

Report of the Strategic Director (Service Delivery)

[Section 1: Planning Applications](#)

[Section 2: Appeals](#)

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

1. **Planning Applications**

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

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

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

Glossary of terms

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

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

Item No. 1.1

Ref. No. [DMPA/2021/0061](#)

Valid date: 14/01/2021

Applicant: Chris Weston

Proposal: **The creation of two new vehicular accesses for maintenance for planting and open space and existing agricultural and equestrian uses at Broomy Farm on Land at Broomy Farm, Woodville Road, Hartshorne, DE11 7EX**

Ward: Woodville

Reason for committee determination

The application has been called to Planning Committee by Councillor Taylor for the full circumstances to be assessed.

Site Description

The site is located to the north east of the Broomy Farm housing development (Land at Broomy Farm, Woodville - policy H4 of the Local Plan). The site abuts the open space and National Forest planting to the north east of the site and the wider agricultural and equestrian uses to the north with the land sloping downwards in a northerly direction. The site is accessed off Woodville Road.

The proposal

Consent is sought for the installation and improvement of two accesses to assist with the maintenance of the proposed open space and the neighbouring agricultural and equestrian uses.

Relevant planning history

DMPA/2020/0422: Approval of reserved matters (layout, scale, appearance and landscaping) for erection of 148 dwellings along with creation of roads and public open space pursuant to outline permission ref. 9/2016/0882 (phase 3) - Approved February 2021.

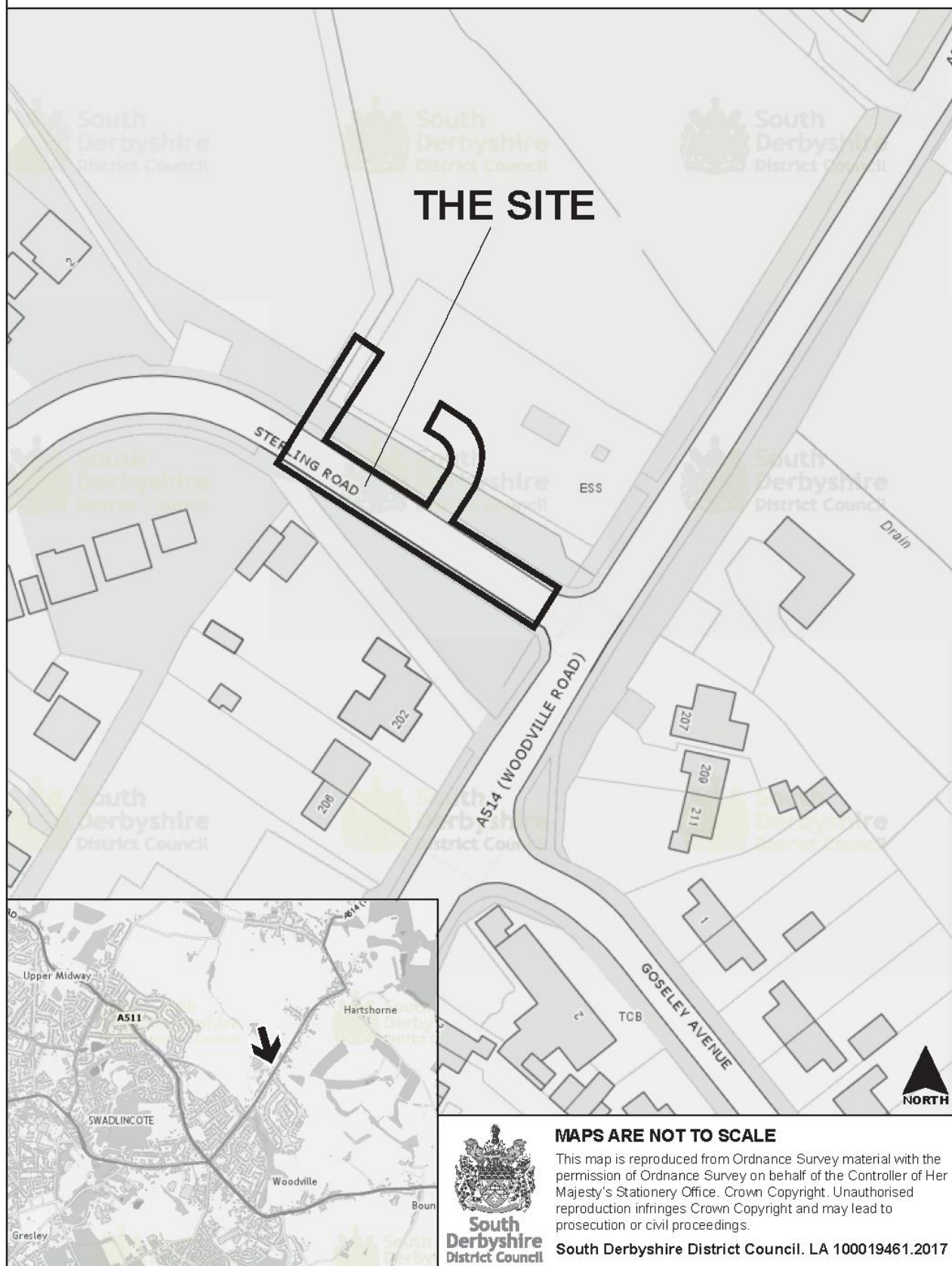
DMPA/2019/1327: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (for the erection of 10 plots in lieu of 8 previously approved under reserved matters approval ref. 9/2018/0767, along with substitution of remaining housetypes and adjustment to plot boundaries, relating to former plots 117-120, 144-145 & 160-161) – Approved December 2019.

DMPA/2019/0893: Approval of reserved matters for layout, scale, appearance and landscaping of spine road through phase 1a and 1b (in part) and approval of reserved matters for layout, scale, appearance and landscaping of the public open space areas for phase 1a and 1b (in part) - Approved October 2019.

9/2019/0382: Approval of reserved matters for layout, scale, appearance and landscaping relating to phase 2a only for the erection of 70 dwellings, along with layout, scale, appearance and landscaping of public open space areas and layout, scale, appearance and landscaping of the spine road for phase 1b (re-plan) and 2a.under outline permission ref. 9/2016/0882 - Approved August 2019.

9/2019/0355: The erection of a boundary entrance feature – Approved August 2019.

**DMPA/2021/0061 - Land at Broomy Farm, Woodville Road, Hartshorne,
Swadlincote DE11 7EX**



9/2019/0291: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetypes relating to plots 82-87, 93-95, 110 and 113-114) – Approved May 2019.

9/2019/0290: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of house type relating to plot 18) – Approved May 2019.

9/2019/0289: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of house type relating to plot 3) – Approved May 2019.

9/2018/0767: Approval of reserved matters for layout, scale, appearance and landscaping relating to phases 1a and 1b only for the erection of 180 dwellings, along with layout & landscaping of public open space areas for phase 1 only (re-plan) under outline permission ref. 9/2016/0882 - Approved November 2018.

9/2017/0730: Approval of reserved matters (in so far as layout & appearance for the spine road for the whole site and layout & landscaping of public open space areas for phase 1 only) - Approved June 2018.

9/2016/0882: Variation of conditions of outline application ref. 9/2014/0740 - Approved June 2018.

9/2014/0740: Outline application (all matters except for access reserved) for the erection of up to 400 dwellings and provision of new school pick up/drop off area, together with associated highway works, public open space, landscaping, parking and attenuation facilities - Approved July 2016.

Responses to consultations and publicity

County Highway Authority has no objections subject to the inclusion of conditions relating to the specification of the surfacing of the proposed accesses.

National Forest Company has provided no comments.

County Footpaths has provided no comments

Hartshorne Parish Council object to this application as it does not appear to have any current or future purpose. Both gates are currently in position with drop kerbs and they lead into fields that appear not to be in the control of the developers, this is clearly shown on Phase 1 of the development. If there are horses to enter the field there is an existing gate via Broomy Furlong Farm.

The first proposed entrance; the pathway that turns at right angles appears to go nowhere. Also, there is a stile onto this land but no exit stile. The Parish Council are concerned what the developers are proposing for a future development for this land which is not currently in their control or ownership?

There has been one letter of objection received, raising the following issues:

- a) There is already a dropped kerb and a 5-bar gated access serving the field/access to the forestry planting.
- b) The first part of this access is from the new tarmac footpath created at the same time as the new access road – Stirling Road, which then changes to a stone type MOT type 1 access ramping down to the field. To the side of this (southeast), is the new footpath stile along the newly diverted footpath as shown on the Derbyshire Mapping Portal. This has recently been diverted around the fenced off area where the substations are located.
- c) Whilst in principle, it is accepted that an access needs to be granted to access the fields, as there is already a dropped kerb and a 5-bar gate, is there an actual need for this to be engineered to such an extent to be regraded with a tarmac topping and be 5.6m wide, surely a single wide access would be sufficient, say 3.6m in width.

- d) The second proposed access already has a dropped kerb, tarmac crossing, grass verge and double 5 bar gates, the gates are at a lower level than Stirling Road, but maintain horizontal land levels, keeping in appearance with the fields and land adjacent.
- e) Why would a second engineered access be required so close to another access serving a smaller area of land?
- f) This area amounts to approximately 1140m², which is separated from the larger field by post and rail fencing. As previously mentioned, the footpath which used to go through this area of land was diverted a couple of years ago, doglegging around the western corner.
- g) The proposal is for a 6.0m wide tarmac access with a 90 degree change in direction heading towards the other access but leads nowhere and would only be approximately 30.0m away. This also raising levels close to 1.0m in places raises questions as to why?
- h) The application form mentions that they are required for maintenance for planting and open space and existing agricultural and equestrian uses, but surely this proposed access serves no such purpose. Should a more level approach access be required for this relatively small area of land, then could not a 5-bar gate be installed into the existing post and rail fence from the north?
- i) The application is being submitted by Bellway Homes, but Certificate B has been served on the owner/owners of the land, implying that Bellway do not own the land on which the accesses are proposed, thus raising further questions as to why the need for this application.
- j) if this is indeed for a separate owner, why could access not be from the existing 5 bar gate from the northern far corner of the field, close to Broomy Farm. This access has been used by the landscape contractors for the planting of the woodland and erection of the fencing in these fields recently.
- k) The development at Broomy Farm is taking shape, which has enhanced the area. It would be a shame if these proposals were to be approved, in particular Access 2 as the work and effort which has been carried out enhancing the area could be disturbed with mainly the proposed regrading works and the particular arrangements of access 2.

Relevant policy, guidance and/or legislation

The relevant policies Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H4 (Land at Broomy Farm, Woodville), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas) and BNE7 (Trees, Woodland and Hedgerows).

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide (NDG)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning considerations

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

- Principle of development and Layout;
- Highway safety; and
- Visual Impact and Amenity.

Planning assessment

Principle of Development and Layout

The position of the proposed accesses would fall outside of the designated settlement boundary of the Swadlincote Urban area and the proposed accesses would constitute works in the open countryside. Policy BNE5 of the Local Plan stipulates that development that is essential to a rural based activity or unavoidable outside settlement boundaries would be supported where the development would not have an undue impact on the character of the local area.

There are currently two gates with dropped kerbs in position at the site, the current application seeks to upgrade the accesses to provide an access to upkeep the National Forest planting area and to access the existing agricultural and equestrian uses that are adjacent to the site. The need to access the agricultural land and equestrian uses means that the proposed accesses would need to be located in a countryside location to provide access and support rural based uses. The proposed works would also ensure that existing accesses are utilised and upgraded as opposed to being blocked up and/or retained and the additional agricultural accesses being introduced elsewhere.

The improvements to the proposed accesses would be suitable under policy BNE5 of the Local Plan provided that there would be no harmful visual impacts or impact on highway safety in that the proposed accesses are required for agricultural and equestrian uses and would support rural based activities.

Highway Safety

There have been no objections raised by the County Highway Authority subject to the inclusion of conditions for the specification of the surfacing of the accesses to ensure that they would be suitable for long term agricultural use and the proposed works would comply with the principles of policy INF2 of the Local Plan.

Visual Impact and Amenity

The proposed accesses would utilise existing accesses that are already in place and bring about improvements. Whilst the proposed works would be visibly altered from the existing dropped kerbs and five bar gates that are currently in place, the upgrading is to ensure that the accesses provide long term agricultural use. The upgrading of the existing accesses would not involve the loss of hedgerow to accommodate visibility splays, which is normally consistent with this type of development and would save brand new accesses being introduced at another location in order to provide access to the neighbouring agricultural/equestrian uses which could incur more harmful visual impact. A condition would be attached to ensure that landscape details are incorporated to soften the appearance of the accesses and the proposed works would accord with the principles of policies BNE1 and BNE5 of the Local Plan.

Other

Concerns have been raised by local residents with regard to the specification of the proposed accesses, their position and the potential for the proposed works to facilitate future development schemes on the neighbouring land. It is noted that the accesses are proposed for agricultural uses and the County Highway Authority has specified specific base levels, the size of the kerbs required and the wearing course in order for the accesses to fulfil the standard detail required to be used for agricultural purposes and agricultural vehicles. Despite there being existing accesses in place that would be used for field accesses, they would require alteration to be suitable for long term agricultural use. Therefore, the specification of the proposed accesses would be unsuitable or require alteration if they were to be used for an alternative use in the future, of which these specification details would be required by condition and would be in place for the lifetime of the development and any changes to the access would be subject to a further application for consideration.

In addition, the layout and position of the proposed accesses would not suitably lend itself for alternative future development, nor would the assessment of the current application pre-empt further development in the future. Any proposed application to change the use of or develop the neighbouring land would be subject to a full planning application and assessment of which the proposed accesses, which would be laid out to a specification consistent with agricultural use would not be suitable to facilitate. It is noted that certificate B has been signed as part of the application as the point of the access and the field that would be served by the accesses fall within two different ownerships and certificate B would need to be served on Bellway if the owner of the neighbouring land were to apply for the accesses.

Summary

The proposed application would provide long term access for the neighbouring agricultural and equestrian uses by upgrading existing accesses at the site as well as providing access for long term National Forest planting. The proposed works would support a rural based operation and would be consistent with policies BNE1, BNE5 and INF2 of the Local Plan.

The position of the proposed accesses and their alignment would make it very difficult for a proposed development to be facilitated off the access points.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings ref. BRO/VALP-001, E706-PH01-SK07 and E706-PH01-SK05; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Prior to the laying out of the access, specification details of the wearing course, binder course, sub base and the kerbs to be used shall first be submitted to and approved in writing by the Local Planning Authority. The accesses shall be laid out in accordance with the approved details and shall be retained as such for the lifetime of the development.

Reason: In the interest of highway safety and to ensure the correct specification of the accesses for agricultural purposes.

