

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2013/0515	1.1	Milton	Repton	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

17/09/2013

Item 1.1

Reg. No. 9/2013/0515/U

Applicant:
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Bespoke Inns
2 Milton Grange
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Milton
DE65 6EF

Agent:
Mr Ian Harding
Building Design Group Ltd
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Bitterscote House
Bonehill Road
Tamworth
Staffordshire
B78 3HQ

Proposal: **RETROSPECTIVE APPLICATION FOR THE CHANGE OF
USE FROM PRIMARILY RESIDENTIAL TO MIXED
RESIDENTIAL / OFFICE USE AT 2 MILTON GRANGE
MAIN STREET MILTON DERBY**

Ward: **REPTON**

Valid Date: **03/07/2013**

Members will recall this item was deferred at the meeting on 27 August 2013 to enable the Committee to consider fully the proposed conditions. That report is attached at Appendix A.

Reason for committee determination

This item is reported to the Committee at the request of a Councillor Stanton on the grounds that local concern has been expressed about a particular issue.

Site Description, Proposal, Applicants' supporting information and Planning History

All these items remain as outlined at Appendix A.

Amendment to plans

As outlined at Appendix A, the original plans have been superseded by a revision received on 14 August 2013. This revision was presented to Members at the meeting on 27 August. No further changes have been made since then.

Responses to Consultations



The Highway Authority raises no objection to the proposal. They understand the applicant's access rights through the courtyard are in dispute and due to this they have considered whether satisfactory access can be achieved one way or another. They comment that should the applicant not be permitted to pass through the courtyard, then the parking spaces could be accessed by utilising the alternative existing access between 2 Milton Grange and 18 Main Street. The applicant can already use this access and the space between the gates/planter and the highway to park two vehicles without requiring approval. They note this scenario is not ideal, as visibility onto Main Street is somewhat restricted and there is no turning space available; but note that it would be better to remove the planter and park to the rear of the site where turning space is achievable. Moreover they state *"whichever parking/access scenario the applicant either chooses or is required to use, it is not considered that either would have such a negative impact on highway safety that an objection on such grounds could be sustained. Therefore it is recommended that the best possible parking/access scenario available should be implemented by the applicant"*.

The Conservation officer has advised that there is not considered to be a material harm arising to the setting of the listed buildings by way of the use and associated parking (which would likely include hardstanding).

The Environmental Health officer (noise) confirms no objection to the proposals in principle.

The Environmental Health officer has no comments to make on the application in respect of contaminated land.

The Parish Council highlights the need for adequate provision for employees' vehicles when considering this application.

Responses to Publicity

15 objections from neighbours have been received, with some of these following the submission of amended plans. Some of these objections have been repeated in various forms, but are not "double counted" for the purpose of this figure.

Incorporating those previously listed at Appendix A, the concerns and comments comprise:

Highway and pedestrian safety

- a) There is not enough parking space for a business to be located at the property;
- b) Vehicles are parked on the street opposite Milton Grange each week day; presenting significant problems or hazard to residents' access/egress onto Main Street due to obstruction of visibility;
- c) The on-street parking has increased since 2 Milton Grange has been used as an office, with at least two staff already parking on Main Street on a daily basis;
- d) Double yellow lines should be painted on Main Street if the application is allowed;
- e) Planning permission was originally granted for only 4 dwellings, as the 6 dwellings originally applied for was considered to cause a traffic hazard; and of these only 3 were permitted to have access through the courtyard (not the applicant's dwelling);

- f) Access from the courtyard onto Main Street is not suitable for additional traffic;
- g) 2 Milton Grange has no parking rights in the courtyard as access and parking to this property is further north on Main Street, where the neighbour at number 18 has access rights across this space;
- h) Milton Grange and the Brook Farm development have young children and teenagers, and there is concern for their safety in crossing the road
- i) A public footpath runs through the courtyard, and vehicles using the courtyard could cause conflict with pedestrians;
- j) Inconsistency between the number of proposed employees and the number of parking spaces;
- k) The owner also has a motorhome parked on land not owned by him for weeks at a time during the summer;
- l) To open the access between number 2 and 18 Main Street is unsafe and has been refused in the past;
- m) 27 different vehicles have been observed and logged visiting 2 Milton Grange recently;

The application versus observed use to date

- n) Several business ventures are owned by the occupier of 2 Milton Grange and/or registered to this address;
- o) A greater number of employees already attend than is stated on the application form and in the DAS, along with further visits and deliveries throughout the day creating much more traffic and noise than as is presented under this application;
- p) The suggestion that the business has operated since 2004 is questioned in so far that it has only been noticeably used as such for the past two years;
- q) The resident does not appear to reside at the property for considerable periods of time, giving an impression that the primary purpose of the property is of a business office;
- r) Staff arrive at 8:30 and do not leave until after 6pm on many occasions, contrary to that being applied for;
- s) How would the Council enforce strict adherence to the office use proposed as it bears little resemblance to the current use of the property?
- t) No detail on how business expansion will be managed is supplied;
- u) Why is there presently storage of beer barrels and other catering items?

Residential amenity and character of the area

- v) Noise, disturbance and nuisance impacts on neighbours, and the fact that the proposed entrance is a gateway which connects with a bedroom at number 3;
- w) Inappropriate to introduce a commercial activity to such an area;
- x) Detrimental to the quality, character and amenity value of the Conservation Area;
- y) Council has a statutory duty to designate and manage Conservation Areas, which includes consideration of the uses within it;
- z) Milton Grange is one of only 7 listed buildings in Milton;
- aa) Revised access passes directly alongside a lounge window and rear garden access to number 18 causing privacy and safety concerns;
- bb) An immediate neighbour provides correspondence from their doctor which confirms current treatment for a "depressive disorder" which the neighbour attributes to the business being run by the applicant;

Other matters

- cc) The application is retrospective;
- dd) If permission is granted it is legitimising unacceptable and illegal behaviour dating back over years;
- ee) If granted this could lead to others requesting permission for the same;
- ff) Consider the barn conversions should remain as residential use only, as originally intended;
- gg) Will business rates be charged retrospectively?
- hh) There are concerns over a “friendship” between the applicant and a Member of the committee;
- ii) How would any permission be policed?
- jj) Suggestion of the applicant negotiating with the owner of the Swan Pubic House to utilise their parking during the day; and
- kk) The application states “retrospective” yet it does not relate to a past business use, and it should be rejected on this technical point.

A number of representations also allude to unauthorised use of the residential curtilage; a shed on and unauthorised use of adjacent land; sub-division of the property to provide two residences; installation of a flue, air-conditioning unit and satellite dish; replacement of a fixed timber partition to the courtyard with gates; and temporary obstruction of the public footpath. The alleged unauthorised use, shed, flue, air-conditioning unit, satellite dish and gates are subject to separate investigation and not part of, or crucial to, the proposal now presented. The alleged sub-division has been investigated by officers and whilst a new kitchen is installed, the property has not been divided into two. Obstruction of public footpaths is a matter for the County Council to consider, should a formal complaint be lodged.

Some residents have advised of the covenants which exist on the use of the property and others within Milton Grange, and that legal advice is being sought in this respect. One representation conveys the stance that should permission be granted, they will be forced to resort to the covenants to prevent its implementation and that they will seek to recover their legal costs from the Council.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan 1998 (saved policies): Employment Policy 5 (E5), Employment Policy 8 (E8), Environment Policy 12 (EV12), Environment Policy 13 (EV13), and Transport Policy 6 (T6).

National Guidance

National Planning Policy Framework (NPPF) paragraphs 11, 12, 14, 17, 19, 21, 28, 32, 120, 123, 128, 129, 131, 186, 187, 203, 206 and 215.

Circular 11/95 – the use of conditions in planning permissions.

Planning Considerations

It is not intended to repeat the observations in the report at Appendix A, but instead respond to questions raised by Members on the suitability and “soundness” of the conditions previously proposed and the two additional conditions mentioned at the previous meeting. Officers have also had further dialogue with the applicant to discuss the suitability and acceptability of these conditions.

As a point of order however, it is necessary to repeat the importance of making a decision on the basis of the proposal before Members – not what might be occurring beyond the scope of the current application and what might happen in the future. The application is for a mixed residential and office use with the latter element to serve 3 employees. It is also important to emphasise the need to make a decision based on planning considerations, and not covenants or other non-planning matters.

Conditions

Members are reminded that the Highway Authority has no objection, the Environmental Health officer for noise and pollution has no objection, and the Conservation officer also has no objection. It follows that qualified advice considers that an office use to the extent proposed is acceptable in principle subject to suitable condition(s) where considered necessary.

