

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

**SECTION 1: Planning Applications**

**SECTION 2: Appeals**

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

-----

## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2015/1127	1.1	Church Gresley	Church Gresley	5
9/2016/0732	1.2	Newton Solney	Repton	20
9/2016/0655	1.3	Midway	Midway	29
9/2016/0744	1.4	Egginton	Etwall	33
9/2016/0947	1.5	Swadlincote	Swadlincote	38
9/2016/0946	1.6	Swadlincote	Swadlincote	42
9/2014/1216	2.1	Shardlow	Aston	45

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

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

**Item**                **1.1**

**Reg. No.**        **9/2015/1127/OM**

**Applicant:**  
**A Thompson & Mr M J Holland**  
**c/o 86 School Street**  
**Church Gresley**  
**Swadlincote**  
**DE11 9QZ**

**Agent:**  
**Mr Barry Singleton**  
**Gino Lombardo Associates**  
**45 Friar Gate**  
**Derby**  
**DE1 1DA**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 14 DWELLINGS AND CONSTRUCTION OF NEW ACCESS ROAD ON LAND TO THE REAR OF 30 & 32 COMMON SIDE CHURCH GRESLEY SWADLINCOTE**

**Ward:**            **Church Gresley**

**Valid Date:**        **18/12/2015**

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

This major application is brought before the Committee as it is a major application where more than two objections have been received.

#### **Site Description**

The 0.39 hectare site is located on Common Side, Church Gresley, opposite Maurice Lea Memorial Park on Common Road. The site is at the end of an unmade road with common land to the north and screened from Common Road by existing woodland on this land. It is located to the east of existing dwellings and appears overgrown and unmaintained, fronting onto a track linked to Robin Hood Place which is also Swadlincote Public Footpath 8.

A pair of semis are located in the north western corner of the site and the remaining site is overgrown garden area with trees and shrubs. Land levels slope down to the south east with a fall in level of approximately 3.5 metres. Existing residential development is adjacent to the west, a small scrapyard bounds the site to the east and the southernmost corner of the site is visible from Penkridge Road, part of the Thorpe Downs Road residential estate.

Six to eight metre high Silver Birch trees are adjacent to the south eastern and eastern boundaries and an individual Norway Spruce tree is opposite the front elevation of 30. These trees are in the process of being covered by a tree preservation order.

9/2015/1127 - 30/32 COMMON SIDE, CHURCH GRESLEY, DE11 9NN



## **Proposal**

Outline planning permission is sought for 14 dwellings with access to be agreed at this stage. All other matters such as appearance, landscaping, layout and scale would be considered at reserve matters stage. The proposal involves the demolition of No. 30 and 32 Common Side. The proposed access would be from Common side and would be located in the north western corner where No.32 is currently located. The access would link to a turning area and private drive for the properties. A 3-5m wide planting buffer is shown adjacent to the gable end and garden area of 34 Common Side. The indicative layout shows properties with front elevations adjacent to the northern and western boundaries with the garages and parking adjacent to the rear gardens. A 3m wide wildlife corridor is shown adjacent to the south eastern and eastern boundaries with the protected trees retained.

## **Applicants' supporting information**

The Design and Access Statement describes the site and its context. It outlines the pre-applications discussions and investigations such as highways, noise and ecology. General statements are made on design, layout, scale and landscaping.

The Arboricultural Survey Report and Method Statement outlines the general methodology employed and conformity with BS5837:2012. It categorises all trees on site and includes their RPA calculations. The majority of category B trees would be retained with the category C group on the Robin Hood Place frontage removed.

The Coal Mining Risk Assessment identifies the site as within a coal mining area where shallow coal and potential mineworkings exist beneath the site.

The Noise Impact Assessment relates to the adjacent scrapyard and noise surveys were undertaken. Consultation with both the occupiers of 30 & 32 Common Side (the nearest existing residential dwellings) and staff indicated that the scrap yard is generally quiet, except for occasional periods when scrap is moved by means of a mechanical grab. It is understood that there is no history of complaints associated with the business. Staff at the premises commented that the mechanical grab operates for a maximum of 30 minutes per day. Recommended noise mitigation is enhanced double glazing rated at least 38dB Rw and a 3.5m high acoustic fence on the boundary. This is considered adequate to provide a good level of amenity for future occupiers and would not unreasonably restrict the workings of the existing business.

Preliminary Ecological Appraisals dated October 2015, July 2016 and August 2016 were submitted. Protected species surveys have been carried out and have concluded that Great Crested Newts and reptiles are not considered to pose a constraint to development; however, other protected species require further surveys prior to any works on site.

## **Planning History**

None

## Responses to Consultations

The Highway Authority states that the development would be subject to the provisions of the Advanced Payments Code and confirm they have no intention of adopting any part of the development as publicly maintainable highway. They consider that the Local Authority should be satisfied that the applicant has (and subsequent future owners of the properties will have) a right of access to the site and that any necessary remedial works can be carried out to Common Side should they be necessary during/following construction works. The access to Common Road and parking and turning is acceptable and thus they do not consider that an objection to the proposal on highway safety grounds could be sustained. Conditions are recommended in respect of submission of a construction management statement, wheel washing, internal layout in accordance with the 6 C's guidance and parking for two vehicles per plot and informatives relating to adoption and the public right of way.

The Environmental Health Officer states that as a result of the submitted Noise Assessment and his discussions with the developer, he has agreed to the inclusion of a 3.5m boundary acoustic fence; a revision of the layout of the dwellings to increase the distance from the noise source; the installation of enhanced double glazing to all the new dwellings which offer an extra 8dBA of noise attenuation above standard double glazing. As such he considers the scheme to be acceptable and is satisfied that the mitigation recommended would minimise the adverse impacts on the amenity of future occupiers to an acceptable level and would not unreasonably restrict the existing business.

The County Education Authority advises that proposed development falls within, and directly relates to, the normal areas of Church Gresley Infant & Nursery School, Pennine Way Junior Academy and The Pingle School. The Infant and Junior school would not have sufficient capacity to accommodate the additional pupils generated by the development, however, there is sufficient capacity at The Pingle School. A financial contribution is therefore requested of £11,399.01 towards the provision of 1 infant place at Church Gresley Infant & Nursery School via Project A: Classroom adaptations; and a financial contribution of £22,798.02 towards the provision of 2 junior places at Pennine Way Junior Academy via Project A: Additional teaching accommodation and toilet provision; totalling £ 34,197.03.

The Coal Authority has no objection subject to an intrusive site investigations condition.

Derbyshire Constabulary's Crime Prevention Design Advisor considers that the layout does not provide good internal surveillance of communal car parking with a strongly defined outer boundary [see further comment on this aspect below].

The Contaminated Land Officer recommends a phased contamination condition.

Southern Derbyshire CCG requires a contribution of £5,326 towards meeting the additional patient capacity at Gresleydale Healthcare Centre.

The National Forest Company has confirmed that the scheme is below the threshold for National Forest woodland planting and landscaping and would therefore not seek a contribution.

The County Flood Management Team recommends ground investigation and SUDS conditions.

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

Derbyshire Wildlife Trust recommends conditions in respect of protected species, Biodiversity Management Plan, bat and bird mitigation, Japanese Knotweed control and Construction Environmental Management Plan.

## **Responses to Publicity**

Three letters of objection have been received raising the following concerns/points:

- a) There is a concern with the use of Common Side as it is not wide enough and not maintained to sustain the increased traffic.
- b) There is no mention of bringing Common Side up to adoptable standard.
- c) Their driveway uses the proposed access shown.
- d) The access is an established right of way and is totally unsuitable to take additional traffic.
- e) The road is not suitable for two way traffic and there is no pavement except for the public footpath which runs along the boundary of the common.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland)

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE8 (Trees, Woodland and Hedgerows) and INF12 (Provision of Education Facilities)

## **National Guidance**

- National Planning Policy Framework (NPPF) 7, 11, 14, 17, 32, 49, 56, 58, 109, 118, 119, 121, 123

- National Planning Practice Guidance (PPG)

## **Local Guidance**

- SPG Housing design and Layout

## **Planning Considerations**

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

- Principle of Development
- Highway Issues
- Residential Amenity
- Ecology and Trees
- Noise
- S106 Contributions
- Planning Balance

## **Planning Assessment**

### Principle of development

The site is located within the urban area of Church Gresley with residential development to the north west, west and south west and existing industrial premises to the east. Local Plan Policy H1 considers all sizes of development within the settlement boundary to be appropriate. The site is located within walking distance of Swadlincote and its services and facilities and is accessible by all modes of transport. Residential development in this location is considered sustainable development in principle. Local Plan Policy S2 requires a positive approach to development that reflects a presumption in favour of sustainable development.

The scale of development is considered to be in keeping with the character of the area as shown on the indicative layout. Properties face the northern and western boundaries which improve the streetscene. The protected trees incorporated within the layout would be retained for their amenity value and act as a buffer. The proposal therefore accords with Local Plan Policies H1 and S2.

### Highway Issues

Local Plan Policy INF2 states that planning permission will be granted for development where travel generated by development should have no undue detrimental impact upon local amenity, the environment, highway safety and the efficiency of the transport infrastructure and availability of public transport services. It requires that appropriate provision is made for safe and convenient access to and within the development and car travel generated is minimised. NPPF paragraph 32 requires that safe and suitable access to the site can be achieved for all people.

This outline application requires determination of the proposed access which is off Common Side, involving the demolition of an existing pair of semi-detached dwellings. The ownership of the unadopted road Common Side is not known. The

access from Common Road to the site is within the red outline of the application site and certificate D completed under Section 66 with the requisite notice no. 2 advertised in the local paper with no owner coming forward. A previous application for 3 terraced properties at 37 Common Side was granted in 2014 when a similar exercise was undertaken and the dwellings are now occupied. The 6 C's Design Guide allows for 25 dwellings to be served off a private road. Eight properties are currently served and a further 14 would mean a total of 22 dwellings therefore within this tolerance.

The right of access is a legal matter which is not overridden by planning permission and as such would have to be proven on the sale of the land and in conveyance to future occupiers. The highway authority is not responsible for maintaining an unadopted road although it can intervene under existing legislation (Highways Act 1980 S230) to repair it. The Highway Authority has stated they have no intention of adopting any part of the development as publicly maintainable highway. Responsibility for the cost of maintenance of a private road rests with the frontagers; that is, the owners of properties with frontages on such roads. It is not uncommon for the owner of a private road to be unknown and in this case land registry searches have not identified an owner. Responsibility for the road's upkeep therefore lies with the frontagers of which No.30 and 32 Common Side are included as the properties face the road. Thus, any necessary remedial works can be carried out to Common Side should they be necessary during/following construction works. On this basis, the Highway Authority does not consider that an objection to the proposal on highway safety grounds could be sustained as the visibility at the access with Common Road is considered adequate and parking and turning proposed is acceptable.

It is therefore concluded that as the proposal would not exceed the number of dwellings allowed access from a private drive and safe and suitable access can be achieved it accords with Local Plan Policy INF2 and NPPF paragraph 32.

### Residential Amenity

Local Plan Policy BNE1 relates to design excellence and outlines specific criteria that are required when designing new developments. Criterion e), f), g) and h) are relevant to this proposal and require developments to: create places with a locally inspired character that respond to their context, reflect the national forest context, be visually attractive and respect important landscape, townscape and historic views and vistas and should not have an undue adverse affect on the privacy and amenity of existing nearby occupiers.

NPPF paragraph 58 requires that developments: function well and add to the overall quality of the area over the lifetime of the development, establish a strong sense of place, optimise the potential incorporating green spaces, respond to local character and reflect the identity of local surroundings, create safe and accessible environments and are visually attractive.

Local Plan Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. NPPF paragraph 17 requires a good standard of amenity for all existing and future occupants.

The proposal is in outline with matters of layout and scale reserved, therefore, only general comments regarding the layout are considered appropriate. The indicative layout shows a continuance of the street facing the track to Robin Hood Place which follows the existing pattern of development and would improve the appearance of the area and natural surveillance. Dwellings in the western part of the site would also have their front elevations adjacent to the boundary and would provide a further streetscene with parking and garages to the rear. The retained trees adjacent to the eastern boundaries would provide a natural screen to the industrial premises and would add to the visual amenity of the development. Provision of a planting area adjacent to No.34 would reduce the impact on the amenity of this property as the access road would not be immediately adjacent to its gable and rear garden. The layout indicates that the relationships between existing and proposed dwellings would exceed the Council's minimum space standards and thus it is considered that development can be accommodated without significant amenity impacts on existing properties. The proposal is thus considered to accord with Local Plan policies BNE1, SD2 and NPPF paragraphs 17 and 58.

### Noise

Local Plan Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. It states that the need for a strategic buffer between conflicting land uses should be considered. Paragraph 123 of the NPPF states that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life, mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions and recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

The site bounds an existing scrapyards to the east and as such the impact on this business requires detailed consideration. A noise survey has been completed and recommends mitigation measures to render the site habitable. The Environmental Health Manager has carefully analysed the proposal and considers the mitigation to provide a good level of amenity for future occupiers and would not unreasonably restrict the workings of the existing business in accordance with Local Plan Policy SD1 and NPPF paragraph 123.

### Ecology and Trees

Local Plan Policy BNE3 states that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including sites of County importance (such as Local Wildlife sites), ancient woodlands, veteran trees and hedgerows and priority habitats and species shall be accompanied by appropriate surveys to assess impacts and the mitigation proposed. Where mitigation measures cannot sufficiently offset the significant harm resulting from the development, planning permission will be refused. NPPF paragraph 109

requires impacts on biodiversity to be minimised and net gains provided and paragraph 118 states that Local Planning Authorities should aim to conserve and enhance biodiversity and if significant harm resulting from development cannot be avoided, adequately mitigated or as a last resort, compensated for, then planning permission should be refused.

Extensive surveys have been undertaken on site in order to satisfy the Wildlife Trust requirements in relation to protected species and proposed mitigation. Protected species have been found on site and the mitigation recommended in the submitted Ecology survey is accepted in respect of further surveys prior to any works and submission of a Biodiversity Management Plan. The Wildlife Trust considers the survey work to date to be adequate to enable determination of the application subject to their recommended conditions.