4. Prior to the first use of both accesses a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of a [dwelling/unit] or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall

be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

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

Item No. 1.2

Ref. No. [DMPA/2021/0109](#)

Valid date: 18/01/2021

Applicant: Sally Smith

Agent: Pegasus Planning Group

Proposal: **Approval of reserved matters (layout, scale, appearance and landscaping) relating to the provision of a parking area for 8 vehicles and the realignment of Woodville footpath 3 (ref SD51/3/1) pursuant to outline permission ref. 9/2016/0882 on Land east of Lincoln Way and Salisbury Drive, Midway, Swadlincote**

Ward: Woodville

Reason for committee determination

The application has been referred to Planning Committee at the discretion of the Head of Planning and Strategic Housing.

Site Description

The site and the immediate surrounding area is comprised of phase 3 of the residential allocation known as Broomy Farm (Land at Broomy Farm, Woodville - policy H4 of the Local Plan). A reserved matters application was granted approval for phase 3 under application DMPA/2020/0422 which comprised of 148 dwellings. The site is located to the west of the Broomy Farm allocation adjacent to the boundary with Granville Academy. A school pick up and drop off facility was described within the original outline application approved under reference 9/2014/0740. Owing to the sites position adjacent to the Granville Academy, an application has been received for a pick up and drop off facility comprising of 8 car parking spaces with space for manoeuvring.

The proposal

Consent is sought for the creation of eight car parking spaces to serve as a pick up and drop off area to serve Granville School.

Relevant planning history

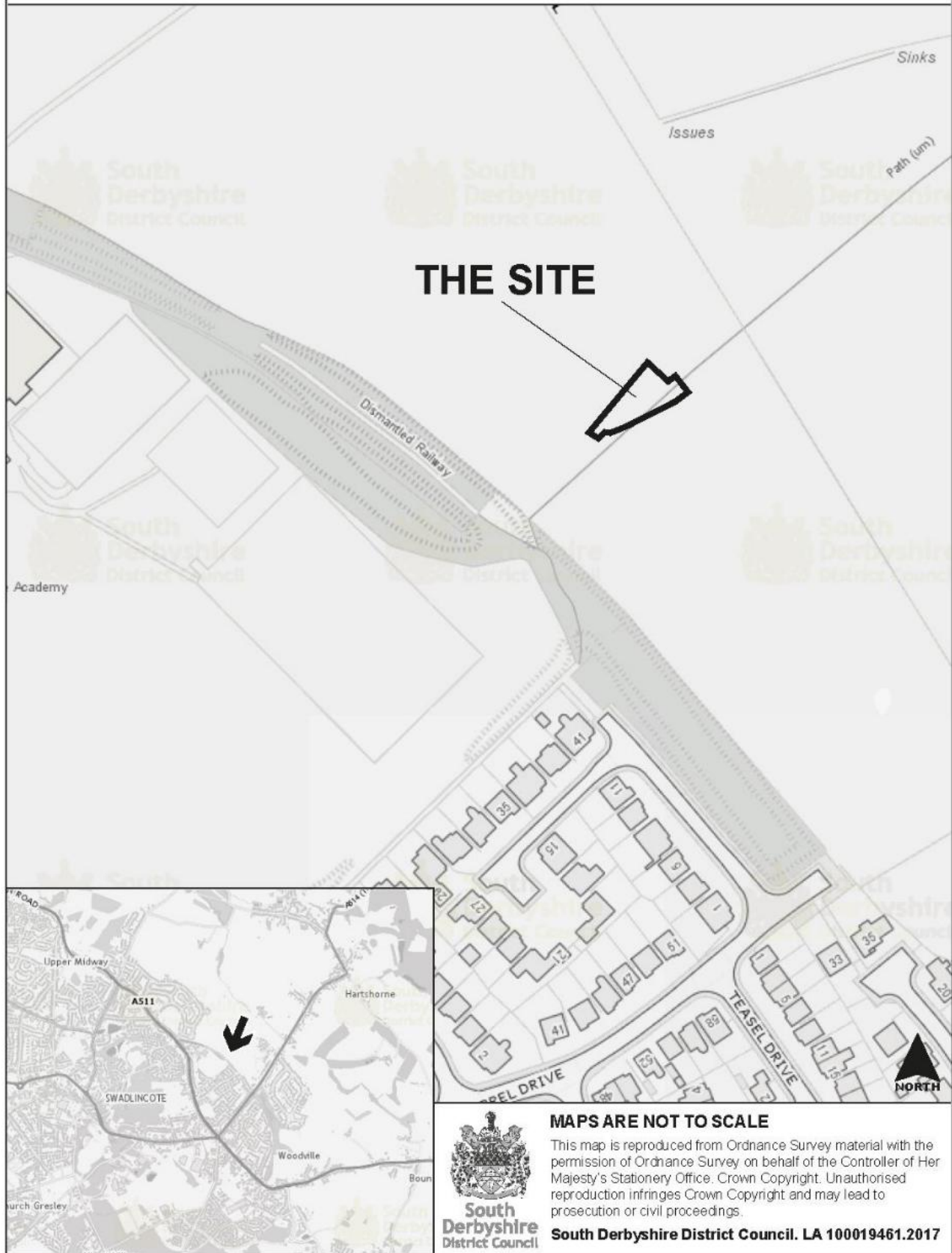
DMPA/2020/0422: Approval of reserved matters (layout, scale, appearance and landscaping) for erection of 148 dwellings along with creation of roads and public open space pursuant to outline permission ref. 9/2016/0882 (phase 3) - Approved February 2021.

DMPA/2019/1327: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (for the erection of 10 plots in lieu of 8 previously approved under reserved matters approval ref. 9/2018/0767, along with substitution of remaining housetypes and adjustment to plot boundaries, relating to former plots 117-120, 144-145 & 160-161) – Approved December 2019.

DMPA/2019/0893: Approval of reserved matters for layout, scale, appearance and landscaping of spine road through phase 1a and 1b (in part) and approval of reserved matters for layout, scale, appearance and landscaping of the public open space areas for phase 1a and 1b (in part) - Approved October 2019.

9/2019/0382: Approval of reserved matters for layout, scale, appearance and landscaping relating to phase 2a only for the erection of 70 dwellings, along with layout, scale, appearance and landscaping of public open space areas and layout, scale, appearance and landscaping of the spine road for phase 1b (re-plan) and 2a.under outline permission ref. 9/2016/0882 - Approved August 2019.

DMPA/2021/0109 - Land east of Lincoln Way and Salisbury Drive, Midway, Swadlincote DE11 7FG



9/2019/0355: The erection of a boundary entrance feature – Approved August 2019.

9/2019/0291: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetypes relating to plots 82-87, 93-95, 110 and 113-114) – Approved May 2019.

9/2019/0290: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetype relating to plot 18) – Approved May 2019.

9/2019/0289: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetype relating to plot 3) – Approved May 2019.

9/2018/0767: Approval of reserved matters for layout, scale, appearance and landscaping relating to phases 1a and 1b only for the erection of 180 dwellings, along with layout & landscaping of public open space areas for phase 1 only (re-plan) under outline permission ref. 9/2016/0882 - Approved November 2018.

9/2017/0730: Approval of reserved matters (in so far as layout & appearance for the spine road for the whole site and layout & landscaping of public open space areas for phase 1 only) - Approved June 2018.

9/2016/0882: Variation of conditions of outline application ref. 9/2014/0740 - Approved June 2018.

9/2014/0740: Outline application (all matters except for access reserved) for the erection of up to 400 dwellings and provision of new school pick up/drop off area, together with associated highway works, public open space, landscaping, parking and attenuation facilities - Approved July 2016.

Responses to consultations and publicity

County Highway Authority has objections subject to conditions, the proposed car parking spaces measure 5m in depth which would create some extent of overhanging but the red line of the application includes further land to the rear and a condition can be added for the car parking spaces to be laid out to reflect 5.5m in depth.

The Councils Landscape Architect has no objections.

County Council (Education) have provided no comments.

Granville Academy have provided no comments.

Woodville Parish Council has no objections.

Relevant policy, guidance and/or legislation

The relevant policies Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H4 (Land at Broomy Farm, Woodville), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and BNE7 (Trees, Woodland and Hedgerows).

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)

- Planning Practice Guidance (PPG)
- National Design Guide (NDG)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning considerations

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

- Principle of development and Layout; and
- Highway safety.

Planning assessment

Principle of Development and Layout

The indicative master plan approved at the outline stage showed the potential for a drop off/pick up area to serve the Granville Academy, with the principle of a pick-up and drop off facility being broadly suitable in principle. Owing to the position of the site, the area within phase 3 of the housing allocation was deemed the most suitable, given its proximity to the school.

The existing footpath through the site would be incorporated along the bottom of the proposed car park pick up and drop off area to provide connectivity through the wider site and feed into the pedestrian walkway.

The creation of up to eight car parking spaces in this location would provide a suitable level of parking for the proposed pick up and drop off facility with the footpath to lead through to the rear school entrance. It would also be in a convenient location for children and parents should an additional pedestrian access point to the school be installed in the future..

Highway Safety

There has been no objections received from the County Highway Authority and the proposed layout would provide sufficient car parking spaces with sufficient space within the site to accommodate car parking spaces that would be 5.5m in depth. There would be sufficient manoeuvring space out onto the hammerhead junction and would allow for two cars to pass one another on the approach and exit to and from the drop off area and would accord with the principles of policy INF2 of the Local Plan.

Other

There have been no objections raised by local residents and the position of a car park and drop off facility for the school in this location would raise no harmful impacts to neighbouring residential dwellings and would accord with the principles of policy SD1 of the Local Plan.

In addition, there have been no objections raised by the Landscape Architect

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions.

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings ref. P20-2591_008 (Location Plan); School Drop off Layout - S0000/100/BF3D0; and P19-2591_23; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Notwithstanding the submitted drawing, each car parking spaces shall measure at least 2.4m x 5.5m. Prior to being taken into use, the spaces shall be laid out generally in accordance with the application drawing, paved in a solid bound material, provided with measures to ensure that surface water from within the site is not permitted to discharge onto the footway or public footpath and maintained thereafter free from any impediment to their designated use.

Reason: In the interest of highway safety.

Informatives:

- a. The application site is affected by a Public Right of Way (Footpath 3 in the parish of Woodville as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.

Where it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

Where a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.

Any development insofar as it will permanently affect a public right of way must not commence until a diversion order has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

Item No. 1.3

Ref. No. [DMPA/2020/1393](#)

Valid date: 16/12/2020

Applicant: Karen Brenchley

Agent: Elisabeth Hackett Architect Limited

Proposal: Demolition of open porch and replacement with enclosed porch and the erection of new entrance gates and wall in part and new boundary wall with associated landscaping at 79 Main Street, Kings Newton, Derby, DE73 8BX

Ward: Melbourne

Reason for committee determination

This application is presented to the Committee at the request of Councillor Fitzpatrick as local concern has been expressed about a particular issue.

Site Description

The application site is located within the rural village and conservation area of Kings Newton and the property has been identified as a building that makes a positive contribution to the character and appearance of the conservation area. The application property is a modest cottage with attached barns, possibly once associated with Cofton fronting onto Trent Lane. The 1880's OS map shows Cofton as the nearest sizable house whilst part of the range of buildings on site has a cottage character this feels more likely to have been a workers cottage with attached barn ranges rather than a farmhouse in its own rights.

The proposal

The application seeks planning permission for the demolition of the existing open porch and its replacement with an enclosed porch and the erection of new entrance gates and wall in part at the site frontage and a new boundary wall along the internal west boundary with 75 Main Street.

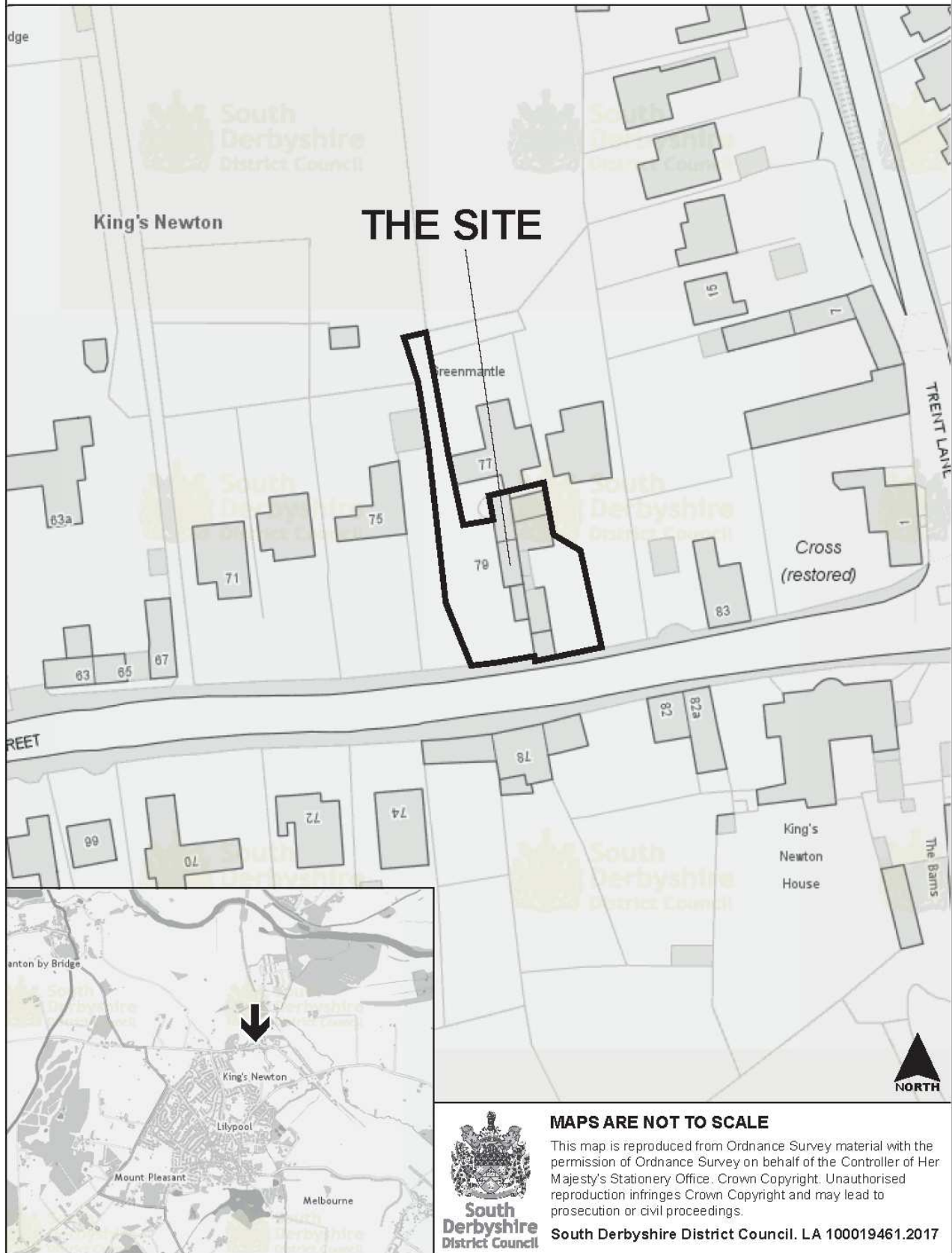
Applicant's supporting information

A Design and Access Statement has been submitted which includes up-to-date photographs of the building and site and which covers the following:

The courtyard is used for parking and turning and has been left open, with no physical boundaries, as all the properties were originally owned and inhabited by members of the same family. There was a reasoned mutual agreement for the use of the courtyard however, over the years the properties have been sold off and therefore the communal idea of the courtyard no longer works and defined physical boundaries are needed. A new brick wall defining the properties boundaries within the courtyard/driveway is proposed and rights of way will be retained. The current access into the courtyard/driveway of No. 79 is used by the other homeowners and should actually only be used by No. 79 with only the occupants of No. 77 having a right of way over said land. Current arrangements allow no privacy for the application property.