The use of conditions must be considered carefully. The NPPF clearly sets out that consideration should be given to *“whether otherwise unacceptable development could be made acceptable through the use of conditions”*. There are also 6 tests for imposing a condition: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. All must be met for each and every condition attached. Circular 11/95 (“the Circular”) provides detailed guidance around each of these tests. It is therefore intended to take each of the originally intended (and where relevant, now updated) conditions and “test” them appropriately.

Temporary period of consent

“This permission shall be for a limited period only, expiring on 17 September 2014, on or before which date the B1(a) use shall be discontinued unless, prior to that date, an application has been made and permission has been granted for an extended period.”

This condition is considered necessary to provide a period of time where monitoring of the proposed use, and other conditions, can occur without prejudicing the Council's ability to cease the use should unacceptable impacts arise or conditions are breached. This would not delete the business restriction condition on the 1990 permission either, such that this consent would only “override” that condition for the period specified. The clear specification of which element of the mixed use should cease, and the date by which it should cease, provides a clear line beyond which enforcement action can occur. Given the nature of the proposal, the more private nature of the residences around the courtyard and the existing condition; a temporary period of consent is considered wholly reasonable.

Scope of the use

“The office hereby approved shall only be used for purposes within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification; and shall be solely limited to the room labelled 'Office' on the plan referenced 2727/04 Rev C received by the Local Planning Authority on 14 August 2013.”

This condition is considered necessary in defining the “split” between business and residential use of 2 Milton Grange. It is precise in both the extent of the property which can be used as an office, and to the type of business use which can occur. Whilst permitted development rights would not exist for change of use to B8 storage and distribution (given the application does not create a new planning unit but instead a mixed use within a single unit); the condition also provides clarity in this respect. This condition is considered reasonable as it allows the applicant to carry out the business as proposed; and it is also enforceable in that should the use change or extend beyond the office, monitoring of the site could detect such a breach.

Hours of operation

“The office shall not be in use for any purpose other than between 0900 hours and 1700 hours Mondays to Fridays. The office shall not be used whatsoever on Saturdays, Sundays, Public Holidays and Bank Holidays.”

Occupants of existing dwellings should be able to expect a reasonable degree of peace and quiet – especially given the proximity of dwellings and the courtyard setting. This condition is considered necessary to afford this, and is reasonable in balancing a business use with residential use. Indeed the hours of operation are those proposed by the applicant and *generally* focus the business use to times where neighbours are not sleeping. The condition is also precise and works in tandem with the aforementioned conditions to ensure that monitoring outside of these hours should reveal no business activity whatsoever.

Parking provision

“Notwithstanding any business use which might have occurred prior to this grant of planning permission, the use hereby permitted shall not commence until the applicant has submitted to and received approval in writing from the Local Planning Authority, details of access and turning areas to the parking spaces to be provided along with surfacing details of all parking spaces and manoeuvring areas and a timetable for the provision of such works. Once provided in accordance with the approved details, the parking spaces and manoeuvring areas shall thereafter be maintained free of obstruction for vehicles associated with the use hereby approved.”

The use hereby approved is a mixed business and residential use. The Highway Authority raises no objection to the level of parking proposed, but do note the need and benefit to provide turning space within the site to improve on the current situation as to the use of space between number 18 and the applicant's property. It is therefore considered necessary to seek details of how the applicant intends to “connect” the existing access to the proposed spaces and ensure that vehicles can enter and leave in a forward gear. The requirements are clear in what they seek and not unreasonable. Indeed they are in the applicant's interest given the potential conflict with covenants.

The opening element of the condition places an onus on the applicant to swiftly address the requirements, as without any permission could not be lawfully implemented and the applicant would still face the risk of enforcement action as if no application had been made. It is also clear in that approval of details is one of three steps – the second being implementation in accordance with the details and timetable and thirdly the need to maintain those areas for their purpose.

Number of employees

For the purposes of this report, condition 2 in Appendix A has now been combined with what was to be a new condition, as reported at the previous meeting.

“The office shall not accommodate more than the 3 workers normally based the premises. In particular, no customers or clients are permitted to visit. The owner/operator shall maintain an up to date register of the 3 workers normally based at the premises and provide a copy of this register prior to first use of the office and on each subsequent change in these 3 workers.”

The aim of this condition is to prevent multiple comings and goings by staff each day. The more conventional arrival of 3 staff in the morning, the going and coming of those staff around lunchtime and their departure in the evening is considered to have an acceptable degree of impact. This is why the word “the” is included before “3 workers” implying that only 3 staff should have 2 Milton Grange as their normal place of work. A more “open” limit of 3 staff could be open to exploitation by having a multitude of staff based at the premises, but allocating times where they are able to attend the office. Observations by officers and residents indicate there have been regularly more than the same 3 persons using this office, although not necessarily all at the same time. Consideration must be given to the maximum possible effect which could arise from operating within the scope of such a condition, as well as the ability to identify a breach.

A further question arises as to who is the owner/operator. The residential element, whilst a dwellinghouse, can still accommodate lodgers without breaching planning control. It is thus quite possible, and within the scope of the condition, for a resident to also be a worker. This would make it impossible to identify who is a worker and who is a resident when monitoring the site. It is not considered possible to limit the use to one specific business either, as Companies House indicates various strands of Bespoke Inns Ltd – the company named in the application.

The effect of all these matters undermines the aim of the condition so to make it (a) imprecise (b) unenforceable and (c) unreasonable. In light of these fresh considerations that it is no longer recommended that this condition be attached.

Deliveries

“No deliveries shall be taken at or despatched from the site.”

Again the aim of this condition is to limit comings and goings to those arising from workers and residents. This condition is not normally a condition which could be attached because it is unreasonable in that it effectively makes it impossible for the applicant to run the business properly, contrary to paragraph 35 of the Circular. It was previously included following dialogue with the applicant which confirmed no objection to it being imposed as deliveries could be made to other properties in his control.

Attention has since been given to paragraph 42 of the Circular in that just because the applicant agrees to a condition does not make it unreasonable. The condition would also prevent deliveries legitimately associated with the residence, and potentially goes so far to even prevent the owner/operator couriering items from a point of delivery elsewhere. This in turn raises concern over the enforceability of the condition as it would be impossible to detect such activity. Regard has also been had to restricting business deliveries only, but with regard to the above considerations that workers could also reside at the site, or that all deliveries could be made in the name of a residential occupant; it would not be possible to detect a breach.

The effect of all these matters undermines the aim of the condition so to make it (a) unenforceable and (b) unreasonable. In light of these fresh considerations that it is no longer recommended that this condition be attached.

Right of appeal

Members should be cautious of imposing any of the above conditions which are not considered to meet the tests. Any approval carries a right of appeal for the applicant to seek variation or removal of conditions imposed. It is thus on this basis that officers consider that the decision should be made on the basis of what precise and enforceable control can be reasonably imposed on the development without it conflicting with established guidance and the NPPF. Hence should Members feel that the conditions now proposed below do not provide sufficient control to prevent unacceptable harm to neighbouring amenity, then it should consider a recommendation of refusal weighing up all the considerations as discussed at Appendix A. Should a motion be made for refusal, again Members are reminded of the applicant's right to appeal, whether an Inspector would likely sustain a refusal, and if so what conditions would be attached by that Inspector.

Summary

In light of the above discussion, the limited and controllable use of a small element of the property is not considered to give rise to adverse highway safety, visual amenity or heritage impacts. An office use of part of a dwellinghouse is not an uncommon scenario, but the impacts arising from such a use are always dependent of the circumstances of the business operating and the environs in which it is set. The proposal before Members is considered to be within acceptable tolerances, capable of control to a reasonable degree, and can be limited to a period of one year to properly assess the impacts. Moreover it is wholly within the applicant's interest not to exploit the scope of any permission given the ability of the Council to enforce against identified breaches and withhold any attempt to renew any permission.

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

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 17 September 2014, on or before which date the B1(a) use shall be discontinued unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: In order to monitor the impact of the use on the amenities of adjoining occupiers.

2. The office hereby approved shall only be used for purposes within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification; and shall be solely limited to the room labelled 'Office' on the plan referenced 2727/04 Rev C received by the Local Planning Authority on 14 August 2013.

Reason: In the interest of protecting neighbouring residential amenity.

3. The office shall not be in use for any purpose other than between 0900 hours and 1700 hours Mondays to Fridays. The office shall not be used whatsoever on Saturdays, Sundays, Public Holidays and Bank Holidays.