The Council's Tree Officer considers the majority of the trees within the site to be of low value, however, there are some Silver Birch trees on the southern and eastern boundaries that have amenity value together with creating an effective sound buffer to the adjacent scrapyards. It is considered that these trees together with an individual Norway Spruce tree on the Common Side frontage are worthy of protection by a TPO. Saved Environment Policy EV9 requires the protection of trees and woodlands and states that development will not be permitted which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting. NPPF paragraph 118 states that planning permission should be refused for developments resulting in the loss of aged or veteran trees, unless the need for, and benefits of, clearly outweigh the loss.

The submitted Tree Survey and layout plan has proposed the retention of the majority of the trees on the site and their protection during construction and over the life of the development has been secured further through TPO protection.

### Section 106 contributions

The proposal for 14 dwellings would generate the need for the following S106 contributions:

- A contribution of £5,326 for increasing capacity at Gresleydale Healthcare Centre (precise project yet to be agreed).
- A contribution of £30,030.60 towards open space, outdoor sports and built facilities (precise projects yet to be agreed).

A contribution of £11,399.01 towards the provision of 1 infant place at Church Gresley Infant & Nursery School, and a contribution of £ 22,798.02 towards the provision of 2 junior places at Pennine Way Junior Academy; totalling £34,197.03.

### The Planning Balance

In consideration of the three dimensions of sustainable development outlined in paragraph 7 of the NPPF, in terms of the economic and social role, the proposal would provide 14 dwellings that would contribute to housing supply and provide construction jobs in the area. The site would also generate Council tax, New Homes

Bonus and contributions under S106. Swadlincote is an urban area with its resultant services and facilities. The application site is located close to main route into Swadlincote and has good links to the centre of the town and has good accessibility credentials as residents would not be solely reliant on the private car. The improvements to the visual appearance of the area and natural surveillance of an existing public footpath are considered social benefits. The benefits of the scheme set out above must be afforded weight in favour of the proposal. The retention of the higher value trees and suitable mitigation in respect of ecology ensures that the proposal would protect and enhance the natural environment. Noise concerns have been adequately addressed. The proposal is thus considered to constitute sustainable development in terms of the three strands set out in the Framework.

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

### Recommendation

- A. That delegated authority be granted to the Planning Services Manager to secure a signed unilateral undertaking (or other agreement under Section 106 of the Act) for the provision of £30,030.60 for recreation open space, £5,326 for healthcare provision and £34,197.03 for education provision;
- B. Subject to A, **GRANT** permission subject to the following conditions:
  1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
  
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.  
  
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
  2. Approval of the details of the appearance, landscaping, layout and scale (the Reserved Matters) shall be obtained from the Local Planning Authority in writing upon an application made in that regard before any development is commenced.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
  3. The access shall be laid out in accordance with plans ref: 15207A OS and ; 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.

4. The internal layout of the site shall be in accordance with national guidance in Manual for Streets and Derbyshire County Council's 6C's Design Guide.

Reason: In the interests of highway safety.

5. Any reserved matters submission shall include details of the intended positions and design of the bat/bird boxes and roost features for the site shall be provided, and the scheme shall be carried out in accordance with the approved details before any of the dwellings hereby approved are first occupied.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

6. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy, noting that initial groundworks may pose a risk to life and/or property.

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

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

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

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

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it, noting that initial groundworks could create a pathway to receptors.

8. No works to construct a dwelling or hard surface shall take place until details of a scheme for the disposal of surface and foul water have been submitted to

and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

9. Prior to commencement of development a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway, pedestrian and cyclist protection and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety, noting that initial works to prepare the site may have an unacceptable impact.

10. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

11. Prior to the first occupation of any dwelling, space shall be provided within the plot curtilage for the parking of two vehicles and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions should not be less than 3m x 6m.

Reason: In the interests of highway safety.

12. Prior to the commencement of development of any works that may affect great crested newts or their habitats, a detailed precautionary method of works, mitigation and enhancement strategy shall be submitted to and approved by the local planning authority. All works shall then proceed in accordance with the approved strategy.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

13. Prior to the commencement of any works on a site an updated survey for any recently excavated badger setts within the site shall be carried out and submitted to the local planning authority. Works shall only commence when a strategy for the exclusion of badger and subsequent closure of the setts under licence will be submitted to and agreed in writing by the local planning authority and thereafter the works shall be implemented in accordance with Natural England licence.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

This needs to be made clear before commencing to ensure that all stages of development are considered.

14. No development or other operations shall commence, including but not limited to site clearance and site preparation, until a Biodiversity Management Plan, that shall include provisions for ecological retention, enhancement and future maintenance and management, has been submitted to and approved in writing by the local planning authority. The approved Biodiversity Management Plan shall be implemented in full and subsequently maintained in accordance with the approved Biodiversity Management Plan.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

15. Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the local planning authority, detailing the containment, control and removal of Japanese knotweed adjacent to the site. The measures shall be carried out strictly in accordance with the approved scheme.

Reason: To ensure that an adequate means of eradicating or containing the spread of the plant is considered before any works that might facilitate its spread and thereafter implemented to prevent further spread of the plant which would have a negative impact on biodiversity and existing or proposed landscape features.

16. Prior to the commencement of development a detailed Construction Environmental Management Plan (CEMP) (Biodiversity) shall be submitted and approved in writing by the Local Planning Authority. The approved CEMP shall be implemented in full.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

17. Prior to the occupation of any of the dwellings all the windows shall be fitted with double glazing to a specification of Rw 38dBA or better (or equivalent). The provision of ventilation within these rooms shall be such that the ventilation rates for dwellings specified in Approved Document F of the Building Regulations are capable of being achieved with the windows closed (such as through the use of sound insulated trickle vents).

Reason: To protect the amenities of the future occupiers of the properties.

18. Prior to occupation of any of the dwellings a timber acoustic fence at a minimum height of 3.5m shall be erected in accordance with specific details submitted as part of a reserved matters application, based on its position as shown on plan 15207/PP/01c, and shall thereafter be maintained as such for the life of the development.

Reason: To protect the amenities of the future occupiers of the properties.

Informatives:

- a. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com). The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.
- b. For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).
- c. Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
- d. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.
- e. The application site is affected by two Public Rights of Way (Footpaths 8 and 9, as shown on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 01629 533190 and asking for the Rights of Way Duty Officer.

- i) Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.
  - ii) If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form.
  - iii) If 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.
  - iv) Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the planning authority) 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.
  - v) To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.
- f. In respect of condition 11, the Wildlife Trust draw particular attention to the incorporation of amphibian-friendly off-set gully pots and sections of dropped kerbs to reduce impact upon the local amphibian population which we would expect to see included within the detailed design of the Reserved Matters application.
- g. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and overcome objections. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

**Item**                **1.2**

**Reg. No.**        **9/2016/0732/RSD**

**Applicant:**  
**Mrs Katy Falls**  
**Barratt Homes North Midlands**  
**2 Horizon Place**  
**Nottingham Business Park**  
**Nottingham**  
**NG8 6PY**

**Agent:**  
**Mrs Katy Falls**  
**Barratt Homes North Midlands**  
**2 Horizon Place**  
**Nottingham Business Park**  
**Nottingham**  
**NG8 6PY**

**Proposal:**        **APPROVAL OF RESERVED MATTERS FOR LAYOUT,  
SCALE, APPEARANCE & LANDSCAPING OF  
PLANNING PERMISSION REF: 9/2014/1039 TO  
PROVIDE 100 DWELLINGS, INCLUDING PUBLIC OPEN  
SPACE AND ASSOCIATED SERVICE  
INFRASTRUCTURE ON LAND AT SK2624 5131  
NEWTON ROAD NEWTON SOLNEY BURTON ON  
TRENT**

**Ward:**            **Repton**

**Valid Date:**     **20/07/2016**

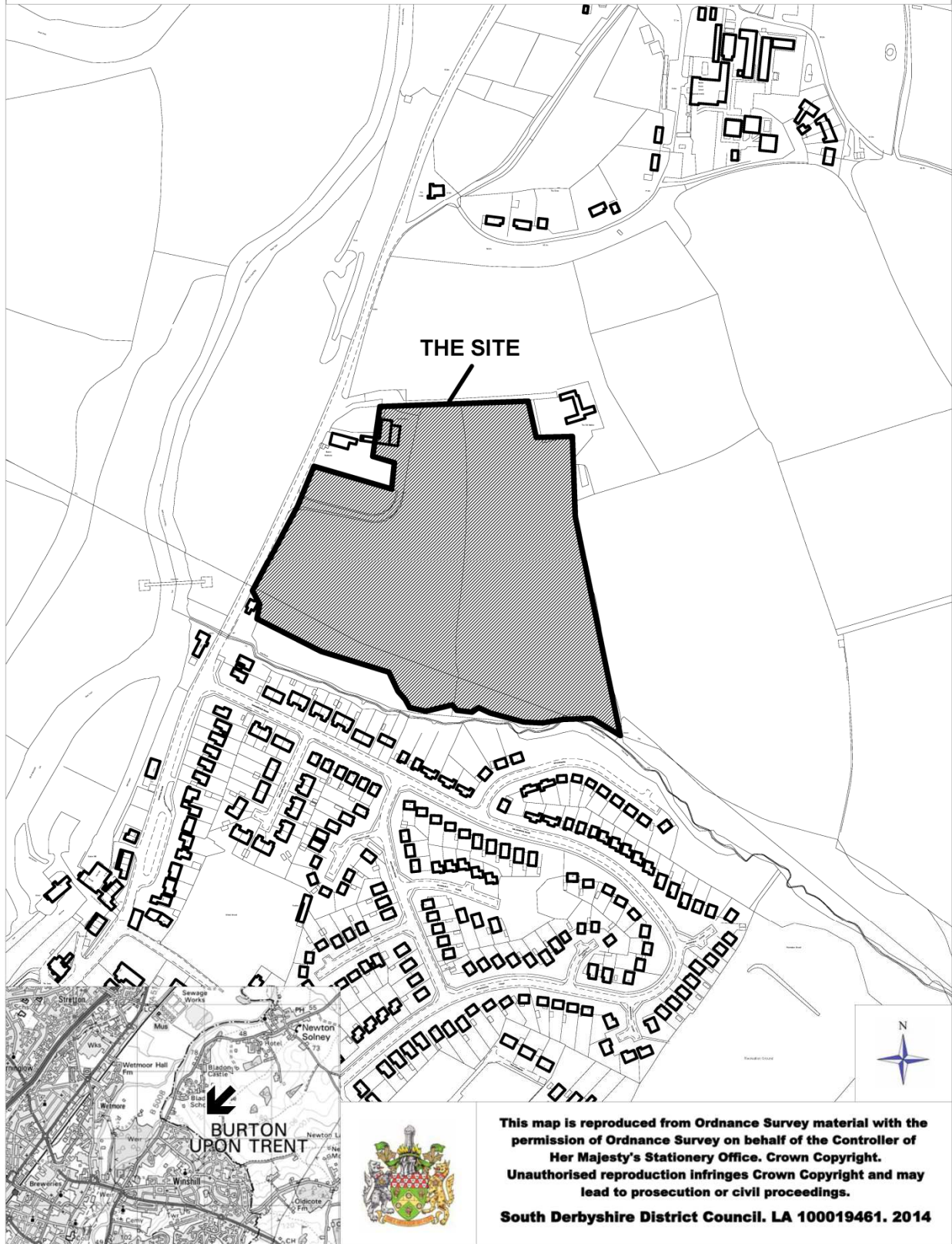
**Reason for committee determination**

The item is presented to Committee due to it being a major application subject to more than two objections.

**Site Description**

The site extends to approximately 6.3 hectares of agricultural land located to the northern edge of Winhill, Burton upon Trent. The site lies east of Newton Road (B5008) wholly within South Derbyshire and the parish of Newton Solney, yet abuts the administrative boundary of East Staffordshire and Winhill parish along the southern edge where the Dale Brook runs. This brook corridor is well vegetated with a number of mature trees within, now largely subject to a Tree Preservation Order (TPO). This TPO extends across the site protecting the existing trees of visual or ecological merit sited along hedgerow corridors. These hedgerows form the eastern, northern and western boundaries to the site, with a further hedgerow bisecting the site in a north to south direction. The land falls quite rapidly from the north-east corner to the south-west, with the ground rising particularly steeply in the north-east corner.

9/2016/0732 - LAND AT NEWTON ROAD, NEWTON SOLNEY, DE15 0TF



Access is presently gained through a field access to Newton Road bounded by timber post and rail fencing with the track extending to a redundant pole barn and hardstanding to the northern edge of the site. Two existing dwellings sit immediately adjacent to the north-west corner of the site (Bladon Paddocks and The Old Dairy), a barn conversion sits beyond a small spinney to the north-east corner (The Stables), whilst a further single dwelling sits adjacent to the south-west corner, bordering Newton Road (Keeper's Cottage). A line of 1960s houses and bungalows, along Dalebrook and Brookside, sit just beyond the brook corridor to the southern edge with rear gardens up to this watercourse.

## **Proposal**

Following the grant of outline permission, the reserved matters of layout, scale, appearance and landscaping require approval. The maximum number of dwellings (100) is proposed in a similar layout to that indicatively shown at the outline stage, with the access position and design 'fixed' under that permission. The layout includes a central area of public open space (POS) with a locally equipped area for play (LEAP). A wildlife corridor is provided to the southern edge of the site adjacent to Dale Brook. Dwellings would be provided as a mix of 2 and 2.5 storey detached, semi-detached and terraced houses with parking provided, in the majority, as private driveways, garages and/or bays to the front.

## **Applicant's supporting information**

A Building for Life (BfL) Statement considers the design to positively integrate into the neighbourhood and create a place with distinctive character and legibility to aid movement around the site. Public and private places will be appropriately delineated and adequate parking provision made to strengthen the street scene. It is advanced the scheme scores 17.5 out of 20.

## **Planning History**

9/2014/1039      Outline application (all matters reserved except for access) for the residential development of up to 100 dwellings including open space, access and associated service infrastructure – Refused June 2015 but allowed at appeal April 2016.