New timber boarded gates, and a pedestrian gate set within the wall, will be no higher than the existing stone walls and the walls will be extended to create an opening to meet the new set back gates. This arrangement has been used in other instances along Main Street (at Chanty Barns, Newton Hall, The Barns at Newton Hall, No's 74, 70 and 83 Main Street). The proposed walls will create a sense of flow and continuation of the beautiful gritstone walls which frames Main Street. No existing wall fabric will be lost or altered.

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The new porch entrance will allow people to enter the property without the need to come off the courtyard directly into the dining room. This has posed problems from a thermal and over-looking point of view, with access being straight into a habitable room. The new porch creates a covered subservient entrance that makes reference to the historical context of the buildings and avoids harms to the existing fabric. It is designed to edge the boundary line of the car parking for No. 77 creating privacy and security for the occupiers.

The scale of the new porch is dictated by the constraints of the site being mindful of the existing context with gables and the vernacular architecture. The structure will not mask the existing timbers found within the existing walls on the front (west) façade on the 2-storey element. The gabled timber framed porch adjacent to Main Street reflects the existing later addition porch which is part of the character of the conservation area as mentioned in the Kings Newton Conservation Area Character Statement. The remaining enclosed structure of brick and stone is reflective of the existing materials found on the host building and the perpendicular massing off the existing linear axis is a typical arrangement.

Landscaping will remain neutral and reflective of the context and the street scene. The Main Street fronting stone walls will remain in grit stone and of the same height as the existing. The new boundary wall between No's 79 and 75 will be no higher than 2m and will be constructed from reclaimed bricks to match the existing host building and will have grit stone towards the base as on the host building. The top of the brick wall will be capped in flat stone matching that found on the existing grit stone walling to Main Street. If costs are too high for the brick wall then this can be made from timber boarded panels. The new hardstanding will be gravel.

In summary, it is hoped that the proposal will be seen as an improvement which will enhance the existing living accommodation for the occupiers and which will preserve the building for years to come without harming the historic fabric of the building or the character of the conservation area.

Relevant planning history

9/0596/0086/F: The extension and conversion into a dwelling of the barn at the rear of 79 Main Street, Kings Newton – Full planning permission granted on 27th August 1996. Condition 12 requires planning permission to be sought for any alterations or extensions to ensure that any such extensions/alterations are appropriate to the character and appearance of the building and in the interests of privacy.

9/2000/0246: Alterations and extensions. Full planning permission granted on 11th May 2000.

9/2000/0247: The demolition of a single storey outbuilding. Relevant Demolition Consent approved on 11th May 2000.

Responses to consultations and publicity

The Conservation Officer is of the opinion that, subject to the imposition of conditions for facing and roofing materials, the proposed development would not harm the character and appearance of the conservation area. A sample stonework panel condition should also be imposed to ensure that the work is undertaken to a good standard. The proposed walls for the site also incorporate stone elements so there is a reasonable extent of stonework so as to make this condition worthwhile.

Melbourne Parish Council have raised no objections.

Melbourne Civic Society objects to the proposal and comments as follows:

- This proposal will be detrimental to the character and appearance of the conservation area. The main reason is that no.75 and the adjacent farmyard are complementary parts of a historic farmstead, and the openness of the farmyard is important to the way that it is understood and appreciated.
- The farmhouse now looks 1920s from the front, but is in fact partly 18th century.
- The adopted SDDC Conservation Area Appraisal draws attention to the linear, L-shaped and U-shaped courtyards of buildings as a defining characteristic of the conservation area. Subdividing

courtyards with such fences is injurious to their character and is something that the District Council generally “designs out” of barn conversion schemes.

- The addition to no.79 is also badly-designed, being of a rather contrived form and badly related to the roof of the existing building.
- By way of background, nos. 75 to 79 are an ancient farmstead which had formerly belonged to the Kings Newton Hall estate. It was bought out by the Melbourne Estate in 1734, and they owned it until 1919. The house now known as no. 79 was in existence as a cottage within the farmstead by 1767.

Kings Newton Residents Association (KNRA) objects to the proposal and comments as follows:

- This application creates permanent damage to conservation area characteristics.
- 79 Main street is one of a number of converted agricultural buildings edging what would have been an original farmyard. It is referred to as the Orchard Yard. It is a key part of Main St, described by Pevsner as “one of the most attractive main streets in Derbyshire”.
- The SDDC Conservation Area Character Statement includes deliberate reference to the “long ranges of farm buildings that survive substantially unaltered, creating linear, L-shaped and U-Shaped courtyards”. The document says that these are an important part of the historic settlement pattern providing a contrast between the grand houses and the farmhouses and cottages. The overall conservation area description describes the village as “best described as an area of strong contrasts and it is these contrasts that make it so special and picturesque.” It also describes “the private spaces and courtyards behind the main buildings. These are largely unobserved but are nevertheless an important part of the historic settlement pattern, its grain and agricultural character”.
- This is one of the U-shaped courtyards that is key to this contrast and character.
- Newton Wonder Court is an example of where SDDC have preciously made sure that this rural/farm feel has been continued in the village. There is large open space edged by properties which all have a rural design to them. The Elms Farm Yard is another example that has been maintained despite development. Please maintain this level of protection of the conservation area.
- The conservation area protection has so far done a good job of leaving farm buildings visible, clearly showing the agricultural nature of the history of the village. There are no modern walls on key yards and the majority of these have no gates on so that the view to the farm buildings is maintained. For examples please refer to Chantry Barns, Kings Newton House, the Elms Farm yard, Cofton House driveway, 63a Main St. For Kings Newton Hall and Barns there are gates but these are either left used or are wrought iron, which maintain the views of the yards.
- If absolutely necessary, marking boundaries of properties/ground maintenance is more appropriately done by change of ground surface, keeping the open feel to Main St properties. Example of this include between 71 and 73 Main St, and between 15 and 17 Trent Lane.
- The application mentions that if a boundary wall is too expensive they will build a fence or have a compromise of a wooden top to the boundary. A fence or a non-gritstone wall would be completely out of keeping for this site in the conservation area and must not be permitted in any case. The cost of constructing a wall in keeping with the conservation area is going to be high, and this application as written, if granted, is highly likely to result in a completely inappropriate boundary fence or wall made of a cheap material. The details provided in this application are inadequate to determine the impact on the conservation area.
- The creation of a wall/fence and gates prevents access to 77 Main St. 77 Main Street has a right of access over the land of number 79. Whilst we are not sure SDDC planning processes are involved in rights of access, there is a safety and public services access issue. 77 Main St will be completely invisible from the road which will create safety and delivery problems. Fire engines, ambulances etc. will find it impossible to identify and access No. 77 if it is behind closed gates and if they then have to find a way past parked cars and flower beds. It is appreciated that the applicant wants a feeling of well-being at home, but this application is making the resident at 77 extremely anxious about how she would get help in an emergency.

- The proposed build also makes it impossible to manoeuvre to be able to park 2 cars. There is space for the cars when parked but not to be able to get the second car into the space. Spaces for parking need to be practical.
- In addition, it appears agricultural machinery needing to access the field behind the yard would not be able to get through. This makes the land unviable for farming.
- There seems to also be a difference of opinion as to the exact boundary position, especially with regards to the tree. The upkeep of the tree has been split between the neighbours (unfortunately you can see this in how it has been pruned). Whilst it is good that this application keeps the tree we are also very concerned about the impact of construction on the health of the tree, which is again part of the Kings Newton Conservation Area Characteristics.
- The conservation area characteristics implies that there may be reasonable expectation that archaeological evidence relating to the medieval and or post-medieval periods may survive below ground but this is not our objection to this application. However, if there is any excavation or construction on this site it should include archaeological investigation.
- KNRA try to hold the right balance between everyone having the opportunity to develop our homes/business against the preservation of what keeps the character of the village as a rural village as outlined in the development hierarchy. We have attempted to discuss this application with the applicant but they did not wish to enter into discussion and have relied on their planning advisor on this application. We did offer to speak with their advisor but was told that this was not appropriate in the applicant's opinion.
- The application seems to imply that the advisor has consulted with SDDC as they have put "yes" and Mr in the form, but we are unclear who they have been in touch with.

Councillor Fitzpatrick has advised that several residents have expressed their concerns with regards the conservation of the open courtyard that sits between the properties of 79,77 and 75 Main Street. The main points raised being:

- The proposed division of the yard will neither preserve or enhance the conservation area and that in our own SDDC conservation documentation we specifically draw attention to the conservation of linear, L and U shaped courtyards.
- The current open character of the yard makes a positive contribution to the conservation area.
- The potential for a new wall across the farmyard raises serious concerns over what might be affordable and how in-keeping with a conservation area that would be.
- Main Street in Kings Newton has been described "As one of the most attractive village streets in Derbyshire" and there is very strong local feeling to try and keep the area as unspoilt as possible.
- It is also felt that erection of gates to the entrance to No.'s 79 and 77, will change the open farmyard aspect.
- One resident with building knowledge believes the foundations for the wall could seriously damage the roots of the existing protected Lime Tree, another key feature of Main Street. (increasing the likelihood of killing the tree and undermining its structural integrity).
- Even at 6am Main Street has regular traffic flows and by the "rush hour" it has a constant flow of traffic who see this street as a "rat run" through ton East Midlands gateway and the M1.
- The local speed watch volunteer group have recorded regular excess speeding in this vicinity. The straight nature of the road can fool drivers into thinking there are no hazards. There have been two accidents in this area in recent times with one a driver driving straight into a skip legally placed and illuminated on the road, the second a driver not seeing a delivery van and driving up its ramps when delivering. (photographs supplied).
- The greatest concern with this planning application is that the division of the courtyard and the planned wall will make access to the road from the properties 75, 77 and 79 much more difficult and could even result in some cars having to be reversed blindly into the road. Concern about accessing parking bays have also been raised.
- A site visit demonstrated the current practice where any residents uses the safest access onto Main Street and uses the central courtyard space to ensure vehicles are turned and head out onto Main Street facing forward.

- The area directly in front of properties 75,77,79 Main St is used as a bus stop for the Chellaston School bus and there would be significant concerns for bringing additional risk to pedestrians in this area.
- Cars parked along Main Street also prevent good splay visibility from the entrances to these properties (viewed from traffic coming from the North of Main St) so again there would be significant fears over highway safety in this area if these plans went ahead.
- There may potentially be a boundary dispute between the residents at No's 75 and 79 over the exact demarcation of the courtyard and if the resident at No. 75 is correct then the proposed wall position would have to be changed.

The application has attracted a lot of local opposition and the comments received are very detailed – there has been 12 representations from 11 individuals. Many of the objector's comments are repeated individually and cover the same issues which in essence are as follows:

- a) The pedestrian and vehicular gates will dramatically alter the appearance of the street scene and be detrimental to the Conservation Area.
- b) The position of the vehicular gate will not allow a car entering the courtyard to pull fully off the road, creating a potentially dangerous highway situation.
- c) The highway requirement is for entrance gates to be set back some 5 metres.
- d) The existing entrance is used for vehicles servicing the field beyond and is used for agricultural vehicles, tractors, trailers etc.
- e) The design, scale and detail of the proposed porch is inappropriate and would not be an asset to the conservation area.
- f) Porch is unsympathetic to the linear form of the buildings and of a complex and awkward form with no convincing justification for the harm and only private benefits.
- g) 77 Main Street has not been surveyed and 2 principle windows would be affected by the porch projection.
- h) The garage at No. 79 has not been surveyed – this garage is used for storage of vintage motorcars rather than garaging for the dwelling.
- i) Subdivision of the farmyard will neither preserve or enhance the conservation area. The open character of the yard is a large part of its positive contribution and it is still legible as a former farmyard.
- j) Introducing a physical brick boundary wall, fence or hedge would destroy the open nature of the historic courtyard.
- k) The physical boundary would impair the ability for 75 and 77 Main Street to manoeuvre and exit the site safely in a forward motion.
- l) The construction of a boundary wall and alterations to the access will affect the root system of the protected trees.
- m) A proper tree survey should be included with the application.
- n) The proposal does not take into account the highway safety impact on other users of the access and the fact that it would mean cars would need to back out onto Main Street. This would be exacerbated by parked cars.
- o) Many cyclist use Main Street to access the Cloud Trail cycle track as do runners, walkers, mums with pushchairs and toddlers heading to the nearby school and nursery.
- p) The Chellaston school bus picks up and drops off immediately outside the access.
- q) Main Street is very busy with fast moving cyclists, people heading to work, delivery vans and the Donnington Racetrack traffic for events and concerts.
- r) Recent building around Kings Newton and the nearby East Midlands Airport has added to traffic on Main Street, a busy commuter route for the airport, new rail hub and the M1 junction.
- s) The scale of the proposed plans is highly misleading and suggests the yard is bigger than it is.
- t) The line of the proposed wall encroaches onto an objector's land.
- u) There would not be enough room to pass the proposed porch without hitting the proposed wall nor could a car back out of a parking space without hitting the proposed wall.
- v) Tractors, hay deliveries and regular riding of horses in and out of the access would be affected by the narrowing of the field access.
- w) The proposed gate would cause an obstruction.