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

4. Notwithstanding any business use which might have occurred prior to this grant of planning permission, the use hereby permitted shall not commence until the applicant has submitted to and received approval in writing from the Local Planning Authority, details of access and turning areas to the parking spaces to be provided along with surfacing details of all parking spaces and manoeuvring areas and a timetable for the provision of such works. Once provided in accordance with the approved details, the parking spaces and manoeuvring areas shall thereafter be maintained free of obstruction for vehicles associated with the use hereby approved.

Reason: In the interests of providing sufficient parking and turning provision for the use hereby approved and in the interests of the setting of the listed building and the amenity of the area.

APPENDIX A

27/08/2013

Item **1.2**

Reg. No. **9/2013/0515/U**

Applicant:

**Mr Patrick Hammond
Bespoke Inns
2 Milton Grange
Main Street
Milton
Derby
DE65 6EF**

Agent:

**Mr Ian Harding
Building Design Group Ltd
1st Floor Suite
Bitterscote House
Bonehill Road
Tamworth
Staffordshire
B78 3HQ**

Proposal: **RETOSPECTIVE APPLICATION FOR THE CHANGE OF
USE FROM PRIMARILY RESIDENTIAL TO MIXED
RESIDENTIAL / OFFICE USE AT 2 MILTON GRANGE MAIN
STREET MILTON DERBY**

Ward: **REPTON**

Valid Date: **03/07/2013**

Reason for committee determination

This item is reported to the Committee at the request of a Councillor Stanton on the grounds that local concern has been expressed about a particular issue.

Site Description

The site comprises part of a former barn conversion at The Farm, 20 Main Street, Milton, granted permission in 1990. The farm and its buildings are Grade II listed buildings. Consequently 4 dwellinghouses were created (collectively referred to as Milton Grange), all benefitting from access off Main Street. 1 Milton Grange faces onto Main Street – the remaining properties front a private courtyard. Number 2 benefits from a private driveway to the north and, along with numbers 3 and 4, benefits from a reasonable sized private garden. A public footpath passes through the courtyard and into the open countryside to the west of Milton Grange.

The courtyard is hard surfaced in tarmac with peripheral elements of blue brick pavers. A run of private garages sit within this courtyard serving numbers 1, 3 and 4. The dwellings all

have a number of openings which face onto this courtyard – including the applicant's property.

Proposal

No physical changes to the property are proposed – both externally and internally. It has however been identified that a material change of use from a dwellinghouse to a mixed residential and office use has occurred. This application seeks to regularise that use, comprising the use of a single room as an office, along with shared use of a ground floor WC, to provide for up to 3 employees.

Applicants' supporting information

Design and Access Statement (DAS)

This outlines the social and physical context of the site and the settlement of Milton, as well as noting the former use of the buildings, their listing, and their conversion to their present uses. The DAS outlines that it is intended to use one room and an adjacent toilet to provide for up to 3 employees. It proposes no material alterations to the interior or exterior of the dwellinghouse, with access remaining as it exists and parking within the vicinity of the building.

Despite what is stated in the DAS, no Listed Building Consent application has been submitted. Consequently, in so far as the DAS alludes to the creation of a step to aid access to the room in question; as this is not detailed on plans such works are not considered under this report and indeed would be unauthorised if they were to proceed.

Planning History

9/1990/0093 9/1990/0094	Conversion into four dwellings of the outbuildings and Grade II Listed farmhouse [at The Farm, 20 Main Street]	Approved 25 September 1990
9/2002/0429 9/2002/0430	Extension and conversion of barns into four dwellings and the farmhouse into two dwellings (including the erection of garages) [at The Farm, 20 Main Street]	Refused 27 August 2002
9/2005/0319	The erection of a detached double garage (Listed Building Consent)	Approved 13 May 2005
9/2011/0524 9/2011/0526	Alteration to external elevation enlarging existing window opening to create new doorway at	Approved 3 October 2011
9/2012/0915 9/2012/1005	The erection of an extension, wall and gates and a glazed veranda	Approved 22 January 2013

Amendment to plans

The plans initially submitted proposed parking provision within the central courtyard – outside of land within the applicants' control. Representations claim that the applicant has no legal right to park vehicles on this courtyard by way of covenants attached to the land. Both these factors led to officers seeking that parking provision was made within the application site, not least so conditional control could be exercised if permission were to be granted.

An initial amendment was received on 12 August which was distributed for consultation. This proposed parking between the applicant's property and 18 Main Street. However this was further revised on 14 August to place two parking spaces within the garden. Those plans were distributed the same day for comments and it is those revisions which are considered herein. Representations received following the preparation of this report will be reported to Members at the meeting.

Responses to Consultations

The Highway Authority considers the proposed development will have no detrimental highway implications and, on this basis, there are no highway objections to this application. Notwithstanding this, the latest revisions are still subject to consideration.

The Conservation officer has advised that there is not considered to be a material harm arising to the setting of the listed buildings by way of the use and associated parking (which would likely include hardstanding).

The Environmental Health officer has no comments to make on the application in respect of contaminated land.

The Parish Council highlights the need for adequate provision for employees' vehicles when considering this application.

Responses to Publicity

9 objections from immediate neighbours have been received, with further representations in light of amended plans. Concerns and comments include:

Highway and pedestrian safety

- a) There is not enough parking space for a business to be located at the property;
- b) Vehicles are parked on the street opposite Milton Grange each week day; presenting significant problems or hazard to residents' access/egress onto Main Street due to obstruction of visibility;
- c) The on-street parking has increased since 2 Milton Grange has been used as an office, with at least two staff already parking on Main Street on a daily basis;
- d) Double yellow lines should be painted on Main Street if the application is allowed;

- e) Planning permission was originally granted for only 4 dwellings, as the 6 dwellings originally applied for was considered to cause a traffic hazard; and of these only 3 were permitted to have access through the courtyard (not the applicant's dwelling);
- f) Access from the courtyard onto Main Street is not suitable for additional traffic;
- g) 2 Milton Grange has no parking rights in the courtyard as access and parking to this property is further north on Main Street, where the neighbour at number 18 has access rights across this space;
- h) Milton Grange and the Brook Farm development have young children and teenagers, and there is concern for their safety in crossing the road
- i) A public footpath runs through the courtyard, and vehicles using the courtyard could cause conflict with pedestrians;
- j) Inconsistency between the number of proposed employees and the number of parking spaces;
- k) The owner also has a motorboat parked on land not owned by him for weeks at a time during the summer;

The application versus observed use to date

- l) Several business ventures are owned by the occupier of 2 Milton Grange and/or registered to this address;
- m) A greater number of employees already attend than is stated on the application form and in the DAS, along with further visits and deliveries throughout the day creating much more traffic and noise than as is presented under this application;
- n) The suggestion that the business has operated since 2004 is questioned in so far that it has only been noticeably used as such for the past two years;
- o) The resident does not appear to reside at the property for considerable periods of time, giving an impression that the primary purpose of the property is of a business office;
- p) Staff arrive at 8:30 and do not leave until after 6pm on many occasions, contrary to that being applied for;
- q) How would the Council enforce strict adherence to the office use proposed as it bears little resemblance to the current use of the property?
- r) No detail on how business expansion will be managed is supplied.

Residential amenity and character of the area

- s) Noise, disturbance and nuisance impacts on neighbours, and the fact that the proposed entrance is a gateway which connects with a bedroom at number 3;
- t) Inappropriate to introduce a commercial activity to such an area;
- u) Detrimental to the quality, character and amenity value of the Conservation Area;
- v) Council has a statutory duty to designate and manage Conservation Areas, which includes consideration of the uses within it;
- w) Milton Grange is one of only 7 listed buildings in Milton;

Other matters

- x) The application is retrospective;
- y) If permission is granted it is legitimising unacceptable and illegal behaviour dating back over years;
- z) If granted this could lead to others requesting permission for the same;
- aa) Consider the barn conversions should remain as residential use only, as originally intended; and
- bb) Will business rates be charged retrospectively?

A number of representations also allude to an unauthorised use of and shed on adjacent land and temporary obstruction of the public footpath. The use and shed are subject to separate investigation and not part of, or crucial to, the proposal now presented. Obstruction of public footpaths is a matter for the County Council to consider, should a formal complaint be lodged.

Representations also claim that following the 2011 permission, the applicant has divided the property by inserting a further kitchen so subletting can occur; and that the applicant does not reside at the property. This matter has been investigated by officers and whilst a new kitchen is present, the property is not subdivided.