## **Responses to Consultations**

The County Highway Authority raised comments on the initial layout which needed to be addressed by the applicant. These matters related to pedestrian inter-visibility splays from driveways, rear garden accesses, upstands in the carriageway, width of driveways and garages, and footway links to POS. Whilst amended comments are awaited, it is considered that these matters have been addressed.

Derbyshire Wildlife Trust is satisfied that the wildlife corridor is not too extensively planted with trees and species-rich grassland is to be sown. They are satisfied with the species that are proposed for the new hedgerow planting, although uncertain as to whether the quantity of existing hedgerow to be removed would be properly compensated for. Clarification is sought so to ensure there is no net loss of

hedgerow habitat which is a Habitat of Principal Importance under the provisions of NERC Act 2006. The retention of existing and creation of hedgerows adjacent/within areas of POS is welcomed, as is the retention of two trees as monolith stumps to contribute to the biodiversity value of the site in respect of deadwood habitat. The installation of bird and bat boxes as part of the scheme is welcomed.

The Environment Agency has no objection, noting flood risk mitigation conditions were imposed on the outline permission.

The Local Lead Flood Authority offers their standing advice in respect of sustainable drainage for surface water.

The Strategic Housing Manager has considered the layout, and whilst there is a cluster of affordable housing slightly above the maximum number normally accepted; it is recognised this can be acceptable to make the scheme 'work' in planning terms.

The Police Crime Prevention Design Advisor has no objections or comments to make.

Staffordshire County Council School Organisation Team has commented on the impacts arising to education services in the locality, but recognises the legal agreement with the outline permission secures appropriate mitigation.

National Grid notes the proximity of the high pressure gas pipeline crossing the southern part of the site, and advises that the developer should engage in detailed discussions.

The proposal has been assessed against the HSE's PADHI+ assessment tool with an outcome of 'Do not Advise Against' the granting of permission.

## **Responses to Publicity**

Six objections have been received, raising the following concerns/points:

- a) continued concerns over the principle of development, including highway safety on Newton Road, wildlife, visual and landscape impacts, and pressure on existing services and facilities;
- b) who will maintain the nature corridor;
- c) height of proposed 2½ storey dwellings would appear dominant in the locality;
- d) proximity of some of the proposed dwellings to protected trees;
- e) proposed planting causing shading to adjacent property;
- f) proposed footpath increases likelihood of disturbance to adjacent occupiers;
- g) the play area seems too small for the number of dwellings which would utilise it;
- h) overlooking/loss of privacy;
- i) disturbance to elderly residents adjacent; and
- j) loss of view.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure) and INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features)

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage)

## **National Guidance**

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

## **Local Guidance**

- The Provision of Outdoor Playing Space in New Developments (as updated by the Section 106 Guidance for Developers)
- Housing Design and Layout SPG

## **Planning Considerations**

The principle of the development is established through the extant outline permission and conditions on that permission control matters such as access provision, land contamination investigation, surface and foul water drainage, tree protection and habitat creation/management. The Section 106 agreement which accompanies the outline permission also established the parameters for affordable housing and provision of contributions towards off-site education, recreation facilities, etc. In this respect, some of the concerns raised by representations are not material considerations under this application which only seeks approval of details of appearance, landscaping, layout and scale.

## Planning Assessment

The layout follows the principles set by the masterplan approved under the outline permission, with a largely outward facing development onto public spaces created under the development. The eastern boundary benefits from a stand-off to the existing hedgerow so to maintain a movement corridor for protected species. Two protected trees would be reduced to monolith stumps in line with the ecologist's recommendations at the outline stage, and this does not raise concern given this was fully anticipated when the Order was made, so to secure the ecological benefits identified at that time. The central POS with LEAP provides a welcome green corridor through the site to facilitate pedestrian movement and social benefit, with the important hedgerow largely retained and additional planting positioned so to ensure long term legibility of this historic feature. The enhancements to the brook corridor are also of merit and carry support from the Wildlife Trust. The overall level of POS well exceeds the usual minimum required.

At least 2 parking spaces per dwelling are provided as per the requirements of outline conditions, and in many cases exceeded by way of a garage or further space. The pedestrian routes through the site are well overlooked and provided to a standard to enable and encourage walking as an alternative mode of transport. The arrangement of boundary treatments, with walls and railings to the public realm, as well as a visually 'passive' treatment to the eastern edge; are supported. The delineation between public and private space is also commended.

The scale of the dwellings captures some concern by adjoining residents but the scope for 2 and 2.5 storey dwellings was considered, and supported, by the Inspector in considering the appeal. House types have been chosen to reflect the prevailing historic character within the immediate locality and include bay windows, strong gable features and symmetry across the fenestration details where appropriate. The mix of house styles and scales creates an evolving built environment that sensitively reflects the local vernacular whilst providing its own identity. Feature properties set on prominent corners in the site provide a double frontage, improving the natural surveillance of the street and interest for the viewer. Side surveillance windows to parking bays are also present. The material palette is generally acceptable although at the time of writing there is ongoing discussion as to roof tiles and eaves/verge/elevation detailing. Conditions are recommended to address these matters although it may be resolved by way of additional/amended plans by the time of the meeting, and Members will be updated on this matter verbally.

Backing and siding onto existing properties is also achieved without compromising separation distances set out in the SPG. Whilst there may be an impression of overlooking given many existing residents benefit from an open and impeded view out onto the open countryside, the principle of these changes has been considered acceptable at the outline stage and there is no concern as to separation to existing residences, nor the change in aural character from the use of the dwellings.

## Conclusion

The development of this site was acknowledged have a significant effect on the sensitivity of the area by the Inspector. In the context of permission being given, considerable efforts have been made by both the applicant and officers to achieve a design which harmonises with its environs and wider vernacular as best without resulting in undue visual harm through less than high quality design.

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

## **Recommendation**

**GRANT** approval of reserved matters subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the Drawing Schedule, as received on 4 October 2016 with the exception of plan ref: H6591/AP1 Rev A (Adoption Layout); unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no boundary walls or fences shall erected forward of the boundary walls or fences hereby approved.

Reason: In the interests of overall design, in order to maintain the character of green and public spaces as secured under the plans hereby approved.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no less than 2 of the parking spaces to be provided in connection with each dwelling constructed shall be used other than for the parking of vehicles except (save for plots 63 & 64 where all 3 spaces shall be retained for such purposes) without the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure adequate parking and turning provision for each dwelling.

4. There shall be no gates or other barriers within 5m of the nearside highway boundary (proposed highway boundary) at any of the private driveways or vehicular accesses within the site. Any gates beyond 5m from the highway boundary (proposed highway boundary) shall open inwards only.

Reason: In the interests of safety on the public highway.

5. Notwithstanding the approved drawings/plans, no development involving the construction of a dwelling shall commence until revised or additional details, including samples and/or drawings where necessary, of the following materials/features have been submitted to and approved in writing by the Local Planning Authority:

- a. roof tiles;
- b. chimneys, roof lights and dormers; and

- c. eaves and verge, lintels and cills, and string/dentil course details; and
- d. utility cupboard colours (both wall and ground mounted).

For the avoidance of doubt, no fascia boards shall be placed over corbelling and there shall be no use of cloaking tiles/dry verges. The dwellings shall be constructed in accordance with the approved details.

Reason: To ensure a good standard of design in the interest of the appearance and character of the area.

- 6. No dwelling shall be occupied until the proposed new estate street(s) between each respective plot and the existing public highway have been laid out in accordance with the constructional approval drawings constructed to binder course level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety and to enable sustainable modes of transport for all occupants.

- 7. The proposed private driveways or vehicular accesses within the site shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary (proposed highway boundary).

Reason: In the interests of safety on the public highway.

- 8. Where dwellings are fronted by 650mm maintenance margins (rather than footways), and unless otherwise obstructed by way of dwellings or boundary treatments as shown on the approved plans, the entire frontage shall be maintained clear of any obstruction exceeding 600mm relative to road level, for a distance of 2.4m from the carriageway edge or such other distance as may be agreed in writing by the Local Planning Authority, in order to maximise visibility for emerging drivers.

Reason: In the interests of highway safety.

#### Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
- c. 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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

- d. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - [es.devconprocess@derbyshire.gov.uk](mailto:es.devconprocess@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- e. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- f. Highway surface water shall be disposed of via a positive, gravity fed system (i.e: not pumped) discharging to an approved point of outfall (e.g: existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.
- g. 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.
- h. The site is constrained by an easement for a high pressure gas pipeline and you are advised to engage with National Grid as early as possible to ensure the proposed development does not conflict with their interests and the safe operation of the pipeline.

**Item**                **1.3**

**Reg. No.**        **9/2016/0655/A**

**Applicant:**  
**Mr David Sheridan**  
**464 Burton Road**  
**Midway**  
**Swadlincote**  
**DE11 0DW**

**Agent:**  
**Mr David Sheridan**  
**464 Burton Road**  
**Midway**  
**Swadlincote**  
**Derbyshire**  
**DE11 0DW**

**Proposal:**        **RETENTION OF 1 x ADVERTISING BOARD AT 464**  
                         **BURTON ROAD MIDWAY SWADLINCOTE**

**Ward:**            **Midway**

**Valid Date:**     **27/06/2016**

**Reason for committee determination**

Councillor Wilkins (ward member) has requested that the Planning Committee determine this application as unusual site circumstances should be considered.

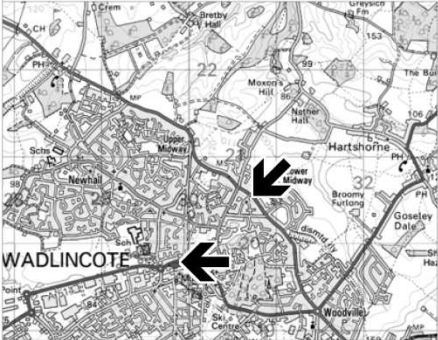
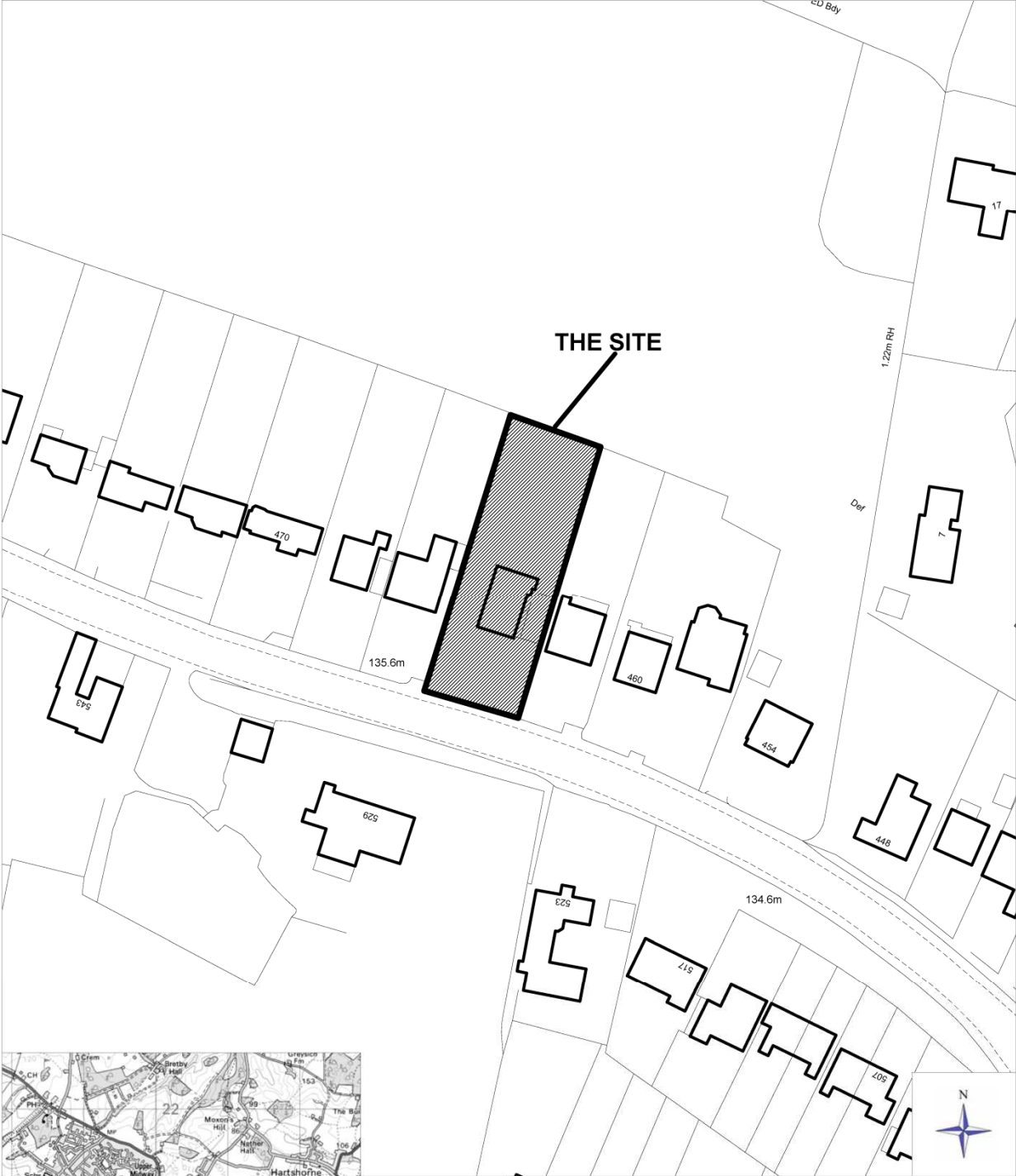
**Site Description**

The site is a residential plot which fronts onto the A511 Burton Road. The host property is of good size and affords some parking to the front. There is an existing vehicular access to and from the highway, demarked by two 2.3m tall brick built pillars, whilst the rest of the boundary here with the highway is made up with a 0.4m high brick built wall with a substantial hedge behind. The brick pillars are set slightly back from the highway edge and thus allow a modest visibility splay for users of the access.

**Proposal**

The proposal (as amended) is the retention of one advertising 'board'. At present there are two boards here placed to the front of the site, either side of the driveway. The applicant has requested retention of one of the boards but with some flexibility that it can be located on either side of the drive as and when. The advertisement is in colour and publicises a professional service run by the property owner from that address.

