out in the first planting season following the approval of the landscape scheme.
6. In reference to condition 5, if any trees, plants or shrubs approved as part of the landscaping scheme, within 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and species, unless otherwise approved by the Local Planning Authority.
7. No development shall commence until full details of boundary fencing adjacent to Acresford Road have been submitted to and approved in writing by the local planning authority. The approved boundary fence shall be erected prior to occupation of the development hereby approved.
8. Prior to occupation of the development hereby approved, the shower/wc building and the amenity building shall be connected to the foul sewer and all foul drainage shall be disposed of via this connection thereafter.
9. No development shall commence until full details of a sustainable drainage system for the disposal of surface water (including a swale, shallow depression or scrape between the access track and parking/turning area to ensure that any surface water flows and sediment supplied by areas of hardstanding can be intercepted) and riparian buffer/tree planting details shall have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development hereby approved.
10. No development shall commence until full details of the installation of a post and rail fence or similar boundary treatment (reflecting flood risk) adjacent to Hooborough Brook to minimise the potential for disturbance/bank erosion has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the development hereby approved.



11. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved CEMP.
12. Notwithstanding the details shown on the approved plans, prior to commencement of construction of the shower/wc building and the amenity building full details of the external materials to be used in the construction of those buildings shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the shower/wc building and the amenity building shall be constructed in accordance with the approved external materials.
13. Prior to the installation of any external lighting or floodlighting, a lighting scheme shall be submitted and approved in writing by the Local Planning Authority. Thereafter any external lighting or floodlighting shall accord with the approved lighting scheme.
14. The site shall not be occupied by any persons other than gypsies and travellers as defined in the Government 'Planning Policy for Traveller Sites' (August 2015) or any Government guidance which amends or replaces that guidance.
15. There shall be no more than two pitches on the site and no more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968, stationed at any time on the site of which only two caravans shall be residential mobile homes/static caravans.
16. No more than a total of three commercial vehicles shall be kept on the land for use by the occupiers of the pitches hereby permitted, and each shall not exceed 3.5 tonnes in weight.
17. No commercial activities shall take place on the land, including the storage or burning of materials.

#### APPEARANCES

##### For the Appellants:

Roger Yarwood                      Agent

##### For the Local Planning Authority:

Bob Woollard                      Planning and Design Group

Neil Northrop                      Weddle Landscape Design

Karen Beavin                      South Derbyshire District Council

Gaynor Richards                      South Derbyshire District Council

##### Interested Party:

Councillor Amy Wheelton

#### DOCUMENTS SUBMITTED DURING THE HEARING

Letters from Headteacher at St Charles School dated 13 February 2020 and  
9 March 2021

Unilateral Undertaking dated 17 March 2021

Amended Plan Ref. E/2018/00110 – Land at Acresford Road, Acresford