Some residents have advised of the covenants which exist on the use of the property and others within Milton Grange, and that legal advice is being sought in this respect. One representation conveys the stance that should permission be granted, they will be forced to resort to the covenants to prevent its implementation and that they will seek to recover their legal costs from the Council.

Development Plan Policies

The relevant policies are:

- South Derbyshire Local Plan 1998 (saved policies): Employment Policy 5 (E5), Employment Policy 8 (E8), Environment Policy 12 (EV12), Environment Policy 13 (EV13), and Transport Policy 6 (T6).

National Guidance

- National Planning Policy Framework (NPPF) paragraphs 14, 17, 19, 21, 28, 32, 120, 123, 128, 129, 131, 186, 187, 203, 206 and 215.
- Circular 11/95 – the use of conditions in planning permissions.

Planning Considerations

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

- The implications of a greater use already occurring
- Impact on highway and pedestrian safety
- Impact on residential amenity
- Impact on the character of the area
- Benefits of the proposal

Planning Assessment

It is first considered necessary to address the points raised between (x) and (bb) above. Whilst the application is retrospective that does not mean that Members should feel obliged to take a more lenient approach; nor does it command a negative initial stance. Planning legislation allows for retrospective applications. In this context an approval would not

“legitimise unacceptable and illegal behaviour” – not least for the fact it is not illegal until formal action is taken.

The concern over precedent is also unfounded, as each application is considered on its own merits with regard to prevailing planning policy and guidance, the specifics of the proposal and potential cumulative effects alongside existing uses. Future applications could legitimately be resisted should it be felt that a “threshold” had been reached. Whether business rates will be charged retrospectively is not a planning consideration.

The implications of a greater use already occurring

Representations allude to multiple businesses, employees and vehicles already utilising the premises for commercial purposes; and this use is already greater than that applied for. Members are reminded that for a sound decision to be made here, that there is no scope to assume what might occur beyond that decision. The application is for a mixed residential and business use with the latter element to serve 3 employees. It is not an application which seeks allowance for 5, 6, 7 or more employees. The applicant recognises this and thus would have to work within the parameters of any permission granted, or look to relocate the business. It is on this basis that the Council must consider that the application is made in good faith.

If the worst case scenario were to occur and the business operation continued to the claimed extent, regard is had to whether breaches could be easily identified. The applicant seeks the use of *one room* as an office to cater for 3 employees (along with shared use of the ground floor WC). If permission were given and limited to 3 employees, then the presence of more would be an observable and enforceable breach. Whether the employees work for the same business or 3 different businesses is not a relevant measure either – it is instead the comings and goings of the employees and ancillary activities of deliveries and visitors; and those can be limited or prevented through further planning control. Whether the residential element of the premises is not occupied regularly does not lead to the conclusion that the entire premises can or will be used for business purposes. Any permission can clearly define the physical extent of the business use. Ultimately it is for the applicant to consider whether he wished to step beyond the limits of any permission and face the consequences, or scale back the level of activity to fit within those controls.

Should permission be given and the applicant chose to use the premises outside of any condition controls imposed, Members are reminded that the Council can serve Breach of Condition Notices (BCN) and, should it consider appropriate, a Stop Notice. The applicant would have no right of appeal against a BCN such that the financial penalties of repeated breaches could be quite severe.

Hence it is from the above discussion that Members are reminded that the applicant is seeking (with regard to the application form):

- Office use within one room of the premises;
- Associated use of the WC for employees;
- Employee numbers limited to 3;

- Operating hours of 0900 to 1700 hours Monday to Fridays only; and
- Provision of an additional 2 parking spaces.

The assessment proceeds on this basis, with frequent regard to whether conditions can make residual concerns over impacts acceptable.

Benefits of the proposal

The proposal would deliver economic development within the District. The NPPF provides significant weight to development which achieves economic growth (paragraph 19). It also makes specific reference to *“facilitating flexible working practices such as the integration of residential and commercial uses within the same unit”* (paragraph 21). Further support is lent by paragraph 28 and Local Plan policies which look to encourage investment and sustainable business development in the District. There is thus significant weight in favour and any reasons to resist the proposal must be individually or cumulatively significant to counter this.

Impact on highway and pedestrian safety

Saved policy E5 allows for business development within rural villages, including through the conversion of existing buildings. This is subject to the scale of the business being compatible to the scale of the development, and that highway and environmental impacts are acceptable. Saved policy T6 requires that safe and suitable access, parking and manoeuvring can be provided and that the proposal does not interfere with the free flow of traffic. The Highway Authority has been consulted on the application and raises no objection. This is a highly material point in determining that the increase in the use of the access is acceptable and that the outward effect on public highway safety can be appropriately accommodated. Notwithstanding this, the need for adequate parking provision is noted. Within the scope of that being applied for, and with regard to parking provision normally required for offices, the provision is considered reasonable – particularly when considering the proposed hours of use and that residential parking could be interchangeable. In this light a condition can be attached to ensure that the spaces are retained for parking of vehicles only and sufficient manoeuvring room is provided.

The representations regarding covenants on Milton Grange are noted. The lack of a right to park vehicles upon it has been addressed by way of amended plans. Whether a right to access across the courtyard exists is not material to this decision, as appropriate access can be achieved within land owned by the applicant.

Impact on residential amenity

Members' attention is drawn to the common scenario where a business can be conducted at a dwellinghouse without, as a matter of fact and degree, it constituting a material change of use. The key is that the use remains ancillary to the primary use as a dwellinghouse, although this depends on a number of factors, including the number of rooms dedicated to a different use, whether clients attend the premises, etc. However that cannot be achieved at 2 Milton Grange for two reasons: (1) a condition on the 1990 permission which prevents any

business use whatsoever, and (2) that the extent of the use both existing and proposed is considered to constitute a material change of use.

The point of the above paragraph is to highlight that businesses can sit alongside a residential use without material harm to neighbouring amenity (or other planning considerations). Indeed recent changes to permitted development rights reaffirm that residential and business uses can operate side by side. Hence without the 1990 condition, it is not unreasonable to assume that a business could operate here, to a lesser degree than is proposed now, without creating material harm to neighbouring amenity and thus constituting a material change of use. The key is thus whether the impacts from that now proposed are demonstrably “worse” to warrant a refusal; and whether conditions can appropriately limit impacts to make the proposal acceptable. The existing condition does not preclude a different decision now, nor command a continued stance to prevent business use.

The concerns relate more to the comings and goings of employees and deliveries, rather than an office use in principle. With regard to the application made, it is not considered that the comings and goings of up to 3 employees presents an *unacceptable* impact on neighbouring amenity – particularly when residents’ vehicles will already cause some degree of disturbance to others. In addition the public footpath through the courtyard and close to habitable windows also tapers the degree of privacy which can presently be achieved by residents. The hours of operation proposed can be conditioned and easily monitored for any breach – both by the Council and neighbours, ensuring that residents are not subject to undue disturbance during the evenings and weekends.

Turning to delivery vehicles, this element of the use poses a concern. It is not considered possible to impose a condition which would limit deliveries to a certain location or to certain days or times – especially when deliveries could include both those under the control of the applicant and those provided by third parties. However the applicant has agreed to the imposition of a condition to prevent any deliveries to the site. This is considered enforceable, as again both the Council and neighbours can monitor this.

Planning and enforcement officers have also visited the site on multiple occasions and observed in the majority there are no employees present. Representations claim a consistent use. Notwithstanding this, consideration has been given to the fact that planning permission runs with the land and not the owner/occupier. Hence the maximum effect must be considered; but given the aforementioned controls which can be applied, it is not considered significant adverse impacts would arise.

Impact on the character of the area

Saved policies EV12 and EV13 seeks that development does not have an *adverse* impact. The principle of a commercial activity within a residential setting or within a Conservation Area is acceptable in planning terms. Both local and national policy guide businesses to within settlements where inevitably residential uses will sit adjacent. The Conservation officer does not raise issue with the proposal, with the use having little impact on visual amenity and character. In terms of the additional parking provision, it is also considered this

has a very limited degree of harm to the setting of the listed buildings and appearance of the Conservation Area given its position and existing context. On this basis, the impact is not considered to be adverse which could command a refusal.

Summary

In light of the above discussion, the limited and controllable use of a small element of the property is not considered to give rise to adverse highway safety, neighbouring amenity, visual amenity or heritage impacts. In line with the NPPF the Council has proactively considered what controls may be appropriate to address residual concerns, and it is felt that these are reasonable and enforceable.