9/2016/0655-464 BURTON ROAD, MIDWAY, DE11 0DW



**This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.**

**South Derbyshire District Council. LA 100019461. 2014**

**South Derbyshire District Council. LA 100019461. 2014**

## **Applicants' supporting information**

The applicant has latterly submitted a statement that confirms that only one board will be used at any one time, if consent is given.

## **Planning History**

9/2016/0691 Erection of a detached dwelling in the rear garden area of 464 Burton Road including the provision of a new access on the A511 - Refused

## **Responses to Publicity**

One comment has been received stating to have seen 4 or 5 close collisions, with traffic slowing down to read the signs.

## **Responses to Consultation**

The County Highway Authority has no objection.

## **Development Plan Policies**

- SD1, BNE1, BNE4 and INF2.

## **National Guidance**

National Planning Policy Framework (NPPF) 11-14, 17  
National Planning Practice Guidance (PPG) ID21b, ID26

## **Local Guidance**

- Display of Advertisements Supplementary Planning Guidance 1999

## **Planning Considerations**

The main issues central to the determination of this application are the impact on the locality in terms of general amenity and public safety.

## **Planning Assessment**

The proposal has changed (from that first submitted) with the applicant requesting to keep only one 'advertising' board (not two) but with scope to move the singular board, across the two presented drive-side locations.

The sign is 1.23m tall in total and 0.64m wide is made up of an aluminium frame, supported by two legs. The actual advert part sits behind a transparent Perspex sheet. Two signs are currently in situ and have been from early June 2016. They are not illuminated and are not overly large, in comparison with that achievable without the need for express consent – an estate agents board for example. In terms of general amenity, the board is located away from neighbour windows and situated subtly back from the highway such that views of it can only be had from the immediate vicinity.

In terms of public safety, the County Highways Authority has not objected. Additionally the subject matter is not seen to be inflammatory.

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

## **Recommendation**

**GRANT** express consent subject to the following conditions:

1. The advertisement shall be removed and the site restored, to the satisfaction of the Local Planning Authority, no later than 3 years from the date of this consent, subject to the right to apply for a further period.

Reason: To accord with The Town and Country Planning (Advertisement) (England) Regulations 2007.

2. Within 1 week from the date of this approval only one sign shall be displayed as per the applicant's email of the 4th October 2016.

Reason: In the interests of the appearance of the area and for the avoidance of doubt.

## **Informatives:**

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

**Item**                **1.4**

**Reg. No.**        **9/2016/0744/FH**

**Applicant:**  
**Mrs D Nolan**  
**The Stables**  
**Ivy Court**  
**Egginton**  
**Derby**  
**DE65 6HG**

**Agent:**  
**Haydn Watkins**  
**Woore:Watkins Ltd**  
**61 Friar Gate**  
**Derby**  
**DE1 1DJ**

**Proposal:**        **THE CONVERSION OF THE GARAGE INTO LIVING  
ACCOMMODATION AND CREATING OF NEW PARKING  
SPACE AT THE STABLES IVY COURT EGGINTON  
DERBY**

**Ward:**            **Etwall**

**Valid Date:**      **18/07/2016**

**Reason for committee determination**

Councillor Mrs Brown has requested that the Planning Committee determine this application as there are issues here which are very finely balanced.

**Site Description**

This residence is situated within a small courtyard and is a conversion, formerly an agricultural outbuilding, one of four similar sharing the same access off Duck Street. The property presently affords a single integral garage capable of taking a standard sized car with a second space on the immediate gravelled driveway.

**Proposal**

The proposal is to convert the integral garage space here to create a small store and a study/bedroom. The current metal up and over garage door would be replaced by a smaller 'store' door and a set of double glazed doors. A new internal door would provide access from the current lounge space. To compensate for the loss of the parking space, the applicant proposes to create a new space within the front garden area.

**Applicants' supporting information**

None

9/2016/0744 - The Stables, Ivy Court, Egginton, Derby DE65 6HG



## **Planning History**

9/1290/0918: Conversion of four outbuildings to dwellings – approved.

Condition 6 of that approval restricts ‘extensions and enlargements’ without prior consent whilst condition 10 requires the garage to be ‘saved’ as a parking space (that additional to the one on the drive) unless approved otherwise; the reason given for the protected parking provision is to avoid the parking of vehicles on the highway. The reason given for control over extensions and enlargements was that inappropriate uncontrolled development within this tight arrangement could cause difficulties in terms of appearance, loss of amenity to neighbouring dwellings and overdevelopment of individual plots with a general increase in density and lowering of standards.

## **Responses to Publicity**

Egginton Parish Council has commented on the application also referencing the 2010 approval and the conditions therein and that the reasoning for the conditions should be upheld by way of a refusal. They continue that Ivy Court is a desirable development within the village and are concerned that were permission be granted it would inevitably open the floodgates for further developments in Ivy Court that would turn this well-kept and well liked corner of the village into little more than a car parking lot. They also express concern over the potential of the development to affect highway safety so close to a dangerous bend.

One neighbour comment has been received requesting that due consideration is given to current planning conditions (see planning history above, namely conditions 6 and 10) mainly with respect to the proposed creation of a further car parking space within the courtyard.

## **Responses to Consultation**

The County Highway Authority has offered no objections subject to the replacement car parking space shown be provided prior to the conversion being taken into use and maintained thereafter free of any impediment to its designated use.

## **Development Plan Policies**

The relevant policies are:

- SD1, BNE1, BNE4 and INF2

## **National Guidance**

- National Planning Policy Framework (NPPF) 11-14, 17, 58
- National Planning Practice Guidance (PPG) ID21b, ID26

## **Planning Considerations**

The main issues central to the determination of this application is whether the development would provide sufficient parking on the site to avoid parking on the highway to the detriment of highway safety.

## **Planning Assessment**

The proposal involves the conversion of an integral garage. Conversion of such, as presented, would not normally need express consent from the Local Planning Authority, the works involved deemed to be permissible by virtue of the General Permitted Development Order 2015. An extant planning condition however restricts the conversion with the intention to preserve site based parking at a reasonable level and to avoid the need to park on the highway. As such the proposal should be determined solely on the likelihood that the development alters the parking situation to the detriment of highway safety. Given the proposal offers a compensatory space, the post conversion situation is not felt to be significantly different – one dwelling, two parking spaces; a view supported by the County Highway Authority.

The creation of the compensatory parking space would involve the relocation of a small box privet hedge but this can be done without significant disruption. Furthermore given the space would be constructed with a permeable finish it also would not need express consent; deemed to be a permissible level of work. The block plan submitted with the application shows the extent of the rearrangement/resurfacing required and in its context it is not extreme; certainly the gravelled area within courtyard is prevalent which in turn, it could be argued, is a throwback to its agricultural courtyard character would have been laid in the main to hardstand and not feature individual gardens and curtilages, boundary treatments etc.

By virtue of distance separation and maintenance of 'sector of views' splays the development is deemed not to cause a detrimental loss of privacy. Given no additional mass is proposed, the development is not felt to cause overbearance or a loss of light or aspect.

Comments received make reference to enlargements and extensions but the conversion of an existing attached/integral space such as this does not constitute an enlargement or extension, purely a conversion with no new mass added. As such it is felt the spirit of the overreaching conditions here is complied with and any subsequent requests for development will be considered through assessment.

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

## **Recommendation**

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

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

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

2. The development hereby permitted shall be carried out in accordance with drawings 9450sp and Sheet No01 received on the 18th June 2016; 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. All external materials used in the development to which this permission relates 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 have been first submitted to and approved in writing by the Local Planning Authority.

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

4. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015) two parking spaces, each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

Reason: To ensure that adequate site based parking provision is available.

Informatives:

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

18/10/2016

**Item**                **1.5**

**Reg. No.**        **9/2016/0947/A**

**Applicant:**  
**Mrs Nicola Lees**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Agent:**  
**Mr Jeremy Rucker**  
**City Dressing**  
**9 Bath Road Industrial Estate**  
**Bath Road**  
**Chippenham**  
**Wiltshire**  
**SN14 0AB**

**Proposal:**        **DISPLAY OF GRAPHIC SIGNS IN THE GLAZING OF THE**  
                         **EXISTING SHOP FRONT AT 2 MIDLAND ROAD**  
                         **SWADLINCOTE**

**Ward:**                **Swadlincote**

**Valid Date:**        **07/09/2016**

### **Reason for committee determination**

The item is presented to Committee as the application has been made by the Council. This report also covers the accompanying application for the repainting of the shop fascia below.

### **Site Description**

The site is located within Swadlincote Town Centre and within the Swadlincote Conservation Area. The property is currently vacant but has been previously used as an estate agent (use class A2).

### **Proposal**

Consent is sought for the display of a non-illuminated vinyl display sign to be fixed on the inside of the existing glazing of the shop. The vinyl would cover all of the existing shop window. In addition, the existing wooden fascia would be re-painted.

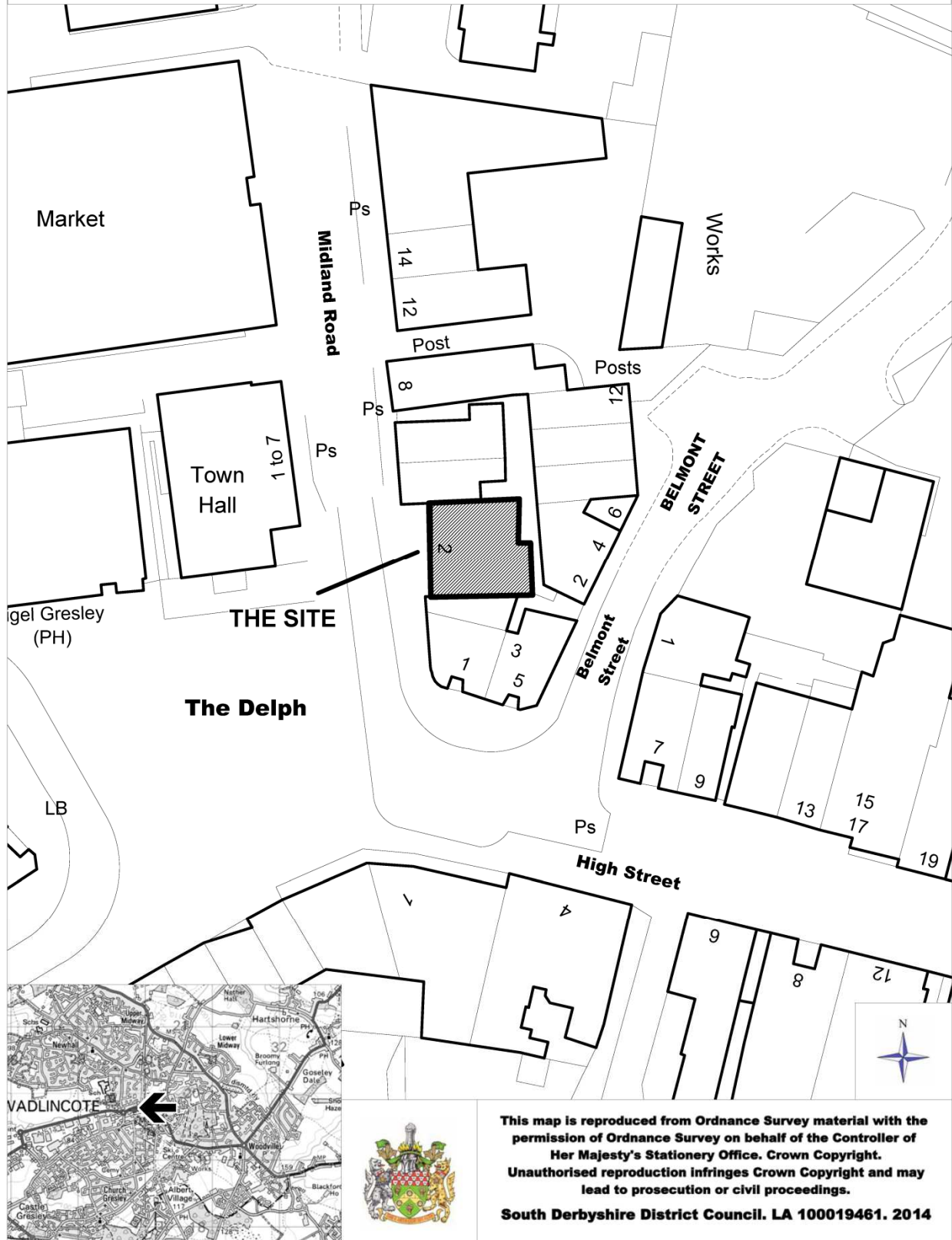
### **Planning History**

There is no relevant planning history for the site.

### **Responses to Consultations**

None.

9/2016/0947 - 2 MIDLAND ROAD, SWADLINCOTE, DE11 0AG.



## **Responses to Publicity**

None.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S7 (Retail), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness).
- 1998 Local Plan (saved policies): Environment Policy 12.

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE10 (Advertisement and Visual Pollution), BNE11 (Heritage), BNE12 (Shopfronts) and RTL1 (Swadlincote Town Centre).

## **National Guidance**

National Planning Policy Framework, including paras 6-10 (Achieving sustainable development), paras 11-14 (The presumption in favour of sustainable development), para 17 (Core principles), para 19 (Building a strong competitive economy) and para 23 (Ensuring the vitality of town centres).

National Planning Practice Guidance (PPG): ID:26 (Design)

## **Local Guidance**

- Swadlincote Conservation Area Character Statement
- Display of Advertisements SPG
- Swadlincote Townscape Heritage Scheme Conservation Area Management Plan and Article 4 Direction

## **Planning Considerations**

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

- Suitability of the proposed signage in the Conservation Area
- Suitability of the proposed fascia decoration in the Conservation Area

## **Planning Assessment**

The shop has been identified as a target property for improvement within the Swadlincote Heritage Lottery Scheme due to the loss of the building's original roof, chimney and shopfront. The scheme seeks to improve and restore the shop-frontages of properties within Swadlincote Conservation Area which have suffered as

a result of unsympathetic, modern additions. The premises are currently vacant and unoccupied. The existing shopfront is predominantly glazed to the front and presents a vacant shop/office to the highway and public realm. The premises are positioned overlooking the Delph and is highly visible from various positions within the conservation area.