- x) The proposal would damage a rare example of a horseshoe shaped courtyard which dates back several hundred years and which adds charm to a much-loved village.
- y) The so-called 'porch' is large, inappropriate and destroys the line of the old building.
- z) The porch would change the aspect of 2 windows at No. 77 and reduce natural light.
- aa) The footings for the new wall would affect the health and stability of the 2 protected lime trees.
- bb) For 20 years, residents and visitors have used the shared yard to turn cars so a safe forward exit can be made.
- cc) The proposal will alter the open courtyard with views and access to a field beyond to an enclosed gated appearance that will spoil the village and contravene the conservation area status.
- dd) Exiting the farmyard in a reverse motion without being able to see oncoming vehicles, cyclists or pedestrians could potentially cause a serious accident.
- ee) Several accidents have been witnessed and attended outside the existing access.
- ff) With no speed cameras, speed bumps or other speeding deterrents cars are often travelling well above a safe speed limit.
- gg) It would be impossible for 4 vehicles (3 at No. 75 plus 1 regular visitor) to manoeuvre past each other to get to the access.
- hh) The objector is disappointed that the applicants did not consult with neighbours prior to submitting the application.
- ii) Although not an original feature, the demolition of the existing porch would be detrimental to the frontage of the historical farm labourer's cottage.
- jj) The proposed replacement room is unsympathetic and would change the buildings overall appearance.
- kk) The straight nature of the road encourages drivers to exceed the 30mph speed limit resulting in a least 2 accidents in recent history (one driving into a skip and another up the ramp of a parked delivery truck).
- ll) The application will create major parking problems within the site and on Main Street exacerbating the existing problems on this rat run.
- mm) Main Street is particularly busy at weekends due to nearby events and when there are problems on the A50 as it is used as a cut through route.
- nn) Vehicles parked in the narrow driveway will impede emergency vehicles – at present all 3 properties in the complex can be serviced at speed and in total safety.
- oo) The farm is an ancient one that had belonged to the Hardinge Estate based at Kings Newton Hall and was bought by the Melbourne Estate in 1734 who retained ownership until 1919. No. 79 was a separate cottage amongst the outbuildings and the main farmhouse (now No. 75), which has the appearance of a 1920s house and part of the earlier farmhouse incorporated in it, is outside the conservation area (CA). The CA boundary makes a rather artificial distinction between the farmhouse and yard and the buildings that belong to it. In reality they should be appreciated as complementary parts of a single whole.
- pp) The Kings Newton CA Character Statement specifically draws attention to "long ranges of farm buildings that survive substantially unaltered, creating linear, L and U-shaped courtyards".
- qq) Both accesses have been used as exits/entrances and as pedestrian walkways since August 2000.
- rr) Security cameras show that the applicants and their visitors use the neighbours access on a regular basis and mutual use has never been a problem before.
- ss) When tractors or other large agricultural vehicles use the courtyard to access the field, they always encroach on a line that is beyond the proposed boundary wall alignment.
- tt) The protected lime trees are located on land owned by an objector who remonstrates that the applicant has previously cut the easternmost tree to have its height. The applicant has never cut branches that overhang the pavement or swept up fallen debris from the tree.
- uu) An objector was advised only last year by a tree surgeon that the widening of the access would adversely affect the trees and would not be allowed.
- vv) The 2 protected lime trees (designated in 1969) are the only surviving trees on the north side of the street of rows previously planted during the winter and spring of 1856. The surviving trees are mentioned in the Kings Newton CA Character Statement as forming a striking contrast in views along Main Street.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): Policy S2 (Presumption In Favour of Sustainable Development), Policy SD1 (Amenity & Environmental Quality), Policy BNE1 (Design Excellence), Policy BNE2 (Heritage Assets), Policy INF2 (Sustainable Transport)
- 2017 Local Plan Part 2 (LP2): H27 (Residential extensions and other householder development), BNE10 (Heritage)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Kings Newton Conservation Area Character Statement 2011 (CACS)
- Derbyshire County Council, Highways Development Control – Standing Advice for Local Planning Authorities, January 2021 (CHA/SA)

The relevant national policy and guidance is:

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

Planning considerations

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

- The impact on the character and appearance of the conservation area;
- The impact on the living conditions of the adjoining properties and the general character and appearance of the area;
- Highway implications; and
- Impact on protected trees.

Planning assessment

The impact on the character and appearance of the conservation area

The property is unlisted and is visible from the public realm via a shared driveway with 75 and 77 Main Street. The existing open porch projection is just visible from Main Street attached to a range of buildings which tend to sit along different building lines. The proposal is to remove the existing open porch and construct a front projecting gabled extension to act as an enclosed porch, with a small lean-to open porch alongside in a similar position to the existing. The existing oak framed porch is potentially quite recent as it does not appear on any historic maps but it is a lightweight and small projection so may have been omitted. The masonry providing some enclosure around its base is certainly not of any great age, unless it has been largely rebuilt at some point although it is reasonably well executed.

The proposed extension would be modest in scale with the same eaves and ridge height as the converted agricultural range which forms part of the dwelling to the north of the existing porch. The proposed materials include stonework in the lower sections and matching brick above with slate for the roof. Subject to a materials condition, the proposed porch element of the proposal would preserve, and not harm, the special architectural and historic character and appearance of the conservation area, achieving the desirable objective within Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The original application also included proposed alterations to the highway fronting boundary wall, which would be sympathetic to and in keeping with the character of the existing wall, and the erection of a boundary wall within the site itself. The front boundary wall proposals have subsequently been

amended on 15th March 2021 (to comply with highway requirements – see below) and these amended details, together with the original details for the boundary wall within the site, are not considered to cause harm to the character and appearance of the conservation area, achieving the desirable objective within Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

As such the proposals, as amended, would conform to the requirements of the NPPF and with Policy BNE2 of the LP1 and Policy BNE10 of the LP2 in that the heritage asset would not be harmed and the positive contribution that the host property makes to the historic environment would be preserved.

The impact on the living conditions of the adjoining properties and the general character and appearance of the area

The proposed single storey porch extension would be classed as a non-habitable structure and it would present a blank north elevation towards the frontage of the closest neighbour (77 Main Street) such that this neighbour would not be adversely affected and the current privacy levels would be maintained in line with the Council's SPD.

There is adequate separation between the west side of the proposed porch extension, where window openings are proposed, and the frontage of 75 Main Street to the west side of the site to meet SPD guidelines and the existing privacy levels would be improved by the erection of the proposed boundary wall between these 2 plots. As such this neighbour would not be considered to be adversely affected by the proposals in line with the Council's SPD.

The application property is perpendicular to the existing highway and the proposed sympathetic and in scale porch would be set back within the site such that it would not adversely affect the existing street scene or the general character of the area. The proposed boundary walls and pedestrian gate would be in keeping with the local vernacular of boundary treatments such that the general character of the area would not be harmed.

The proposal, as amended on 15/03/2021, would therefore be considered to be in accordance with the requirements of NPPF and with the objectives of Policy BNE1 of the LP1 and Policy H27 of the LP2 in that the development would be in keeping with the scale and character of the existing host and would not be unduly detrimental to the living conditions of adjoining properties or the general character of the area.

Highway implications

The originally submitted application included alterations to the front boundary wall to construct return wings and to hang new pedestrian and vehicular gates. The County Highways Authority (CHA) standing advice requires that any new vehicular gates at a domestic access should be set back from the highway boundary by 5m. The originally submitted plans denoted the new vehicular access gates at a distance of 2m back from the highway edge and as such would be considered unacceptable with regard to highway safety. The applicant declined to omit the proposed gates and the new sections of the walls (both to the frontage and that internally dividing the site) from the proposal as suggested by the case officer due to the volume of objections received in relation to these elements of the proposal and it was requested that the application be assessed in its amended form as shown on the plans received on 15th March 2021.

The existing open vehicular access is 5.29m wide and the proposed boundary alterations, as amended on 15/03/2021, would reduce this opening to 3.7m which would be above the CHA minimum standard of 3.2m for a shared access. As such it is not considered that the amended proposal would conflict with the CHA's standing advice and the proposed access would be considered acceptable in highway terms.

The existing access is already substandard as the existing 2-storey outbuilding of No. 75 to the east of the access immediately abuts the pavement such that visibility in an easterly direction is already impaired and the existing west side stone wall of this access also obstructs visibility in a westerly

direction. The proposed inward opening east side pedestrian gate and the 2 proposed return walls off the existing access walls would be at the same height as the existing walls at 1.5m and their positions would not make the existing situation any worse than it is at present. As such, it would be considered that an argument for refusing this aspect of the [amended] proposal could not be sustained.

The proposed stone return wall to the west end of the existing west side highway fronting wall, which would continue as the proposed internal site boundary, would be at the same height as the existing wall for a distance of approximately 1.9m back into the site at which point the proposed boundary wall between the application site and 77 Main Street would increase to a height of 1.9m. The lower stone wall of this proposed boundary treatment would end in line with the return walls that are proposed either side of the vehicular access and the increase to a proposed height of 1.9m at this point would not cause any increased conflict with the current substandard access. It should be noted that boundary walls that do not front a public highway can be erected to a height of 2m without the need for planning permission by virtue of Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such the proposed internal boundary wall could be erected under the occupier's permitted development rights and the Local Planning Authority would have no control over the materials used. In this instance, the treatment of the proposed internal wall could be controlled so as to ensure that it is in keeping with the character of the area as the applicants could erect close boarded timber fencing without seeking planning permission.

In line with the CHA standing advice the proposed frontage wall alterations, as amended on 15/03/2021, would not result in a material increase in the volume or a material change in the character of traffic entering or leaving a classified highway, would not involve the creation of a new access nor would it encroach onto the public highway. As such, the amended proposal would not be considered to adversely impact on highway safety in line with standing advice and Policy INF2 of the LP1.

Impact on protected trees

The proposed front boundary walls would be neither a retaining nor a habitable structure such that footings could be designed to avoid impact on the root systems of the protected lime tree (TPO24 T5). Following a discussion with the Conservation Officer, the Agent has advised [by email on 15th March 2021] that the applicant would be happy with a condition to control the boundary wall works within the root protection area of the tree. This would require a pre-commencement condition so that appropriate details could be secured prior to any works commencing in order to avoid any adverse impacts on the health of the tree.

Other issues raised through publicity

The Agent has advised [by email on 24th February 2021] that the applicant has written confirmation from her solicitor that 75 Main Street has no legal right to use the right hand side vehicular access (as you look at the property from the highway). The email also states that the existing turning and access arrangements for 77 Main Street, situated to the north of the application site, would not change and this has been annotated on the submitted plans. The applicant also advises that any reversing or turning of vehicles over the boundary would not be permissible as this would constitute trespassing onto the applicant's land.

In response to the objections raised, a further email was received on 19th March 2021 with a map attachment from the applicants showing the area of land, which is within the applicant's legal ownership, that the occupants of 77 Main Street have a legal right of access over. The proposed development would leave this area as a clear route for the neighbours to access their allocated parking spaces.

A further amended plan was received on 12th April 2021 with a revised red line ownership boundary. The west side boundary line is now aligned with the proposed internal boundary wall and as such it no longer encroaches on to the land that has been identified as belonging to 75 Main Street.

It should be noted that rights of access and land ownership issues are civil matters and would not be

classed as material considerations that would outweigh the main issues as assessed above.

The proposal, as amended, would conform to Policy SD1 of the LP1 in that it would not lead to adverse impacts on the environment or amenity of existing and future occupiers within and around the proposed development.

The proposal, as amended, would conform to the requirements of the NPPF and the NPPG and with Policy S2 of the LP1 in that planning applications received by the Council that accord with the policies in the Local Plan Part 1 (and where relevant, with policies in neighbourhood plans) will be dealt with positively and without delay unless material considerations indicate otherwise.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the originally submitted plans and documents (unless superseded) received on 15th December 2020 and made valid on 16th December 2020 and amended drawing no. 310.02 Revision B, received on 15th March 2021, and amended drawing no. 310.03 Revision B, received on 12th April 2021; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt.

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

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

4. Prior to any pointing commencing, a sample panel of pointed stonework no less than 1 sq. m shall be prepared for inspection and approval in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved sample, with the approved sample retained on site throughout the duration of construction works.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

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

Reason: To ensure that the works are carried out in the best interests of the health of the tree(s).

6. Details of the wall foundations, which shall be designed to avoid negative impact upon the roots of the protected trees, shall be submitted to and approved in writing by the Local Planning Authority before any development takes place. The foundations shall only be constructed in accordance with the approved details.

Reason: In order to minimise damage to retained trees during building operations. Details must be approved prior to the commencement of development to ensure the development is undertaken in way which ensures a satisfactory standard of tree care and protection.

7. The works shall be carried out in accordance with British Standard 3998:2010 - Tree Work (or equivalent document which may update or supersede that Standard).

Reason: To ensure that the works are carried out in the best interests of the health of the tree(s).

Item No. 1.4

Ref. No. [DMPA/2020/1150](#)

Valid date: 23/10/2020

Applicant: C Corbin

Agent: Broadgrove Planning and
Development Limited

Proposal: The erection of a glass walled roof top extension to existing dwelling at Corbin House, Hilton Road, Egginton, Derby, DE65 6GU

Ward: Etwall

Reason for committee determination

The application is reported to Planning Committee as the applicant is related to an elected Councillor (Councillor Corbin).

Site Description

This is a large residential property set in equally large grounds, situated well outside of the Hilton village boundary. There is one other residential property to the north and a school to the east, the school occupying a listed building. The site is flat and affords a level of privacy, screened from the public realm by the trees and hedging that bound the site.

The proposal

The proposal is to add a glass box style extension to the roof, it in part, cantilevered off part of the roof.

Applicant's supporting information

The Design & Access Statement (DAS) provides details of the proposed development and considers the proposals against the relevant policy framework.

A Planning Design and Heritage Statement provides details of pre-submission investigations, undertook to facilitate an elevated viewing space over the site, one with least impact on the surrounding context/landscape whilst achieving something in keeping with the existing modernist design.

Relevant planning history

2002/0136*: Demolition of dwelling, workshops and outbuildings and erection of new dwelling and associated landscaping: approved May 2002.

2007/1460: Erection of an extension: approved February 2008.

2018/1360: Installation of new window: approved March 2019.

2019/0780: Kitchen extension and flue: approved September 2019.

*It should be noted permitted development rights were removed here from the outset to maintain control over subsequent extensions, in the interest of the character and amenity of the area, having regard to the setting.

Responses to consultations and publicity

The Conservation Officer was consulted given the adjacent listed building. It was concluded however that the proposal would not harm the setting of the listed building and as such would achieve the

A map of the site location in South Derbyshire. The map shows a large area outlined in black, labeled 'THE SITE'. Within this area, 'Corbin House' is marked. To the north of the site is 'Hinkin Hall'. To the east is 'Park Hill'. The site is bounded by 'A5132 (HILTON ROAD)' to the south. A 'Track' is visible to the north. The map also shows 'South Derbyshire District Council' and 'MP' (Member of Parliament) areas. An inset map in the bottom left corner shows the location of the site relative to 'Hilton' and 'Etwell Common', with a black arrow pointing to the site. A north arrow is located in the bottom right corner.



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'desirable' objective described within section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Derbyshire County Council Urban Design Team consider that the architecture is in keeping with the modern architecture of the building, and whilst it will give some verticality to the structure they do not think the essential character of the building will be significantly dominated and it will be read as an authentic design addition. They accept that the cantilevered form introduces a different element, but this projection is a typical characteristic of the modernist architecture movement, with the changes in reinforced concrete technology. They consider that the lightness of the glass structure will contrast with the gravity of the low-lying structure, but both aspects are a response to the landscape surroundings and context.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- South Derbyshire Local Plan Part 1 (LP1): SD1: Amenity and Environmental Quality, BNE1: Design Excellence and BNE2: Heritage Assets
- South Derbyshire Local Plan Part 2 (LP2): H27 Residential Extension and other Householder Development and BNE10: Heritage

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD) November 2017

The relevant national policy and guidance is:

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

Planning considerations

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

- The effect of the proposal on the setting given the proximity to a Listed Building;
- The effect of the proposal on the residential amenity of nearby occupiers; and
- Design impacts.

Planning assessment

The effect of the proposal on the setting given the proximity to a Listed Building

It is considered there are no negative impacts to the setting of the Listed Building, the proposal situated on the far side of the house, away from the listed building. To that end there is agreement with the points made in the submitted DAS, that the siting of the proposal is considerate of the relationship with the adjacent listed form.

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

Given the separation distances involved to the neighbours, any impacts (in terms of overbearance / overshadowing or loss of privacy) are deemed to be inconsequential.

Design impacts

The main issue at hand is the design of the proposal; is it deemed to be in keeping (as is the aspirations of policy H27) or does it unacceptably contravene the ethos of original design concept; a building born out the truly exceptional architecture requirements of paragraph 79 of the NPPF, an ultimately low lying form in its setting which belies its extensive residential offer?

Taking account of the unique set of circumstances in play here, the proposal is ultimately considered not to significantly undermine the design characteristics of the host. On balance it is considered to be a subservient form, lightweight in regards materials, thereafter, set away from the principal elevation from where it may be glimpsed but not dominate. Large scale sections of glass can be found on the main dwelling although usually more grounded/cloaked, and whilst there are large sections of flat roof, it is punctuated in parts, and some vertical attenuation does already exist. It certainly will be a talking point to those with the opportunity to see it, if approved and built, and there is an argument that is a good thing.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the drawing(s) received 23 October 2020; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt.

3. Other than where specified on the approved plans/drawings, all external materials used in the development shall match those used in the existing building in colour, coursing and texture unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the building(s) and local distinctiveness.

Item No. 1.5

Ref. No. [DMPA/2021/0122](#)

Valid date: 22/02/2021

Applicant: Mark Goodwin

Agent: HES Architects Ltd

Proposal: **Retrospective application for the erection of a single storey side extension to increase seating capacity of the bar/restaurant area. The Cow, Dalbury Lees, Ashbourne, DE6 5BE**

Ward: Etwall

Reason for committee determination

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

Site Description

The application site is the public house and associated land surrounding the main building situated on the northern corner of the village green. The main frontage faces the junction of two roads on either side of the Green at the southern end of the village of Dalbury Lees. The public house has a modest car park to the north but the extension, for which this retrospective application has been made, is located at the southern side of the main frontage adjacent to the driveway serving the adjacent property, Chessets cottage.

The proposal

The proposal is a retrospective application for the erection of a single storey side extension. The extension takes the form of an 'orangery' on the side of the principal elevation. The extension is very slightly set back and has a flat roof with dwarf parapet wall and 'lantern style' rooflight. The only doors and windows are the double 'French' doors on the front elevation and an internal doorway from the main building.

Applicant's supporting information

The applicant has provided a Planning Statement which simply seeks to justify the proposal on the basis of the need for additional internal space for the bar and restaurant area citing the need for additional space once allowed to re-open following closure due to Covid-19. The additional space will allow the business to maximise use of the internal space, during continued social distancing and making use of the unused external space. It is hoped that this additional space will aid the retention of jobs once the business can re-open.

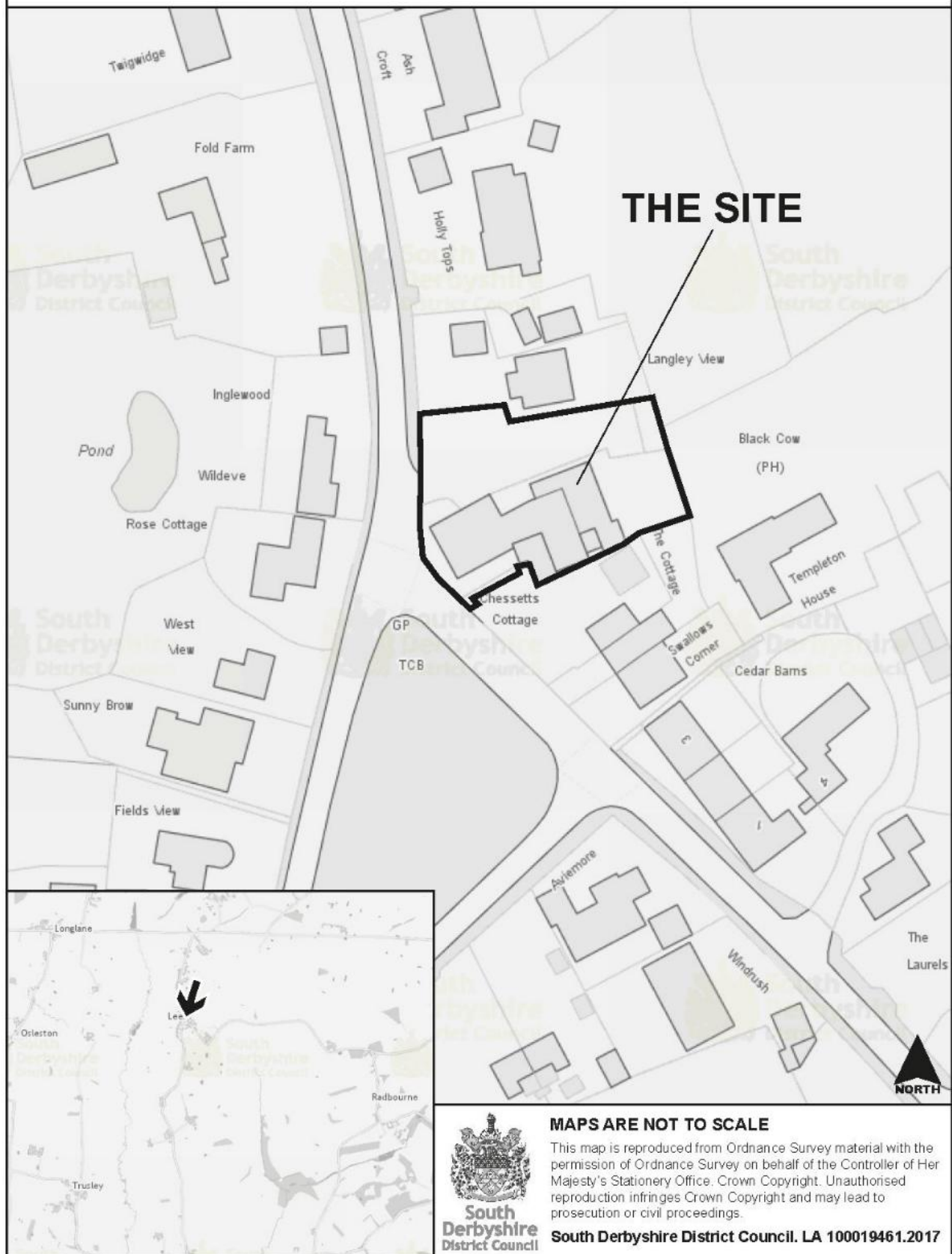
Relevant planning history

9/1992/0368: The erection of a two storey extension to provide a function room bottle store and additional living accommodation at the rear of the public house known as Black Cow - Approved 21 October 1992.

9/1998/0902: The erection of a lean-to extension on the south flank, a second storey extension to provide a dining room to the private quarters and alterations to the eastern elevation of the public house known as the Black Cow - Approved 31 March 1998.

9/2011/0068: The erection of a detached dwelling with detached garage - Approved 6 June 2011.

DMPA/2021/0122 - The Cow, Dalbury Lees, Ashbourne DE6 5BE



9/2011/0760: The change of use of some rooms into residential B&B mixed with Public House - Approved 4 November 2011.

9/2011/0761: The erection of a detached dwelling with detached garage (Revised Scheme 9/2011/0068) - Approved 9 November 2011.

9/2015/1125: Amendments to existing garage and vehicular access at Langley View, The Green - Approved 21 January 2016.

9/2017/0253: The erection of an extension and alterations to the public house and provision of additional B&B accommodation - Approved 4 May 2017.

Responses to consultations and publicity

The Environmental Health Manager has no objection to the proposal and recommends no conditions. However, an advisory is suggested stating that the granting of permission not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of part III of the Environmental Protection Act 1990 be received.

The County Highway Authority states that, whilst an increase in the potential use of the premises without the provision of additional parking is not considered to be ideal, it is not considered that detriment to existing highway conditions could be demonstrated such that an objection could be sustained.

Dalbury Lees Parish Council objects on the grounds that this is a further retrospective application. The application also states that there was no impact to trees or hedgerows. A hedge was in fact taken out. The area is also stated as having no use but in fact was shown on previous permissions as tandem parking. The increased capacity of the venue means an increase in vehicles and parking. The dining space created is simply a replacement for some of that lost by previous permission for more bedroom space.

One neighbour objection has been received raising the following issues:

- a) Hedge has been removed along the boundary of the extension.
- b) The external space was not unused - this was an outdoor seating space with tables and chairs for eating and drinking.
- c) Previous development of the pub meant the significant loss of internal seating space.
- d) Additional capacity likely to cause further parking issues on surrounding roads.

Relevant policy, guidance and/or legislation

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), E7 (Rural Employment), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport);
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development);

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning considerations

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

- Principle of the Development
- Design and Amenity; and
- Highway safety

Planning assessment

Principle of the Development

The Cow Public House is within the settlement boundary of Lees occupying a prominent location facing the village green. Policy SDT1 of the Local Plan categorises Lees as a rural village and states that development will be permitted within settlement boundaries where it accords with the development plan. The Planning Statement submitted as justification for this extension cites the need for more internal seating space as part of the future plans to recover from the effects of the Covid-19 pandemic. Given that pubs are currently not allowed to serve indoors and have only recently been allowed to recommence serving customers outside, this is clearly a longer term strategy. The pub has also diversified in recent times to rely on accommodation as a main source of income and, whilst this change has meant the loss of some internal space within the existing building which has necessitated the construction of the side extension, the business model is an appropriate use in the village drawing people in from further afield but remaining a local pub for residents of Lees. As such, the principle of development is acceptable subject to meeting other policy criteria.

Design and Amenity

The subject of this application is the already completed side extension to the public house. This side extension is set back slightly from the main frontage and has a flat roof construction with lantern rooflight providing the main source of daylight with surrounding parapet wall. Ideally the extension would have been set back further from the primary elevation but this would have meant the extension would have been even more modest than it is now, being constrained by an existing single storey extension further to the rear. The plans show that the extension provides for three four-person tables and two two-person tables. Whilst not set back as far as ideally appropriate, the extension is still subservient to the main building and fits well with the main frontage with the 'French' doors complementing the existing openings and the brickwork being painted to match the host building. It is noted that the extension extends close to the boundary with the adjoining neighbour where previously there was a boundary hedge. This hedge has not been replaced. Given the modest size of the hedge and the existing hedgerow along the highway it does not appear that the loss of the hedgerow is significant. There is a hedgerow screening the small space in between the recent extension and the other single storey extension to the rear of the site. As such the building is considered to comply with Policy BNE1 and the Design SPD.

The extension has no external openings other than the 'French' doors opening onto the front paved area between the building and the low hedgerow fronting the highway. This paved area serves as the only open space and there are therefore no issues with overlooking. The extension is located on what the applicant states was unused land but was previously used as outdoor space having seating in this location previously. There is a potential benefit here in providing internal space in this location as on summer evenings there will be less opportunity for noise disturbance to neighbours. The proposal is therefore considered to comply with SD1.

Highway Safety

As can be seen from the planning history there have been a number of modifications to the pub over the years including the loss of some of the car park for the construction of a new dwelling known as Langley View. Whilst this extension creates more internal floorspace potentially increasing the number

of visitors to the village the Highway Authority state that, '*whilst not ideal, it is not considered that detriment to existing highway conditions could be demonstrated such that an objection could be sustained*'. The Highway Authority therefore raise no objection. It is therefore considered that the proposal complies with INF2.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following condition:

1. The development hereby permitted shall be in accordance with drawings refs 200 Rev A (Site Plan) and 201 (Plans and Elevations); unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

Informatives:

- a. The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of part III of the Environmental Protection Act 1990 be received. For further information please contact the Environmental Health Service.

Item No. 1.6

Ref. No. [DMPA/2020/1117](#)

Valid date: 15/10/2020

Applicant: Scott

Agent: Fisher German LLP

Proposal: The removal of condition no. 15 of permission ref. 9/2018/1375 (relating to footway link) for the change of use from agricultural land to storage and distribution use (use class B8) along with demolition of existing buildings and laying of hardstanding at Former Midland Pig Producers, Woodyard Lane, Foston, DE65 5DJ

Ward: Hilton

Reason for committee determination

This item is presented to Committee as it is a major planning application, and the previous application was presented to the Committee for approval in September 2019 as the proposed change of use was contrary to the provisions of the Development Plan and the recommendation was for approval of planning permission.

Site Description

The site is located to the east of Woodyard Lane in Foston, a short distance to the north of the A50 and its junction at Dove Valley Park. It is bounded to the north, east and south by manufacturing and warehousing premises, including those at Dove Valley Park. Large industrial units occupied by JCB lie immediately to the east, and the FUTABA distribution centre is to the north. Smaller office units are located to the south of the site along with the LCS container storage yard which falls within applicant's wider ownership. To the west of Woodyard Lane lies a traveller site and a number of other business uses, including offices and storage and distribution.

A residential property is located opposite the site entrance, although it is understood this has been unoccupied for a significant period of time. An animal rendering plant is located to the north west of the site.

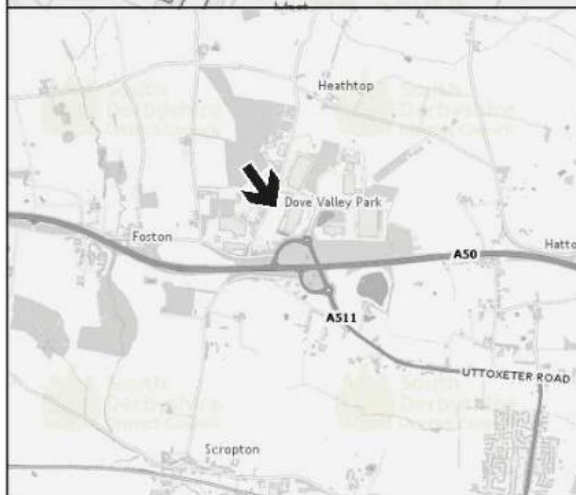
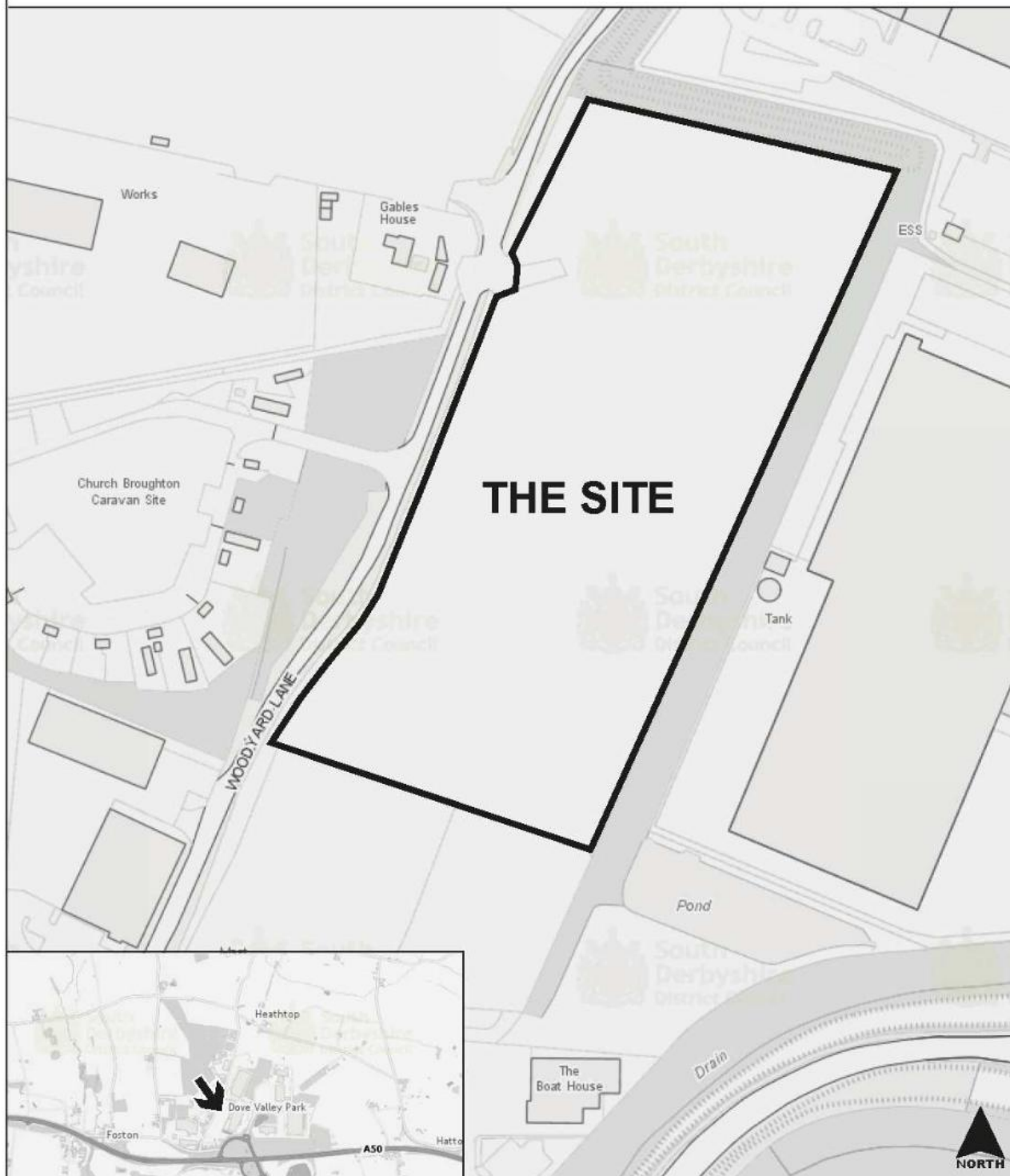
The site was formerly used as an intensive pig unit together with two 3-bedroomed detached residential properties used by agricultural workers. The agricultural buildings have been demolished and the site was cleared in 2019. There is access to the applicant's wider ownership through a separate access to the southern boundary of the site, although the main access is to Woodyard Lane itself. The site is bounded by 2.4m high chain link fencing and double chain link gates to the entrance with Woodyard Lane. The western boundary with the Lane has a mature hedgerow, although of poor quality. To the north is a landscaped bund which forms part of the industrial park landscaping.

The site is in the countryside, although adjoining allocated employment areas, and is not subject to any specific heritage or ecological designations, although the Conygreave & Rough Woods ancient woodland lies beyond development on the northwest of Woodyard Lane. The site is located within a Flood Zone 1 area and therefore considered not to be at risk from fluvial flooding.

The proposal

The removal of condition no. 15 of permission ref. 9/2018/1375 (relating to footway link) for the change of use from agricultural land to storage and distribution use (use class B8).

DMPA/2020/1117 - Former Midland Pig Producers, Woodyard Lane, Foston, Derby DE65 5DJ



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Applicant's supporting information

The Supporting Statement considers that condition 15 is no longer necessary, relevant or reasonable and should be removed. The reason for the condition was to ensure safe and suitable access for all users and in the interests of encouraging sustainable modes of transport. This was based on the site having a pedestrian access to the south of the site however, this link is no longer available. Whilst the use will still fall under B8 it was uncertain how the site would be used by a future occupier and there was previously a footpath link down the eastern edge of the site which would link to the proposed footpath. This is no longer available and there is a gateway restricting access which the new owners of the site have no control over. Therefore, the condition considered to be no longer relevant to the proposed use of the site as the employees would not use the footpath given the rural location and would not be able to safely access it.

The condition is considered to place unjustifiable and disproportionate burden on the owner of the site when it is no longer necessary for the footpath and the staff on the site cannot gain access to it, therefore it fails the test of reasonableness. The Planning Practice Guidance sets out that it is important to ensure that conditions are tailored to tackle specific problems. Whilst at the time of granting the planning application it seemed reasonable to add the condition because access could be safely achieved by pedestrians down the adjacent site this is no longer the case therefore, it no longer applies to the development and is unreasonable.

Relevant planning history

9/2017/0799: Outline application with all matters reserved for change from agricultural land to offices, general industrial and storage and distribution. Approved August 2018.

9/2018/1375: Change of use from agricultural use to B8 storage and warehouse. Approved Sept 2019.

Responses to consultations and publicity

The County Highway Authority had some initial concerns in terms of loss of the footpath and footway link through from the site to Uttoxeter Road but understand that the scheme as originally envisaged under the previous application is not now feasible to provide. On this basis, and through negotiations with the applicant it is agreed that condition 15 can be removed subject to a Unilateral Undertaking to secure funding to improve public transport facilities through the contributions agreed to provide a new bus stop on Uttoxeter Road close to the junction with Woodyard Lane.

The Environmental Health Officer has no objection to the removal of the condition.

Relevant policy, guidance and/or legislation

The relevant policies are:

- Local South Derbyshire Local Plan Part 1 2016 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S5 (Employment Land Need), S6 (Sustainable Access), E1 (Strategic Employment Land Allocation), E2 (Other Industrial and Business Development), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport).
- South Derbyshire Local Plan Part 2 2017 (LP2): SDT1 Settlement Boundaries and Development; BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

Planning considerations

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

- The effect of the proposal removal of condition 15 on the sustainability of the development.

It is considered that all other issues and conditions on the 2018 approval remain the same, and on this basis can be re-imposed in the event of an approval of this application.

Planning assessment

The effect of the proposal removal of condition 15 on the sustainability of the development

The requirement for a footpath link came from the initial assessment of the 2017 application for the mixed development at the site. The 2017 outline application detailed the access into the site from Woodyard Lane, but all other matters were reserved for further detailed assessment. The development was to comprise the following:

920sqm of B1 offices from the conversion of buildings on the site; 680sqm of B2 General Industry, and 5,6040sqm of B8 Storage and Distribution.

Woodyard Lane does not have a footpath along it, and the site boundary extended south just to the north of a private access into the Tomlinson Business Park. The applicants had an rear access route which could be used by future employees at the site to walk to the bus stops on Uttoxeter Road. The Highway Authority identified a desire to provide a link on Highway Land from Tomlinson Business Park to Uttoxeter Road and requested the imposition of the condition to improve pedestrian links with local bus services.

The 2018 application for demolition of the existing buildings and use of the site just for B8 storage, identified that the access from Woodyard Lane remained the same. The Highway Authority considered at the time that the highway issues were the same and the same conditions remained applicable to this application and requested their re-imposition.

The site area for the 2018 application was slightly smaller and did not include a piece of land between the current site and the private access track to the north of Tomlinson Business Park, but did allow for a pedestrian link along the eastern boundary of the site to link with a private track which led onto Woodyard Lane. The applicant has stated that the land that was on the eastern side of the site onto the private track is no longer available to the Portable Storage Unit company (current applicants). They state that the number of employees on the site is approximately 17 and that the existing bus routes and facilities would not be suitable for future employees as they are in work earlier than the buses run.

The Highway Authority were reluctant to see the removal of the footpath link as this would reduce the sustainability of the development. Discussions and negotiations took place with the applicants to see if there was an alternative solution available where they don't have to provide the footpath link via condition 15.

It was suggested that a compromise would be to look at providing a contribution in lieu of the footpath which could support an improvement to local bus services and bring a bus stop closer to the application site to reduce the travel times to any future employees at the site.

The Highway Authority consider that there is the opportunity to look at securing a new bus stop closer

to Woodyard Lane than the existing bus stop near Hay Lane. It was not considered reasonable or appropriate to look at securing a new footway all the way along Woodyard Lane to the site entrance.

The new bus stop would provide a more tangible and immediate benefit for future employees at the site. The cost for this would be in the region of £10,500 including traffic management costs.

It is therefore concluded that on this basis, condition 15 can be agreed to be removed and through the submitted Unilateral Undertaking, a contribution in lieu be made to secure public transport improvements which would be commensurate to the development proposed and would also have some wider public sustainability benefits.

As this application is for the removal of condition 15 only from the 2018 permission, it is recommended that all other conditions from that application be re-imposed to this new decision. The time period for implementation remains as per the original 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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

A. Authorise the Head of Planning and Strategic Housing to complete a Unilateral Undertaking under Section 106 of the 1990 Act in line with that described above;

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

1. The development permitted shall be begun before the expiration of three years from the 4th September 2019.

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

2. The development hereby permitted shall be carried out in accordance with the following:-

Drawing ref. 20181211-003C, received on 13 March 2019 on 9/2018/1375;
Location Plan drawing No. 127502-01 received 15th October 2020;
Supplementary Statement received 15th October 2020; and
Unilateral Undertaking received 15th February 2021.

unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. The development shall be carried out in strict accordance with Bat Mitigation Strategy detailed in section 5 of the Bat Survey report prepared by Quants Environmental dated July 2019 submitted under application 9/2018/1375, and the conditions of the requisite Natural England Licence, a copy of which shall be submitted to the local planning authority once issued.

Reason: To protect the interests of protected species in the interests of the biodiversity of the site.

4. The development shall be carried out in strict accordance with the house martin mitigation and compensation recommendations included in section 4.3.2 of the Bat Survey Report prepared by Quants Environmental dated July 2019.

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

5. No development other than the demolition of the existing buildings shall commence until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the local planning authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The approved scheme of protection shall be implemented prior to any other works commencing on site and thereafter retained throughout the construction period.

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

6. No development other than demolition of existing buildings shall commence until space has been provided within the site for storage of plant and materials, site accommodation, loading, unloading, manoeuvring and cleaning of wheels of goods/construction vehicles, and parking and manoeuvring of employees and visitors vehicles, with this space laid out in accordance with a scheme first submitted to and approved in writing by the local planning authority. Once implemented, the approved facilities shall be retained free from any impediment to their designated use throughout the construction period. All construction vehicles shall have their wheels cleaned on a hard surface before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.

Reason: In the interests of highway safety, acknowledging that construction traffic will create impacts on highway safety on commencement of development.

7. The existing accesses shall be retained available for use by construction traffic throughout the construction period.

Reason: In the interests of highway safety.

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

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

9. Prior to any works to construct a hard surface, setting of site levels or installation of services/utilities, a detailed assessment to demonstrate that the proposed destination for surface water accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) shall be submitted to and approved in writing by the local planning authority. The assessment shall demonstrate, with appropriate evidence including porosity testing, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:
 - i) into the ground (infiltration);
 - ii) to a surface water body;
 - iii) to a surface water sewer, highway drain, or another surface water drainage system;
 - iv) to a combined sewer.

Reason: To ensure that surface water from the development can be directed towards the most appropriate waterbody in terms of flood risk and practicality, noting that certain works may compromise the ability to subsequently achieve this objective.

10. No construction of a hard surface, setting of site levels or installation of services/utilities shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
 - a) the Flood Risk Assessment by Infrastructure Planning and Design Ltd (Report No. R-001, FINAL status, Issue B, July 2019) including any subsequent amendments or updates to those documents as approved by the lead local flood authority; and
 - b) DEFRA's non-statutory technical standards for sustainable drainage systems (March 2015); has been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site, making allowance for climate change and urban creep, and where necessary include measures to capture overland flows between proposed and existing properties. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of the site or in accordance with a phasing plan first submitted to and approved in writing by the local planning authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

Reason: To ensure that the principles of sustainable drainage can be incorporated into the development, noting that initial preparatory and/or construction works may compromise the ability to mitigate harmful impacts.

11. Upon completion of the surface water drainage system, including any attenuation ponds and swales, and prior to their adoption by a statutory undertaker or management company; a survey and report from an independent surveyor shall be submitted to and approved in writing by the local planning authority. The survey and report shall demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 20. Where necessary, details of corrective works to be carried out along with a timetable for their completion, shall be included for approval in writing by the local planning authority. Any corrective works required shall be carried out in accordance with the approved timetable and subsequently re-surveyed by an independent surveyor, with their findings submitted to and approved in writing by the local planning authority.

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

12. Prior to the development being taken into use, the existing northern access to the site shall be provided in accordance with the drawing ref. IPD-16-370-111 Rev G (contained at Appendix A of the submitted Transport Assessment on application 9/2018/1375) and be provided with a minimum width of 7.3m, 10m kerbed radii and visibility sightlines of 4.5m x 57m, the area forward of which shall be cleared and maintained in perpetuity clear of any obstructions exceeding 600mm in height relative to the nearside carriageway edge.

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

13. The existing southern access to the site shall be used for pedestrian access only unless and until the junction with Woodyard Lane is provided with a minimum width of 7.3m, 10m kerbed radii and visibility sightlines of 4.5m x 120m, the area forward of which shall be cleared and maintained in perpetuity clear of any obstructions exceeding 600mm in height relative to the nearside carriageway edge, details of which shall be first submitted to and approved in writing by the local planning authority.

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

14. Any gates shall be set back at least 10 metres into the site from the highway boundary.

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

15. Prior to the installation of any lighting details of a scheme for external lighting shall be submitted to and approved in writing by the local planning authority. No external lighting other than as approved shall be installed without the prior written approval of the local planning authority upon an application made in that regard.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties and to minimise sky glow.

16. Prior to the laying of hard surfaces or creation of bunds, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. All hard landscaping shall be carried out in accordance with the approved details prior to the first use of the site, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation/use of the site or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the local planning authority gives written consent to any variation.

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

17. The storage use hereby permitted shall not take place other than between 0700 hours and 2000 hours Mondays to Saturdays, with no deliveries other than between 0700 hours and 1900 hours weekdays and 0800 and 1300 hours on Saturdays. The use hereby permitted shall not take place whatsoever on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

Informatives:

- a. 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.
- b. The hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact Natural England: 0300 060 3900.
- c. The County Flood Risk Team advises: - Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of

treatment stages. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system. - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance. - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern. - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.

- Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface water disposal in areas where geohazards or ground instability are deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.

- d. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- e. Any watercourses, attenuation pond(s) and/or swale(s) which might need to be delivered on site to satisfy conditions should be designed to accord with health and safety guidance as set out in the CIRIA SuDS Manual 2015 (C753) or guidance that may update or replace it, and to meet the requirements of the Construction (Design and Management) Regulations (CDM) 2015 through assessing all foreseeable risks during design, construction and maintenance of the pond, minimising them through an 'avoid, reduce and mitigate residual risks' approach.
- f. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email Highways.Hub@derbyshire.gov.uk or telephone 01629 533190.
- g. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- h. This permission is the subject of a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990.

2. Planning and other Appeals

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

Reference	Place	Ward	Outcome	Decision level
<u>DMPA/2020/0311</u>	Weston Road, Weston on Trent	Aston	Dismissed	Delegated
<u>DMPA/2020/0512</u>	Thompson Close, Mickleover	Etwall	Dismissed	Delegated
<u>DMPA/2020/0987</u>	61 Bretby Hollow	Newhall and Stanton	Dismissed	Committee

Appeal Decision

Hearing Held on 16 March 2021

Site visit made on 17 March 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/F1040/W/20/3261872

Land to the west of Weston Road, Weston On Trent, Derby DE72 2BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ilke Homes against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/0311, dated 16 March 2020, was refused by notice dated 17 July 2020.
 - The development proposed is an outline application including access from Weston Road with all other matters reserved for up to 28 no. dwellings; public open space and associated works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, I have used the name of the appellant given on the appeal form, as confirmation of the correct name was received from the appellant at the Hearing.
3. Outline planning permission is sought, with all detailed matters reserved for future consideration, except for access. Plans showing possible layout, scale, appearance and landscaping and other supporting technical information have been submitted. However, given that these would largely be addressed at reserved matters, I have treated the plans solely as an indication of how the site might be developed and to which I have regard but only as a material consideration. I have determined the appeal on the basis of the drawings listed in the Statement of Common Ground¹ (SoCG).
4. The appeal is also supported by a section 106 planning obligation, dated 4 March 2021, which would secure open space and recreation provision, a financial education contribution and 9no. affordable units.
5. Following discussions with the main parties at the Hearing, I undertook an extensive unaccompanied visit to Weston On Trent, informed by key site references provided by the Council and appellant. The visit included not just immediate observations of the appeal site itself, but reference to much wider surrounding views and other relevant matters.

¹ Section 2.0 of the SoCG dated 10 March 2021

Main Issues

6. The main issues of this appeal are the effect of the proposed development on:
- i. whether the site is an appropriate location for housing, having particular regard to the effect of safeguarding the countryside and ensuring a viable and sustainable pattern of settlements;
 - ii. the character and appearance of the appeal site and surrounding area; and,
 - iii. the availability of best and most versatile agricultural land.

Reasons

7. The site comprises an irregular parcel of undeveloped land, located off Weston Road, extending approximately to 1.17ha in area, comprising Grade 3a agricultural land. The site is located within Flood Zone One and is at a low risk of fluvial flooding, with a less than 0.1% annual chance of flooding from rivers or the sea.

Location of development

8. It is common ground between the parties that the appeal site is outside of any defined settlement boundary, albeit adjacent, and is therefore located within the open countryside. The Council's sustainable growth strategy is set out in Policy S1 of the South Derbyshire Local Plan Part 1, 2016 (LP1). It seeks to ensure that economic, social and environmental objectives are fully addressed including, amongst other things, that the District's landscape and rural character are protected, conserved and enhanced. This is consistent with the sustainability requirements of the National Planning Policy Framework (the Framework). The Framework further recognises that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside².
9. LP1 Policy S2 seeks to reflect the presumption in favour of sustainable development as required by the Framework and LP1 Policy S4 outlines the Council's strategy for housing and its commitment to maintaining a deliverable 5-year housing land supply. LP1 Policy H1 sets out a 'Settlement Hierarchy' and identifies Weston On Trent as a Local Service Village where sites adjacent to the settlement boundary may be considered appropriate as exceptions or cross subsidy sites. Policy SDT1 of the South Derbyshire Local Plan Part 2, 2017 (LP2) confirms amongst other things that outside settlement boundaries, development will be limited to that considered acceptable by LP2 Policy BNE5, which in turn states planning permission will be granted where development is allowed for by a specific list of Policies, one of which is LP1 Policy H1. The proposed development does not comply with any of the criteria listed.
10. I acknowledge the location of the site next to the settlement boundary, which means it is not isolated in terms of the definition within the Framework³. However, this does not outweigh the conflict that I have found in relation to the development plan. I have also been provided with a list of facilities in Weston On Trent including a primary school, church, public house, a village hall and play area, and a regular bus service to Derby and Chellaston School. Whilst

² Paragraph 170

³ Paragraph 79

shops and services could be accessed at Aston On Trent through walking and cycling, it is likely that there would be some reliance on a private motor vehicle to meet day to day needs. This issue surrounding the proposed development and its location outside the settlement boundary raises further concerns to the sustainability of the site.

11. For the above reasons, I conclude that the proposed development would create significant harm as the site does not constitute an appropriate location for housing, having particular regard to safeguarding the countryside and ensuring a viable and sustainable pattern of settlements. Therefore, the scheme conflicts with the strategic housing aims of LP1 Policies S1, S2, S4, H1, LP2 Policies SDT1, BNE5 and the requirements of the Framework.

Character and appearance

12. The appeal site is an agricultural field that lies beyond the settlement boundary of Weston On Trent, which lies between the main settlement and a number of dwellings, located further along Weston Road outside the settlement boundary. This ribbon development is referred to as the 'satellite area of development' (the satellite) by both main parties in their submissions and at the Hearing. The topography of the site gently slopes away from the road, where majority of its boundaries are defined by mature hedgerows and trees. The site forms part of wider national, regional and county level landscape areas.
13. Weston On Trent is identified in National Character Area 69 (Trent Valley Washlands), which constitutes a distinct, broad, linear band of pastoral and arable land, intermixed with urban development, transport routes and localised mineral extraction. At regional level the site is located within Group 5: Village Farmlands, where it notes modern development on the fringes of villages is particularly notable and to protect the character of villages and consider the visual impact of any new development. At county level the site occupies a location within a Landscape Character Type defined as Lowland Village Farmlands (LVF).
14. A key feature of this landscape as defined in the County Council document 'The Landscape Character of Derbyshire' (The LCD) is its nucleated settlement pattern, with villages such as Weston On Trent located on relatively high spots for better drainage. Villages are traditionally compact with the enclosure pattern reflecting a diverse history, where the adjacent fields are medium in size, enclosed by species rich hedgerows. The LCD acknowledges that LVF has had much of its original landscape character impacted upon by modern large scale development, including power stations and the associated pylons. The LCD does not consider the site specifically but defines the wider landscape of which it forms a part.
15. I have carefully considered the Appellant's Landscape Visual Appraisal (LVA), which was also discussed in detail at the Hearing. I note the site is not a valued landscape, as expressed in Paragraph 170 a) of the Framework or that the site also is not rare in the sense that it is typical of agricultural fields in the area. Notwithstanding this, the site has landscape value. It plays a role in providing physical and visual separation between the main settlement and the satellite, therefore retaining their distinct characteristics, settings, and the rurality of Weston On Trent.

16. The introduction of up to 28no. dwellings to the site would represent a substantial character change, mostly associated with the resulting presence of buildings and the wider urbanisation of the site, including the provision of a vehicular access onto Weston Road. At 24no. dwellings per hectare, I accept that the proposal does not represent a particularly dense form of development and that a character change is also an expected consequence of most greenfield development.
17. I viewed the site from the majority of the locations identified in the LVA and am satisfied that I saw everything I need to assess the impact of the development. There was agreement at the Hearing between the main parties that the effects of the proposed development would be generally limited to closer views, particularly along Weston Road and longer views would generally be restricted by the surrounding relatively flat topography and its features. Following my site visit, I agree with this observation.
18. I note the location of the site adjacent to the settlement boundary, which would avoid a notable detachment from the existing main settlement. Nevertheless, the site still forms part of a wider rural landscape of open countryside, making a positive contribution to it. I note the conclusions of the LVA, but I consider that the proposed development would result in visual harm to the character and appearance of the appeal site and surrounding area. Therefore, I am unable to share all of the main findings of the appellant's detailed LVA. Whilst illustrative, the appellant has provided details of green space within the site and additional planting has been suggested, this would not provide suitable or sufficient mitigation to counteract the harm created by the residential development on this site or compensate for the sites existing positive contribution to character and appearance.
19. Although the proposal is for outline permission only, the effect of erecting up to 28no. dwellings on this site, and the associated domestic paraphernalia, that would be associated with a residential development can still be determined. I find that there are misgivings in the illustrative drawings surrounding the potential house designs and layout and consider them to be too urban in appearance for this location. However, as matters such as layout and appearance are for future consideration, I am satisfied that a more appropriate and locally distinctive scheme could be produced through a reserved matters submission, avoiding such an issue. Nonetheless, the site's existing connection to surrounding fields and countryside means it has value in terms of its contribution to the overall landscape and scenic beauty of the area. This would be significantly eroded as a result of any form of residential development. Even though these effects would be relatively localised, there would still be an unacceptable adverse impact.
20. For the above reasons, I conclude that the proposed development would significantly harm the character and appearance of the appeal site and surrounding area. Therefore, the scheme conflicts with the character and appearance aims of LP1 Policies S1, BNE4, LP2 Policy BNE5 and the requirements of the Framework.
21. The Council has cited LP1 Policy BNE1, the Design Guide Supplementary Planning Document 2017 and the National Design Guide on its decision notice. However, as matters of design are not for consideration on this appeal, I find

that the above policy and documents are not directly applicable to the case before me.

Best and most versatile land

22. The Framework requires decisions to contribute to and enhance the natural and local environment by recognising the economic and other benefits of the best and most versatile agricultural land, which is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification. It is common ground between the main parties that the site comprises grade 3a quality land.
23. As such there would be a loss of what is considered to be best and most versatile land, albeit at the lower end of the classification. The appellant has drawn my attention towards an appeal decision⁴ in support of their case and has quoted guidance from Natural England. I recognise that the area of the site in the referenced decision is larger than the site area of case before me and that the site, in the context of the wider District, would likely represent a small proportion of the available best and most versatile land.
24. The Framework does not define what "significant" development might comprise. Therefore, having regard to the amount and quality of the land in question and the relative scarcity of such land as a national resource, I consider that whilst there would be harm from the loss of land from agricultural production as a result of the proposed development, it would not be significant in the context of the wider District. Nonetheless, the proposed development would still result in a further erosion of the best and most versatile land, conflicting with the requirements of the Framework, weighing against the proposed development in the planning balance. Additionally, I note the comments from an interested party, disputing the level of agricultural activity on the land.
25. For the above reasons, the proposed development would moderately harm the availability of best and most versatile agricultural land. Therefore, the scheme conflicts with the agricultural and economic aims of LP2 Policies BNE4, BNE5 and the requirements of the Framework.

Other Matters

Housing land supply

26. The Council during the assessment of the application and subsequently at appeal, considered a variety of documents, reports, appeal decisions and calculations all relating to housing land supply. The details provided often relate to the relevant situation at that time and the information has been revised in subsequent documents to take into account of more recent data and revised guidance, particularly in light of the current pandemic.
27. The Council have provided a variety of figures relating to its 5-year housing land supply. A set of figures relating to the calculations derived from the Standard Method (SM) have been provided by the Council. However, the Council have confirmed that they will not be using this method of calculation until later this year and both main parties agree that the Council's Local Plan Part 1 is up-to-date until 13 June 2021. Thus, in this instance, the SM figures have little consequence for this appeal. Additionally, the Council have provided

⁴ APP/D0121/W/15/313963

a further 2no. sets of figures arrived from base dates of April 2020 and April 2021. It is agreed by the main parties that the figures using April 2021⁵ involve some assumptions.

28. Whilst I acknowledge that the Council have had a track record of underestimating its figures in recent years and the base date from 2021 represents the most up-to-date assessment, I cannot be certain on this occasion that this would still be the case, especially given the unprecedented situation surrounding the pandemic. Therefore, I consider in this instance that the 5-year housing land supply figure produced from the April 2020 base date is more reliable, as it is derived from more accurate data. Thus, for the benefit of this appeal, I acknowledge that the Council considers that it has a housing land supply of 5.33 years, which equates to a supply of 4610 dwellings, above a requirement of 4325 dwellings. In reaching this figure the Council has removed 266 dwellings from its calculation, although the appellant considers that a further 72 dwellings should be removed from the Woodville Regeneration Area (E6).
29. There are sites which the Council have identified for the 5-year period from 1 April 2020 that are accepted as being deliverable by the appellant. However, there is a dispute about whether there is clear evidence regarding the deliverability of a number of sites which are mainly allocations or have an outline permission. The appellant believes the housing land supply position to be lower at 4.56 years, as some 665 dwellings are not considered deliverable. Accordingly, it is necessary to examine whether the Council can demonstrate a 5-year housing land supply.
30. The Framework states that where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. Further guidance is provided on what constitutes a deliverable housing site in the Planning Practice Guidance⁶. Both main parties have submitted information on a list of individual sites that are in dispute, and I heard evidence on these at the Hearing.
31. It was agreed at the Hearing that the appellant's latest submission⁷ would be used as a starting point for discussions on this matter, thus ensuring that the Council could provide oral comments. Within this submission, a breakdown of the disputed sites is presented⁸, showing clearly the areas of dispute between the appellant and the Council. I have carefully considered the appellant's comments and concerns with each site in dispute and that it is argued, amongst other issues raised, that for many sites at 1 April 2020 there was no or insufficient clear evidence to meet the definition of a deliverable site.
32. The evidence indicates that the Council has reduced its calculations of housing land supply to reflect the definition of a deliverable site in the Framework, and the Council has also been collecting data from site owners, including expected annual construction rates through pro-formas, in addition to visiting construction sites. Upon examining the sites in dispute, I consider that there is,

⁵ Housing Position Paper January 2021

⁶ Paragraph 007 Reference ID:68-007-20190722

⁷ Response to Further Housing Land Supply Evidence dated March 2021

⁸ Table A1; Amended disputed sites trajectory – Base date 1st April 2020

in the majority of these cases, sufficient clear evidence to determine that they meet the realistic prospect of being delivered as specified in the definition.

33. The site at Boulton Moor, Elvaston Phase 3 (H13) has an outline planning application that was granted on 9 July 2020. However, it has conditions imposed on it to aid development on the site at the earliest opportunity, including approval of the first reserved matters application to be approved within two years of the date of outline consent and then for development to commence within one year of the subsequent approval (my emphasis). In respect of Wragley Way Phase 1 and Jacksons Lane, Etwall (E23 B), I note the oral confirmation from the Council to the submission of the reserved matters applications on 3 March 2021. The site at Land West of Mickleover, Phase 3b (H19) I note a further application to amend a condition on the original permission limiting housing delivery has been submitted and that only minor technicalities surround the deed of variation on the planning obligation. I also recognise the wider construction works on phases 1, 2 and 3a that are being undertaken. In the case of all of the above sites, there is sufficient certainty that they meet the definition of being deliverable.
34. In respect of Land to north of William Nadin Way/ West of Depot, Swadlincote Site A (H2), the appellant's agent confirms there is no housebuilder present, as that they represent the landowner on this development. I accept that given this update there is an inability to predict when a reserved matters application would be submitted, amongst other potential delays. Although the site benefits from a Housing Trajectory prepared by Barton Willmore, the site at Boulton Moor, Elvaston, Phase 3 (H13) has no permission, and no developer involvement is noted. Although I do recognise that it is part of the wider development already under construction. Wragley Way Phase 2 (H15) still requires work to be done to satisfy Highways England, with little detail on progress. The Woodville Regeneration Area (E6) has an outline planning application pending subject to minor technicalities on a planning obligation, which I accept should result in its trajectory being pushed back by a year. In the case of all of the above sites, there is insufficient certainty that they meet the definition of being deliverable. Thus, I find that 205 dwellings should be removed from the Council's 5-year housing land supply, resulting in a deliverable supply of 4405 homes.
35. The appellant has referenced the delivery rates on a couple of sites, but has only raised issues that would have implications on the overall number of dwellings delivered in respect of Land to north of William Nadin Way/West of Depot, Swadlincote (Burton Road, Stanton) (H2) Site C. The appellant is disputing the higher rate of dwellings to be delivered from 2021/22. However, taking the 2020 measurement on the Housing Delivery Test, which indicates that the Council has achieved a sizeable delivery rate of 167%, I find it highly likely that the rates suggested by the Council could be achieved and are realistic. In reaching this view, I have also taken into account the delivery rate for the above site in 2020/21 and the associated conditions of the pandemic.
36. It is accepted by both main parties that a lower rate should be applied to 2020/21 due to the pandemic. However, the appellant is suggesting that additional reductions should be applied to 2021/22 resulting in a total additional reduction of 169 dwellings. I consider that whilst the pandemic has had a significant effect on construction sites through them being shut down during the first lockdown in 2020, this was only for a relatively short period

from the end of March until early May. Since this time, construction sites have re-opened, with measures such as social distancing being implemented. Additionally, there is clear support from Central Government in keeping the construction industry in operation. Although, I accept that the longer term effects of the pandemic are generally unknown at this time, I cannot be certain that there is sufficient justification to include further reductions, over and above those already included by the Council in its calculations.

37. The appellant has drawn attention to a Judgement⁹, which I have noted. A number of previous appeal decisions¹⁰ have also been provided in their submission that include housing land supply, the pandemic and other issues, which I have had regard to, as material considerations in the determination of this appeal. Nonetheless, whilst there are some similarities between these schemes and the case before me, I do not consider them to be directly comparable, as they are in different parts of the country and involve varying amounts of development, amongst other things. Therefore, I conclude that the decisions illustrate that every proposal has to be considered on its own particular merits. Accordingly, I find little within these cases which would lead me to alter my conclusions in this case.
38. I appreciate that there will always be a degree of uncertainty over forecasts of housing delivery, and even more uncertainty due to the pandemic. Although I have found some of the disputed sites to not be deliverable, I consider the evidence presented by the Council is well researched and reasonable in most of its assumptions it makes on housing delivery. Based on all the information before me at the present time, I conclude that sufficient sites have clear evidence to demonstrate that there would be a realistic prospect of the housing being delivered within the 5-year period as specified and that a Framework compliant 5-year housing land supply can be demonstrated.

Heritage

39. Whilst not cited on the Council's decision notice, I am informed that the site is potentially within influencing distance of Weston Hall, which is Grade II* listed and the Trent and Mersey Canal Conservation Area. I am required under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the desirability of preserving or enhancing a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, whilst Section 72(1) of the Act sets out that in the exercise of planning functions that requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area, this statutory duty does not extend to the setting of a conservation area. I agree with the Council's observations on this matter, but as I am dismissing the appeal, it is not necessary to consider effects on the heritage assets any further.

⁹ East Northants Council v Secretary of State for Housing Communities and Local Government and Lourett Developments Ltd

¹⁰ APP/X0360/W/19/3238048; APP/E5900/W/19/3225474; APP/A1530/W/19/3223010; APP/T2350/W/19/3221189; APP/R3650/W/18/3211033; APP/F1610/W/18/3217856; APP/N1730/W/18/3204011; APP/R3650/W/17/3171409; APP/D0840/W/17/3184721; APP/J2210/W/18/3216104 and APP/Y0435/W/18/3214365.

Planning Balance

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
41. I have found that the local planning authority can demonstrate a 5-year supply of deliverable housing sites and therefore the policies concerning the strategy for delivering housing, particularly LP1 Policies S1 and H1 are up-to-date.
42. The provision of what is likely to be family homes would generate notable additional social benefits, of which, 9no. would be affordable units. In addition, there would be notable economic benefits for the locality, both during construction and occupation of the dwellings. Additionally, a financial contribution to education and open space and recreation provision would be secured through the planning obligation.
43. However, given my findings on the main issues, the proposed development would result in significant harm to the Council's housing strategy, to the character and appearance of the appeal site and the surrounding area. There would also be moderate harm to the availability of the best and most versatile agricultural land.
44. Whilst I acknowledge the factors in favour of the proposed development, those considerations do not outweigh or overcome the harm that I have identified on the main issues. Consequently, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a decision other than in accordance with the development plan would be justified.

Conclusion

45. Taking all matters into consideration, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Emily Christie (Appellant)

Jonathan Coombs (Agent) Pegasus Planning Group

Matthew Good (Agent) Pegasus Planning Group

James Atkin (Agent) Pegasus Planning Group

FOR THE LOCAL PLANNING AUTHORITY:

Richard Stewart South Derbyshire District Council

Richard Groves South Derbyshire District Council

Mary McGuire South Derbyshire District Council

Anton Cannell South Derbyshire District Council

INTERESTED PERSONS:

Peter Watson Local Councillor

Derek Hobbs Local Resident

Chris Dodds (observer) Planning Prospects

DOCUMENTS SUBMITTED AT THE HEARING:

- 1) Listing description for Weston Hall (Grade II*)
- 2) Trent and Mersey Canal Conservation Area Character Statement 2014
- 3) Letter from Derek Hobbs, dated 13 March 2021 (provided by the Council)



Appeal Decision

Site visit made on 26 January 2021 by Darren Ellis MPlan

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/F1040/W/20/3261402

24 Thompson Close, Mickleover, Derby, DE3 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Emma Mari against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2020/0512, dated 14 April 2020, was refused by notice dated 24 August 2020.
 - The development is described as an alteration to existing fence to include part of side garden. Proposing to erect standard fence, with hedges/planting to screen.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons for the Recommendation

4. The appeal site comprises a detached dwelling on a corner plot on the end of Thompson Close, with the side boundary adjacent to a public footpath. The street is part of a recently built housing estate that consists of predominantly detached dwellings that area set back from the highway with front gardens. Most of the front boundaries have a low wooden barrier while some properties have no physical boundary at all. There are a few properties, including the appeal property, where taller fences that enclose the rear gardens are visible from the street. However these fences generally follow the building lines of the adjacent properties, such that they do not project into the gardens and verges to the front and side. Overall, the estate has an open, green and pleasant appearance and character and the carefully planned arrangement of front and rear boundaries contributes to that pattern of development.
 5. Policy BNE1 of the South Derbyshire Local Plan Part 1 (2016) (LPP1) requires development to respond to the local context and Policy H27 of the South Derbyshire Local Plan Part 2 (2017) (LPP2) requires householder development
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to not be unduly detrimental to the general character and appearance of the area. The supporting text to Policy H27 goes on to say that while the erection of boundary treatments can provide privacy to residential amenity space, open spaces within residential developments that positively contribute to the street scene or overall setting of such areas should be maintained, where enclosing those spaces could unduly impact on the open character of the area. This is supported by guidance on page 54 of the South Derbyshire Design Guide Supplementary Planning Document (2017) (SPD), which recommends 'that rear garden boundaries that are exposed to public view (e.g. at the side of a property adjacent to the street) do not sit forward of the building line', in order to preserve the character of the street scene.

6. The proposed fence would project to the side of the property and would be set in approximately 0.5m from the boundary adjacent to the public footpath. Consequently, it would be well forward of the building line and would significantly reduce the existing open space to the side of the property. In this case the height and extent of the fence would fail to retain the open appearance and character of the street, and the fence would be an obtrusive feature in the street scene at a prominent point on the corner of the Close, adjacent to the footpath.
7. The appellant states that a hedge would be planted in between the fence and the highway to screen the fence. However, the hedge would take some time to become established and to provide sufficient screening, and a hedge could be cut down or removed at any time. As such a hedge would not comprise a permanent screen for the fence. In any event, the combination of a hedge and fence would enclose the space and detract from the deliberately planned open character to the side of the property which forms part of the wider character of the estate. Consequently, the suggestion does not overcome my concerns in that regard.
8. For the reasons given above, the proposed fence would cause significant harm to the appearance and character of the area. The proposal would therefore conflict with LPP1 Policy BNE1, LPP2 Policy H27 and the guidance in the SPD.

Other Matters

9. Whilst the fence would provide additional privacy to the side facing windows, those windows are set back from the edge of the pavement to maintain adequate levels of privacy and it is not unusual for ground floor living rooms to be visible from the public realm. The private garden and the area to the rear is already screened by existing fencing.
10. I recognise the desire for added security but the side of the property is visible in the public realm and benefits from good levels of natural surveillance. There is little evidence that enclosing the space would enhance security and any would be intruders would be less conspicuous in the space to the side and rear of the property once the enclosure had been scaled. The proposal would also narrow the path at the side of the dwelling at a pinch point on the corner reducing visibility for passers-by as they travel round the corner and reducing surveillance from the dwelling onto the footpath, making it less attractive to potential users. Accordingly, I am not satisfied that the proposal would result in any notable benefit in terms of security and reduction of crime.

11. I note the appellant's concerns regarding the advice previously received by Bloor Homes with regard to the proposed fence. However, this is a matter that would need to be taken up with Bloor Homes in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.
12. The effect of a proposal on property values is not a material planning consideration.
13. For the reasons given above and having had regard to all other matters raised, including the letters of support for the proposal, I recommend that the appeal should be dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, agree with the recommendation and shall dismiss the appeal.

Chris Preston

INSPECTOR



Appeal Decision

Site visit made on 16 March 2021

by R Walmsley BSc MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th March 2021

Appeal Ref: APP/TPO/F1040/8246

61 Bretby Hollow, Newhall, Swadlincote, Derbyshire DE11 0UE

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
 - The appeal is made by Mr Dave Barratt against South Derbyshire District Council.
 - The application Ref: DMOT/2020/0987 is dated 11 September 2020, refused by notice dated 18 November 2020.
 - The work proposed is to fell 1no. Sycamore tree.
 - The relevant Tree Preservation Order (TPO) is South Derbyshire District (Land to the rear of Thorntree Lane, Newhall), Tree Preservation Order No.130 (1995) which was confirmed on 4 January 1996.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - (i) the effect of the proposed works on the character and appearance of the area, and;
 - (ii) whether sufficient justification exists for the works proposed.

Reasons

Character and appearance

3. The sycamore tree is one of several trees that provide a pleasing verdant backdrop to surrounding houses. Owing to the height and maturity of the tree it is visually prominent and therefore contributes positively to the character of the area. Because of the tree's stature, felling it would result in a noticeable loss of vegetation which would have an adverse effect on the character and appearance of the area.

Justification for the works

4. Previous work to the tree has created some imbalance in the shape of the crown and has created cavities. However, these matters in themselves are not evidence of the tree being in poor health. There is nothing within the evidence before me and nor did I see anything on site to indicate that the tree was anything but structurally sound and healthy.

5. I have no doubt that the tree overshadows the appellant's garden and may overshadow the living areas of his property. However, the tree is not so close to the house that it obliterates light to the point that the living areas could be considered dark and gloomy and the garden unusable. Given the distance of the tree from the neighbouring properties, it would not have a discernible effect on the levels of light into these properties. The tree is not, therefore, harmful to living conditions.
6. It is a matter of opinion whether the tree has outgrown its location. There are parts of the garden available for use which are not directly beneath its canopy which suggests to me that the tree is not unduly large for its position. I appreciate that the tree will continue to grow. However, until such time when the tree is causing harm because of its size, felling it on these grounds is not justified.
7. Based on the reasons above, I have found no justification for the works proposed.

Conclusion

8. A balance must be made between the harm that would be caused to the amenity value of the tree if it was felled and the matters put forward by the appellant. Given the positive contribution the tree makes to the character and appearance of the area and the harm identified if it were to be felled, none of the factors submitted by the appellant, taken either singly or cumulatively, provide sufficient justification for its removal. Therefore, I dismiss the appeal.

R Walmsley

INSPECTOR