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

Recommendation

GRANT permission subject to the following conditions:

1. The business use hereby approved shall only be used for purposes within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any statutory instrument revoking and re-enacting that Order with or without modification; and shall be limited to within the room labelled 'Office' on the plan referenced 2727/04 Rev C received by the Local Planning Authority on 14 August 2013.

Reason: In the interest of protecting neighbouring residential amenity.

2. The B1(a) use shall not involve more than 3 employees at these premises.

Reason: In the interest of minimising employee movements so to protect neighbouring residential amenity.

3. The business use hereby approved shall not occur at these premises other than between 0900 hours and 1700 hours Mondays to Fridays. The use hereby permitted shall not occur whatsoever on Saturdays, Sundays, Public Holidays and Bank Holidays.

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

4. No deliveries shall be taken at or despatched from the site.

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

5. The use hereby permitted shall not continue until the applicant has submitted to and received approval in writing from the Local Planning Authority, details of the parking spaces to be provided (notwithstanding the plan provided), details of access and manoeuvring to these spaces, surfacing details of both parking and manoeuvring areas, and a timetable for the provision of such works. Once provided in accordance with the approved details, the spaces shall thereafter be maintained free of obstruction for the parking of vehicles associated with the use hereby approved.

Reason: In the interests of providing sufficient parking provision for the use hereby approved and in the interests of the setting of the listed building and the amenity of the area.

Informative:

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

17/09/2013

Item **1.2**

Reg. No. **9/2013/0550/FR**

Applicant:
Mr & Mrs D Bacon
45 Alma Road
Newhall
Swadlincote
DE11 0SD

Agent:
Mr N Astle
24 The City
Woodville
Swadlincote
DE11 7DH

Proposal: **THE ERECTION OF 4 DWELLINGS AND ASSOCIATED
CAR PARKING AND TURNING AREA AT 45 ALMA
ROAD NEWHALL SWADLINCOTE**

Ward: **NEWHALL & STANTON**

Valid Date: **15/07/2013**

Reason for committee determination

Councillor Bambrick has requested this application be determined by the Planning Committee as issues of local concern has been expressed about a particular issue.

Site Description

The site comprises an area to the rear of 45 Alma Road. The site slopes gently across its width until the boundary with Bramblewood where there is an overall drop of about 1.0 – 1.5m to the floor level of the bungalows on Bramblewood. The boundary to Bramblewood is formed by a part concrete block wall and a part brick wall fence. The overall height from this ground level is about 2.0m – 2.2m. From the application site the eaves line of an adjoining bungalow is visible.

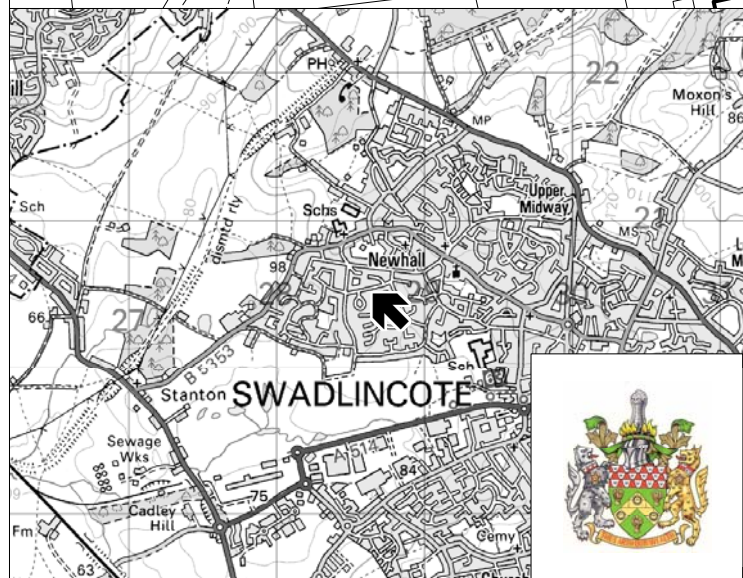
Fences enclose the other boundaries but on the west boundary a row of substantial conifer trees dominate a part of the boundary being about 7m high. Trees are also present on the other boundaries but are not a dominant as the evergreen trees.

Proposal

Although this is a full application, since submission the application has been amended to better reflect the requirements of the outline planning permission. The finished floor level has been reduced and the eaves line reduced to the top of the windows, the overall effect is to reduce the proposed ridge height by some 1.8m.

The house types have also been amended. Bathrooms are now located on the front of the dwelling with associated obscure glazing. There would be a roof window to

9/2013/0550 - 45 Alma Road, Newhall, Swadlincote DE11 0SD



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South Derbyshire District Council. LA 100019461. 2010

bedroom 2 with an obscure glazed side window that would look towards 45 Alma Road, the applicant's house. A recessed brick panel to give the impression of a window on the front elevation would face towards Bramblewood.

Access would be from the existing access to Alma Road improved to take account of the proposed development, as required by the outline planning permission.

Applicants' supporting information

Outline planning permission exists for the erection of 4 dwellings subject to conditions. The application has been amended as described above and the application is no longer for the approval of reserved matters as the amended scheme cannot meet all the requirements of the outline planning permission.

The houses now have a staggered appearance in order to provide additional light to bedroom 2 of the proposed dwellings through glazed side windows and to provide a means of escape. The main source of natural light to this bedroom would be provided by a rooflight set well above floor level. This it is argued would allow for a habitable room to be located on the front of the dwelling without any overlooking of the dwellings on Bramblewood.

Access would be the same as previously submitted and the conditions attached to the outline planning permission are acceptable to the applicant.

Planning History

Outline planning permission was granted in 2011 subject to conditions. (9/2011/0174)

Responses to Consultations

The County Highway Authority has no objection subject to the conditions imposed on the outline planning application being implemented in accordance with that permission.

The Coal Authority is satisfied that the Coal Mining Risk Assessment that accompanied the outline planning application addresses the coal risk for the site provided that matters identified in that permission are addressed.

Severn Trent Water has no objection.

Responses to Publicity

Seven letters were received in response to the application as originally submitted (i.e. prior to amendment); the grounds for objection are summarised as follows:

- a. The houses should be no higher than two storeys, the submitted drawing show a dwelling no lower than illustrated in the outline application. The application should be returned so that the conflict with the outline planning permission can be addressed.
- b. The outline planning permission required that no habitable rooms be located in the front elevations, the submitted drawings show two bedrooms on the front and these windows would look straight into bedrooms. This is contrary to the provisions of the outline planning permission.

- c. It is essential that the existing boundary wall be retained.
- d. Alma Road is unadopted and the construction of the new access will cause vehicles to park on Bramblewood. Residents on Bramblewood are older and some are infirm and access for emergency vehicles is essential at all times.
- e. The dwellings would overlook the rear gardens of 41 Alma Road and impact on privacy.
- f. The development will reduce the value of houses that are for sale.

In response to the amended planning application, the following comments have been received from four objectors:

- g. The amended plans do not address the requirements of Condition 12 of the outline planning permission in that there remains a habitable room on the front elevation. It is noted that the dwellings have been reduced in height
- h. Privacy will still be invaded.
- i. The ten days allowed for the reconsultation was insufficient as the period included a bank holiday, people often take the week off and no time for comment would have been possible had this situation arisen.
- j. The illustrative plan accompanying the outline planning application showed obscure glazed windows on the front elevation of the proposed dwellings.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 4 & 11, Transport Policy 6.

National Guidance

The NPPF Chapters 6 & 7 and paras. 7, 17, 47 & 215.

Local Guidance

SPG - Housing Design and Layout

Planning Considerations

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

- The extant permission including compliance of this proposal with the requirements of that planning permission.
- The Development Plan and NPPF Guidance
- Impact on neighbouring dwellings and compliance with SPG
- Access

Planning Assessment

The outline planning permission

The application was originally submitted for the approval of reserved matters following the grant of outline planning permission. However, the amendments and changes to the upstairs arrangements have resulted in a habitable room being proposed on the front elevation facing the dwellings on Bramblewood. This is directly contrary to the

provisions of condition 12 of the outline planning permission and as such this condition cannot be complied with. Accordingly in revising the appearance of these dwellings the applicants have requested that the application be determined as an application for full permission.

The Development Plan and the NPPF

The policies in the adopted Local Plan have been assessed against the provisions of the NPPF and for the purposes of Paragraph 215, Housing Policies 4, 11 & Transport Policy 6 are in line with the advice in the NPPF and as such carry significant weight in the determination of this planning application.