#### Appearance of the proposed signage

The proposed signage would seek to screen the vacant shop from the Delph, as the vinyl on the inside of the glazing would stop the transparency of the existing shopfront. Although the proposed signage would cover the entire glazed shopfront, given the current vacant position of the property, the signage would act as an improvement to the existing shopfront and the wider conservation area. When assessing the property in context, the signage would be suitable both in terms of size and design and would respond well to the surrounding character and local vernacular. It would therefore be acceptable in terms of amenity and public safety and would comply with the principles of the Council's SPG and policies BNE1, BNE2 and BNE4 of the Development Plan and policy BNE12 of the Draft Local Plan Part 2.

#### Appearance of the proposed painting

Consent is also sought for the painting of the existing wooden signage fascia above the shopfront. The proposed colour of the paint that would be used would be dark green (colour S6030-G10Y). This colour of paint is listed as preferred within Appendix 3 of the Swadlincote Conservation Area Management Plan. Therefore, the painting of the existing sign in this colour would be deemed suitable and acceptable and would comply with policies BNE1, BNE2 and BNE4 of the Development Plan and policy BNE12 of the Draft Local Plan Part 2.

#### Conclusion

On the basis of the above, the proposed vinyl sign would screen the existing, highly visible, vacant estate agents from the public realm and wider conservation area. As a result of this, the signage would have a positive effect on the setting of the conservation area and would offer a temporary solution to the improvement of the overall shopfront. The painting of the existing sign fascia would be of a suitable colour that is recommended within the conservation area.

#### **Recommendation**

**GRANT** express consent.

**Item**                **1.6**

**Reg. No.**        **9/2016/0946/NO**

**Applicant:**  
**Mrs Nicola Lees**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Agent:**  
**Mr Jeremy Rucker**  
**City Dressing**  
**9 Bath Road Industrial Estate**  
**Bath Road**  
**Chippenham**  
**Wiltshire**  
**SN14 0AB**

**Proposal:**        **PAINTING OF THE FRONT OF THE PROPERTY AT 2**  
                         **MIDLAND ROAD SWADLINCOTE**

**Ward:**            **Swadlincote**

**Valid Date:**      **07/09/2016**

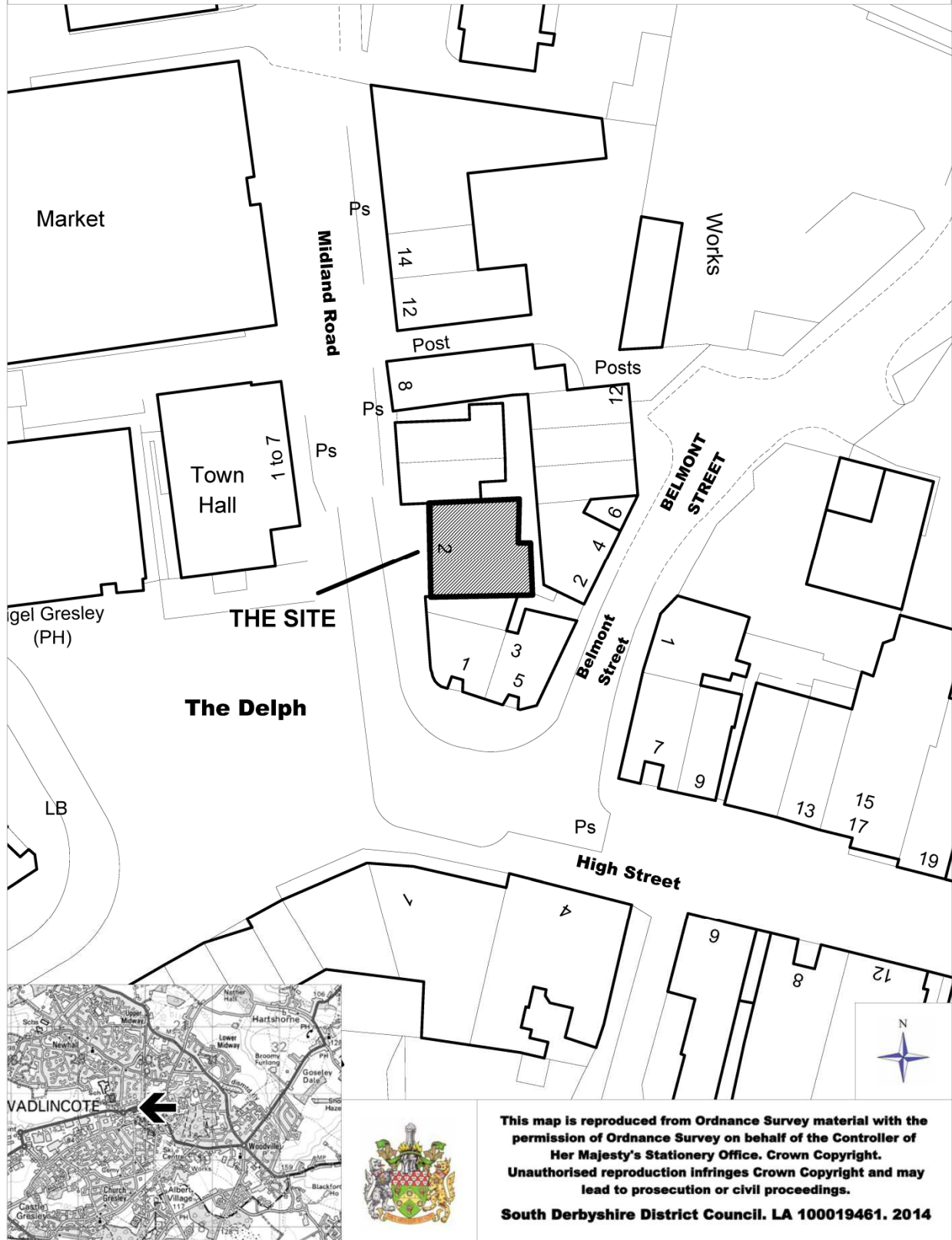
This application has been assessed as part of the planning committee report for planning application 9/2016/0947.

### **Recommendation**

**GRANT** permission under Regulation 3/4.

1.     The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2.     The development hereby permitted shall be carried out in accordance with plan/drawing ""Final Proof of Frontage"", received on 7th September 2016; 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 shopfront shall be painted in colour reference; S6030-G10Y and in accordance with the application details, unless alternative details have been first submitted to and approved in writing by the Local Planning Authority.

9/2016/0946 - 2 MIDLAND ROAD, SWADLINCOTE, DE11 0AG.



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

Informatives:

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

**Item**                **2.1**

**Reg. No.**        **9/2014/1216/OS**

**Applicant:**  
**Mr Michael Stanton**  
**Lavinia Dickinson (Deceased) Trust**  
**Ladyacre House**  
**Ingleby Lane**  
**Ticknall**  
**DE73 7JQ**

**Agent:**  
**Mr Simon Chiou**  
**Lathams**  
**St Michael's Church**  
**Queen Street**  
**Derby**  
**DE1 3SU**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS RESERVED)**  
                         **FOR RESIDENTIAL DEVELOPMENT OF UP TO 58**  
                         **DWELLINGS ON LAND AT SK4330 5222 LONDON**  
                         **ROAD SHARDLOW DERBY**

**Ward:**                **Aston**

**Valid Date:**        **03/02/2015**

**Reason for committee determination**

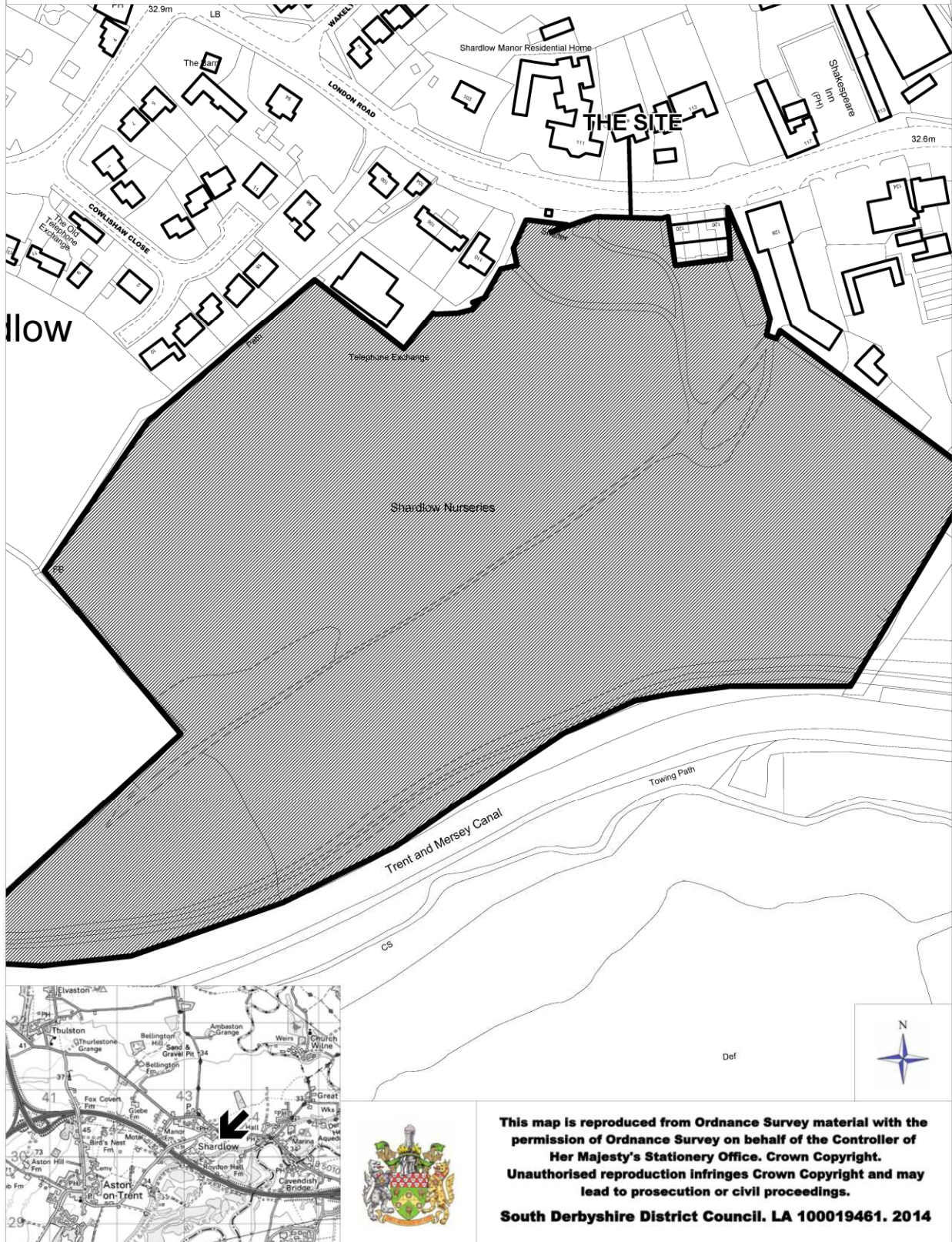
The item is presented to Committee as the applicant is a Councillor.

**Site Description**

The site extends to some 7.29 hectares on the southern side of the village, outside of but adjacent to the defined settlement confines. Formerly a nursery, with glasshouses now removed; the land has been vacant for a considerable number of years and has become overgrown with self-set vegetation and has the appearance of an undeveloped site. A number of mature and semi-mature trees pepper the site. Within the site an open ditch divides the site into two 'halves' with the southern half largely within Flood Zone 3 (according to Environment Agency mapping). There is a slight fall from north-west to south-east across the site.

Access is gained from the London Road where a break in the built form to the southern side of the road exists. A bus stop with layby is present here. Directly opposite is Shardlow Manor, a grade II listed building. The Shardlow Conservation Area edges along London Road and includes further listed buildings and structures in the locale. A mix of dwelling types and ages border the northern edges of the site along with the telephone exchange and some commercial premises. The Trent and Mersey Canal, with conservation area, borders the southern edge of the site. Agricultural land borders the east and west edges, with Shardlow and Great Wilne Footpath No. 5 running down the western boundary before turning north-west towards Aston Lane.

9/2014/01216-LAND AT LONDON ROAD, SHARDLOW, DE72 2GP



**This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.**

**South Derbyshire District Council. LA 100019461. 2014**

## Proposal

Outline permission with all matters reserved is sought for the erection of up to 58 dwellings on the site, along with provision of public open space. The existing bus stop on London Road would be relocated. The original proposal of up to 97 dwellings has been reduced in response to concerns raised during assessment of the application.

## Applicant's supporting information

A Design & Access Statement was written for the original submission for up to 97 dwellings in 2014. It is considered the proposal offers an imaginative and sustainable solution to a vacant and under-used site. The site and context analysis demonstrates that the developable area sits outside the floodplain, ecology and arboriculture are not adversely affected, the additional dwellings do not significantly impact on the existing road network, and the visual impact of any development on site is contained by the relatively narrow frontage to London Road and dense tree lined edges of the site. The large open area of land south of the development is considered to have the potential to become an important landscaped amenity space for the residents of Shardlow and provides a unique opportunity for improved environmental and social uses. Finally it is advanced that the district-wide shortage of housing land in general and of affordable housing provision in particular creates a strong presumption in favour of the development; and that the feasibility and concept strategy has been developed from a robust site analysis and has produced a viable and sustainable proposal.

An extended Phase 1 Habitat Survey, undertaken in February 2014, identifies the broad range of habitats and assesses them for their ecological importance and potential to support protected species. It is noted this appears to be written to support a potential marina development on the site as opposed to the development now proposed. The closest designated site is St. Chads Water, a Local Nature Reserve (LNR) 2km to the north east. It is not considered this LNR will be negatively affected. The site comprises scrub and grassland of which approximately 3.2 hectares was dominated by a mosaic of tall ruderal and scrub species with large stands of bramble. Approximately 2.2 hectares was dominated by rough, tussocky semi-improved grassland with approximately 2 hectares of willow woodland in the south western corner. The site overall was considered to be of ecological significance, with it being isolated within the wider environment of managed farmland. Scrub and mosaic habitats are noted to be of importance for some birds in so far as breeding and foraging. The presence of the Trent and Mersey Canal on the southern boundary also increases the ecological value through provision of riparian habitats. It is recognised that all main habitats will be lost to the development, apart from the willow woodland and the vegetation associated with the boundaries. Mature trees and hedgerows along the boundaries of the site have potential to support foraging and commuting bats, especially adjacent to the canal. The mosaic of scrub has potential to support breeding birds and to support foraging, commuting and hibernating reptiles.

The Flood Risk Assessment notes the site is located within defended Flood Zone 3a from the River Trent south of the site. The proposed use of the site is residential and

therefore classified as 'more vulnerable'. This classification requires the passing of a Sequential/Exception Test, which it is considered has been demonstrated through a search of sites in Shardlow and Aston-upon-Trent. The flood risk on the site from tidal, groundwater, sewerage, pluvial and artificial sources is considered negligible. The flood risk from fluvial sources has been considered in more detail however, with modelling results provided and identifying a flood protection breach to the east of the site which in the event of a 1 in 100-year event would be overtopped, resulting in a flood level of 32.42mAOD on site. A flood outline for this scenario has been modelled to affect the southern half of the site to a maximum depth of 400mm, with waters travelling at low speeds. As these waters would be located away from the proposed development, occupants would have a safe access and egress away from the site. The disposal of surface waters arising from the development is into a watercourse crossing the site, with discharge attenuated to 6.3l/s, and the proposed surface water drainage system incorporates storage to accommodate 1,005m<sup>3</sup>.

A Hydraulic Assessment finds that a review of the existing conditions confirms the site is currently protected against the 100-year flood event by a flood defence running adjacent to the canal. The site floods in the 100-year with climate change event as a result of river flows overtopping the flood defence at two locations, positioned approximately 140m and 300m downstream of the site boundary. The site is therefore considered to be located within the 100-year with climate change defended floodplain. It is recommended that the peak water level on the 'wet' side of the realigned flood defence be used to set the minimum finished floor levels in order to mitigate the potential impact of a breach.

The Transport Assessment (TA), based on 97 dwellings, outlines the site is predicted to generate no more than 72 two way trips in any peak hour, equivalent to just over one additional trip every minute in the peaks with a nominal number of trips outside these hours. Each property would be located within 400m of the bus service which provides a frequent service to Leicester and Derby 24 hours a day, 7 days a week. This is advanced to provide a real alternative to the private car for commuters and leisure users whilst a number of local amenities are located within a short walk/cycle of the A Framework Travel Plan (FTP) that accompanies the TA provides a long term management strategy for the site which aims to minimise travel to and from the site by single occupancy car trips. Principally, the FTP aims to increase modal choice, seeking to make best use of the sustainable location of the site. A safe and suitable means of access has been identified in line with Manual for Streets standards and a solution to relocate the existing bus stop has also been identified. It is considered the residual cumulative impact of the development is minimal and in no way severe so to withhold permission on transport grounds.

A Tree Survey identified 62 individual trees and 24 groups of trees affected. At best the overall condition of the trees is described as fair. The proposed layout requires the removal of numerous individual trees and groups of trees. It is considered that the removal of these trees should not preclude the development upon the consideration of the trees general condition, and their subsequent unsuitability for inclusion in a Tree Preservation Order. Any trees recommended for removal are lower quality with the exception of 1 individual category 'B' tree and 1 small group of category 'B' trees, which presently display a relatively limited level of public amenity value. The boundary poplars in the western corner of the site are also not considered

appropriate for retention in the proximity of new dwellings. It is recommended that protective measures and construction methodology are adopted prior to and during the construction, and where removal is unavoidable and necessary then planting of replacement trees of an appropriate size and species should mitigate this loss.

## **Planning History**

- 9/2016/0660      (Related application) The removal of approximately 22m of topsoil from section of existing flood defence embankment and raising of embankment to requisite levels – Approved September 2016.
- 9/0381/0394      Residential development – refused June 1981 (on the grounds of being outside the settlement confines, too much for the size of the village, intrusion into the countryside, highway safety and inadequate surface water drainage).
- SED/261/28      Residential development – refused May 1961 (on the grounds of being in the draft green belt).

## **Responses to Consultations**

Natural England raises no objection and advises that the application should be determined in accordance with standing advice and input from the Council's own ecological advisors.

Derbyshire Wildlife Trust objects to the application. It is noted that the extended phase 1 habitat survey was undertaken at a sub-optimal time of year, but it covers habitats and scopes out the potential for protected species – namely great crested newt, water vole and otter. The information provided is considered to form a useful baseline, but is lacking in detail in several critical areas. The development will result in a net loss of biodiversity due to the loss of scrub, bramble underscrub, rough grassland and other habitat whilst not indicating any habitat creation and enhancement measures for wildlife. Whilst this type of habitat is unlikely to be of high value for plant diversity and does not include any UK BAP priority habitat types, and it is also thought unlikely to qualify for Local Wildlife Site status; the habitats are locally valuable and relatively uncommon in this part of Derbyshire which is typically intensively managed for agriculture. Ideally there should be a net overall gain for biodiversity. Furthermore the mosaic vegetation is likely to support suitable habitat for both wintering and breeding birds, reptiles, common amphibians and foraging bats and badgers. Surveys for these species have not been undertaken at optimal times of the year.

The Environment Agency (EA) notes that site lies within Flood Zone 3 as defined by the EA and Strategic Flood Risk Assessment (SFRA) as having a high probability of flooding. They originally objected in the absence of any evidence to demonstrate that the flood risk Sequential Test, in order to steer new development to areas at the lowest probability of flooding, has been applied. Since then hydraulic modelling has been undertaken which confirms the EA's suspicions of a low spot on the flood defences that protect the site from flooding. A separate planning application (ref: 9/2016/0660) for works to raise the flood defence to the appropriate standard of

protection has now been approved. It is advanced that these infrastructure works provide wider sustainability benefits to the local community, and subject to the Council being satisfied that the proposed development is sequentially appropriate and passes the Sequential Test; they hold no objection subject to a Grampian condition to require the infrastructure works to be undertaken prior to any raising of land levels within the floodplain under this application, and for a condition to ensure finished ground floor levels to be set at least 600mm above the 1 in 100 year flood level of 32.42 metres above Ordnance Datum (mAOD).

The Environment Agency asks that Derbyshire County Council, as Lead Local Flood Authority, is consulted on the application as statutory planning consultee for surface water drainage at the point of determination of this application.

The Development Control Archaeologist notes the site is likely to contain archaeological remains of prehistoric/Romano-British date. There is a significant concentration of known sites of this type in the area around Shardlow, typically identified through cropmarks and including a nationally important (Scheduled) complex associated with the Aston cursus and Iron Age settlement 700m west of the proposal site, along with other undesignated complexes immediately west, to the north-west, to the north of London Road and south of the canal – all within 200m of the proposal site. Whilst the site has been used as a nursery and occupied by glasshouse structures, it is likely that the bulk of the archaeological resource beneath the site could have survived given the structures were relatively 'lightweight'. The site is therefore likely to contain archaeological heritage assets and in the absence of an appropriate assessment the application conflicts with the NPPF, leading to an objection being lodged.

The County Highway Authority notes that whilst access is a reserved matter, it is intended to form an access at the point of the existing bus stop, with the layby and shelter relocated accordingly. Furthermore, whilst recorded vehicle speeds exceed the posted 30mph limit, adequate visibility can be achieved to accommodate these higher speeds. As a result there is no objection subject to conditions to control the forming of a temporary and the permanent access, relocation of the bus stop, a construction management plan, wheel washing facilities, visibility splays and design of the internal layout and timing and provision thereof.

The County Rights of Way section has no objection as it does not appear to affect the route of Footpath 5, but an informative should be added to any permission granted.

Peak and Northern Footpaths has no objections but asks that public access over the public open space be legally secured and be made suitable for use at all times of the year, as well as direct access to Footpath No. 5. Construction of a pedestrian/cycle bridge should also be considered, so to enable connection between the site/village and the towpath.

The Police Crime Prevention Design Adviser advises there are no objections to the application in principle. However it is advised that the public footpath is poorly supervised and to include links into the development would present an avoidable crime and nuisance generator. It is advised that the development should be enclosed

to this boundary and pedestrian movement encouraged along the entrance road, as a safer alternative for both pedestrians and residents. Notwithstanding this, future detail should include active outward facing house elevations, appropriate definition between private and public space, enclosed and secure rear gardens avoiding exposed garden boundaries where possible, individually securable and direct rear garden access and 'in curtilage' or 'in view' associated parking.

The Contaminated Land Officer notes the site is within influencing distance of historical features which could present hazards during the development. It is recommended that further intrusive site investigation be secured by condition, along with remediation/mitigation as necessary.

The Strategic Housing Manager seeks provision of 30% affordable housing in a mix of 1, 2, 3 and 4 bedroom dwellings (in a 75:25 rent to shared ownership tenure) to be spread across the site in clusters of no more than 10 dwellings. On the maximum number proposed, this would be 17 dwellings.

The County Planning Policy Officer notes that infant and junior schools do not have the capacity to accommodate the additional pressure on places from this development and seek contributions:

- £223,290.21 for 13 secondary places at The Long Eaton School; and
- £93,139.50 for 5 post-16 places at The Long Eaton School.

Members should note this is based on the original 97 dwellings and updated figures will be reported verbally at the meeting.

The NHS Southern Derbyshire CCG notes that the Alvaston Medical Centre is most likely to be affected by the proposals and it is operating at capacity and a contribution of £22,063 is requested.

## **Responses to Publicity**

Shardlow & Great Wilne Parish Council objects on the following grounds:

- i) the proposal would lead to a 20% increase in the number of houses in Shardlow, too large to maintain the village community and changing the character of the village;
- ii) the indicative density is too high with little garden space and constitutes overdevelopment;
- iii) flooding is an issue and application ref: 9/2013/0087 (for 12 houses at 128 London Road) was refused on flood risk grounds);
- iv) the proposal would generate substantial surface water due to hard surfaces created and it is uncertain where this would go, with existing surface water flooding issues;
- v) ecology report appears to be for a previous proposal for a marina;
- vi) infrastructure already at capacity with the primary school full, the surgery having closed and moved, and foul sewers under strain, and no intent as to mitigating these issues is given;
- vii) there is not a need for this level of development in Shardlow with Boulton Moor just 3 miles away delivering over 1,000 dwellings;

- viii) social housing has already been added to the village in the last 10 years and more housing for elderly is required to 'free up' existing stock for families; and
- ix) development of an estate would spoil the existing culture of this historic inland port.

36 objections have been received, raising the following concerns/points:

#### Principle of development

- k) the site is outside of the settlement confines and contrary to policy;
- l) this would be a strategic scale development in the wrong place;
- m) there is no need for the housing in the village;
- n) other available brownfield sites should be used;
- o) has any consideration been given to using this land for self-build plots;

#### Infrastructure and services

- p) local schools, doctors and dentist cannot sustain further homes;
- q) primary school currently oversubscribed;
- r) the existing shop/post office/hall cannot support further homes;
- s) the bus service is limited;
- t) no mention of supporting existing services in the village;
- u) Cheal Close has provided affordable homes and no further such homes are needed;

#### Flood risk and drainage

- v) the land is prone to flooding;
- w) other applications rejected on flooding grounds and lack of safe access/egress;
- x) the proposal does not satisfy the NPPF sequential test;
- y) there are other sequentially preferable sites adjacent to the village;
- z) the sequential assessment has not been undertaken correctly;
- aa) the land accommodates excess flood water;
- bb) development would increase flood risk off-site;
- cc) houses at Cheal Close had to be elevated above flood levels, and the same on this site would exacerbate the visual impacts;
- dd) existing dyke/ditch is not fit for purpose at present;
- ee) drainage from the proposed development would be a problem;
- ff) foul sewers and waste water treatment works are at capacity;

#### Biodiversity

- gg) loss of a wildlife haven;
- hh) the site is home to badgers, bats and nesting ground birds;
- ii) impact on trees and habitat;
- jj) timing of ecology survey inadequate;

#### Visual impact, heritage and character

- kk) visual impacts from some distance;
- ll) impact on views from the canal;
- mm) harmful to the conservation area;
- nn) impact on the setting of listed buildings in the area;
- oo) density of the development indicated is not appropriate or in character with the village;
- pp) scale of the development would be too much and harmful to the character of the village;
- qq) a range of bungalows and larger family homes with a doctors surgery would be more appropriate;
- rr) a smaller, less dense development of around 25 homes would be more appropriate;
- ss) the proposed frontage to London Road would not enhance the character of the area, nor encourage use of the recreation space to be provided;

#### Transport and highway safety

- tt) increase in traffic through the village;
- uu) increased risk of accidents from extra traffic;
- vv) transport statement underestimates the impact;
- ww) safety of proposed access;
- xx) safety of removing the bus stop layby and relocating the stop on the carriageway;
- yy) the density would lead to inadequate access for emergency vehicles;
- zz) inadequate provision for visitor parking (to the recreation space);
- aaa) inadequate provision for residents parking;
- bbb) open air parking would lead to the development being an eyesore;
- ccc) loss of space used for parking by numbers 120-126 London Road;
- ddd) the development would not encourage use of sustainable modes of transport;

#### Ground conditions

- eee) the site is contaminated with glass;

#### Amenity

- fff) loss of privacy;
- ggg) shading from proposed dwellings;
- hhh) disturbance during the construction phase;
- iii) disturbance from vehicles during occupation phase;
- jjj) rise in anti-social behaviour (littering);

#### Other

- kkk) no detailed plans for the recreation space and how it would be maintained;
- lll) loss of view;
- mmm) potential for a further phase of development later on; and
- nnn) lack of adequate pre-application consultation.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): H5 (Village Development), H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest), EV12 (Conservation Areas), EV13 (Listed or Other Buildings of Architectural or Historic Importance) and EV14 (Archaeological and Heritage Features).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development); H23 (Non-Strategic Housing Allocations); BNE5 (Development in the Countryside); BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage).