As this is now a full planning application rather than an approval of reserved matters, all aspects of the development are therefore open to consideration subject to the proviso that there is an extant planning permission for 4 dwellings on the site (this represents the applicant's fall-back position).

The site lies within the urban area of Swadlincote for the purposes of Housing Policy 4. The development is wholly in accord with the principle of allowing housing development in the urban area – the site is surrounded by development, is not a valuable open space within the urban area and does not represent an intrusion into the rural area surrounding the urban area. The remaining assessment relates to the potential impact on the scale and character of the area and the potential impact on the amenities of neighbours.

The amended scheme has reduced the overall height of the dwellings this means that the scale of the development is more in keeping with the scale and character of development around the site.

The following deal with the impact on neighbours and the access to the site that form a part of Housing Policy 4 but also relate to Housing Policy 11 and Transport Policy 6.

Impact on Neighbours

The boundary wall to the bungalows obscures direct views into the site at ground level. Reducing the floor level and ridge line help to minimise the apparent mass of the dwellings when viewed from Bramblewood, the use of rooflights and side windows to each bedroom remove any overlooking of nearby dwellings. As this is now a full planning application, the proposals should be judged on its merits rather than as a part of an approval of reserved matters. Separation distances on overlooking set out in the SPG are exceeded by the lack of windows in the proposed dwellings that look towards Bramblewood. The objector on Alma Road is concerned about overlooking of the garden, but none of the dwellings would overlook the private area immediately adjoining the dwelling, but do have a view of the bottom of the garden area some 20 metres from the dwelling if the intervening trees were to be removed by the objector. In order to secure these changes to the design of the dwellings, a condition is recommended to ensure that no subsequent alterations to the house types can take place without the prior grant of planning permission.

Highway Considerations

The access has been assessed and considered acceptable by the County Highway Authority at the outline application stage, the County Highway Authority's requirements

would be included if the Committee is minded to grant planning permission for this development.

Other considerations

Contamination and historic mining impact on the development site can be addressed through the imposition of conditions.

Conclusions

Subject to the imposition of the recommended conditions the development is considered to accord with the provisions of the Development Plan and planning permission is recommended.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. NA/DBMP/1.a & 2.b received on 15 August 2013.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3.
 - A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
 - B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

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

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

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

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

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

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

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

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, none of the dwellings hereby permitted shall be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no external alterations, including the insertion of new windows, to the buildings other than as approved under this permission.

Reason: In the interests of preserving the setting of the building and the character of the area.

10. The windows at first floor level in the front elevation of the properties, facing Bramblewood, and the side windows to bedroom 2 in each dwelling shall be permanently glazed in obscure glass.

Reason: To avoid overlooking of adjoining properties on Bramblewood in the interest of protecting privacy.

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

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

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

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

13. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

14. Notwithstanding the requirements of Condition 7 above, the existing boundary wall to the rear of the properties on Bramblewood shall be retained.

Reason: To protect the privacy and provide security for the residents at Bramblewood.

15. An intrusive site investigation shall be undertaken prior to the commencement of the development, the details of which shall be approved by the Local Planning Authority. If site investigations confirm the need to treat any areas of shallow mine workings or to adopt any other mitigation measures for stability and safety purposes, these shall be undertaken prior to the commencement of the construction of any of the dwellings hereby permitted or alterations to form the access to the site.

Reason: to ensure the stability of the ground levels.

16. Prior to any other works commencing (excluding demolition and site clearance), the access shall be widened to 5m, surfaced in a solid bound material for the first 5m, provided with 2.4m x 33m visibility sightlines and 2m x 2m x 45° pedestrian intervisibility splays on each side, the area forward of which shall be cleared, and

maintained thereafter clear, of any obstruction exceeding 1m in height (600mm in the case of vegetation), relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

17. Prior to the occupation of the first dwelling, the access driveway and turning space shall be laid out in accordance with the application drawing and maintained thereafter free of any obstruction to its designated use.

Reason: In the interests of highway safety.

18. Prior to the occupation of the first new dwelling, space for the parking of vehicles shall be provided within the site curtilage on the basis of two spaces for each of the existing and proposed dwellings, each space shall measure at least 2.4m x 4.8m with 6m clear behind for manoeuvring and be maintained throughout the life of the development free of any impediment to their designated use.

Reason: To ensure that adequate parking/garaging provision is available to serve both existing and proposed dwellings.

19. Prior to the occupation of the first dwelling, the bin store shall be provided in accordance with the application drawing and be maintained throughout the life of the development.

Reason: In order to ensure that storage bins are not stored on the public highway.

Informatives:

Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: www.coal.gov.uk/services/permissions/index.cfm.

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

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

environmental health department: pollution.control@south-derbys.gov.uk.

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

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

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

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

17/09/2013

Item 1.3

Reg. No. 9/2013/0573/U

Applicant:
Mr & Mrs J Adams
32 Crown Way
Chellaston
DE73 5NU

Agent:
Mr John Steedman
Steedman Planning
Tournament Way
Ashby De La Zouch
Leicestershire
LE65 2UU

Proposal: **CHANGE OF USE OF LAND TO A SITE FOR TWO
PERMANENT HOLIDAY LET MOBILE HOMES AT LAND
AT SK3626 9699 HILLS LANE STANTON BY BRIDGE
DERBY**

Ward: **MELBOURNE**

Valid Date: **23/07/2013**

Reason for committee determination

The application is reported to Committee at the discretion of the Director of Community and Planning Services because the application is similar in nature to a nearby proposal which is subject to local concern which is also due to be determined by the Committee.

Site Description

The site is a paddock used for grazing horses associated with the adjoining stables and outdoor riding arena. Access is by way of a private drive joining Hills Lane, next to Hills Cottage. There is a public footpath beyond the mature boundary hedge to the north of the site.

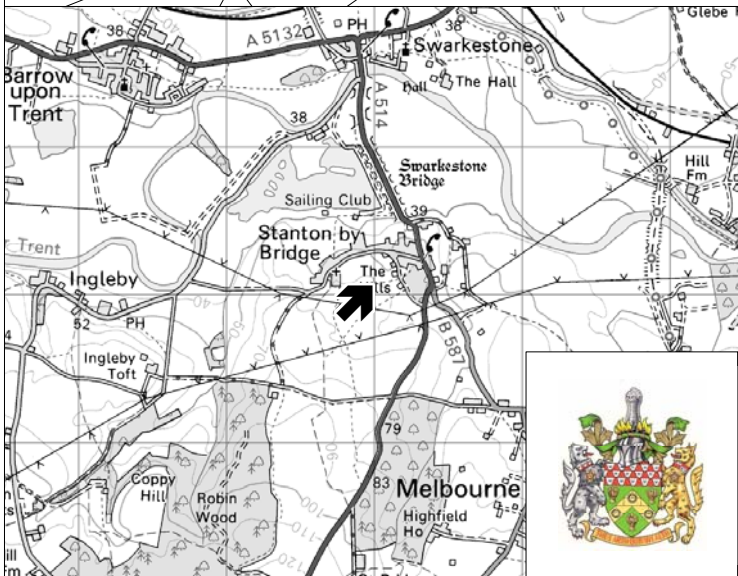
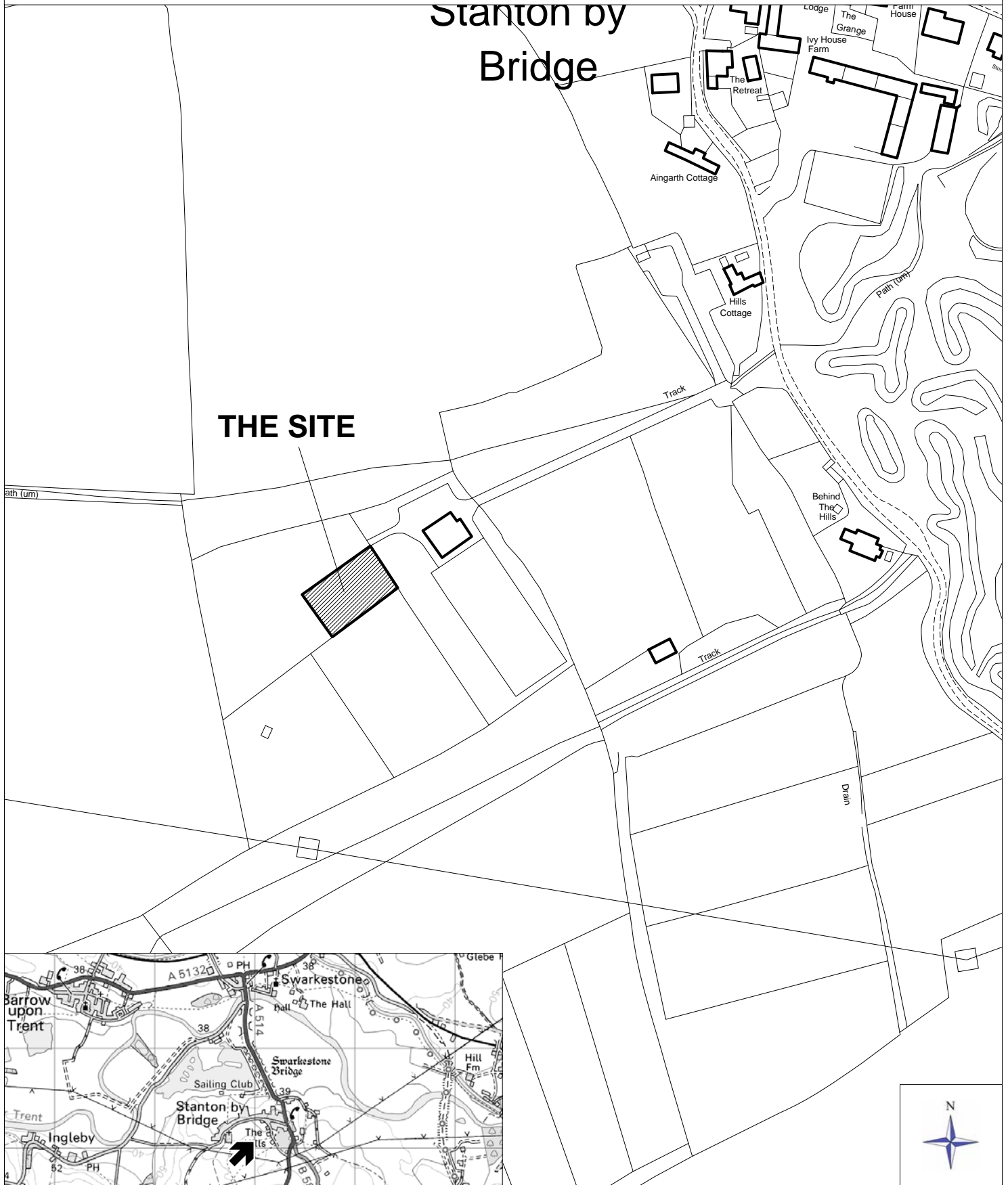
Proposal