## **National Guidance**

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

## **Local Guidance**

- Housing Design and Layout Supplementary Planning Guidance (SPG)
- Section 106 Agreements – A Guide for Developers
- Shardlow Conservation Area Character Statement (2014)
- Trent and Mersey Canal Conservation Area Character Statement (draft 2013)

## **Planning Considerations**

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

- The planning policy context;
- The principle of development;

- Flood risk
- Drainage;
- Impact on designated heritage assets;
- Archaeological impacts;
- Visual and landscape impacts;
- Connectivity and highway safety impacts;
- Biodiversity;
- Design and amenity;
- Affordable housing, infrastructure and mitigation; and
- Other material considerations.

## **Planning Assessment**

### The planning policy context

Section 38(6) of the 2004 Act gives primacy to the Development Plan, commanding that all applications must be considered against its provisions unless material considerations indicate otherwise. The NPPF reasserts this primacy multiple times, acknowledging that it is a 'secondary' consideration to the Plan, albeit a particularly important one. Both the Plan and NPPF seek to achieve sustainable development, where sustainability is measured against the Plan or the Framework as a whole. It is of particular note that the NPPF concedes within the core principles that development "should be genuinely plan-led" and this plan-led approach should provide "a high degree of predictability and efficiency" for assessment of applications. A departure from the Plan thus requires the material considerations to be of substantial weight.

The Local Plan Part 1 (LPP1) was adopted only in June, following an extended forensic analysis by the EiP Inspector of the housing needs for the wider Housing Market Area (HMA). There can thus be no doubt that the Objectively Assessed Need (OAN) arrived at is wholly robust and is appropriate in determining housing needs for the District; and in turn the housing distribution and settlement hierarchy policies, as well as the site allocations in the LPP1, can all be afforded full weight. In this same vein, the social, environmental and economic objectives of the LPP1, such as employment need, infrastructure requirements and protection of the historic and natural environment; must be also be respected.

It is of significance that Inspectors in recent appeals concluded that the LPP1 housing policies and those saved from the 1998 Plan (LP98) were up to date. In reaching this conclusion regard was had to the status of the 5 year supply. Both Inspectors found that the Council's published trajectory could be relied upon and neither chose to re-open proceedings to hear evidence on assumptions informing the deliverability of individual sites.

In the above context, it is advanced that the Development Plan can be relied on as the sustainable development strategy for the District. Once again, a departure from the Plan thus requires the material considerations to be of substantial weight, and the recent appeal decisions demonstrate that the benefits of the development must be particularly 'grand' and not already facilitated by the Plan itself.

The knock-on effect of this is that the presumption in favour of development under paragraph 14 of the NPPF is not engaged. The Secretary of State himself has recently consented to judgement on a High Court challenge stating "paragraph 14 is clear that the presumption "means" something in particular for both plan-making and decision-taking, and what it means in the context of decision-taking is set out exhaustively.... If... none of [the] limbs [are] engaged, the presumption has no further meaning beyond paragraph 14" [emphasis added]. It is thus incorrect to apply the presumption after it has been concluded the proposal is not in accordance with an up-to-date Development Plan.

### The principle of development

The site fails to provide housing within the settlement confines for Shardlow, thus not adhering with saved policy H5. As the scheme is not affordable led and greater than 25 dwellings, it is also not an exception site, thus conflicting with the settlement hierarchy (policy H1). In turn an 'in principle' conflict with saved policy EV1 and emerging policy BNE5 arises, and it is noted the site is not an emerging allocation under policy H23 nor proposed to be included within the revised settlement confines (emerging policy SDT1). It is clear that the proposal does not benefit from the planned approach, and not 'unavoidable' or 'appropriate' in the countryside.

Whilst it is noted the applicant is suggestive of the site being a brownfield site, this point is not agreed. In its glossary, the NPPF provides a definition of brownfield, or previously developed land, but it specifically excludes "land that is or has been occupied by agricultural or forestry buildings" and "land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time". There is thus clear argument that this site should not be treated as brownfield in weighing up the merits of the case.

### Flood risk

The site falls within flood zones 2 and 3a, both on the EA mapping and as defined in the SFRA. The NPPF advocates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere – necessary being the operative word. Policy SD2 states "the development of sites with a higher risk of flooding will only be considered where essential for regeneration or where development provides wider sustainability benefits to the community that outweigh flood risk".

Residential development is classified as a 'more vulnerable' development type and is generally inappropriate in zone 3a unless the Sequential and Exception Tests can be passed. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding – ensuring that development is not permitted where there are reasonably available alternative sites appropriate for the proposed development in areas with a lower probability of flooding. The SFRA provides the basis for applying this test.

Due to the non-strategic scale of the site (i.e. less than 100 dwellings), it is considered the Sequential Test should be assessed at a sub-District level. In determining the appropriate area over which to apply the sequential test, regard has been had to the strategic approach to housing delivery across the District (policies S4 and H1). Sites of this scale are appropriate for Key Service Villages and Urban Areas. Regard is also had to the PPG which states “for individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan; the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases it may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives”.

The situation here is that there has generally been no need to sequentially test allocations in the Local Plan given the availability of land to meet the identified housing needs. The exceptions are Hatton where development is required in this location in order to bring forward necessary infrastructure and wider community benefits, or regeneration. In the absence of policies or evidence demonstrating a need for development within Shardlow, or within a set catchment including this site; it is difficult to see why reasonable alternatives across all the Key Service Villages and Urban Areas should not be considered.

The Sequential Test for this site has been previously applied to just sites in Aston-Upon-Trent and Shardlow, given the proximity of the two settlements and their similar status in the settlement hierarchy. The applicant disagrees and considers the search should be confined to Shardlow alone. Given there is no locational imperative which justifies the need for development at this location, or indeed anywhere else in Shardlow – a fact demonstrated by the lack of any allocation through either parts of the Local Plan; the applicant’s argument is not sound. Indeed the previous application of the Test has been reviewed in light of the status of the Local Plan having changed since then, and restricting the search area is considered to be at odds with the apportionment of objectively assessed housing needs on the basis of the ‘best’ available sites across the District.

Notwithstanding this, the reduced size of the scheme means a number of sites previously discounted could now accommodate the number of dwellings proposed. Four SHLAA sites in Aston have been considered both individually and, where adjacent, combined. The land at Moor Lane could provide for a combined capacity of 62 dwellings – accommodating the proposed development of up to 58 dwellings. This land is located in Flood Zone 1 and hence is sequentially preferable. Given that the Aston site has been reviewed through the Part 2 Local Plan preparation process (and been subject to the sequential test there); that site is sequentially preferable.

Consequently, the proposed site fails to pass the Sequential Test. Accordingly it is not necessary to apply the Exception Test. The ‘no objection’ response of the EA is

noted, but it must be recognised that this is dependent on the Council being satisfied that the proposed development is sequentially preferable. The above discussion strongly indicates it is not. Whilst the EA also advances that the infrastructure works on the nearby site would provide wider sustainability benefits to the local community; they fail to recognise that there is no maintenance package which would sit alongside those works to prevent a return to the existing flooding risk within a short time. Indeed, now the EA are publically conscious of the shortcoming in their defences, there is likely to be pressure to resolve this matter as part of their ongoing budget. It is not agreed that this development is the only way in which the wider sustainability benefits can be delivered.

### Drainage

At the time the application was submitted, the EA were the statutory authority for considering drainage matters. Due to the passage of time, the County Council is now the Lead Local Flood Authority (LLFA) but it became apparent late on that the LLFA had not been made aware of the proposal, and neither party had considered drainage matters. Local and national policy requires development to cater for its own drainage means and not cause an increased risk of flooding off-site. It is thus normal to expect a minimum level of assessment to inform development proposal as these. Unfortunately it is clear from the County's response that there is inadequate information in order to determine whether the site can be suitably drained in principle (with sufficient space for attenuation where required). The absence of information is significant in this case as a proportion of the site is within areas of high flood risk.

### Impact on designated heritage assets

The setting of a designated heritage asset is a material consideration which has great weight when considering any application for development. The statutory duty to "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses" cannot be ignored. With respect to any buildings or other land in a conservation area, the planning authority must pay special attention to the desirability of preserving or enhancing its character or appearance. Although this statutory duty does not explicitly extend to the setting of a conservation area; development within its setting can affect the character or appearance on which it derives its significance. This is reflected in the NPPF which makes no distinction between listed buildings and conservation areas in paragraph 132:

"when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting".

The policy context is informed by policy BNE2, saved policies EV12 and EV13, emerging policy BNE5 and national guidance in the Framework and the PPG. The main focus is on Shardlow Manor and the conservation areas.

Shardlow Manor pre-dates the construction of the canal into Shardlow. The gardens and grounds of the Manor have been subdivided in the 20<sup>th</sup> century for housing development. The mature pines behind Wakelyn Close were part of the grounds and at the back of this area lies a paddock in which there is a substantial tree-covered embankment. This relates to the former boundary of the Manor. Hence, the Manor derives much of its significance and setting from the land to the north of London Road, although it will have still been consciously designed to capitalise on views southwards towards the sloping landscape down to the River Trent (hence the orientation of the principal windows). Development of the site is therefore considered to have an impact on this significance, in so far as the views out from the property, with the views across and beyond the site becoming enclosed by built development. This impact is already tempered by the existing 'channelling' of views by the row of terraces and houses to the front of the telephone exchange. Overall it is considered a degree of harm is brought about, but this is less than substantial and needs to be weighed against the public benefits of the proposal.

It is recognised that the site is outside of, but adjacent to, the Shardlow Conservation Area. The proposal would also have a very slight impact on the character and appearance of the conservation area through the enclosure of the route through Shardlow and the loss of a 'glimpse' view out from the centre of the village, but this gap is also not development on the southern side of the road is not considered to be at odds with the character, subject to a strong and well-designed frontage being secured, maintaining this existing character. In terms of impact on the Trent and Mersey Canal, the built development would be separated from the canal by the indicative recreation space. Seen against and nestled into the backdrop of built form along London Road, with carefully controlled landscaping of the recreation space so as not appear 'unnatural', it is considered harm would not be caused to the significance of this conservation area.

The impact on designated heritage assets requires balancing against the public benefits of the proposal. The PPG analyses what is meant by the term 'public benefits' and considers that these could be anything that delivers economic, social or environmental progress, but that they should flow from the proposed development. The key aspects are that the benefits should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit, although they do not always have to be visible or accessible to the public in order to be genuine public benefits.

### Archaeological impacts

Shardlow has significant historical interest in archaeological terms, it being an historic inland port. The site is likely to contain archaeological remains of prehistoric/Romano-British date and there is a significant concentration of known sites of this type in the area around Shardlow – typically identified through cropmarks and including a nationally important Scheduled complex associated with the Aston cursus and Iron Age settlement 700m west of the site. Other undesignated complexes within 200m immediately to the west, north-west, north of London Road and south of the canal all elevate the potential for remains to be identified on the site. Indeed the 'lightweight' nature of the former glasshouse structures means that the

bulk of the archaeological resource beneath the site could have survived relatively undisturbed.

The application is unfortunately not supported by any assessment of significance and proposed measures to identify, record, and/or preserve this interest. This fails to comply with local and national policy. The applicant advances that survey work could be undertaken to address this conflict. However the survey work for this site is complicated by the former nursery use making a geophysical survey inappropriate. Accordingly trial trenching of the site is necessary, and this alone would introduce considerable delay in addressing this point. The cost of undertaking intrusive works prior to determination also raises question over the likelihood of this expense being sustained in light of other issues raised in this report. It is therefore not appropriate to delay determination. Should they wish, the applicants can seek to resolve these matters ahead of any resubmission or appeal.

### Visual and landscape impacts

It is recognised that the site is not presently pleasing to the eye and it appears reasonably prominently on the main thoroughfare through the village. That is not to say that development is required in order to 'tidy it up' however – there are a range of alternatives which could achieve a visual improvement without it requiring built development to the extent or prominence proposed. The views into the site are limited to just the frontage and the public footpath, where in both cases built development at close quarters and in a range of densities are not 'out of sync' with the existing environs. The views from the canal would be filtered by existing (and potentially proposed) planting such that the development would not appear as a prominent incursion out from the existing edges of the village.

### Connectivity and highway safety impacts

With access a reserved matter, the test is whether access is feasible without undue harm. The indicative position of the access would lead to the loss of the layby for the bus-stop but this would be relocated in the carriageway. Whilst representations raise issue with this solution, both in terms of loss of the scope for existing parking and by introducing an obstruction to the free-flow of traffic when buses stop; these impacts provide insufficient reasons to resist the principle of an access in this location. Indeed 'on carriageway' bus stops are preferred by the County Highway Authority as a way to enable buses to easily and more safely re-join the flow of traffic. The number of dwellings proposed is also not considered to cause capacity issues on the wider network. The frequency of bus services is also relatively good for a rural village, whilst other sustainable modes of transport are feasible. The response of the County Highway Authority is supported and permission should not be withheld on highway safety or capacity grounds.

### Biodiversity

Due to the passage of time since the site was last in active use, the site has been subject to succession by a number of species, both flora and fauna – some potentially of significance or subject to protection. This is the core of the concern raised by the Wildlife Trust. It is simply not possible to determine the significance of,

and extent of, interest on the site given key surveys have not been undertaken. Indeed the passage of time since the first, sub-optimal, habitat survey means it may now also be inappropriate to rely on some of this data.

The NPPF advocates that impacts on biodiversity should be minimised and net gains provided where possible. It makes clear that if significant harm cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and that permission should also be refused for development resulting in the loss or deterioration of irreplaceable habitats unless the need for, and benefits of, the development in that location clearly outweigh the loss. Policy BNE3 and saved policy EV11 reflect these principles. Given the absence of suitable information, it is not possible to ascertain whether the proposal would have acceptable impacts and/or could be appropriately mitigated.

The applicant has again advanced that such survey work could be undertaken to address these conflicts, but it is likely now that these would either be taken during a sub-optimal period again or lead to considerable delay in determining the application – one which has already kept the local community ‘in limbo’ for some 18-24 months. There is also no certainty that the survey work would lead to the lifting of the Trust’s objection given in cannot be certain at this stage that any mitigation required can be delivered (on or off-site). It is therefore not felt appropriate to delay determination further, and this is no different to the approach taken on other sites where survey work cannot take place until next spring. Again the applicant can seek to resolve these matters ahead of any resubmission or appeal.