The application is for the use of part of the field for the siting of two mobile homes for holiday purposes. The supporting statement indicates that these would have the appearance of timber cabins.

Applicants' supporting information

The applicant's supporting statement is summarised as follows:

9/2013/0573 - Land at SK3626 9699 Hills Lane, Stanton by Bridge, Derby
(DE73 7HY)



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- The applicants have identified a need for self-catering accommodation based on the availability of horse riding facilities in the adjacent National Forest, which is being promoted as a destination for such activity.
- Viability considerations have identified that most of the self-catering accommodation in the National Forest is based on mobile units with timber cabin appearance.
- The units would be screened by mature planting.
- In 2007 East Midlands Tourism has identified a need to provide holiday attractions away from the Peak District. A number of permissions for similar accommodation have been granted in the interim. Latest information indicates that visitors to the East Midlands continued to increase through the recession.
- The proposal is supported by local and national planning policy.
- The location is such that there would be very limited impact on nearby properties due to the small scale nature of the proposal. Traffic movements would be infrequent.
- Access and visibility is reasonable bearing in mind the lightly trafficked road and low vehicle speeds.

Planning History

9/0296/0820 – Stables and riding arena – granted.

Responses to Consultations

The Highway Authority considers that the proposal is acceptable in highway safety terms, given the low traffic speeds and minimal traffic in Hills Lane.

Severn Trent Water Ltd and the Contaminated Land Officer have no comment.

Responses to Publicity

The Parish Meeting objects as follows:

- a) The site is outside the village confine, the conservation area and the National Forest.
- b) Hills Lane is single track with only one passing place and has limited visibility.
- c) The village is not a sustainable community with any amenities for visitors.
- d) The road is not suitable for horse boxes.
- e) Increased traffic would be dangerous for all road users.
- f) Lack of site supervision would attract travellers.
- g) A condition on stables on adjoining land prevents business use in the interest of highway safety.
- h) A precedent would be set.

13 individual objections raise the following matters:

- a) Small wooden chalets would be more appropriate.
- b) Mobile homes would become permanent dwellings.
- c) The existing stable is excluded from business use by condition.
- d) Hills Lane is not suitable for the extra traffic, including horse boxes and service vehicles, and there would be danger to road users.

- e) The roads are not suitable for horses.
- f) There would be adverse impact on the amenity and privacy of residents.
- g) There would be adverse impacts on deer, badgers, bats and rare butterflies.
- h) Visitors would be unfamiliar with the area thus increasing risk of road accident.
- i) A condition on stables on adjoining land prevents business use in the interest of highway safety.
- j) A precedent would be set.
- k) The Parish Meeting's objection is supported.
- l) The village is not a sustainable community with any amenities for visitors.
- m) Existing services would be strained.
- n) The site is home to one of the few colonies of White Letter Hairstreak butterfly in Derbyshire. [Comment: the application site has been grazed by horses for some years and is thus is not likely to contain diverse ecological interests].
- o) It is not clear how water would be maintained in the wildlife pond. [Comment: No such pond is proposed].

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan: Recreation and Tourism Policy 1, Transport Policies 6 and 7, Environment Policies 1& 9

National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)
 Paras 11-14 (The presumption in favour of sustainable development)
 Para 17 (Core principles)
 Chapter 3 (Supporting a prosperous rural economy)
 Chapter 4 (Promoting sustainable transport)
 Chapter 7 (Requiring good design)
 Chapter 11 (Conserving and enhancing the natural environment)
 Paras 186 & 187 (Decision-taking)
 Paras 196 & 197 (Determining applications)
 Paras 203-206 (Planning conditions and obligations)
 Annex 1 (Implementation)

Good Practice Guide on Planning for Tourism.

Planning Considerations

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

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

Planning Assessment

The Principle

Saved Environment Policy 1 of the Local Plan is the overarching development plan policy for development away from settlements. It is not inconsistent with the NPPF. It requires development to be either essential to a rural based activity, or unavoidable in the countryside, and the character of the countryside, the landscape quality, wildlife and historic features are to be safeguarded and protected. If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside. For the reasons set out in the following paragraphs of this report (including by reference to other relevant development plan policies) the proposal is unavoidable in the countryside (providing self-catering accommodation close to the National Forest which would help to meet an acknowledged need identified in the National Forest Strategy 2004 -2014), and it also meets the other relevant criteria for acceptability. Visit England, the national tourist board, is now promoting The National Forest as one of England's destinations, especially to the "active outdoors" market, as a primarily rural destination, and log cabin style mobile homes would hence be a component of a short break or longer holiday. Demand for self-catering accommodation is growing much faster than for serviced accommodation, both nationally and locally, and appears to be part of a longer term trend.

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

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

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

- supporting the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings; and
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.

The provision of tourist accommodation to meet the identified need for overnight accommodation in the National Forest, as identified in the National Forest Strategy, and as a strong regional attraction in its own right, is a contributor to that sustainability objective. Although the site is not within the Forest boundary it is very close and provides easy access to it. Resisting such proposals as a matter of principle is intrinsically counter to the economic sustainability of the National Forest and the districts

(including South Derbyshire) that benefit from this developing tourism resource. The provision of overnight accommodation encourages longer stays thus reducing traffic generated by day visits (from The National Forest Company's sustainability report 2007). In terms of location, the village has no meaningful facilities. However Melbourne and Derby are accessible by the bus service that runs through the village.

The Good Practice Guide on Planning for Tourism states:

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

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

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

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

Having regards to these factors the proposal represents sustainable development that is acceptable in principle.

Impact on the countryside

The topography of the site and existing boundary treatment means that there would be very little impact on the character appearance of the countryside. Existing boundary vegetation would be preserved and augmented by condition, in accord with Local Plan Saved Environment Policy 9. With the recommended condition on landscaping, and having regard to the site's well screened context, the proposal would meet the requirements of Local Saved Environment Policy 1 for the character of the countryside, the landscape quality, wildlife and historic features to be safeguarded and protected, and designed and located so as to create as little impact as practicable on the countryside. For the same reasons the development would meet the requirements of Saved Recreation and Tourism Policy 1 and Chapter 7 of the NPPF, being of appropriate scale and character and well integrated with its surroundings.

Residential Amenity

The site is set well away from existing dwellings. The access track is located some 25m from the dwelling at Hills Cottage and some 45m from the other neighbouring dwelling Behind the Hills. The limited amount of traffic generated by the proposal would not have undue adverse impact by way of noise and disturbance.

Traffic Access and Highway Safety

The proposal would not generate substantial vehicle movements. The Highway Authority has raised no objection in highway safety terms. Whilst the precise pattern of usage by the occupants is not fully known, there is a condition on the adjacent stable building (Condition 5 of Planning Permission 9/0296/0820) which precludes business use without further grant of permission. This would enable any material change in the nature of the stable to be assessed on its merits. As such the proposal is compliant with Saved Transport Policy 6.

An appropriate condition would secure adequate access for people with a disability within the application site, in accordance with Saved Transport Policy 7. It would be reasonable to require access arrangements for the disabled on site, so that people with impaired mobility can be included in the user group for the proposal.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. No more than two mobile homes shall be placed on the application site.

Reason: For the avoidance of doubt and to enable the local planning authority to consider the impacts of more intensive use of the land for this purpose.

3. Before the use commences details and specification of the mobile homes shall be submitted to and approved in writing by the local planning authority; and the mobile homes shall be placed on the application site in accordance with the approved details and specifications only.

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

4. No development shall take place until a scheme indicating provision to be made for access to the site by people with disabilities has been submitted to the Local Planning Authority. The scheme as approved shall be implemented before the development is brought into use.

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

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

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

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

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

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

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

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

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

Informatives:

Condition 5 of Planning Permission 9/0296/0820 precludes business use without further grant of permission. Depending on the extent to which the stable and arena are put to use for purposes associated with this application, it may be necessary to make an application to vary the condition.

The details to be submitted under condition 3 should have the appearance of timber lodges.

17/09/2013

Item **1.4**

Reg. No. **9/2013/0667/TC**

Applicant:
Mr David Shepherd
The Firs
11 High Street
Ticknall
Derby
DE73 7JH

Agent:
Mr David Shepherd
The Firs
11 High Street
Ticknall
Derby
DE73 7JH

Proposal: **THE FELLING OF A SILVER BIRCH TREE AT THE FIRS**
 11 HIGH STREET TICKNALL DERBY

Ward: **REPTON**

Valid Date: **16/08/2013**

Reason for committee determination

The application is brought before committee as the applicant is a member of the Council (being the Ward member for Stenson).

Site Description

The property is a Grade II listed detached cottage opposite the junction of Narrow Lane and High Street. The garden extends to the rear and side where a detached garage sits. Immediately adjacent to the garage is a tall, silver birch of semi-mature age. There is a further tree to the front corner of the garage – this being a Corsican Pine subject to a Tree Preservation Order (TPO), and the whole property lies within the Ticknall Conservation Area

Proposal

The proposal is to remove the silver birch only.

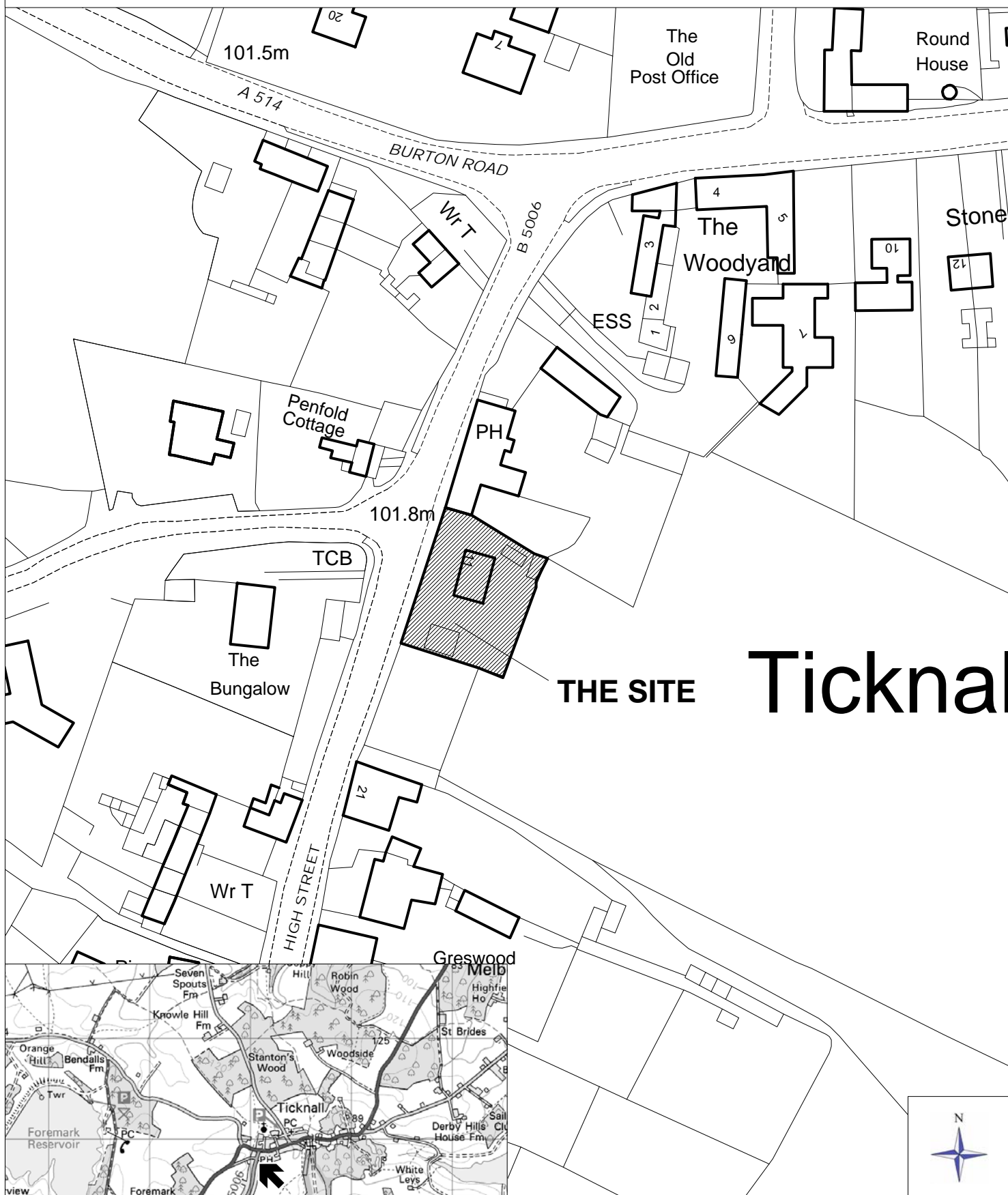
Applicants' supporting information

The applicant points out that the tree is leaning towards the cottage, and that he intends to plant a replacement.

Responses to Consultations

The Council's Tree Officer notes there are no major defects in the main crown, but the lean towards the cottage is of concern given anchoring roots have restricted space on the tension (garage) side. The upper canopy is also touching the side and roof of the

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cottage. He considers that whilst pruning would alleviate the latter concern, it would not overcome the leaning problem and it would be unacceptable to continue with this situation. As such there is no objection to the felling, although it is requested that the replacement be conditioned to a Rowan or flowering Crab Apple.

Responses to Publicity

At the time of writing, the application is still open to consultation. Any representations received shall be reported verbally to the meeting.

Development Plan Policies

The relevant policies are:
Saved Local Plan: Environment Policy 9 (EV9).

National Guidance

National Planning Policy Framework (NPPF) paragraphs 11, 12, 17, 118, 203, 206 and 215.

Planning Assessment

The loss of the silver birch is not considered to be detrimental to wider amenity or biodiversity, with surrounding trees and hedgerows capable of “absorbing” this loss. Nevertheless the request to condition a replacement is noted. However as this is a 6 week notification under Section 211 of the Planning (Listed Buildings and Conservation Areas) Act 1990, conditions cannot be attached to any decision. Given the tree is not considered worthy of a TPO, such a request can only be added as an informative and drawn to the applicant’s attention.

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

Recommendation

NO OBJECTION to the proposal.

Informatives:

The applicant is encouraged to plant a replacement tree, either a Rowan or flowering Crab Apple.