### Design and amenity

The scheme is in outline such that layout, scale and appearance cannot be fully assessed. The indicative layout achieves the basic principles of an outward facing development and a range of property types and spaces. The open space provision would appear to be appropriate and achieve minimum standards. There is some concern as to the density of development to the edges of the site for a development provided in this manner, but it is not considered a fundamental issue which prevents the principle of development being established. It is also possible for the amenities enjoyed by existing occupiers to be protected by way of the standards in the SPG.

### Affordable housing, infrastructure and mitigation

Affordable housing provision would be in line with policy at 30% of the overall development (circa 17 dwellings) and this provides a welcome addition where such needs remain important.

The proposal would have impacts on existing services and facilities, of which some would be beneficial through additional inward investment in the local economy. Whilst additional strain on existing roads and sewers is inevitable with any growth; there is no substantive evidence to withhold permission on these grounds. However education and healthcare capacity is of concern and for this reason contributions to mitigate the impact are sought by the County and the CCG. In summary, the contributions (based on an indicative housing mix of 4 one-beds, 16 two-beds, 20 three-beds and 18 four-beds) would be:

- Education (secondary): £85,880.85
- Education (post-16): £37,255.80
- Healthcare: £22,063.00
- Outdoor sports facilities: £36,960.00
- Built facilities: £30,630.40

As noted above, at the time of writing updated figures for education – in response to the reduction to 58 dwellings, are awaited.

### Benefits

It is recognised that the housing needs for the District are a minimum. The provision of 58 dwellings towards the rolling supply carries weight, especially given affordable housing would be secured in a key service village; but this is considerably tempered by the fact that this quantum is not required to sustain the supply figure and it could be provided under the LPP2 (i.e. through the plan-led system). Whilst the applicant argues that the hierarchy points to providing some housing at some point of the plan period in Shardlow, this is not the purpose of the hierarchy – it does not explicitly state that a minimum or certain level of development is required in each and every village in the hierarchy. This follows the lead of paragraph 55 of the NPPF which notes that development in one village may support services in a village nearby, and in this case the housing sub-market area needs can be met in Aston, Melbourne, Repton or Willington. The peripheral economic and social benefits which arise from the construction and use phases are also of merit, but carry little weight.

### Conclusion

The Development Plan is the primary consideration in this application. It is up-to-date and its policies can be afforded full weight given a 5 year housing supply exists. There is no reason to doubt this supply given the proximity of this recommendation to the adoption of the LPP1 and the examination before that, as well as the figure being ratified on subsequent appeal decisions. There is also no reason to doubt this supply will dwindle given the surplus factored into the supply and the progression towards adoption of the LPP2. Indeed further windfall sites are being added on an ongoing basis, as Members will recall from previous committees. The presumption under the NPPF is therefore not engaged and it is thus necessary to determine whether there are any other material considerations which outweigh the Plan.

The provision of affordable housing is of merit, but this comes as ‘part and parcel’ of similar major schemes to be delivered elsewhere in the District, in accordance with the Plan. It is also recognised that development in Shardlow itself might help to sustain local services, but this is desirable as opposed to essential otherwise the spatial approach to housing delivery would command minima per settlement as part of the strategy. It does not do this. The visual ‘tidying up’ of the site is not considered to carry weight – it does not follow that development of this use and scale is necessary to secure a visual improvement. The wider flood protection benefits are questionable. Whilst there is an argument that the ‘sibling’ permission would facilitate the continued protection of properties across the village sooner than the EA might address this shortcoming themselves; it cannot be assumed that such works would

not be carried out in the absence of permission here. That permission can be separately implemented, and it would seem odd that the EA would choose to 'ignore' that shortcoming going forward when committing its budgets to flood defences across the area. Furthermore, once carried out there is no mechanism to ensure the defences are maintained so to 'validate' the benefits going forward.

The peripheral economic and social benefits from housing provision are also noted. However many of these benefits are requirements which are enshrined in the overall sustainable development approach upon which the Local Plan is based. They are thus already expected from each housing allocation across the District. With the scope to deliver most of the benefits on sites elsewhere in the vicinity and/or District, it is considered that the material considerations here are insufficient to justify a departure from the plan-led system - a departure which would undermine the predictability in decision making the Plan is designed to promote.

The environmental and social harms which arise by way of developing land at higher risk of flooding and without certainty that drainage needs for the site would not elevate flood risk elsewhere; to biodiversity; and to potential archaeological interest are all of significant weight. The fundamental harm to the plan-led approach is however a substantial weight in itself. Hence the harm as a whole is considered to substantially outweigh the benefits arising from the proposal – conflicting with the provisions of policies H1, SD2, SD3, BNE1, BNE2 and BNE4 and saved policies H5, EV1, EV11 and EV14.

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

## **Recommendation**

**REFUSE** permission for the following reasons:

1. The Development Plan is up-to-date and policies relevant to the supply of housing can be afforded full weight given a 5 year housing supply exists. The presumption in favour of sustainable development under paragraph 14 of the NPPF is therefore not engaged and it is necessary to determine whether there are any other material considerations which indicate a decision should be made contrary to the provisions of the Plan. The proposed development, whilst contributing further to provision of open-market and affordable housing in the District, does not benefit from an allocation nor is it within the settlement confines of Shardlow. Accordingly, as the site lies within the countryside, the proposal is contrary to the plan-led approach which seeks to provide housing needs in a sustainable manner whilst safeguarding against undue harm to the environment. The proposal is therefore contrary to policy H1 of the Local Plan Part 1, saved policies H5 and EV1 of the Local Plan 1998, emerging policies SDT1 and BNE5 of the Local Plan Part 2; as well as not respecting the core principles of the NPPF and the balanced approach to sustainable development enshrined therein.
2. The site falls within flood zones 2 and 3a where housing development should be avoided by directing such development to areas of lower risk. A sequential

test has been applied which, in the absence of policies or housing needs evidence requiring a proportion or minimum number of dwellings to be created in Shardlow over the Development Plan period; has found there to be reasonable available alternative sites which could accommodate the development proposed. The sequential test is therefore not passed and as such the proposal is contrary to policy SD2 of the Local Plan Part 1 and paragraphs 100 and 103 of the NPPF along with associated guidance contained in the PPG.

3. Surface water drainage needs for the site should be accommodated without increasing the risk of flooding elsewhere. Whilst details have been provided of the proposed runoff rate and attenuation volume, there is an absence of information regarding the location of proposed attenuation or the method of surface water disposal. Given the site lies within an area of high flood risk, these details are significant in establishing whether the site does not cause increased risk of flooding elsewhere. The proposal is therefore contrary to policies SD2 and SD3 and paragraph 103 of the NPPF.
4. Shardlow has significant historical interest in archaeological terms, with a number of recorded sites in the immediate locality - one of national significance. The site thus has a high probability of containing archaeological remains of prehistoric/Romano-British date. The construction nature of the former structures on the site means that the bulk of the archaeological resource beneath the site is likely to have survived relatively undisturbed. The proposal is not supported by an assessment of significance and proposed measures to identify, record, and/or preserve this interest, such that it is not possible to ascertain what degree of harm (if any) the proposed development would bring about. The proposal is therefore contrary to policy BNE2 of the Local Plan Part 1, saved policy EV14 of the Local Plan 1998, emerging policy BNE11 of the Local Plan Part 2 and paragraphs 128 and 139 of the NPPF.
5. Since the site was last actively in use, it has been subject to succession and colonisation by a number of species, both flora and fauna – some potentially of significance or subject to protection. Whilst a phase 1 habitat survey has been carried out, the further survey work recommended in order to fully establish the potential of the site has not been undertaken. Furthermore the passage of time since the initial survey was carried out creates uncertainty that the identified baseline for interest is still relevant. The proposed development thus has the potential to cause the loss or deterioration of irreplaceable habitats, with it not demonstrated that significant harm can be avoided, adequately mitigated, or compensated for. The proposal is therefore contrary to policy BNE3 of the Local Plan Part 1, saved policy EV11 of the Local Plan 1998, emerging policy BNE8 of the Local Plan Part 1 and paragraphs 109 and 118 of the NPPF.

#### Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to the proposal, meetings and negotiations. However despite such efforts, the planning objections and issues cannot be satisfactorily addressed - either at this point in time or in principle. As such it is considered that the Local Planning Authority has

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

## **2. PLANNING AND OTHER APPEALS**

(References beginning with a 9 are planning appeals and references beginning with an E are enforcement appeals)

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>	<b>Page</b>
9/2015/1051	Fishpond Lane & Duck Street, Egginton	Etwall	Dismissed	Delegated	67



---

## Appeal Decision

Site visit made on 26 August 2016

by **Jonathan Hockley BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **21 September 2016**

---

**Appeal Ref: APP/F1040/W/16/3143404**

**Land at junction of Fishpond Lane & Duck Street, Egginton, Derby,  
Derbyshire DE65 6HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Anna Harrison against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/1051, dated 6 November 2015, was refused by notice dated 27 January 2016.
  - The development proposed is the erection of dwelling.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The South Derbyshire Local Plan Part 1 (LP Pt 1) was adopted on 13 June 2016. The appeal must be determined on the basis of the development plan at the time of my decision. Both main parties were given the opportunity to comment on the implications of the adoption of the LP Pt1 and I have taken the received reply into consideration in reaching my decision.

### Main Issue

3. The main issue in this case is the effect of the proposed dwelling on the character and appearance of the surrounding area.

### Reasons

4. Egginton is an attractive small village which primarily consists of two roads; Main Street/Church Road through the centre of the village, and Duck Street/Fishpond Lane, which form a U shaped lane connecting to Main Street at both ends. This street varies in character significantly throughout its length. The south western corner of the street, where the road changes name and the appeal site is located, is rural in character, providing a link to the countryside beyond the village. The site itself is a small agricultural field seemingly used for pasture.
  5. In views from the north along Duck Street, the site is reasonably well hidden behind trees and existing development on the west side of the street. From this angle the development would appear to be a continuation of the existing built form. However, from the east, in views along Fishpond Lane the site has a significantly different appearance. After the turning to the reasonably
-

modern cul-de-sac on the north side of the Lane, the street has a rural character on its southern side with thick lines of trees and the development on the north side backing onto the Lane. Views lead along the sinuous Lane to and through the appeal site which allows a vista through the green site and towards the rural countryside beyond. The presence of a low flood berm towards the rear of the site does nothing to dispel this sense, as the ridge is low enough to readily allow views over and beyond it towards trees within the valley.

6. The proposal seeks to construct a fairly substantial 3 bedroomed house with separate detached garage. This would be sited roughly in the middle of the plot and would be 1½ storeys high. Whilst sympathetically designed, due to this siting the scheme would fail to respect the important vista down Fishpond Lane to the wider countryside beyond. The house would form a visual stop to the street, and would remove a substantial part of the current open views, extending the urban form of the village to the south west. The proposal would thus create the effect of the village encroaching into the countryside. Whilst there are trees at the front of the site these do not hinder views significantly, and would provide even less screening in the winter to the visually prominent proposal. Accordingly, I therefore consider that the proposal would have a significant adverse effect on the character and appearance of the surrounding area.
7. Policy BNE1 of the LP Pt1 states that all new development will be expected to embrace the principles of sustainable development. The proposal would generate one dwelling, and thus would have limited economic benefits. Limited social benefits of an additional property would also accrue. Details have been provided of issues at the site in the past due to fly tipping, thefts, and risks to animal health and it is considered by the appellant that a direct supervision of the land owned by the appellant would assist in dispelling such risks. However, I note that the appellant currently lives in the centre of the village, stated to be just some 200m from the site. This is not a significant distance and would still allow reasonably close supervision of the land. Accordingly I place minimal weight on this benefit.
8. When taken in the round, I do not consider that the limited benefits identified would outweigh the significant adverse effects of the proposal on the character and appearance of the area. The proposal would thus not be the sustainable development for which there is a presumption in favour of within the National Planning Policy Framework (the Framework) and in Policy BNE1. The harm caused to the character and appearance of the area would also be contrary to the stated intention of Policy BNE1 that all new development should create places with a locally inspired character that respond to their context and have regard to valued landscape and townscape characteristics, and to the core planning principle of the Framework that planning should take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside.

#### *Other Matters*

9. At the time of the appeal both parties were in agreement that the Council could not demonstrate a five year supply of deliverable housing sites. On the basis of the adoption of the LP Pt1 and in the absence of any evidence to the

contrary, the Council can now demonstrate such a supply, and accordingly the second part of paragraph 49 of the Framework is not engaged.

10. The Council decision notice refers to housing policies 5 and 8 of the South Derbyshire Local Plan, 1998 (the SDLP). These policies refer to development in village confines and that permitted outside of settlements. However, the latest evidence supplied to me by the Council considered that due to the age of the SDLP that these policies are not entirely consistent with the Framework's presumption in favour of sustainable development.
11. I note the reliance upon windfall development within the LP Pt1 required for the housing targets of the District to be met. The appellant also draws my attention to Policy BNE5 of the South Derbyshire Local Plan Part 2, which allows for some development outside of settlement boundaries. I also note the evidence relating to the consultation on changes to the Framework, which considers that development on small sites adjacent to boundaries should be supported if they are sustainable. However, both these documents do not form adopted policy, which limits the weight I can provide to them. Moreover, I have concluded above that the proposal would not constitute sustainable development.
12. Environment Policy 1 (EP1) of the SDLP states that outside settlements new development will not be permitted unless is it essential to a rural based activity or unavoidable in the countryside, and the character of the area would be safeguarded. The appellant refers to recent appeal decisions and considers that this policy does not impose a blanket ban on housing development outside settlement development limits. The supporting text to the policy indicates that the policy seeks to avoid isolated homes in the countryside unless special circumstances justify such homes, which accords generally with paragraph 55 of the Framework. Due to the presence of nearby development in this case I do not consider that the site in this case could be considered 'isolated'. However, the proposal would not safeguard the character of the area and would thus be contrary to this policy.

### **Conclusion**

13. I have found that the proposal would have an adverse effect on the character and appearance of the area, and would be contrary to Policy BNE1 of the LP Pt1 and to the Framework, as well as to Policy EP1 of the SDLP. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR