

# **REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)**

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

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

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## **1. PLANNING APPLICATIONS**

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

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

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

18/12/2018

**Item** 1.1

**Ref. No.** 9/2018/0839/U

**Applicant:**  
**Mr J Bailey**  
**C/O Agent**

**Agent:**  
**Mr J Imber**  
**Jmi Planning**  
**62 Carter Street**  
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**ST14 8EU**

**Proposal:** CHANGE OF USE OF AGRICULTURAL PADDOCK FOR THE EXERCISING OF DOGS ALONG WITH THE ERECTION OF BUILDINGS FOR BOARDING KENNELS AND ASSOCIATED STORAGE AND THE CREATION OF A PARKING AREA ON LAND EAST OF GREENACRE BENT LANE CHURCH BROUGHTON DERBY

**Ward:** Hilton

**Valid Date** 07/08/2018

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

The item is presented to Committee at the request of Councillor Billings as local concern has been expressed about a particular issue.

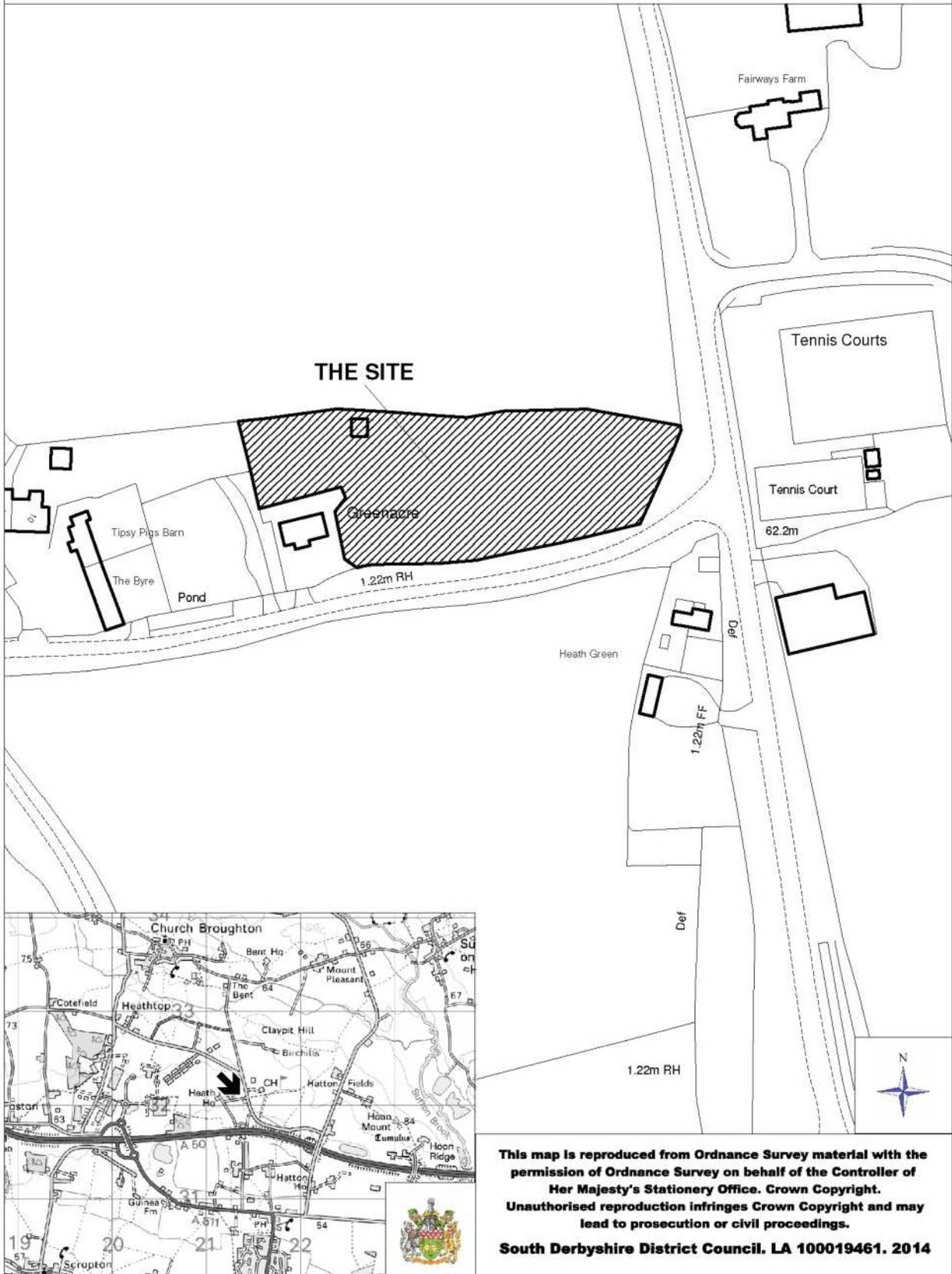
#### **Site Description**

The application site comprises a paddock adjacent to and to the rear of Greenacre, Bent Lane, Church Broughton, a bungalow. The site lies within open countryside to the east of a group of former farm buildings now converted to residential dwellings. The site is approximately 1.7km southeast of the village of Church Broughton and approximately 2km north of Hatton.

#### **Proposal**

The application is for the erection of a kennel building and separate smaller storage building at the rear of Greenacres. The paddock would serve as an area for the exercising of dogs and a small parking area would be created to the north of the Greenacres itself. Access to the parking area and kennels would be via a surfaced track currently used to access the field but also used by a neighbouring property.

9/2018/0839 - Land East of Greenacre, Bent Lane, Church Broughton, Derby  
DE65 5BA



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## **Applicant's supporting information**

The applicant has provided a completed application form, certificate and location and block plans as well as plans and elevations of the proposed building. In addition the applicant has provided a Supporting Planning Statement, a Business Case as required by Policy E7 demonstrating the need and economic viability of the proposal, a Noise Assessment and a proposed Noise Management Policy demonstrating that mitigation of the potential noise issues can be controlled through construction of the kennel building and conditions relating to the management of the dogs on site.

## **Planning History**

9/1982/060                      The erection of an agricultural workers dwelling. Approved  
26/04/1982.

## **Responses to Consultations**

Environmental Health states that there has been significant communication between themselves and the applicant to explore appropriate noise mitigation measures. Based on the information contained in Noise Impact Assessment ref 12523.01.v1 July 2018, Noise Impact Assessment ref 12523.01.v3 November 2018 and Barley Meadow Kennels Noise Management Policy (undated), the following mitigation measures have been proposed:

- That the fabric of the kennels will be constructed and maintained in such a way as to adequately control the internal noise from the kennels;
- That the dogs will only be exercised during the daytime;
- That dogs will be only be exercised under supervision in the field to the east of the proposed kennel building and will be kept at least 55m from the closest dwelling. Dogs boarding in the kennels will be walked on a lead and that a marker line or lightweight fence will be installed to designate the 55m position;
- That a 2m high acoustic fence or gate should be installed parallel to the south elevation of the kennel building and approximately 3m to the south of the kennel building. The east and west ends of the acoustic fence should return and be joined to the kennel building as shown on Figure 4 Noise Impact Assessment ref 12523.01.v3 November 2018. The acoustic barrier should have a minimum mass of 12 kg/m<sup>2</sup> and may be a close-boarded weather-treated timber fence (min 18-20mm thick) with cover strips over the gaps between panels and gravel boards to seal the gap at the base.
- That a noise management policy will be implemented.

In addition, the magnitude and frequency of external dog noise is highly dependent on the effective day to day management of a kennel operation, and therefore Environmental Health considers the content of any noise management policy or plan should be subject to a review after a prescribed period (say 12 months) to ensure that it is being properly applied and to refine it in the light of experience.

The Highway Authority states that Bent Lane is a location of single width and only serves 12 properties. Whilst not ideal, it is not considered that the traffic generated by 14 kennels to accommodate 28-32 dogs could be considered severe enough to

recommend refusal of the application. The CHA therefore recommends conditions relating to access, parking and manoeuvring, location of gates.

The Development Control Archaeologist states that the proposal site is immediately adjacent to – but outside – the DHER entry for the WW2 airfield at Church Broughton (Derbyshire HER 20101), and will have no impact on any associated archaeological remains. The current proposals involve construction of kennel buildings and hardstanding to the rear of ‘Greenacres’, along with thickening of the hedgerow/tree boundary around the field. The focus of the development seems very unlikely for medieval settlement, which would be more likely towards the frontage. DCC archaeology therefore feels on balance, given the above observations and the relatively light touch of the development proposals, that the policies at NPPF chapter 16 do not justify a planning requirement for archaeological work in relation to the current proposals.

Derbyshire Wildlife Trust comments that the building proposed for demolition would appear to be suitable for Barn Owls. In the absence of any survey by a licenced ecologist it should be assumed that the building and the boxes found within the building are used by Barn Owl species protected under Schedule 1 of the Wildlife and Countryside Act. Conditions relating to the continuity of occupation shall be provided and no works shall take place within 30 metres of the building unless survey based evidence has been provided that no birds are nesting at the development and finally permanent roosting/nesting space for barn owls shall be provided within one month of the building being developed and thereafter maintained.

## **Responses to Publicity**

Foston and Scropton Parish Council, on behalf of the residents of Bent Lane requested the application to be determined by full planning committee.

A petition was submitted signed by 34 people raising a number of objections. In addition 30 letters of objection have been received, by many of the same residents that signed the petition raising the following concerns/points:

- a) The barking of dogs will cause noise disturbance. I live in Church Broughton and dogs can be heard from over half a mile away (Crowfoot Kennels). Additional barking from a different direction is unacceptable.
- b) The property has an agricultural tie. The property was recently sold reflecting the market value of the agricultural tie. The applicant should not be operating a commercial business from the property given such recent sale of the dwelling.
- c) How can a noise Assessment predict the noise over 20 dogs will make when barking.
- d) Over 30 people in 15 properties will be affected by noise smell and traffic.
- e) How will the site be accessed via a drive not owned by the applicant.
- f) How will waste be removed from site as there is no mains drainage in the area.
- g) The kennel building unattractive and will be seen from the public highway.

- h) Dogs are pack animals and are likely to make a lot of noise due to separation/new dogs being introduced.
- i) Noise assessment predictions of two dogs barking is an underestimate.
- j) The guidance set out in South Derbyshire 'barking dogs leaflet is noted as regards statutory nuisance. This proposal would constitute a considerable nuisance.
- k) Impact on biodiversity - We believe there is a barn own on site in the shed to be demolished.
- l) Muck spreading is common in the adjoining field and is a health risk to dogs.
- m) Business plan weak and does not cover a wide enough area in terms of other kennels/sitters in the area and makes too many assumptions. Many dog owners will not use kennels.
- n) No mention of dogs barking at night which is a concern as dogs can bark as loud as 80 – 90 and as loud as 100 decibels. 28 dogs barking at this level must be considered.
- o) The disposal of foul sewerage from dog wash area and staff toilet will go to septic tank. It is understood that this is not working and this must be a concern for Environmental Health.
- p) The block plan fails to show the close proximity of the neighbours.
- q) Access to the proposed car park is across third party land along a grass/gravel track within a few feet of gardens which is unacceptable.
- r) The proposal will have a severe impact on the residents enjoying their homes and gardens.
- s) The additional screening is totally inadequate and inappropriate spoiling neighbours' outlook.
- t) The number of dogs proposed is high in relation to two staff, one of which will be an apprentice.
- u) Kennel business will have a knock on effect for tennis club and golf club.
- v) Proposal shows a south facing building. Is this acceptable given the heat that could be caused?
- w) Is the grooming room an additional service or is this part of the kennels alone.
- x) How will the kennels determine a 'noisy' dog before it has stayed at the kennels.
- y) The noise survey states that the ambient noise will not be above already endured created by the A50. However, dog barking would be in addition to the road noise.
- z) A 2m acoustic fence is not sufficient to stop noise.
- aa) Applicant has 3 dogs already that are already noisy. How will they keep 28 dogs quiet?
- bb) Increase in traffic not justified and children play will be at risk.
- cc) Business use should not be approved in a residential area.
- dd) New building in the countryside should be suitable for a variety of uses, not just kennels.
- ee) Environment Agency should be consulted due to waterlogging and dog waste.

## Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), E7 (Rural Development), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport)
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows),

## National Guidance

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

## Local Guidance

- South Derbyshire Design Guide SPD

## Planning Considerations

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

- Principle of the development
- Design
- Impact on amenity
- Highway safety
- Impact on historic environment
- Impact on Ecology

## Planning Assessment

### Principle of the development

The principle of new development in the countryside is established by BNE5 of the Local Plan Part 2. This states that (inter alia):

*‘Outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is:*

- i) allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28;’*

Employment policy E7 of the Local Plan Part 1 states that: *'Development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries will be supported by the Council provided they support the social and economic needs of the rural communities in the District.'* The policy goes on to state that *'the Council will support proposals for the re-use, conversion and replacement of existing facilities and development of new buildings...'* subject to certain criteria. These include the submission of a sound business case; the highway network is capable of accommodating the traffic generated; development will not give rise to any undue impacts on neighbouring land; the proposal is well designed and a scale commensurate with the proposed use; and visual intrusion and the impact on the character of the area locality is minimised. The submission of a business case is fundamental to the principle of the development. Other issues are discussed under relevant headings below.

The applicant has provided a business case which highlighted the need for additional high quality dog kennels in the area based on the number of new dwellings being built in the area and the associated growth in the population. Using the number of homes that currently have a dog, the applicant has estimated the potential additional dog population from the number of new homes to be built over the plan period. The business plan then looks at the number of kennel facilities in the area and concludes that there is a shortfall. Given the limited number of other kennel facilities highlighted in the Business Case at the time the application was submitted, the applicant was asked to provide additional information. The Council has a publicly available list of licenced premises which totals 36 premises throughout South Derbyshire. The additional information the applicant provided assessed this list and reduced to 13 the number of premises that actually provide boarding facilities for dogs. Whilst there is limited evidence of existing kennel spaces available at present and no mention of what kennel facilities might be available in Staffordshire, also within a reasonable catchment area, it is considered that a case has been made for the number of new households in the district which is expected to rise substantially over the plan period and it is reasonable to assume that the dog population will rise in line with the additional housing provision. The business case also sets out the start-up costs and expected turnover based on providing the new building to the most recent Licencing standards. The proposal therefore complies with (i) of Policy E7.

Objectors have raised the issue of the property being constrained by an agricultural tie. Planning history for the site confirms that Greenacres is a dwelling that was granted consent with an 'agricultural tie'. Whilst the property was recently purchased in 2017, the current owner works in agriculture. The current tenant works for the owner of Greenacres and is employed as a farm manager. As the property is both owned by someone who works in agriculture and his tenant works for him employed in agriculture, there is no breach of this condition. The application, whilst in the name of the owner of Greenacres, is a proposal by the tenant and family to run the kennel business whilst still employed in agriculture. There are also no restrictions on the original permission restricting the setting up of a business from the property.

### Design

Policy E7 (iv) states that the new buildings should be *'well designed and of a scale commensurate with the proposed use.'* The proposed kennel and storage building

are of functional design being proposed as double skin blockwork construction and timber clad gable ends with the main window and door openings facing north and south. The kennel building is of pitched roof construction with relatively low pitch roof with a height to ridge of just under 4.1 metres and height to eaves of 3.62 metres. The kennel building would be 19.10 metres in length and 11.30 metres in width. The flat roof storage building located to the west of the kennel building would be much smaller being only 3.56 metres in height and measuring 6.30 metres by 5.70 metres. Whilst these buildings have a relatively large footprint they have been designed to have a minimal impact on the wider area being located to the rear of the existing house and minimising their height through the use of a shallow pitched roof. The materials are similar to that found on modern agricultural buildings, the use of concrete and timber boarding being prevalent in modern agricultural buildings. The kennel building itself would be 18 metres away from the western boundary of the site and 10 metres away from Greenacres itself. The storage building would be located opposite Greenacres and create a courtyard around the parking area being 21 metres away from Greenacres but closer to the western boundary than the kennel building itself. The layout and buildings are considered to be of a scale commensurate to the proposed use and therefore comply with Policy E7 (iv).

#### Impact on amenity

The design and layout of the building are considered to be acceptable as set out above being functional in appearance and layout. In addition, there is no overlooking of neighbours being sufficiently distant from neighbouring properties and in any event the buildings are single storey. The proposal also includes the bolstering of the boundary hedgerow minimising the visual impact the proposal would have on the surrounding area.

The nature of the development however could create potential adverse impacts on neighbour amenity affecting their living conditions. 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.'* This policy states that the Council will take into consideration certain criteria. Of particular relevance in this instance is criterion iii. which states that: *'The need for a strategic buffer between conflicting land uses such that they do not disadvantage each other in respect of amenity issues, such as odours, fumes, or dust and other disturbance such as noise, vibration, light or shadow flicker.'* The development could affect neighbours by noise, odour water or light pollution and there have been previous refusals relating to this type of proposal in other locations. However, this application must be considered wholly on its own merits.

As regards noise disturbance, the closest residential dwelling other than Greenacres is approximately 55m away. However one property's garden shares a boundary at the north eastern corner of the application site. A noise assessment was submitted and the Environmental Health Manager has considered the site circumstances and the noise assessment provided and challenged some of the assumptions set out in the originally submitted report. Consequently an amended noise assessment has been provided and a new set of mitigation measures have been proposed. These have been assessed by Environmental Health and the use has been considered to be capable of being accommodated without causing undue harm in this location

subject to the proposed mitigation. The proposed conditions have captured the mitigation measures set out in the revised assessment and are worded accordingly to ensure that they are enforceable.

No details of external lighting have been provided in the application. This could be controlled by a condition requiring details of lighting to be provided prior to completion of the building.

### Highway safety

Bent lane, leading to Miry Lane, is one of several roads that was severed by the A50 when constructed in the 1990s. It is now a dead-end and serves a small number of properties. The road is predominantly single width carriageway and therefore does not encourage high vehicle speeds. The Highway Authority states that whilst not ideal, it is not considered that the traffic generated by 14 kennels to accommodate 28-32 dogs could be considered severe enough to recommend refusal of the application. County Highways also notes that the proposed access is across land in third party ownership. The applicant has signed certificate B and the owner has been notified. The applicant maintains that, whilst this is third party land, he has a right of access to access the paddock across the land adjacent to Greenacres. This is a legal issue and not a planning issue and therefore County Highways recommends conditions relating to access, parking and manoeuvring, location of gates. The proposal is therefore considered to comply with Policy E7 (ii), INF2 and paragraph 109 of the NPPF.

### Impact on Historic Environment

The site lies adjacent to but outside the Derbyshire Historic Environment Record for the WW2 airfield at Church Broughton (Derbyshire HER 20101) but The County Archaeologist has acknowledged that the proposal will have no impact on any associated archaeological remains. However the site is within 'Heathhouses', a small settlement attested as early as the 14th century, and possibly therefore with potential for medieval settlement archaeology. The site is within a small field with no evidence for occupation on historic mapping, though the form of the field suggests that it may have been a medieval 'croft' or backplot rather than part of the open field as per the rather larger fields in the surrounding landscape. The site also appears on aerial photographs to have some surface earthworks, although the 2009 satellite photography suggests that these are far more likely to be the result of 20th century dumping and settlement-edge activity rather than medieval village remains.

As the proposal involves the construction of the kennel and storage buildings at the rear of Greenacres and includes the thickening of the hedgerow/tree boundary around the field the County Archaeologist considers it very unlikely that this location would be the focus of a medieval settlement and concludes that the nature and location of the proposal set against policies BNE2, BNE10 and Chapter 16 of the NPPF do not justify the a planning requirement for archaeological work in relation to the current proposals.

## Impact on ecology

The proposal involves the demolition of an existing three sided timber outbuilding. The previous owners had clearly erected boxes for nesting birds. The two boxes erected were suitable for barn Owls. No ecology report was submitted. Derbyshire Wildlife Trust commented that the boxes were very likely to be used by Barn Owls and, in the absence of any assessment, recommend that the building and boxes should be assumed to be in use. As such conditions are recommended to secure the long-term protection of the species by maintaining continuity of occupation of a roosting or nesting box within 200m of the development. Conditions relating to when construction work can take place following evidence of that no birds are nesting prior to work commencing. This approach to secure ongoing nesting boxes for Barn Owls in an alternative location but close to the existing site is considered acceptable mitigation consistent with Policy BNE3 and paragraph 175 of the NPPF.

## Conclusion

The proposal appears to meet the policy requirements of BNE5 and E7 in terms of principle of development. The NPPF paragraph 8 sets out the presumption in favour of sustainable development which is the three strands of economic, social and environmental objectives. There would be some economic benefit for the applicant and modest social benefits for the wider area. Whilst the application has the potential to cause harm to neighbour amenity, these potential impacts appear to be made acceptable through the imposition of conditions that would provide the necessary environmental safeguards to make the development acceptable.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the Amended Block Plan, received on 12 November 2018; and Elevations and Floor Plans drawing, 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. Before any other operations are commenced the existing vehicular access to Bent Lane shall be modified in accordance with the application drawings, laid out, constructed and provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centre line of the access, to the extremities of the site frontage abutting the highway in each direction. The land in advance of the sightlines shall be maintained in perpetuity clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

4. The premises, the subject of the application, shall not be taken into use until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of visitors, staff and service and delivery vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

5. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

6. Prior to first approved use, the kennel building shall be constructed to provide sound reduction against internally generated noise in accordance with the calculations contained in Appendix A3 of the Noise Assess Noise Impact Assessment ref 12523.01.v3 November 2018. The specification of the construction shall be submitted to the local planning authority for written approval prior to first approved use. The approved works shall be retained for the life of the development unless agreed in writing with the planning authority.

Reason: To protect the amenities of nearby residents from internally generated noise and comply with policies SD1.

7. The use of Exercise areas A and B as described in the Block Plan and Development Plan (Amended 12-11-2018) shall be used for a maximum of two hours per day for the exercising of dogs at times of day to be agreed in writing with the local planning authority prior to the first approved use.

Reason: To protect the amenities of nearby residents from extended periods of external dog barking and comply with policies SD1.

8. The level of dog noise emitted from the site shall not exceed 45dB LAeq (5mins), as measured at the façade of any of the surrounding residential properties. The level of dog noise shall be determined by direct measurement or by measurement at an accessible location agreed with the local planning authority followed by noise propagation calculation.

Reason: To protect the amenity of the nearby residents from intensive short term periods of external dog barking in accordance with local planning policy E7 / SD1 / BNE1.

9. Prior to first approved use, a 2m high acoustic fence or gate shall be installed parallel to the south elevation of the kennel building and approximately 3m to the south of the kennel building. The east and west ends of the acoustic fence

shall return and be joined to the kennel building as shown on Figure 4 Noise Impact Assessment ref 12523.01.v3 November 2018. The acoustic barrier shall have a minimum mass of 12 kg/m<sup>2</sup> and shall be constructed such that there are no gaps which compromise the acoustic integrity of the fence. The fence shall be retained for the life of the development unless agreed in writing with the planning authority.

Reason: To protect the amenities of nearby residents from external dog barking and comply with policies SD1.

10. Prior to the construction of the Kennel building a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of the building, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the building and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

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

#### Informatives:

1. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
2. 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 landowner.
3. The applicant and/or developer is reminded of the Council's responsibility to issue official addresses for all residential and business premises within South Derbyshire. All new addresses are allocated in line with our street naming and numbering guidance (search for 'Street naming and numbering' at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk)) and you are advised to engage with the Council as soon as possible to enable the issuing of street and property names/numbers created by this development. Any number and/or property name that is associated with identifying individual properties must be displayed in a clear, prominent position that can be read from the roadside. It is the developers' responsibility to erect the appropriate signage once the build(s) is/are ready for occupation. There are two types of the name plate the Council uses: Type A carries the Council's crest, whilst Type B does not. You are advised that the Types are

usually expected in the following locations:

- Type A: on classified (A, B and C) roads, at junctions with classified roads, and at the commencement of local distributor roads (roads acting as through routes within developments);
- Type B: intermediate name plates along local distributor roads, on collector roads (roads which run within a development providing access and linking small access roads and access ways), on access roads (roads serving a small number of houses which may also have a surface shared by pedestrians and vehicles), and access ways which have a different name from their access road; all unless at a junction with a classified road (where Type A will be expected instead).

Further advice can be found online at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk) or by calling (01283) 228706.

4. That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact Natural England: 0300 060 3900.

18/12/2018

**Item** 1.2

**Ref. No.** 9/2018/0451/MTF

**Applicant:**  
**Mr Andy Wendler**  
**LSP Developments Ltd**  
**13 Kilwardby Street**  
**Ashby De La Zouch**  
**LE65 2FR**

**Agent:**  
**Mr Steve Buckley**  
**Peacock And Smith**  
**Suite 9c**  
**Josephs Well**  
**Hanover Walk**  
**Leeds**  
**LS3 1AB**

**Proposal:** **ERECTION OF A MIXED USE DEVELOPMENT INCORPORATING A PUBLIC HOUSE WITH RESTAURANT (USE CLASS A4) WITH ANCILLARY ACCOMMODATION, A FAST FOOD RESTAURANT WITH DRIVE THROUGH (USE CLASS A3/A5), A RESIDENTIAL CARE HOME FACILITY (USE CLASS C2) AND 15 SUPPORTED LIVING APARTMENTS (USE CLASS C3) ALONG WITH CREATION OF ANCILLARY CAR AND CYCLE PARKING PROVISION, AMENITY SPACE, SOFT LANDSCAPING AND IMPROVEMENTS TO PEDESTRIAN LINKS ON SITE OF THE FORMER COUNCIL DEPOT DARKLANDS ROAD SWADLINCOTE**

**Ward:** Swadlincote

**Valid Date** 09/05/2018

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

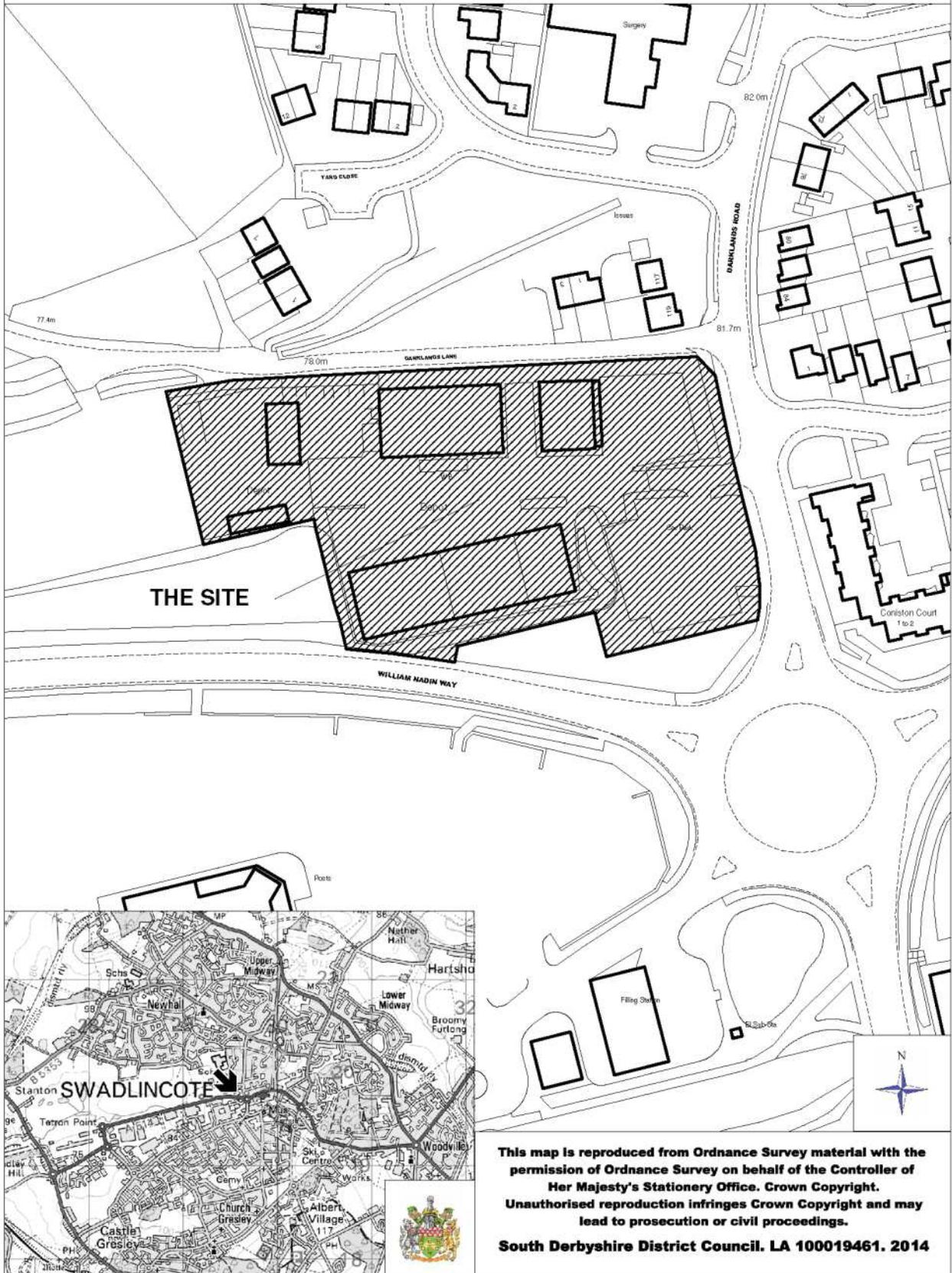
The item is presented to Committee as it is major application with more than two objections and the Council is the landowner.

#### **Site Description**

The site is located within the urban area of Swadlincote, wholly within the settlement confines and covering an area of approximately 0.94 hectares and lies within the Swadlincote Town Centre as defined in the Local Plan. The site is not within the Conservation Area, nor are there listed buildings within the vicinity which might have their setting influenced by the site. There are presently no Tree Preservation Orders on the site.

The site is previously developed land comprising a public car park (eastern part) and, until recently, the former Council depot (western part). To the north, the site is bound by Darklands Lane, beyond which lies the Darklands Brook and residential

9/2018/0451 - Former Council Depot, Darklands Road, Swadlincote DE11 0PQ



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

properties fronting on to Darklands Road, Middle Close and Yard Close. To the east is Darklands Road beyond which lie residential properties off Darklands Road and Toulmin Drive, including Coniston Court. A toucan crossing also exists to the east, close to the junction of Toulmin Drive and the existing access to the car park and depot. To the south east is the A514 Civic Way/William Nadin Way and Sainsbury's supermarket roundabout, with William Nadin Way forming the southern boundary. To the west lie residential properties constructed by Morris Homes under Local Plan housing allocation H5, beyond which lies allocation H2 (Sites A, B and C), the golf course and country park.

The site itself has been recently cleared pursuant to permission granted earlier in 2018, with hardstanding left in part along with the retaining wall to William Nadin Way. There is a considerable change in levels between the carriageway and the site itself, with this gradient also notable across the car park and the wider site as a whole, leading towards the Darklands Brook beyond the site boundary. There are a number of mature and visually significant trees across the site which are generally focussed towards the site edges, but are in good to excellent condition.

## **Proposal**

It is proposed to utilise the existing access to Darklands Road and construct a mixture of retail/leisure and residential uses on the site:

- A public house and restaurant (use class A4), with staff accommodation at first floor level, would be constructed to the north-eastern corner of the site. Car parking for this use would be placed immediately to the west of the building and south of a central, shared access road, providing a car park to the south-east corner – broadly similar to that which presently exists. An external seating area adjacent to a small children's play area would be provided. The public house would be operated by Marston's Inns and Taverns and operate as a family orientated facility.
- A drive through restaurant/take away (use class A3/A5) to be operated by KFC. The parking area for this use would be largely to the north of the central access road, with a small area of outdoor seating.
- Two care home facilities, a supported living facility (use class C3) and residential care facility (use class C2) which would provide assisted living and care to adults. The supported living facility offers a lifestyle largely independent of care but with care facilities close by should they be required; whilst the residential care facility provides accommodation and care for those unable to live independently.

Associated landscaping would be provided through each of the three 'components'. Altogether, the scheme would comprise the comprehensive redevelopment of an edge of centre, brownfield site, which has reached the end of its former planning chapter.

## **Applicant's supporting information**

The Planning Statement confirms that full consideration has been paid to the adopted Development Plan and it is considered that the application accords with the provisions of it. A full and thorough sequential assessment has been undertaken considering all reasonable potential sites. The proposed application site represents the sequentially best site for the proposed development, whilst in terms of retail impact, the proposal falls below the threshold of 2,500m<sup>2</sup> to trigger the need for a full impact assessment to be undertaken. The site is located within the settlement boundary which is identified as the main area for growth across the plan period, and there are no specific policies which relate to the specific type of development, whilst the site is not allocated for any specific use or purpose. The site is within the town centre boundary. The planning history demonstrates retail and commercial related development is considered to be acceptable at the location. The proposals would provide a high quality, mixed use development, and is considered to form an effective use of the land. The application would also deliver a series of benefits such as creating economic development on a vacant, previously developed site; regenerating a key gateway site; remediating a contaminated site; improving local pedestrian linkages between the site and surrounding residential areas; creating high quality, purpose built care facilities for the elderly population; delivery of approximately 40 to 50 permanent full and part time jobs in the public house with approximately 16 full time and 59 part time in the drive through restaurant and 25 full time in the care facilities; and strengthening the perception of Swadlincote as a destination.

A Design and Access Statement (DAS) sets out that careful consideration along with extensive dialogue with the Council has been used to determine appropriate locations for the building layouts, massing and pedestrian routes, whilst also focusing on the existing topography, landscaping and neighbouring buildings that are in close proximity to the site. The overall design proposal is said to have been influenced by the direct dialogue and comments received during pre-application meetings and consultation, and retains the overriding principles and design concepts established at an early stage. It is advanced that the scheme provides a quality mixed use development that reflects national planning guidance, local policy objectives and site specific considerations. The development is the key to providing improved facilities to this largely uninspiring prominent site. The key benefits are set out and include:

- investment and regeneration through the redevelopment of a sustainable site;
- employment generation;
- local choice and competition within the retail market;
- increased expenditure retention within the localised catchment;
- generation of wealth for the local area; and
- a new public house which would complement existing land uses.

A Flood Risk Assessment notes that the Darklands Brook lies approximately 10m north of the north-west corner of the site, with the majority of the site in Flood Zone 1, where the annual probability of fluvial flooding is assessed as less than 1 in 1000 years. Approximately 1% of the site (the north-western tip) lies in flood zone 2 (between 0.1 and 1% annual probability of fluvial flooding). Modelling was undertaken on the Darklands Brook and this indicated only the north-west corner of

the site would be affected by a 1 in 100-year event. Hence, fluvial flooding is not considered a substantial risk to the site. Mapping, however, shows localised areas of low to high risk from surface water ponding from pluvial events. It is proposed that surface water is to be collected by a new drainage network which may include parts of the existing network, and discharge to the Darklands Brook. Foul water is proposed to be discharged in two sections to the combined sewer on Darklands Lane and to the combined sewer in Darklands Road. However, an accompanying Drainage Strategy indicates only a single foul outfall onto Darklands Lane would be utilised. A 30% reduction of current surface water discharge rates has been proposed, requiring up to 140m<sup>3</sup> of attenuation to contain a 1 in 30-year event including allowances for climate change and a 10% allowance of impermeable area for urban creep. Further correspondence during the course of the application has demonstrated this reduction is actually in excess of 50%.

A Transport Assessment (TA) notes a total of 95 parking spaces are proposed, 83 for the drive through restaurant and the public house, and 12 for the residential development. It is noted that an application was previously approved, and although now lapsed, elements of the previous Transport Statement have been drawn upon within this TA. There have been no collisions at the site access point or any collisions classified as 'serious' or 'fatal' within the vicinity. New estimates of trip generation from the site have been combined with updated traffic survey data to show that the proposed development would not lead to any localised congestion on the highway network. As such, there should be no highway-related reasons to refuse the proposed development.

An Arboricultural Impact Assessment (AIA) confirms the proposal will require the removal of eight trees and four groups of trees in order to accommodate the development and achieve required level changes. These trees are a mixture of size, age and quality, with four trees and one group considered moderate quality, whilst a further four trees and three groups are considered to be of low quality. The tree removal would mean some loss of amenity to the local vicinity, in particular along the boundary of Darklands Lane, but mitigation for this would be considered in the proposed replacement planting in the landscaping scheme.

An Ecology Report and Addendum finds there are no habitats of international, national, county or local importance that would be directly or indirectly affected by the proposals. The results of the follow-up survey (the Addendum) support the previous findings in the Ecological Report, with no significant changes recorded. The site is of overall low ecological value, and the species recorded on the site can be described as common or abundant, with no evidence of protected species recorded. Although there are considered to be no ecological constraints to the proposals, a series of generic mitigation measures could be implemented to reduce any impact the development proposals may have on local wildlife. There is also an opportunity to implement some enhancement measures to increase the nature conservation value of the site in the long term in accordance with planning policy. Although some of the trees are scheduled to be retained, a number would be felled and it should be noted that all species of wild bird and their nests are protected under the Wildlife and Countryside Act 1981. Therefore, site clearance works should be timed to avoid the main bird nesting season. In order to protect the established vegetation to be retained, suitable fencing may be required at certain locations. A series of bird/bat

boxes could be installed on some of the existing trees to be retained and/or incorporated into the new build to provide enhanced nesting/roosting opportunities. Where any new planting is proposed, it should aim to use native species, and although the site is currently well lit, new lighting should be designed to minimise light spillage and pollution.

The Coal Mining Risk Assessment (CMRA) notes there is one known shaft within the site boundary which has been drilled, grouted and capped, and that the site is within influencing distance of underground workings between 50m and 320m depth, ground movement from which is now expected to have ceased. However, there may be coal at shallow depth which may have been worked historically and the site is within the boundary of a previous opencast site. These issues are to be addressed by identifying the exact location of the shaft, although as it has been previously stabilised it does not present a risk to the development. Should detailed designs require significant adjustment of ground levels in the vicinity of the shaft such that the cap may be exposed, then the Coal Authority would need to be consulted further. Deep underground workings are not considered to present a hazard to the development as surface movement is expected to have now ceased, whilst the geo-environmental report recommends open hole rotary drilling to ascertain whether voided shallow workings are present so to assess the need for stabilisation. The previous opencast workings affect land to the north of Darklands Brook, and as such are remote from the site.

A Ground Investigation Report confirms that investigation has generally encountered the expected ground conditions in that, below a nominal to moderate thickness of made ground, Pennine Middle Coal Measures were encountered. Boreholes indicated rockhead between 1.2m and 5m depth and groundwater was encountered in some of the 27 boreholes sunk, generally near the base of the made ground. The contamination analyses revealed elevated concentrations of arsenic, total petroleum hydrocarbon (TPH) and polycyclic aromatic hydrocarbon (PAH), and a single fragment of chrysotile asbestos cement tile within the made ground. The findings indicate that the development could be supported on moderate width pad or strip foundations bearing within the firm or stiff Pennine Middle Coal Measures. Gas monitoring is currently ongoing and whilst the monitoring to date has not indicated a requirement for gas protection measures, the monitoring programme would need to be completed in order to assess whether protection measures are required. It will also be necessary to remove a suitable thickness of the made ground from garden areas and to cap it with a geotextile and 600mm of 'clean' soil to prevent exposure to the underlying contamination. It is recommended that PAH affected material is excavated and disposed of off-site.

## **Planning History**

9/2018/0225 Demolition of buildings and removal of hardstandings – Approved March 2018

9/2010/1113 Outline planning permission (all matters reserved except for access and layout) for the erection of 2 non-food retail units, a dental surgery, improvements to Darklands Lane, access, ancillary works and demolition of depot – Approved April 2011

9/2006/0320 Outline planning permission (all matters reserved) for the erection of 2 non-food retail warehouse units, an associated garden centre, car parking landscaping and service arrangements – Approved February 2006

## **Responses to Consultations**

The County Planning Policy Officer advises that no contributions towards education is sought for residential dwellings which are restricted to occupation by persons aged 55 years and over, with this proposal being such a circumstance. An advisory regarding connecting the premises to high speed broadband is also recommended.

The County Highway Authority notes that permission was previously granted for the development of two non-food retail outlets and a dental surgery on the site. Unlike the former proposal, the current application proposes to serve the entire development from the existing Darklands Road access with the addition of pedestrian facilities and via a pedestrian gate from Darklands Lane into the care home facilities. Darklands Lane, at this point, is an adopted highway, albeit poorly constructed, which carries the route of Swadlincote Footpath No. 46 such that measures would need to be implemented to ensure that any access from Darklands Lane is pedestrian only. In the event that the development is likely to introduce any vehicular traffic onto Darklands Lane, the lane would need to be upgraded. Two retaining walls are also indicated adjacent to the lane. Due to their proximity, further details are required order to ensure that they do not impact negatively on the public highway.

It is noted that the delivery vehicles intended to serve the site are significantly larger than those presently used, and some concerns were raised over the necessary manoeuvres on Darklands Road in order for a delivery vehicle to enter and leave the site. However, swept path drawings have demonstrated that the articulated vehicle would not materially alter highway conditions, under the existing use, to such an extent that an objection on highway safety grounds could be sustained.

It is also noted that whilst the TA states staff numbers are likely to be low, the application form points to 61 full time and 79 part-time employees. With regards to the number of parking spaces proposed, no justification for the numbers indicated has been offered. Whilst acknowledging that the depot site is considered to be in a town centre location, this does not allay reservations regarding the level of parking proposed and concerns about the potential impact upon other existing parking facilities and surrounding roads from displaced vehicles currently using the site. However, as the site is deemed to be in a sustainable location and, in the absence of any definitive parking standards and that any standards available are maximum rather than minimum; it is not considered that an objection on the grounds of parking provision could be sustained. Bearing in mind the above comments, there are no objections subject to the conditions being included in the interests of highway safety – these to ensure a construction management plan; modification of the existing access onto Darklands Road; details of the retaining walls adjacent to Darklands Lane; no vehicular access into the site from Darklands Lane; provision of the

proposed parking; control over the position of gates, details of secure cycle parking facilities and a Travel Plan.

Derbyshire Wildlife Trust notes their previous comments on the 2010 application, which was supported by the Ecological Report. The current application is noted to be accompanied by an Addendum which presents the results of a follow up walkover survey of the site carried out in May 2017. This concludes that site conditions remain the same as before. The trees on the site were assessed as providing negligible opportunities for roosting bats, whilst it is considered the buildings would also be unlikely to support them. The Trust concurs that overall the site is of low ecological value and advise that there are unlikely to be any protected species issues arising. The northern boundary alongside Darklands Lane is however noted to provide a green corridor suitable as a foraging/commuting route for bats such that consideration should be given to its retention.

The County Archaeologist echoes their comments in relation to application reference 9/2018/0225, that the proposal area impacts two sites on the Historic Environment Record (HER) – the former route of the Midland Railway Swadlincote Branch and the site of the former Darklands Colliery, dating from the 19<sup>th</sup> century. Although there may be surviving shafts and other remains associated with the small-scale colliery operations present below ground on the site, it is difficult to see any archaeological value in requiring a record to be made of these remains, or indeed how such a record could be safely be achieved. For this reason, no archaeological requirement is requested.

The Lead Local Flood Authority (LLFA) notes the site currently discharges surface water to the nearby Darklands Brook. The applicant is proposing to discharge surface water with a 50% betterment on the existing run-off conditions with storage via an attenuation pond on the site. The inclusion of a 10% allowance for urban creep is welcomed, in addition to the allowance for climate change. The LLFA believe this to be a sensible precaution in order to account for urban creep over the lifetime of the development. It is noted that whilst the applicant has undertaken a ground investigation, it is not clear if soakaway testing has been carried out to ascertain if infiltration is viable, such that an appropriate ground investigation to support and inform the application has not been undertaken – meaning the applicant cannot demonstrate the runoff destination hierarchy as described in paragraph 80 of the planning practice guidance. Nonetheless, there is no objection subject to conditions.

Severn Trent Water raises no objection subject to a condition relating to drainage.

The Environment Agency consider that a condition to address the treatment of previously unidentified contamination (if found) is included.

The Coal Authority confirms the site and surrounding area are at risk from coal mining features and hazards which need to be considered prior to determination. Records indicate the presence of a single mine entry (shaft) within the site, whilst records also indicate that the site is likely to have been subject to historic unrecorded underground coal mining at shallow depth and that a thick coal seam outcropped across the site. It is noted that the applicant has obtained appropriate and up-to-date

coal mining information which has been used to inform the CMRA. The CMRA discounts any significant risk posed by the recorded mine entry due to its location and treatment, but notwithstanding this it does confirm the potential risks posed by shallow coal mine workings and concludes by making appropriate recommendations for intrusive site investigation works, to establish any areas where shallow coal mine workings may pose a risk to the development. The findings of these intrusive site investigations should inform any mitigation measures which may be required in order to ensure the safety and stability of the proposed development.

The Environmental Health Officer (EHO) is satisfied with the findings of the ground investigation report, and recommends that a scheme of remediation is secured under condition. Conditions are also recommended in respect of a scheme of noise control to include noise impacts from the construction phases, externally mounted fixed plant and that associated with use of the drive-thru; odour control in relation to odours from the commercial kitchen; construction dust control and hours of construction. From a commercial point of view, there is no objection subject to an advisory highlighting that food businesses would need to register as a food business a minimum of 28 days before the business opens.

It is further noted that the public house would be required to apply for a premises license under the Licensing Act. One of the objectives of the license is to prevent public nuisance and therefore appropriate control of the management of the public house should be achieved through the application of appropriate conditions within the premises license. The fast food outlet would also be required to apply for a premises license if it opens after 11pm. The EHO also has powers to deal with litter and other forms of anti-social behaviour if they are caused at the premises.

The National Forest Company (NFC) notes the site falls below the threshold where on-site woodland planting and landscaping would be expected. It is noted that the proposals require the removal of the majority of existing trees across the site and that the Council's Tree Officer should be involved on this aspect of the proposals and consideration given to retaining additional trees adjacent to Darklands Lane which appear to be within proposed areas of landscaping. Landscaping details have only been provided for the public house such that the NFC requests that landscaping plans for the whole development are required by condition, with details to include below ground infrastructure to be installed so to ensure that trees planted in hard landscaped areas have sufficient rooting volume and access to air and water to mature. It is further commented that the proposed building designs relate poorly to each other and have no common design elements. The public house and drive thru restaurant appear to be off-the-shelf models which could be improved through the visible use of timber on each of the buildings as a common theme. As well as providing some consistency within the scheme, this would also reflect other prominent buildings which include timber boarding such as Sainsbury's and the NHS walk in centre – both of which are close to the application site. The visible use of timber would also help to reinforce a National Forest character within the town.

The Police Force Designing Out Crime Officer (DOCO) raises a query in respect of the boundary treatment to the Darklands Lane boundary which is presently a 3m high galvanised saw toothed security fence – shown on site plans as to be retained around the side and rear of the KFC and supported living sites, continuing along the

Darklands Lane boundary where it would become a knee rail to the back of the pub car park next to Darklands Lane. As Darklands Lane is presently an unlit, unmade and principally unsupervised track, an unsecured access through the site is advised against as an unnecessary crime risk, and it is therefore hoped that the section of knee rail mentioned is to define the car park edge, supplementary to the site fence and not the only site boundary here. On a similar note, the pedestrian access gates to the secure residential parking area must be restricted to residents and staff. It is also requested that a condition concerning an approved external lighting scheme and CCTV coverage for all car parking, cycle parking and external pedestrian routes, is secured.

## **Responses to Publicity**

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

### Principle of development and visual effects

- a) with pubs closing and on the decline, is another necessary?
- b) there is a pub/restaurant proposed on the other end of Nadin's Way – surely this located near recreational activities/the golf centre would be a better option;
- c) why is the public house next to houses with the car park to the roundabout side?;
- d) the public house/drive thru part of the site should be sheltered housing for the elderly;
- e) impact on the town centre;
- f) there are enough fast food outlets within the town centre already;
- g) a fast food outlet on the main route for children to/from Pingle School is not a good idea;
- h) the drive thru does not help to tackle obesity and offer healthy choices;
- i) a 2.5 metre wall would be an eyesore;

### Amenity and social impacts

- j) impact on the accommodation for elderly residents opposite;
- k) a pub located next to assisted living accommodation could leave occupants scared to leave their properties;
- l) anti-social related to the public house and gatherings in the car park/Darklands Lane;
- m) overnight damage to cars parked on Darklands Road from pub revellers;
- n) increased littering from the use of the fast food outlet;
- o) opening until 1am seems totally inappropriate and inconsiderate when considering the surrounding houses and flats;
- p) late opening hours at weekends;
- q) constant noise from any air conditioning or other such equipment located at the rear of the proposed pub;
- r) what will be done to control the noise both inside and outside the premises?
- s) noise from bottle/glass recycling;
- t) odours from the site;
- u) increased odours/air pollution preventing drying of clothes outside;

- v) how healthy would the outside dining be, with air quality not good so near to the road and island;
- w) impact on use of existing gardens;
- x) impact on privacy;
- y) overlooking from windows in the upstairs living accommodation to the public house;
- z) risk of pests and how would it be controlled;

### Traffic impacts

- aa) where are the current users of the car park going to park?
- bb) Toulmin Drive is lined with cars Monday to Friday so has no capacity;
- cc) Darklands Road is a busy road which is a nightmare most of the time for residents;
- dd) existing traffic calming measures on Darklands Road are ineffective;
- ee) the proposed development would lead to even higher rates of traffic, in particular during late evening and night;
- ff) exiting the car park is fraught with problems; and
- gg) the TA does not reflect the proposed route of National Cycle Network Route 63 along Toulmin Drive from the new Fire Station, with the entrance on Darklands Road creating another obstacle for cyclists at what is likely to be a busy junction.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), S7 (Retail), H1 (Settlement Hierarchy), H20 (Housing Balance), 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), INF2 (Sustainable Transport) and INF8 (The National Forest);
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows), BNE9 (Advertisements and Visual Pollution), BNE10 (Heritage), BNE11 (Shopfronts), RTL1 (Retail Hierarchy) and RTL2 (Swadlincote Town Centre Potential Redevelopment Sites).

### **National Guidance**

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

## Local Guidance

- South Derbyshire Design Guide SPD

## Planning Considerations

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

- The principle of development;
- Ground conditions and drainage matters;
- Highway safety matters and site access requirements;
- The loss of trees;
- Design and landscaping; and
- Noise, air quality and amenity impacts.

## Planning Assessment

### The principle of development

Retail policy seeks to drive retail related proposals to the most sustainable locations – namely Swadlincote Town Centre with policy S7 of the Local Plan looking to support and enhance its primary role, whilst further, more limited, retail related proposals will be supported in the range of local centres across the villages and housing allocations. Within Swadlincote, policy RTL1 confirms “*all main town centre uses as defined by national policy will be supported... outside of the primary frontages...*”. This is just such a site. The site is also located within the settlement confines for Swadlincote such that the principle of the housing element of the proposal is in accordance with policies S4 and H1, helping to deliver part of the combined need for the Plan period identified in the Strategic Housing Market Assessment. This also achieves the aspirations set out under policy H20 which seeks to achieve a mixture of housing tenures and types to meet the changing demographics and associated specialist needs of the District. Overall, the principle of the uses proposed draw direct support from the strategy of the Plan as a whole, and this has been previously recognised under the 2010 application such that concerns as to the need for the proposal have already been addressed under the development, examination and adoption of the Local Plan.

The impact on infrastructure has been considered in respect of the residential element, but the response of the County Planning Policy Officer indicates that, subject to occupation being for a certain age group, no contribution would be levied. This can be secured by condition.

Whilst the specific concerns relating to the effects of a fast food outlet on the health of the population is noted, there are no specific policies within the Plan which resist A5 uses in principle. Indeed, this outlet is a hybrid of both A3 restaurant and A5 take away uses such that much of the proposed use is supported under the Plan irrespective of its location within the town centre. Whilst paragraph 91 of the NPPF states decisions should aim to achieve healthy places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs; there are no particular issues identified and addressed under the

Local Plan and overall the proposal must be considered across the town centre and wider area as a whole – this drive-thru representing just one of two such facilities within the town.

#### Ground conditions and drainage matters

As noted in the CMRA, the site is influenced by coal mining legacy. The main constraint is the location of the capped shaft, which presently sits more or less below the entrance area to the southern half of the existing car park. Consequently, this sterilises this area of the site from built development, heavily influencing the layout as discussed further below. The scope for shallow mining workings has been further explored and a conditional approach can ensure risks to life and property are minimised in accordance with policy SD4.

In terms of drainage, it is intended to connect foul drainage to the existing outfalls from the site, which run out onto Darklands Lane and Darklands Road. Surface water is presently draining from the site at a largely unrestricted rate. Coupled with the fact that the vast majority of the site is currently impermeable, the development would offer the opportunity for betterment, with appropriate attenuation and creation of permeable areas. As a result, whilst the rate of outfall would not be to greenfield rates, it would represent a 50% reduction in outfall rates compared to existing conditions such that the LLFA raises no objection subject to conditions.

#### Highway safety matters and site access requirements

The comments of the County Highway Authority are outlined above. The re-use of the existing access is considered acceptable in principle, subject to condition to ensure consequential amendment to it. A great deal of attention has been given to the proposal for Marston's to utilise a dray (articulated wagon) to serve the public house, which would necessitate an access capable of catering for such a vehicle. A swept path analysis has been provided to demonstrate the routeing into and out of the site is possible, and although this shows that the dray would need to utilise the opposing carriageway on Darklands Road to enter and leave the site, the number of service vehicle movements to and from the site would likely be less than the former depot use and follow a generally similar swept path around the access. Hence it is not considered an objection could be sustained on this basis.

The level of parking provision and the effect on existing parking availability in the town has also been considered. The number of spaces proposed reflects that necessary to support the businesses proposed, with it felt likely that the parking provided to support the fast food outlet being in excess of that which would be used on a regular basis – noting the drive through emphasis of this premises. This could therefore provide some 'overspill' for users of the public house. With existing parking restrictions in place on Darklands Road, Darklands Lane being single track and Toulmin Drive already well utilised for parking; it is considered that customers would likely look elsewhere for parking – either at the Civic Offices or in other car parks in the vicinity, or simply choose to visit another restaurant or public house elsewhere in the town. It is also noted that the proposal would lead to the loss of parking which is presently complimentary to shopping in the town centre, and whilst the TA is silent on this matter, it is recognised that the principle of losing this parking has been

established previously and that there are numerous alternative car parks in and around the town centre – particularly when considering linked trips to destinations such as Sainsbury's and/or The Pipeworks.

The site adjoins the National Cycle Network Route 63 (NCN63), which runs along Darklands Lane, utilises the toucan crossing and continues along Civic Way before heading into the town centre. As part of the fire station redevelopment, NCN63 is to be re-routed around the rear of the fire station and down Toulmin Drive. The need to maintain a 3m wide footway/cycleway along the western side of Darklands Road is thus imperative, whilst there is also a need to enhance the presence of this route as it crosses the site access (noting the likely change of visitor/user to the site and their familiarity with the area). In addition, the development of the site also offers the opportunity to enhance the route along Darklands Lane by way of lighting, noting that the site itself would require illumination to the car parking areas, etc. Part B of policy INF2 provides the basis for securing such improvement by way of condition. The County Highway Authority also seeks the imposition of a Travel Plan condition to maximise the use of sustainable transport methods relating to the use and occupation of the site.

Officers have also sought the creation of a pedestrian connection from Darklands Lane into the centre of the site so to facilitate convenient walking access for residents who live on the new housing allocations to the west of the site. Whilst the comments of the DOCO are noted above, these are premised on the basis that Darklands Lane would remain unlit. The proposal presents the scope to resolve this and open up the site without causing undue security concerns for the businesses and occupiers concerned – particularly when it would be a largely open and accessible site from other quarters in any case. Hence, revised plans shall be secured under condition to provide for this link as well as the removal of the existing palisade fencing where appropriate (so to properly integrate the site with its surroundings).

### The loss of trees

As noted above, the former mine shaft provides a key constraint around which the site must be laid out. The 2010 application proposed a built frontage to the A514 roundabout and Darklands Road, but it is now evident that this could not have been implemented as intended. The consequence of this constraint, and the need to serve three 'domains' from a central access road for the uses concerned, means that the public house and restaurant need to be located as now proposed – noting that both require an active 'shopfront' to draw trade. In addition, the need to cater for a dray to serve the public house means the internal layout must accommodate a suitable manoeuvring path. The latter has been explored at length by officers who suggested the use of a smaller delivery vehicle, which would not attract the need for larger turning heads, etc., as well as use of shared space within the site for such manoeuvres. These have been discounted by Marston's in particular, who state that for their operations to be carried out they require the larger delivery vehicle and use of shared space would cause conflict with customer traffic to fast food outlet and wider site during deliveries.

The cumulative effect of the siting of the buildings and the layout of parking and circulation areas is wholly detrimental to existing tree cover on the site which, notwithstanding the applicant's view set out in the AIA, in the view of the Tree Officer includes a number of category 'A' trees downgraded to 'B' without justification, suggesting an artificial suppression of classifications within that assessment. Some 'C' category trees have also been dismissed as poor and unworthy of any note, which is again not considered to be correct. The higher quality trees would normally warrant protection and it is regrettable that suggested alternative layouts have not been adopted. The most significant trees are the isolated Norway maple on Darklands Road, the isolated Lime adjacent to the western edge of the southern half of the car park, two sycamores close to this lime, and two further limes along the northern boundary with Darklands Lane. The Council's Tree Officer suggests all are worthy of a Preservation Order (TPO). The layout as submitted proposes the removal of *all* trees – even those of lesser quality, and even where the layout could support their retention. This is presently contrary to policies BNE4 and BNE7, and counters the aims of policy INF8 which seeks to increase tree cover within the National Forest. Whilst the site remains in the control of the Council at the present time and it is able to place a TPO on these trees if it so wishes, this would severely hamper the development of the site as a whole and thus this approach has not been adopted. Instead, conditions could be attached to a permission to require a revised approach to retention of trees once further detail in respect of levels, etc. is also available, given that it is considered there is scope to still retain some along the Darklands Lane boundary.

### Design and landscaping

Staying with the landscaping theme, the layout offers little scope for replacement tree planting as mitigation for the proposed losses. Only the Marston's demise has been supplied with landscaping detail, and this is not presently considered to be satisfactory noting the significance of the trees lost here by way of the layout – these being the most publically prominent specimens. Conditions to require revised landscaping proposals and to capture landscaping for the remainder of the site – including details of hard surfacing so to minimise the expanse of tarmac treatment and measures to enable maturity of tree planting to be reached are recommended.

The design of the public house has been subject to considerable scrutiny, including input from the Design Excellence Officer. The original proposals failed to present a credible 'story' to the design approach, with a standard 'off the peg' approach which failed to recognise the local vernacular of the area and of the site and its history in particular. The former railway used to pass straight through the proposed footprint of the public house and along Toulmin Drive, and this was suggested as a design cue. In addition, the Victorian public houses across the town were also advanced as an alternative. Whilst revisions have been presented which seek to present a modern take on the Victorian style, these are still considered to fall short of the expectations of policy BNE1 and the Design SPD. The NPPF has also recently emphasised the importance of securing high quality design and how that detailing and material choice can be particularly fundamental in achieving this. Various conditions are therefore proposed to resolve these matters. Concerns in respect of overlooking to properties to the north have been resolved by amendment, such that the scheme is compliant with BNE1 and the SPD in so far as this matter.

The design of the fast food outlet has also been revised to incorporate more of the National Forest character, noting that as a contemporary building it is better suited to this 'emerging' vernacular for the area. Whilst these revisions now incorporate number of advertisements it will be necessary for KFC to seek separate consent for those, although it is noted that the current approach is not considered appropriate under policy BNE9. The detailing of the building could also be improved in some respects. However, with the general scale and form of the building acceptable, these issues can also be resolved under condition.

The design of the supported living facility and residential care facility is considered acceptable following subtle amendments to the elevations, so to better reflect the vernacular of the area. The northern block, the care facility, would present some habitable windows to the northern elevation looking towards the rear of properties on Yard Close. However, these aspects would be outside of the 45 degree sector of view and sufficiently distant so not to cause undue overlooking of primary external amenity space, even when noting the 3 storey nature of the development. There remains concern with the proposed 'gated' approach to this demise, and the 2m high brick wall proposed to subdivide this accommodation from the rest of the site provides a visual and evident segregation to the community and therefore is not ideal. A more suitable approach could be found without compromising security, and this can be secured under condition which can also address boundary treatments and storage areas/service yards across the wider site.

The site would also need to be appropriately lit to ensure it is accessible in a safe and suitable manner, and to discourage anti-social behaviour. This is particularly so when considering the likely nature of occupants of the supported living facility who may wish to come and go from the premises. Details of a lighting scheme would need to be secured under condition, with such a scheme designed so to minimise the effect on wildlife which may use the site.

#### Noise, air quality and amenity impacts

There is notable concern from neighbouring residents as to the effect of the proposals on living conditions and privacy. As noted above, the concerns in respect of overlooking have been addressed by way of amendments. The concerns relating to fixed plant and machinery, as well as general noise and disturbance from the uses, has been considered by the Environmental Health (EHO). In summary, it is considered the construction phase impacts can be adequately controlled by way of condition whilst extraction equipment can be suitably controlled also under condition, so to limit noise and odour emissions to within acceptable levels. The applicant has provided further detail in an attempt to obviate the need for conditions in respect of the latter, but at the time of writing an updated position from the EHO has not been received. Any further response will be reported to the Committee verbally.

In respect of general noise impacts, the EHO has advised that the public house would be required to apply for a premises license under the Licensing Act 2003. One of the objectives of the license is to prevent public nuisance and therefore appropriate control of the management of the public house should be achieved

through the application of appropriate conditions within the premises license. This is outside the scope of the planning permission. The fast food outlet would also be required to apply for a premises license on a similar basis if it is to open after 11pm, which is the intention of the applicant. To this end, there is no objection in principle to the premises being open until 1am on Fridays, Saturdays and Sundays.

Environmental Health also has powers to deal with litter and other forms of anti-social behaviour, as well as relevant powers under the Environmental Protection Act and Prevention of Damage by Pests Act if problems arise in respect of vermin, etc.

### Summary

The principle of development is firmly in support of the proposed development, and many technical matters relating to ground conditions, drainage and amenity impacts can be addressed or mitigated for by way of condition. The loss of existing trees and the rather formulaic approach to the design weigh against the proposals.

Nonetheless, this is an important gateway site where inward investment would provide notable economic and social benefits, and assist in delivering the town centre regeneration policies enshrined in the Local Plan. To this end, the decision is a finely balanced one which, by way of conditions, is considered to result in a scheme which can be recommended for approval and provide a positive economic boost for the town.

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 plan(s)/drawing(s) ref. ABC/1234 Rev A, received on XX Month 20XX, 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 occupation of the supported living facility (use class C3) and residential care facility (use class C2) hereby approved shall be limited to persons over the age of 55 years.

Reason: In recognition of the fact that the proposal does not make provision to mitigate the impact of the development on local services and facilities, in the interests of securing sustainable development.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no vehicular access shall be created to Darklands Lane without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of highway safety.

5. Any gates erected in the site shall be hung to open away from the existing public highway of Darklands Road and set back by a minimum distance of 15m as measured from the nearside edge of the carriageway.

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

6. No development of a phase or sub-phase shall commence until a construction management plan (CMP) or construction method statement (CMS) has been submitted to and been approved in writing by the Local Planning Authority. 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, method of prevention of debris being carried onto highway and any proposed temporary traffic management. The approved CMP/CMS shall be adhered to throughout the construction period.

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

7. No development of a phase or sub-phase shall commence until details of the finished floor levels of the buildings and hard surfaces hereby approved, and of the proposed ground levels of the site relative to the finished floor levels, roads, footpaths/footways and circulation areas and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels, including technical specifications where such retaining features are adjacent to the public highway. The development shall be constructed in accordance with the approved details.

Reason: To protect the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions and impacts on existing trees, as well as to maintain the integrity of the public highway.

8. Notwithstanding the approved plans/drawings, no development of a phase or sub-phase shall commence until protective fences have been erected around all trees shown to be retained on revised plans/drawings first submitted to and approved in writing by the Local Planning Authority. Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and

trenching, and with existing ground levels maintained unless as otherwise approved under condition 7; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts and that current details are not considered satisfactory.

9. No development of a phase or sub-phase shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

10. No construction of a building or hard surface shall commence until a detailed assessment to demonstrate that the proposed destination for surface water, assessed across the site as a whole, accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include a full understanding of any springs within the site and any associated mitigation requirements, and demonstrate, with appropriate evidence, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i) into the ground (infiltration);

- ii) to a surface water body;

- iii) to a surface water sewer, highway drain, or another surface water drainage system;

- iv) to a combined sewer.

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

11. No development of a phase or sub-phase shall commence until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with the principles outlined within:
  - a. the Flood Risk Assessment prepared by William Saunders consultancy (ref. 9749/12 dated May 2017); and
  - b. DEFRA non-statutory technical standards for sustainable drainage systems (dated March 2015),

have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of each respective building/road/hard surface served by the surface water drainage system or in accordance with a phasing plan first submitted to and approved in writing by the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

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

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

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

13. No construction of a building or hard surface shall commence until a scheme for the drainage of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective building served by the foul water drainage system.

Reason: In the interests of minimising the likelihood of flooding incidents and pollution of the environment.

14. a) No development of a phase or sub-phase shall commence until a scheme to identify and control any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority, and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated' (herein referred to as 'the Guidance'), unless the Local Planning Authority dispenses with any such requirement specifically and in writing.  
  
b) Prior to occupation of the development (or parts thereof) an independent verification report which meets the requirements given in Box 2 of Section 3.1 of the Guidance shall be submitted to and approved in writing by the Local Planning Authority. With the prior written agreement of the Local Planning

Authority pursuant to part (a) of this condition, this may be carried out on a phase-by-phase basis.

c) In the event that it is proposed to import soil onto site in connection with the development, this shall comply with the specifications given in Box 3 of Section 3.1 of the Guidance.

d) If required by the conceptual site model, no development of a phase or sub-phase shall commence until monitoring at the site for the presence of ground gas and a subsequent risk assessment which meets the requirements given in Box 4, Section 3.1 of the Guidance has been completed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

15. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the site. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

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.

16. No development shall commence until a scheme of intrusive site investigation for coal mining legacy has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and a report of the findings arising from the intrusive site investigations, along with any remedial works required (including a timetable for the carrying out of such works), shall be submitted to and approved in writing by the Local Planning Authority prior to any construction works commencing. The approved remedial works shall thereafter be implemented in accordance with the approved timetable.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

17. No development of a phase or sub-phase shall take place until a scheme of dust mitigation measures and for the control of noise emanating from the site during the construction period has been submitted to and approved in writing

by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

18. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Public Holidays.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers.

19. Prior to the respective installation of extraction equipment on or within the public house and fast food restaurant, or the first use by customers of each of those premises and associated external areas, whichever occurs first; a scheme for the control and mitigation of noise and odours emanating from that premises shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the first use by customers of the respective premises commences and thereafter operated in accordance with it with any physical mitigation measures maintained in situ/in working order.

Reason: In the interests of protecting the amenity of the area, air quality and adjoining occupiers.

20. Prior to the first occupation of each respective premises hereby approved a bespoke Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including a timetable and methods of monitoring the performance of the Plan) to promote travel by sustainable modes, including having regard to and linking to measures promoted by other operators at the site, and shall be implemented in accordance with the timetable set out therein. On each anniversary of the date of the first occupation, a report demonstrating progress in promoting sustainable transport measures along with measures to address any failure to achieve the aims and objectives of the Plan, shall be submitted to the Local Planning Authority. Such reports shall be submitted on each anniversary for a period of five years inclusive from the date of first occupation.

Reason: In the interests of encouraging sustainable modes of transport.

21. Prior to the first occupation/use of each respective premises, details of secure cycle parking facilities for the occupants of and visitors to the those premises shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of each respective unit/use of the premises and shall thereafter be retained for use at all times.

Reason: In the interests of encouraging sustainable modes of transport.

22. Prior to the occupation or use of a phase or sub-phase the parking and manoeuvring areas for that phase or sub-phase shall be laid out in accordance with the approved plan(s), and notwithstanding the provisions of

the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use as such.

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

23. Notwithstanding the approved plans/drawings, prior to the construction of a building or hard surface revised details of the access onto Darklands Road to include pedestrian and cycle crossing facilities, also accommodating that required under condition 24, shall be submitted to and approved in writing by the Local Planning Authority. The access shall be modified and provided with the approved pedestrian and cycle crossing facilities prior to the first occupation/use of the site by customers/residents.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, noting that the current proposals are unsatisfactory in accommodating the route of National Cycle Network Route 63 (NCN63).

24. Notwithstanding the approved plans/drawings, prior to the construction of a building or hard surface a revised scheme of hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. This revised scheme shall include:

a) a footpath link from the central access road to the northern boundary (Darklands Lane);

b) means to demarcate the route of National Cycle Network Route 63 (NCN63) across the access onto Darklands Lane with means to allow for cycles to traverse the bellmouth in the most direct fashion; and

c) a mixture of surfacing materials along with additional areas of soft landscaping so to minimise large expanses of tarmac.

All hard landscaping shall be carried out in accordance with the approved details prior to first occupation/use of each respective phase and thereafter maintained in those approved materials.

Reason: In the interest of the visual setting of the development and the surrounding area, noting that the current details are not considered satisfactory and revised proposals must be acceptable across the site as a whole.

25. Notwithstanding the approved plans/drawings, prior to the first occupation/use of a phase hereby approved a revised scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall include:

a) details of below ground measures to ensure that trees planted in or adjacent to hard landscaped areas have sufficient rooting volume and access to air and water in order to mature;

b) feature tree planting along the Darklands Road boundary and within the site; and

c) a timetable for the provision of such planting relative to the occupation/use of buildings/areas of that phase.

All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in accordance with the approved scheme and timetable; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area, as well as to achieve National Forest objectives, noting that the current details are not considered satisfactory and revised proposals must be acceptable across the site as a whole.

26. Notwithstanding the approved plans/drawings or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; prior to the construction of a boundary wall, fence, gate or bin store, a revised scheme of boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. This revised scheme shall include:

a) means to treat the existing retaining wall to be adjacent to the fast food restaurant;

b) an alternative means of boundary treatment to secure the sheltered living and residential care premises without visually enclosing (obstructing) that part of the site;

c) a scheme to remove the existing palisade fence in part along Darklands Lane to allow pedestrian and visual permeability through the site and to replace it with suitable means to prevent vehicle movements onto the site; and

d) alternative railings around seating areas adjacent to the public house and the fast food restaurant.

All boundary walls shall include the use of a bullnose brick of matching colour on the ends of exposed header courses, with plans/drawings clearly detailing where proposed levels will require such boundaries to be stepped. All boundary treatments shall be constructed/erected in accordance with the approved details prior to first occupation/use of each respective phase and thereafter maintained as such.

Reason: In the interest of the visual setting of the development and the surrounding area, as well as to properly integrate the site with the surrounding area, noting that the current details are not considered satisfactory and revised proposals must be acceptable across the site as a whole.

27. Notwithstanding the approved plans/drawings, prior to the construction of the public house and fast food restaurant, revised elevations of that building (along with consequential changes to the floor plans where relevant) along with drawings to no less than 1:10 scale of eaves, verges, cills and lintels for the public house and and details of revised materials for the external faces of

both buildings, shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall include:

- a) reduced/resized first floor window reveals and casements to the public house;
- b) brick chamfered cills and brick headers to window reveals casements to the single storey element of the public house;
- c) an alternative design to the Darklands Road doorway in the two storey element of the public house;
- d) the removal of stone kneelers to the single storey element of the public house and their replacement with a traditional corbelled wet verge;
- e) the inclusion of at least one chimney to the ridgeline of the two storey element of the public house; and
- f) the removal of the collect/pick up canopy on the fast food restaurant and its replacement with a small, translucent oversailing canopy from the serving window.

The development shall thereafter be constructed in accordance with approved plans/drawings and using the approved materials.

Reason: In the interest of the visual setting of the development and the surrounding area, as well as to properly integrate the site with the traditional and emerging local vernacular, noting that the current details are not considered satisfactory.

28. Notwithstanding the approved plans/drawings, prior to the construction of a building or hard surface within a phase or sub-phase a detailed lighting strategy (designed in accordance with the guidelines issued by the Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, shall be submitted to and approved in writing by the Local Planning Authority. The lighting strategy shall include means to provide light spill onto Darklands Lane and to light the footpath link secured under condition 24. All lighting shall be installed in accordance with the approved strategy prior to the first occupation/use of the respective phase in which it sits and thereafter retained in conformity with it.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers whilst to also secure infrastructure related improvements adjacent to the site so to encourage sustainable modes of transport, and to minimise light pollution at night.

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

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

Informatives:

1. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: [www.coal.gov.uk/services/permissions/index.cfm](http://www.coal.gov.uk/services/permissions/index.cfm).
2. The Lead Local Flood Authority advises:
  - The County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed.
  - Any works in or nearby an ordinary watercourse may require consent under the Land Drainage Act (1991) from the County Council (e.g. an outfall that encroaches into the profile of the watercourse, etc.) to make an application for any works please contact [flood.team@derbyshire.gov.uk](mailto:flood.team@derbyshire.gov.uk).
  - The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 4.3 of the CIRIA SuDS Manual C753. This type of development usually requires >2 treatment stages before outfall into surface water body/system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status.
  - The County Council would prefer the applicant to utilise existing landform to manage surface water in mini/sub-catchments. The applicant is advised to contact the County Council's Flood Risk Management team should any guidance on the drainage strategy for the proposed development be required.
3. The Environment Agency has not had any influence or control over the selection of site investigation locations or any aspect of the sampling and analysis undertaken. Therefore, the Environment Agency must assume that the information submitted is both genuine and representative of site conditions and treat it in good faith. It should be noted that in accordance with Government Policy detailed in the National Planning Policy Framework (paragraph 120), 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore, should any significant contamination, not assessed by virtue of the report(s) submitted as part of this application, subsequently become apparent, responsibility remains with these parties.

4. Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:
  - whether the land in question is already affected by contamination through source > pathway > receptor pollutant linkages and how those linkages are represented in a conceptual model;
  - whether the development proposed will create new linkages (e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors); and
  - what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA of the Environmental Protection Act 1990 (e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway) or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

5. Severn Trent Water advise that although their statutory sewer records do not show any public sewers within the area specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and the developer is advised to contact Severn Trent Water to discuss the drainage proposals. Severn Trent Water will seek to assist the developer in obtaining a solution which protects both the public sewer and the building.
6. Food businesses will need to register as a food business a minimum of 28 days before the business opens. Please contact the Environmental Health commercial team on 01283 595947 for advice when fitting out the kitchen(s).
7. 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.
8. Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway, at least 6 weeks prior notification should be given to the Strategic Director Economy, Transport and Environment at County Hall,

Matlock (tel: 01629 533190 and ask for the New Roads and Streetworks Section).

9. The application site is adjoining a Public Right of Way (Footpath 46, Swadlincote as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. Please note that the granting of planning permission is not consent to divert or obstruct the public right of way. 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 580000 for further information and an application form.
10. The recommendations of the highway authority for planning application assessment purposes do not include determination of highway boundaries. Prior to commencement of works, the applicant should obtain the formal confirmation of the highway authority that the proposed development works do not encroach upon, obstruct or otherwise adversely affect the public highway.
11. The applicant and/or developer is reminded of the Council's responsibility to issue official addresses for all residential and business premises within South Derbyshire. All new addresses are allocated in line with our street naming and numbering guidance (search for 'Street naming and numbering' at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk)) and you are advised to engage with the Council as soon as possible to enable the issuing of street and property names/numbers created by this development. Any number and/or property name that is associated with identifying individual properties must be displayed in a clear, prominent position that can be read from the roadside. It is the developers' responsibility to erect the appropriate signage once the build(s) is/are ready for occupation. There are two types of the name plate the Council uses: Type A carries the Council's crest, whilst Type B does not. You are advised that the Types are usually expected in the following locations:
  - Type A: on classified (A, B and C) roads, at junctions with classified roads, and at the commencement of local distributor roads (roads acting as through routes within developments);
  - Type B: intermediate name plates along local distributor roads, on collector roads (roads which run within a development providing access and linking small access roads and access ways), on access roads (roads serving a small number of houses which may also have a surface shared by pedestrians and vehicles), and access ways which have a different name from their access road; all unless at a junction with a classified road (where Type A will be expected instead).Further advice can be found online at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk) or by calling (01283) 228706.
12. The developer is strongly encouraged, as part of the delivery of properties on the site, to provide full fibre broadband connections (i.e. from streetside cabinet to the property). Further details of initiatives to support the provision of full fibre connections as part of broadband installation at the site can be

obtained from Digital Derbyshire on broadband@derbyshire.gov.uk or 01629 538243.

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

18/12/2018

**Item**            **1.3**

**Ref. No.**       **9/2018/0966/NO**

**Applicant:**  
**Mr Batov**  
**Re Projects Developments Ltd**  
**565 High Road**  
**Leytonstone**

**Agent:**  
**Robert Shaw**  
**Third Revolution Projects**  
**20-22 Wenlock Road**  
**London**  
**N1 7GU**

**Proposal:**    **DEVELOPMENT OF A LOW UTILISATION STANDBY GAS  
FUELLED EMBEDDED GENERATION FACILITY TO SUPPORT THE  
LOCAL AND NATIONAL GRIDS, INCLUDING CREATION OF  
EARTH MOUND AND LANDSCAPING AT HOON HAY MANOR  
MARSTON LANE HATTON DERBY**

**Ward:**         **Hilton**

**Valid Date**   **05/09/2018**

**Reason for committee determination**

The item is presented to Committee at the request of Councillor Roberts as local concern has been expressed about a particular issue.

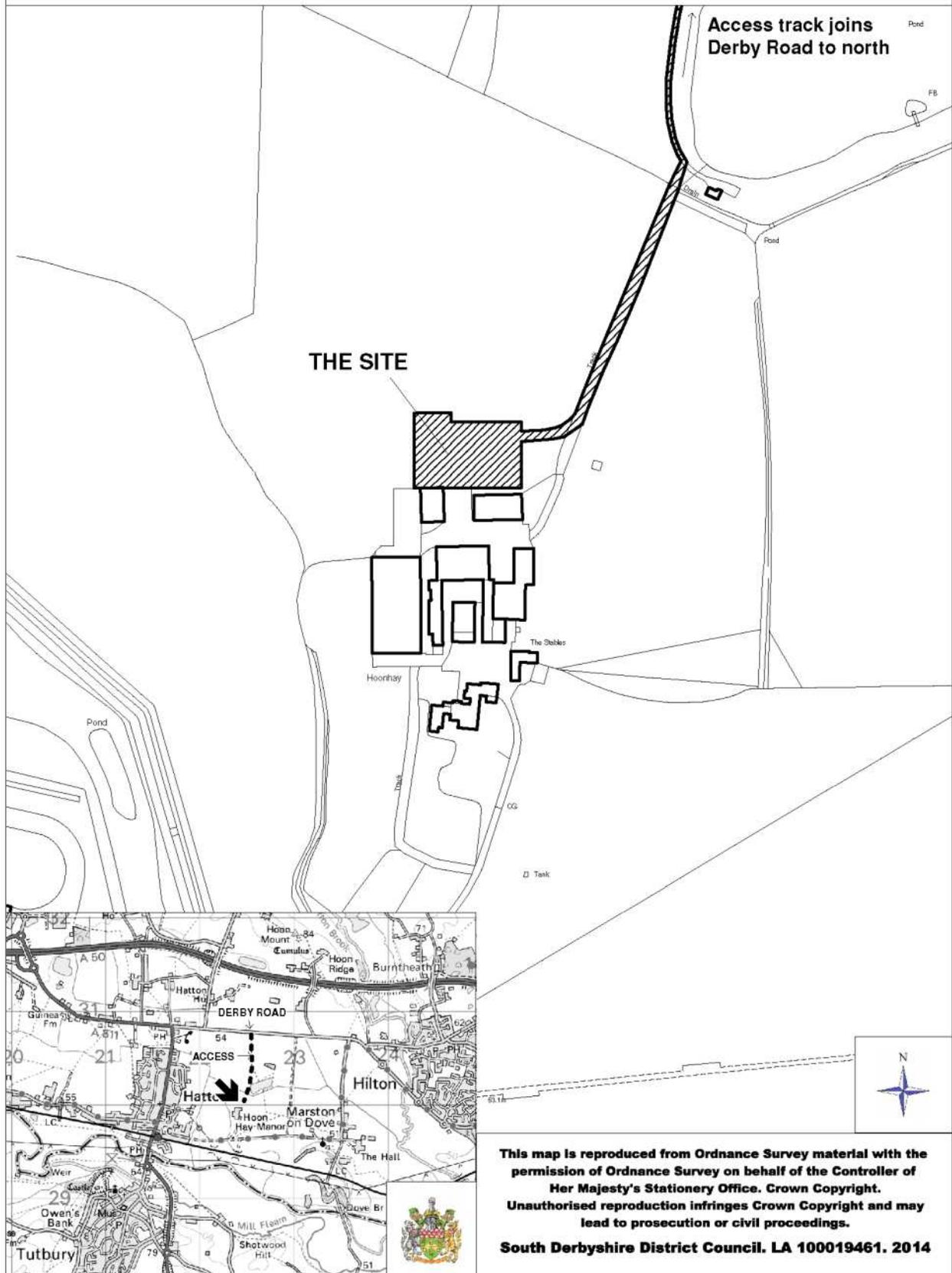
**Site Description**

The site, an agricultural field, is located to the north of Hoon Hay Farm to the east of Hatton and close to the Nestle factory. Predominantly flat, the site is within the floodplain. Hoon Hay Farm is approached from Marston Lane and the main farm buildings are to the north of the traditional farm yard. However, Hoon Hay Farm has a second access directly off Derby Road to the north which is used to access the fishing lake and fields to the north of the farmstead.

**Proposal**

The proposed development is for the installation and operation of a low utilisation Gas Fuelled Capacity Mechanism Embedded Generation Facility of up to 5MW that would generate and deliver electrical power to the local distribution network. The facility would provide supply and balancing services to the local area and support National Grid's operation of the system. The facility would be predominantly housed in a building designed to look like a modern agricultural building and is sited close to the existing agricultural buildings but the radiator/coolers would be located outside

9/2018/0966 - Hoon Hay Manor, Martson Lane, Hatton, Derby DE65 5EA



the building within the compound enclosed by a 2m high acoustic fence. The whole compound would sit on top of a 1m high bund. The location of the site has been driven by the need to be in close proximity to viable grid and gas connections.

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

In addition to the application form and various plans and elevations the following information was submitted:

The Planning Design and Access Statement considers that the proposal is sustainable meeting social, economic and environmental objectives of the NPPF. Whilst the site is within Flood Zone 3 it is protected by recent improvements to flood defences no sequentially preferable locations within the study area were reasonably available. This Statement also addresses all relevant policies concluding that the proposal is acceptable.

The Noise Assessment demonstrates that the noise from the proposed facility would result in low impact at the nearest receptor during both daytime and overnight periods.

The Flood Risk Assessment summarises the Environment Agency advice and desktop analysis of the site and concludes that the site would be safe from flooding for the life of the proposal.

The Landscape and Visual Impact Assessment states that the site is not within any statutory designations and that the new barn which would house the proposal would be constructed of materials typically used for agricultural buildings and would be close to the existing farm buildings. The report concludes that the proposal would have minor and slight adverse effects on the location and that the proposal can be accommodated within the landscape character and visual amenity and is acceptable in terms of landscape and visual amenity.

An Ecological Report undertaken at the site summarises the impact of the proposal on the ecology of the site and sets out recommendations for mitigation.

Photomontages prepared provide a mock-up of the proposal in situ was provided from both the east and the west alongside a photo of the existing site. These show that the building would have minimal impact on the countryside as the building will be viewed in the context of the existing farm buildings.

The Transport Note assesses the potential site access in terms of achievable visibility and road casualty history in the area. Whilst nine recorded collisions occurred in the study area within the last five years none were considered to reveal any pertinent issues associated with the expected movements associated with the proposed development. The Note concludes that the proposed development would not be expected to have a detrimental impact on road safety in traffic highway terms.

### **Planning History**

None.

## **Responses to Consultations**

Upon the receipt of further information and subject to conditions, the County Highway Authority has withdrawn an earlier objection.

The Development Control Archaeologist states that the application is supported by a Preliminary Ecology Appraisal dated 4<sup>th</sup> July 2018 and that sufficient information has been provided to identify the likely environmental impacts of the scheme and proposed appropriate mitigation. Conditions are proposed relating to breeding birds and the provision of a detailed Biodiversity Enhancement Strategy.

Environmental Health, whilst originally objecting to the proposal due to the potential noise impact, upon receipt of further information now states that the proposal is acceptable subject to conditions. An additional condition relating to the estimated noise and its actual noise post completion specifying the proposal not be brought into use until an agreed mitigation strategy and implementation prior to first use.

The Lead Local Flood Authority has no comment.

The Environment Agency has no objection, subject to the inclusion of a condition relating to the height of finished floor levels to be no lower than 53.24m Above Ordnance Datum and owners/operators sign up to the Flood Warning Service and are not dispatched to the site whilst a flood or weather warning is in place.

Derbyshire Wildlife Trust has no objection in principle, subject to conditions relating to nesting birds and the preparation of a Biodiversity Enhancement Strategy prior to commencement of the proposal.

## **Responses to Publicity**

One objection has been received, raising the following concerns/points:

- a) The proposal will cause pollution from diesel generators.
- b) Unacceptable impact on global warming.
- c) Adverse impact on farming community would be massive and irreversible.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD6 (Sustainable Energy and Power Generation), INF2 (Sustainable Transport), INF8 (The National Forest), E7 (Rural Development), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness)

- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside)

### **National Guidance**

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

### **Local Guidance**

- South Derbyshire Design Guide SPD

### **Planning Considerations**

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

- Principle of development
- Visual impact of the development
- Highway safety
- Amenity
- Ecology
- Flood risk
- Historic environment

### **Planning Assessment**

#### Principle of development

The energy policies in the National Planning Policy Framework are limited to the encouragement of renewable and low carbon energy generation. The consideration of this application therefore requires wider consideration of more recent Government energy policy on energy storage.

The Department of Energy & Climate Change (DECC) is responsible for setting the policy and legislative framework for the UK's networks, with the following specific objectives for future electricity networks to:

- maintain electricity network reliability
- ensure new generation (renewables, nuclear and fossil fuels) and new demand (including electric vehicles and heat pumps) receive timely and affordable connection to the network
- use regulation to make sure networks are cost effective, competitive and using smarter technology

As part of ensuring network reliability the provision of small-scale peak power Embedded Generation Facilities such as the one proposed would allow for additional capacity at peak time to help maintain electricity network reliability at times of peak demand. In general terms battery storage is considered to aid in the reducing carbon emissions through facilitating a reduction in reducing energy production at peak times and as such receives overarching support from the NPPF.

Whilst the application site is located outside any recognised development boundaries and would ordinarily fall to be considered against policy BNE5 of Local Plan Part 2 being development within the countryside, policy SD6 relates specifically to sustainable energy and power generation.

SD6 supports in principle the development of energy development, and ancillary buildings or infrastructure subject to consideration of the environmental effects of the development (landscape, ecology and the historic environment) and the impacts on local amenity (noise etc.). In addition the proposal would also support a degree of farm diversification, supporting the rural economy. Whilst the applicant for this proposal is a specialist provider, the land is owned by a local farmer who would be landlord to the facility and thus benefiting from the diversification of the land.

### Visual impact of the development

The application proposes the erection of an 'energy barn', to the north of the existing complex of farm buildings. The proposed barn would have a similar appearance and general scale of the existing barns within the complex. The building is sited so that it would appear as a natural extension to the existing farm complex enclosed by a 2m acoustic fence. The whole compound would be sited on a 1m high earth bund measuring 35 metres by 30 metres to assist in achieving the finished floor level required by the Environment Agency. This natural extension to the farm complex would assimilate into the appearance of the area (i.e. this working farm complex) and thus the visual impact of the proposal is considered to be very low.

The building would be visible from a distance from existing public footpath Hoon No 2 and partially visible from public footpath Hoon No 3, but in both instances this would be in the context of the existing farm buildings.

In addition to the barn, which has a ridge height of 7.5 metres, the proposal includes the creation of a grid compound which contains five radiator/coolers, each approximately 7.5 metres by 2.2 metres and approximately 2.5 metres in height. Also within the compound is a gas kiosk which is shown located between the existing agricultural building and the proposed agricultural style barn and is 4.3 metres by 3.3 metres and a height to ridge of approximately 3.5 metres. This compound, of which the building is part, is sited in the field immediately adjacent to the most northerly existing agricultural barn. Although not directly adjacent to the existing building the result of this siting whilst industrial in appearance would be only partially visible from the public realm and the public footpaths which run in a southerly and south westerly direction to the east of the site. This siting and existing natural landscaping is such that it is considered that the landscape effects of the scheme have been appropriately considered and the proposal would not give rise to an unacceptable impact on the landscape.

### Highway safety

Vehicular access to the site is obtained from a Derby Road with a farm track up to the proposed site and its associated farm buildings. Whilst the access will need to be temporarily widened to support construction traffic the access is considered to be

appropriate for the proposed use and as such no objection has been received from the Highway Authority.

The Highway Authority has no objection to the proposal or the temporary widening of the access a construction management plan be conditioned including but not limited to demonstrating that HGVs are capable of accessing the site and turn within it.

### Amenity

The external plant consists of five radiator/cooling units located to the north of the proposed barn. On the opposite side of the barn to the south are five cowl and fan inlets. On the roof are five chimney/exhaust outlets, one for each of the five gas generators. A noise survey has been provided stating that low level noise would be heard at the nearest third party receptor locations during both daytime and overnight periods. However, the noise assessment concludes that there are no noise related issues associated with the proposed power generation facility at the site and Environmental Health raises no objection subject to a condition relating to the testing and identification of further mitigation works to be identified and implemented prior to implementation. This is to ensure that the noise levels do not exceed the noise levels estimated in the submitted noise survey.

### Ecology

The ecological assessments undertaken concluded that the site is not subject to any statutory or non-statutory designations. The closest site is the Marston on Dove SSSI located approximately 2km away to the south east at its closest point and the survey area does not support any features that contribute to the designation of the site. Habitats within the proposed development area were assessed as being of value to wildlife within the local vicinity with potential to support breeding birds and foraging bats. Recommendations have been made for ecological enhancements at the site but no further surveys are recommended. The survey work has therefore demonstrated that the proposal will not have a discernible effect on the ecology of the area sufficient to comply with Policy BNE3.

### Flood risk

In identifying a potential site for this proposal a key driver is the proximity to gas and grid connections. The proposed site is close to both. Whilst this site is within Flood Zone 3 it benefits from the flood protection from the recent upgrading of the flood defences in this area. As required, a Flood Risk Assessment has been provided. The Applicants Planning Statement sets out that the Flood Zone category of the type of development proposed is 'essential infrastructure'. Under the February 2016 climate change allowance guidance, such developments in Flood Zone 3 should apply an upper end allowance of 50%, rather than the previous 20% national allowance for climate change. However, because the EA in-channel data provided by the Environment Agency did not include modelled flows, a stage discharge curve could not be created by the consultant to interpolate a 1:100 year +CC (50%) flood level. As such, a conservative approach has been adopted to calculate the impacts of climate change, which assumes the defences along the Salt Brook Diversion Channel are not present. Therefore, the Applicant has raised all controls/assets to

above 53.24m AOD through the creation of an earth mound. The Environment Agency has not objected to this approach and suggested a condition relating to minimum finished floor levels and also requires the development to sign up to the Flood Warning Service.

The sequential test provided demonstrated that there were no alternative reasonably available sites appropriate for the proposed development (i.e. within close proximity to viable grid and gas connections) in areas with a lower probability of flooding and it is considered that the proposal passes the sequential test. The proposal is also not expected to adversely affect surface water or ground water quality and as such the proposal is considered to comply with policies SD1, SD2 and SD3.

### Historic environment

Hoon Hay Farm is not listed and the closest listed building is the Grade I Church of St Mary and Grade II listed gate approximately 1 km away to the east. The applicant states that the site was carefully selected to ensure that there was negligible inter-visibility between the site and the church and this is confirmed by the Landscape and Visual Impact Assessment. Given the distance between the site and the listed building, the intervening vegetation and the siting of the proposal adjacent to the existing complex of farm buildings it is unlikely that the site would be viewed together with the church and as such the proposal will not impact on this heritage asset.

Derbyshire County Council's archaeologist comments that Hoon Hay Farm is part of Derbyshire Historic Environment Record (DHER 20905) and is considered, potentially, to be the site of the deserted medieval village of Hoon. The DHER contains a reference to Hoon in the Domesday survey, and then in 1610 as 'Howen'. The name is linked to the presence of burial mounds or Barrows. Again the DHER entry refers to the fact that the area in question has been ploughed in recent times. However, sub-surface features of the remains of the medieval village may survive. Taking this information into account a condition has been recommended to secure a written scheme of investigation for archaeological work to be undertaken prior to development taking place and provision for the publication and dissemination of the analysis of the results and deposition secured. The addition of this condition to record the heritage asset that 'may' be lost ensures that the 'potential' asset is recorded and information is retained. Whilst the non-designated heritage asset itself may be lost its recording therefore complies with Policy BNE2 and BNE10.

### Conclusion

There are no policy or technical reasons to withhold permission in this case. The impact of locating this facility in this part of the district would have very little impact and is therefore considered acceptable.

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 drawing nos. 1023/AL/001 Rev C; 1023/AL/002 Rev C; 1023/AL/003 Rev C; 1023/AL/004 Rev C; and 1023/AL/005 Rev C, 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. Before any construction activity begins the existing access to Derby Road shall be widened to a minimum of 5m in width, constructed to industrial specification, provided with visibility splays of 2.4m x 215m in both directions, the area in advance of the visibility splays being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the nearside carriageway channel level.  
Reason: In the interests of highway safety.
4. Throughout the construction phase the construction compound as shown on drawing 1023/AL/003 shall be provided for the storage of plant and materials and the parking and manoeuvring of construction vehicles and site operatives vehicles.  
Reason: In the interests of highway safety, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.
5. No development shall take place until 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, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.
6. In order to avoid any potential impact on breeding birds, groundworks and the clearance of any vegetation shall be undertaken outside the main bird nesting season which runs from March to August inclusive. Where this is not possible, an ecologist would need to check the ground or vegetation for active nests and signs of bird breeding activity. In the event that a nest is found, an

exclusion zone around the nest shall be established. Works will cease within this buffer area until the young birds have fledged.

Reason: To avoid harm to badger during construction, the development shall be carried out in accordance with the precautionary measures for badgers detailed in section 5.11 of the Preliminary Ecological Appraisal prepared by Phlorum dated August 2018.

7. No development shall take place until a detailed Biodiversity Enhancement Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall be broadly in accordance with the Landscape Flood Risk and Biodiversity Mitigation/Enhancement Plan 1023/AL/006 Rev. A and sections 5.15 - 5.18 of the Preliminary Ecological Appraisal (PEA) prepared by Phlorum dated August 2018 and, as a minimum, include the incorporation of features for roosting bats and nesting birds along with native planting within the details of landscaping. The approved measures shall be implemented in full prior to first operation of the facility and thereafter subsequently maintained in accordance with the approved Strategy.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain in accordance with the objectives of the National Planning Policy Framework.

8. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 5 September 2018, Ref:7975 and the following mitigation measures detailed within the FRA:

- a. Finished floor levels are set no lower than 53.24m above Ordnance Datum (AOD) - Sections 7.4 to 7.5 and 9.10 to 9.11.

- b. Owners/Operators sign up to the Flood Warning Service and are not dispatched to site whilst a flood, or weather warning is in place - Sections 7.5 to 7.6 and 9.12 to 9.13.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development; to reduce the risk to personnel maintaining the development.

9. A. No development shall take place, until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
  - a. The programme and methodology of site investigation and recording.
  - b. The programme for post investigation assessment.
  - c. Provision to be made for analysis of the site investigation and recording.

d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.

e. Provision to be made for archive deposition of the analysis and records of the site investigation.

f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under 'A' above.

C. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under 'A' above and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

10. Within one month of completion, testing to demonstrate that the sound levels quoted are achieved shall take place. The exact methodology proposed shall be agreed with the Local Planning Authority prior to testing. Should noise levels prove higher than those in Acoustics Report A1328 R01 then an appropriate scheme of mitigation shall be submitted to and agreed in writing by the Local Planning Authority prior to operation.

Reason: In the interests of neighbour amenity.

11. Should generators or noise generating equipment be used, other than those assessed in Acoustics Report A1328 R01 then these shall be approved in writing by the Local Planning Authority prior to full operation.

Reason: In the interests of neighbour amenity.

12. The noise mitigation scheme relies upon intervening structures onsite. Therefore, should the existing site layout be altered in a way that could reduce the ability of these buildings to control noise, then an appropriate scheme of mitigation shall be submitted to, and agreed in writing by, the Local Planning Authority prior to these works being completed.

Reason: To protect the amenity of the area.

13. No development shall take place until a scheme of dust mitigation measures and the control of noise emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

14. During the period of construction, no ground, construction or fitting out works shall take place other than between 0730 and 1800 hours Monday to Friday

and 0800 and 1300 hours on Saturdays. There shall be no works on Sundays or public holidays except in an emergency.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers.

Informatives:

1. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
2. 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 landowner.
3. 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.
4. The site is adjacent to a public Right of Way (Public Footpath No 2 Hatton on the Definitive Map). The route must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section. If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.

18/12/2018

**Item**            **1.4**

**Ref. No.**        **9/2018/1040/U**

**Applicant:**  
**Mr Gurbinder Sahota**  
**Village Cars**  
**2 Woodhall Drive**  
**Littleover**  
**DE23 4RS**

**Agent:**  
**Mr Gurbinder Sahota**  
**Village Cars**  
**2 Woodhall Drive**  
**Littleover**  
**Derby**  
**DE23 4RS**

**Proposal:**     **CHANGE OF USE OF B1/B8 UNIT TO USE AS PRIVATE HIRE OFFICE (SUI GENERIS) AT UNIT 43 DOVESITE BUSINESS PARK THE COMMON MELBOURNE DERBY**

**Ward:**           **Melbourne**

**Valid Date**    **20/09/2018**

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

The item is presented to Committee at the request of Councillor Harrison as local concern has been expressed about a particular issue.

#### **Site Description**

The business unit is surrounded on all sides by other units associated with the business park. Access to the site is from The Common and is well screened by mature landscaping. The site slopes away from The Common and the units are slightly lower than the road leaving 'Four Winds' and 'West View' in a slightly elevated position.

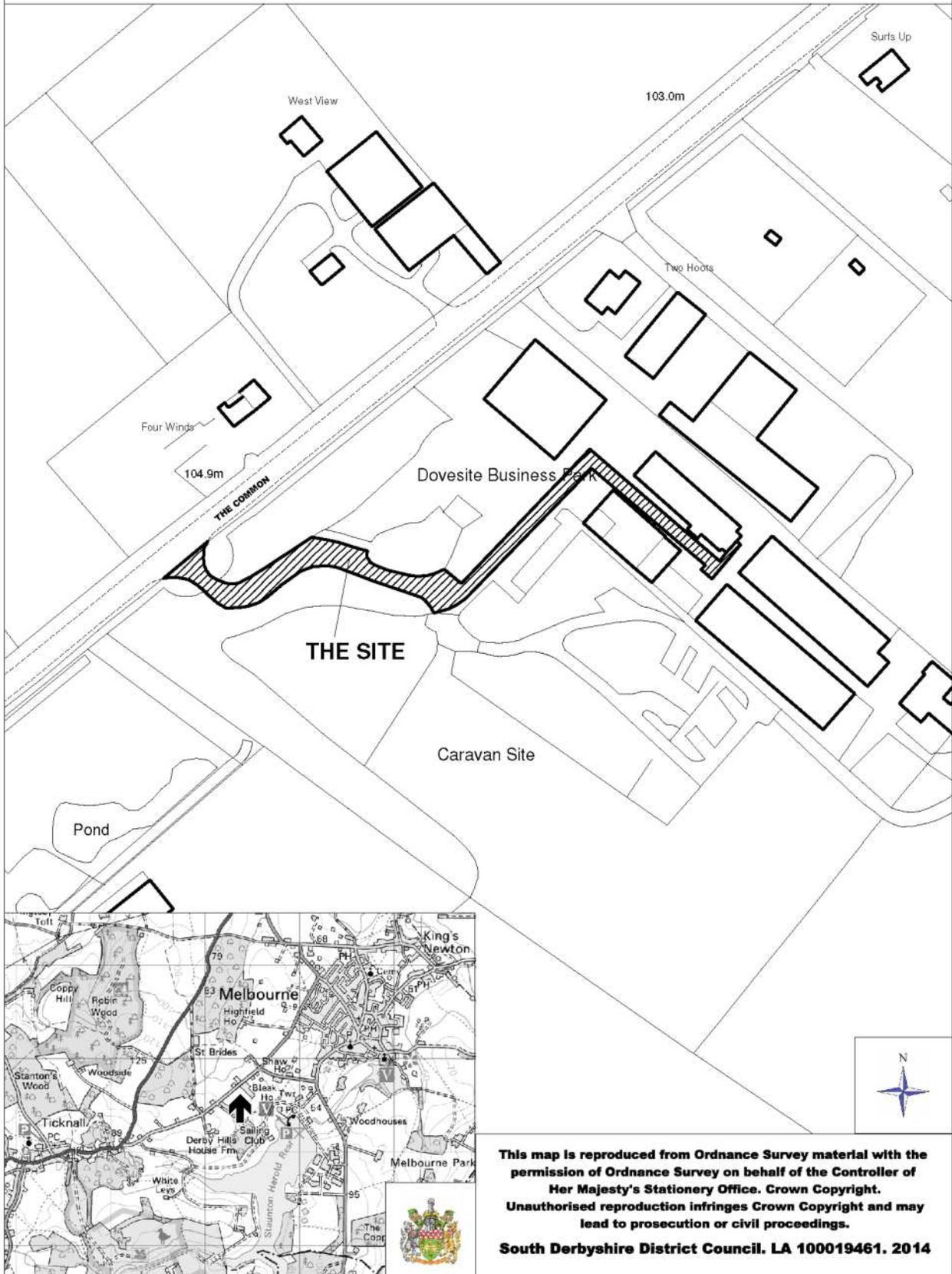
#### **Proposal**

The proposal is for the change of use of an existing unit on Dovesite Business Park from B1/B8 office/storage use to a private hire office use. This is now a retrospective application as the applicant had to move in at the end of October 2018.

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

The applicant has provided evidence of his need to relocate his existing business setting out his previous address and a short history of the existing business – Village

9/2018/1040 - Unit 43 Dovesite Business Park, The Common, Melbourne, Derby DE73 8HS



Cars. The existing business has been served notice from its former base due to the site being sold.

### **Planning History**

- |             |  |
|-------------|--|
| 9/1992/0249 | The use as a farm shop of part of a store at the premises. Approved with conditions.   |
| 9/0594/0112 | Use for light industrial purposes and storage. Refused 22/06/1994.   |
| 9/0794/0337 | Use for light industrial purposes and storage. Approved 12/12/1994.  |
| 9/0895/0355 | Building extension and unrestricted hours of operation. Enforcement notice issued. Appeal against hours of operation allowed 29/08/1996. |
| 9/1998/0184 | The use for B2 General Industrial purposes of Unit 2 of the premises.  |
| 9/1999/0325 | Erection of a freestanding security camera pole. Approved 06/09/1999.  |
| 9/2007/0840 | The erection of a general purpose industrial building. Approved 18/09/2007.  |
| 9/2007/0938 | The erection of a general purpose agricultural building. Approved with conditions.   |
| 9/2010/0919 | The change of use to touring caravan pitches. Approved with conditions.  |
| 9/2011/0568 | The variation of condition 6 of planning permission 9/0794/0337/u to allow outside caravan storage. Approved with conditions.            |
| 9/2012/0857 | Retrospective application for change of use from B1 and B8 to B2. Approved with conditions.  |
| 9/2014/0105 | Retrospective application for change of use from B1 and B8 to B2. Approved with conditions.  |
| 9/2016/0411 | Extension to existing touring caravan park. Approved with conditions.  |

### **Responses to Consultations**

The County Highway Authority has no objections to the proposal subject to conditions: restricting the use of the office for bookings only; no private hire cars

operating from the site to avoid uncontrolled vehicular movements to and from the site and obstruction of parking and manoeuvring associated with other uses.

Environmental Health has no objection.

## **Responses to Publicity**

Melbourne Parish Council and Melbourne Civic Society have no objections to this proposal.

One objection letter has been received, raising the following concerns/points:

- d) Hours of operation of the Business Park are 07:00 to 19:00 to protect neighbour amenity – This condition needs to be upheld.
- e) If this application is approved, other applications would surely follow.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), E7 (Rural Development), SD1 (Amenity and Environmental Quality), INF2 (Sustainable Transport)
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside)

## **National Guidance**

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

## **Planning Considerations**

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

- Principle of development
- Amenity impacts
- Highway safety

## **Planning Assessment**

### Principle of development

The existing business, Village Cars, previously operated out of Unit 5, The Offices, Bridge Farm, Sinfin Lane, Barrow upon Trent. The applicant's landlord recently sold the East Midlands Storage Yard and the business has been left without a home.

Whilst the Business Park is outside the village settlement boundary and subject to countryside policy, particularly policy E7, the site is an existing business park and the

unit the applicant has proposed to use is a small, vacant unit within other uses and considered appropriate for use as a private hire base where only bookings will be made and no private hire cars will be based. The statement submitted with the application demonstrates that the proposal is a sound business and the proposal would appear to meet the criteria set out in LP1 E7. Where proposals comply with one of the named policies in LP2 BNE5, the proposal also complies with BNE5.

### Amenity impacts

The applicant proposes to work until 01:00 on Monday to Friday and 04:00 on Saturdays and Sundays leaving the office at these times. The hours of operation for the Business Park are 07:00 to 19:00 Monday to Saturday and no working on Sundays. Given the existing unit is within an existing business park surrounded by other units and the use, is akin to an office, the impact on the two residential dwellings opposite the business park would be minimal as the only potential impact would be the entrance and exiting of the occasional private hire vehicle outside of normal business hours. Given Environmental Health raised no objections to the proposal, the use is considered to comply with policy SD1.

### Highway safety

The change of use of an existing unit on an existing business park is unlikely to cause any highway issues and this is confirmed in the Highway Authority's response. A condition relating to the use being restricted to the operation of the booking system only and no private hire cars to be allowed to operate from the site has been suggested. The proposal would therefore comply with Policy INF2.

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

## **Recommendation**

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

1. The use of the site shall be restricted to operation of the office/bookings process only. No private hire cars shall be brought to the site.

Reason: To avoid uncontrolled vehicular movements to and from the site and obstruction of parking and manoeuvring so associated with other uses.

2. The use hereby permitted shall not operate outside the following times:

08:00 - 01:00 Monday to Friday;

08:00 - 04:00 Saturday and Sunday.

Notwithstanding these hours of operation where a single user will operate the business from the site, no other vehicles associated with the business will visit the site outside of normal hours of operation of the business park which are 07.00 hours until 19.00 hours Monday to Saturday or at any time on Sundays unless otherwise agreed in writing by the Local Planning Authority.

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

18/12/2018

Item 1.5

Ref. No. 9/2018/0493/FM

**Applicant:**  
**Mr & Mrs P Lacey**  
**Tower Farm**  
**Swarkestone Road**  
**Weston On Trent**  
**Derby**  
**DE72 2BU**

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

**Proposal: THE ERECTION OF A REPLACEMENT DWELLING AT TOWER FARM SWARKESTONE ROAD WESTON ON TRENT DERBY**

**Ward: Aston**

**Valid Date 24/05/2018**

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

The item is presented to Committee as the proposal does not strictly accord with the Development Plan.

#### **Site Description**

The site consists of a single storey dwelling with a cluster of sprawled outbuildings and is located outside of the village of Weston on Trent. The site is characterised by dense tree planting to the front, sides and rear of the site with a flat topography. This creates an intensely screened site which entirely restricts views into and out of the site.

#### **Proposal**

Consent is sought for the demolition of the existing single storey dwelling and the erection of a replacement house. The existing additional outbuildings would also be demolished to accommodate the proposed dwelling. The existing access would be retained.

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

The Tree Report identifies that the woodland tree groups have amenity value rather than individual trees. The protection of tree groups 1 and 2 (south west and south east of the site) is recommended along with the orchard to help the new development blend into the landscape.



An Ecology Report recommends that a further Bat Survey is required to assess the impact of the development and that opportunities for the enhancement such as the design of wildlife friendly lighting, the protection of trees from construction works, the erection of bat boxes and the planting of plant species within landscaping schemes.

The Landscape and Visual Appraisal (LVA) considers that the proposed development would result in a very localised landscape and visual change that would be restricted to the site. Any adverse visual change associated with the proposed development would be temporary and would only arise from demolition. The proposed development would not result in any significant detrimental change to the local or wider visual amenity, character and function of the local area particularly in the longer term; when the sympathetically designed dwelling and associated landscaping mitigation have matured within their setting. The site is therefore, suitable location to accommodate the residential development, as proposed, without any degradation of landscape character or loss of amenity.

A Planning Supplementary Statement sets out that the proposed dwelling is set back approximately 7 metres further from the site frontage than the existing dwelling. However, it is submitted that the revised siting of the proposed dwelling is justified in terms of impact upon the landscape. Siting the dwelling further from the site frontage allows for the retention of the existing area of woodland in its entirety, unlike the extant scheme which required substantial loss of trees (as is concluded by the LVA), this results in a scheme with a lesser impact upon landscape character than both the existing baseline and the extant permission. The revised siting of the dwelling would carry the additional benefit of reducing the environmental impact of the scheme due to the solar gain to the house and photovoltaic panels. The proposals comply with three of the four criteria set out within Policy H24 of the Local Plan Part 2 but do not comply with Criterion (iii), which requires that the new dwelling is sited in substantially the same position as the existing. The LVA concludes that the landscape impact of siting the proposed dwelling further back into the site is lesser than that associated with both the existing baseline and the extant scheme. It also concludes that there would be no or negligible views of the proposed dwelling from public vantage points.

## **Planning History**

9/2016/0842            Demolition of the existing single storey dwelling and outbuildings and the construction of a new two storey dwelling with associated external works. Approved with conditions.

## **Responses to Consultations**

The Highways Authority has no objections to the proposal as the proposed works would involve the demolition of an existing dwelling and the replacement of a new dwelling.

There have been no objections raised by the Councils Environmental Health Officer.

The Development Control Archaeologist notes that the site is located within Derbyshire HER 27766; the site of a World War 2 (WW2) military camp, identified

through aerial photographs in 2009/10. Consultation with the Derbyshire HER was undertaken in the context of the previous planning application for the site in 2016. Comparison of the plan of the WW2 site transcribed from aerial photos, with the modern layout at this time, suggests that some of the surviving buildings are on the approximate site of WW2 buildings, but appear generally to be of different form in plan. This photographs provided by the previous applicant suggest that the surviving buildings are not original, but are later temporary buildings re-using the concrete slabs of the WW2 site. Some of the roadways within the original site do however appear to survive, notably at its western and southern edges. Survival of the WW2 site therefore appears to be very limited, comprising some of the internal roadways and below-ground elements such as concrete hardstanding, and services/drainage. Due to the evidence for very limited survival of the WW2 site it is recommended that the proposal will have no archaeological impact.

There have been no comments received from Severn Trent Water.

Derbyshire Wildlife Trust have noted that there are no ponds on site and the off-site ponds have been assessed as having poor suitability to support great crested newt and the development is therefore considered unlikely to have an impact on great crested newt. It is welcomed that there are no plans for any broad-leaved woodland to be removed as part of the development and Derbyshire Wildlife Trust are satisfied that adequate clarification has been provided on the ecology matters where concerns were initially raised. This is subject to a condition that prior to the commencement of the development, a scheme of biodiversity enhancement (namely the incorporation of integral bird nest and bat roosting boxes and native landscape planting) shall be submitted to and approved in writing by the Local Planning Authority.

No comments have been received from the Lead Local Flood Authority.

### **Responses to Publicity**

There has been one objection received raising the following concerns/points:

- a) The size and appearance of this dwelling is not within character of the surrounding area.
- b) The site is outside of the village boundary and it is led to believe that the same family have also brought the land on the left hand side of proposed application.
- c) Several applications have been refused recently in our area and the height of this application would stand out massively.
- d) Open farmland surrounds the area which hopefully will be a key point.
- e) Strongly object to this application, do not want to see massive properties appearing like at the other end of the village towards Aston on Trent.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H24 (Replacement Dwellings), BNE7 (Trees, Hedges and Woodland) and BNE10 (Heritage).

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD

## **Planning Considerations**

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

- Principle of development;
- Visual impact;
- Landscape management plan;
- Impact on amenity; and
- Other

## **Planning Assessment**

### Principle of development

The site is located outside of the settlement boundary for the village of Weston-on-Trent. Whilst isolated dwellings in the countryside are not usually permitted, there is scope under policy H24 of the Local Plan to demolish an existing dwelling in the countryside and erect a replacement dwelling in its place. This policy allows for the improvement of a dwelling for future occupation whilst making sure that there would be no increase in the number of dwellings in the countryside, and that the nature of the existing use of the site would not change.

There is an existing single storey residential property present at the site with outbuildings. Whilst this is not currently occupied, this dwelling could be occupied at any time in the future without the need for planning consent. The loss of this dwelling and the replacement with another, albeit larger dwelling would not result in an

increase in the use of the land nor alter the nature of the existing use at the site and in these respects the proposed development would result in no material change. On the basis of this and in accordance with policy H24 of the Local Plan, the principle of the development would be considered suitable.

### Visual impact

Policy H24 of the Local Plan supports the erection of a replacement dwelling provided that the proposed dwelling would not be significantly larger than the existing dwelling (taking into consideration what could be achieved under permitted development), would occupy substantially the same siting as the existing dwelling and that the proposed dwelling would not be more intrusive into the countryside than the existing dwelling.

Whilst it is acknowledged that the proposed dwelling would be significantly larger than the existing dwelling and would be positioned further back into the site than the existing dwelling, it is acknowledged that these requirements of policy H24 are to ensure that the proposed replacement dwelling would not have a harmful visual impact in the countryside by way of size or positioning. The application site is located on very flat terrain with very dense tree planting to all four sides of the plot; these circumstances significantly restrict views into and out of the site and any dwelling located within the site would not be easily visible from the street scene nor any of the approaches to the front, sides or rear of the site. The erection of the replacement dwelling despite its size, mass and scale and its position would create no visual impact other than from when seen within the site.

Therefore, despite the lack of compliance with all the requirements of policy H24, it need to be acknowledged that the proposal would still achieve what the principle of the policy sets out to do in that there would be no visual impact as a result of the proposed works owing to the dense planting that currently obscures any views of the site and thus the character and local distinctiveness of the area would remain protected. This is substantiated by the submitted LVA which stipulates that the amended position of the dwelling would result in the loss of no trees. On the basis of this, it is considered that the proposal would comply with policies BNE1 and BNE4 of the Local Plan.

### Landscape management plan

The flat topography of the surrounding area and the dense tree cover to the front, sides and rear creates a visual blockage into the site that would eliminate any visual impact from the proposal. It would therefore, be essential for the tree cover to be protected by a Tree Preservation Order (TPO) to ensure that it could not be removed at a later date and to make sure that the dense tree cover would always be retained to screen the site for the lifetime of the development. On the basis of this, it is considered necessary for a TPO to be placed on the site which would cover all of the trees to ensure that no felling or works could take place without consideration by the Local Planning Authority. In addition, a condition would be required that a Landscape Management Scheme shall be submitted, that would confirm details of planting and maintenance of the trees.

### Impact on amenity

The site is located in excess of 21m away from the windows of neighbouring residential properties and owing to the secluded position of the site, it would not be considered that the proposed dwelling would have any detrimental impact in terms of overshadowing or overlooking to neighbouring residential properties and would comply with the principles of policy SD1 of the Local Plan and the Councils Design Guide.

### Other

The existing access would be used to serve the proposed dwelling, of which there have been no objections raised by the County Highways Authority. The site benefits from a large open area to the front which could accommodate a suitable level of parking to serve the dwelling and for cars to pull in clear of the access. On the basis of this, the proposed dwelling would comply with policy INF2 of the Local Plan.

In addition, there have been no objections raised by the Derbyshire Wildlife Trust in that a suitable level of investigation has been carried out by the applicant and the proposed scheme would result in the retention of all the trees to the front of the site which would be a biodiversity gain in comparison to the extant planning application 9/2016/0842.

### Conclusion

The principle of replacing the existing dwelling with another dwelling is considered suitable in principle. Whilst it is acknowledged that the proposed dwelling would be moved further back into the site and would be larger in size, this would allow more trees to be retained to the front of the site and the proposed dwelling would probably be almost completely obscured from vision by the dense tree planting in accordance with the submitted LVA. On the basis of this, it is considered that there would be no adverse visual impact as a result of the proposed dwelling subject a TPO being secured for the site. It is therefore recommended that the application is approved subject to conditions.

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

### **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 plan(s)/drawing(s) ref. Location Plan (9533lp), Site Plan ((9533sp), Elevations (9533) and Floor Plans (9533), 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. Prior to the commencement of the development, a scheme of biodiversity enhancement (namely the incorporation of integral bird nest and bat roosting boxes and native landscape planting) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To protect existing biodiversity at the site and to ensure that the construction works do not damage existing wildlife that is present at the site.

4. Prior to the commencement of the development, a landscape management plan (LMP) shall be submitted to and approved in writing by the Local Planning Authority. The LMP shall include details of the protection of existing trees at the site through the construction process, as well as long-term design objectives for additional tree planting at the site, management responsibilities and maintenance schedules for the tree planting. Where relevant, the maintenance schedules shall include means to annually review the condition of any tree planting on a rolling programme. The landscape management plan shall be carried out in full accordance with the approved details.

Reason: In the interest of the visual setting of the development and the surrounding area over the lifetime of the development, and to ensure that the existing tree cover at the site would not be lost or diminished through the construction process.

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

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

6. Prior to their incorporation into the dwelling, precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

7. Prior to the occupation of the proposed dwelling, to which this permission relates, the existing dwelling as shown on drawing reference, site plan (9533sp) shall be demolished and cleared from the site. The proposed dwelling may not be occupied until this work has been completed.

Reason: To ensure that no more than one dwelling could be occupied at the site.

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

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

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

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

#### Informatives:

- 1 The applicant and/or developer is reminded of the Council's responsibility to issue official addresses for all residential and business premises within South Derbyshire. All new addresses are allocated in line with our street naming and numbering guidance (search for 'Street naming and numbering' at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk)) and you are advised to engage with the Council as soon as possible to enable the issuing of street and property names/numbers created by this development. Any number and/or property name that is associated with identifying individual properties must be displayed in a clear, prominent position that can be read from the roadside. It is the developers' responsibility to erect the appropriate signage once the build(s) is/are ready for occupation. There are two types of the name plate the Council uses: Type A carries the Council's crest, whilst Type B does not. You are advised that the Types are usually expected in the following locations: - Type A: on classified (A, B and C) roads, at junctions with classified roads, and at the commencement of local distributor roads (roads acting as through routes within developments); - Type B: intermediate name plates along local distributor roads, on collector roads (roads which run within a development providing access and linking small access roads and access ways), on access roads (roads serving a small number of houses which may also have a surface shared by pedestrians and vehicles), and access ways which have a different name from their access road; all unless at a junction with a classified road (where Type A will be expected instead). Further advice can be found online at [www.south-derbys.gov.uk](http://www.south-derbys.gov.uk) or by calling (01283) 228706.
- 2 The developer is strongly encouraged, as part of the delivery of properties on the site, to provide full fibre broadband connections (i.e. from streetside

cabinet to the property). Further details of initiatives to support the provision of full fibre connections as part of broadband installation at the site can be obtained from Digital Derbyshire on [broadband@derbyshire.gov.uk](mailto:broadband@derbyshire.gov.uk) or 01629 538243.

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

18/12/2018

**Item**            **1.6**

**Ref. No.**        **9/2018/0857/FM**

**Applicant:**  
**Mrs J Street**  
**14 Ashby Road**  
**Melbourne**  
**Derby**  
**DE73 8ES**

**Agent:**  
**Mr David Granger**  
**David Granger Design Ltd**  
**The Old Dairy**  
**Mill Street**  
**Packington**  
**Ashby De La Zouch**  
**LE65 1WN**

**Proposal:**     **ERECTION OF DEPENDENT RELATIVE BUNGALOW WITHIN THE GARDEN OF 14 ASHBY ROAD MELBOURNE DERBY**

**Ward:**           **Melbourne**

**Valid Date**    **09/08/2018**

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

The item is presented to Committee at the request of Councillor Harrison due to local concern that has been expressed about a particular issue.

#### **Site Description**

The site is located in the rear garden of an existing residential property which is located within the settlement boundary of the village of Melbourne. The site falls outside of the conservation area but is located within a predominately residential area close to the centre of the village. The immediate area is not defined or characterised by a specific house type, with a range of different house types and styles ranging from detached and semi-detached properties to bungalows.

#### **Proposal**

Consent is sought for the erection of a single storey, "L" shaped bungalow building in the rear garden of the existing residential property. The proposed accommodation would be used as an annexe dependent on the existing dwelling and would be provided with two bedrooms to house a dependent relative. All parking would be served at the front of the current dwelling and there would be no separate parking proposed for the proposed building on this basis.

9/2018/0857 - 14 Ashby Road, Melbourne, Derby DE73 8ES



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## **Planning History**

The following planning applications have been submitted and determined at the site:

- 9/2006/0277 The erection of ancillary living accommodation. Withdrawn.
- 9/2006/0753 The erection of ancillary living accommodation (amended scheme for application 9/2006/0277). Approved with conditions
- 9/2014/0016 The erection of an extension. Approved with conditions

## **Responses to Consultations**

The Environmental Health Officer /Contaminated Land Officer have no comments to make with regard to the application.

The Highways Authority has no objections to the application. Whilst the proposal is not considered to be suitable in highways terms due to the fact that there would be no additional parking, provided that a condition could be in place that the building would only be occupied by a dependent relative/incidental use, it is not considered that a refusal could be sustained on highways grounds.

No comments have been received from Severn Trent Water.

## **Responses to Publicity**

Melbourne Parish Council has raised no objections but note that a condition for additional parking should be attached.

Melbourne Civic Society has commented that they are not happy with the size of this building for the location. It will cover a lot of the garden and be intrusive to neighbours especially at No 10 which will be overlooked. Why are "two" bedrooms needed for a dependent (elderly/infirm?) relative and will there be steps to the new build? Similar plans were submitted in 2006 when developments in gardens were taking hold. We seem to remember that the design was smaller and did receive Planning Permission. However Melbourne Civic Society were extremely disappointed that the Councils online system did not provide the historic application details. A new build here would probably require an extra car parking space on this very packed section of Ashby Road, made worse by the loss of parking opposite. If planning permission is granted, Melbourne Civic Society would expect a condition to be applied that only a relative can occupy the property. The Local Planning Authority needs to consider seriously the excessive size and massing of the proposed building.

There have been three letters/emails of objections received, raising the following concerns/points:

- a) The appearance and size of the proposed dwelling is completely inappropriate for a small garden and its setting in relation to neighbouring houses. The

design looks ordinary with little architectural merit and clearly no thought has been given to the visual impact on neighbouring properties.

- b) A more sympathetic design would have included a flat or shallow pitched roof which avoided the need for an apex roof that serves no purpose. Such a design would also fit in with the property's rear extension completed around four years ago.
- c) It would be a slab of bricks and tiles that would dominate the area and when looking at the plan also be disproportionate to the overall site. Effectively the footprint looks as large as the existing house.
- d) Number 10 Ashby Road would be the most affected property by shadowing and loss of light. The location plan does not take into account an existing rear extension completed approximately six years ago and it is not clear from the application if the existing site plan makes a similar allowance.
- e) The proposal would be to build adjacent to a neighbouring boundary; a bungalow and would extend over the length of our existing boundary wall and at least part of the neighbouring extension and stand to a height of 5.3m.
- f) This would have a significant adverse impact by shadowing a neighbour's extension and rear garden. No thought has been given to the detrimental effect on neighbouring houses.
- g) There is no provision for additional parking. The application indicates there are two parking spaces available. The current occupier's vehicle is a large vehicle and it is doubted that a second similar sized car would fit without overstepping onto the pavement, which is probably why visiting family and friends invariably park on the road. It is naive to think that future occupiers of the proposed dwelling would not have a vehicle and hence add to the congestion on Ashby Road.
- h) There is significant development that has taken place and continues on this stretch of road. It is reasonable to assume that these new houses will each have a minimum of 2 vehicles making a further twenty four vehicles accessing/using Ashby Road. The creation of these properties has taken away the verge that was used by residents for parking. This stretch of road is becoming very congested and restricted to one lane in parts due to parked vehicles.
- i) The application refers to a "dependent relatives bungalow," why are there two bedrooms proposed?
- j) Doesn't the applicant have to prove the reason for the dwelling? If so then clearly most residents on Ashby Road could argue similar justification, what is to stop other wholesale applications if a precedent is set?
- k) The application states that pre-application advice was sought from Ms A Garfield. Was she aware that since the old application in 2006 the applicant has extended their own property at the rear and neighbouring properties have also extended their properties at the rear? Consequently the impact on the site and neighbouring properties is significantly worse.
- l) Advice was stated as positive due to a previous consent having lapsed. This refers to application 9/2006/0753. The details of that application are not available online and requests have been submitted to SDDC to provide the relevant papers/comments made at that time.
- m) Given the rear extensions to both 10 and 14 Ashby Road have been completed since 2006 the adverse impact on the overall site is even more apparent and out of scale.

- n) The “personal circumstances” previously used in 2006 were obviously not critical as the project did not proceed but have now apparently resurfaced twelve years later. We understand the applicant owns investment houses in Melbourne and beyond; surely one would be suitable?
- o) Strongly object to the application and assume this would be fully debated by the Planning Committee and not delegated to a Planning Officer.
- p) The suggested changes do not address the issue of over development of a small plot/impact on the immediate area from the site plan. This is an area now saturated with recent new dwellings.
- q) Architectural merit is a matter of opinion but the proposal looks ordinary with little thought to neighbouring properties.
- r) If the “dependents” are elderly the internal layout of the proposed house does not look particularly mobility friendly.
- s) Whilst an effort has been made to lower the roof line it is still considered wholly inadequate and objections on the grounds of loss of light remain as neighbouring properties shall be adversely affected. In addition, there has been no attempt to reduce the length of the house which will still run the length of neighbouring gardens and overlap with rear extensions to neighbouring properties.

Following the submission of amended plans, there has been one letter/email of objection received raising the following issues:

- a) One of the fundamental flaws in the application is the sheer scale of the building compared to the surroundings and the relatively small garden. The floor area has been reduced by less than one square metre which is wholly inadequate. A simple look at the plan reveals the new design effectively butts up to the existing patio which cannot be right.
- b) The proposal would be even worse off. The proposed length of the building adjacent to a neighbouring boundary would now run the full length of the garden plus extension and beyond. Therefore whilst a further attempt has been made to reduce the ridge height we would still suffer from loss of light along an extended stretch of the property.
- c) If the applicant was serious about minimising impact and loss of light then surely it would make more sense to flip the revised design to the effect that the long boundary wall of 13.2 metres was adjacent to number 16. Given they are south of the applicants property effectively they would not suffer from loss of light as the sun would move behind the back of the new build. It would mean the applicant has to remove a small shed against that wall but then the impact of perspective would reduce the effect on number 10. It would also mean the applicant themselves would bear the loss of light which seems only reasonable.
- d) Unaware of the circumstances that merit “dependent relative” status means. If they are elderly then the internal design of the unit does not appear suitable i.e. not ideal for say wheelchair access and movement. Either way, “dependent relative” implies a short term.
- e) There is no provision for additional parking. The application indicates there are two parking spaces available. The current occupier’s vehicle is a large vehicle and it is doubted that a second similar sized car would fit without overstepping onto the pavement, which is probably why visiting family and

friends invariably park on the road. It is naive to think that future occupiers of the proposed dwelling would not have a vehicle and hence add to the congestion on Ashby Road.

- f) There is significant development that has taken place and continues on this stretch of road. It is reasonable to assume that these new houses will each have a minimum of 2 vehicles making a further twenty four vehicles accessing/using Ashby Road. The creation of these properties has taken away the verge that was used by residents for parking. This stretch of road is becoming very congested and restricted to one lane in parts due to parked vehicles.

Melbourne Civic Society has provided further comments following the submission of amended plans and considers that *the changes to the plans do not improve the situation, as the latest proposal brings the new build closer to the next door neighbour at number 10. All previous concerns that have been raised remain and it is considered that the proposed building is too big for the size of the garden. It is considered that an extension on the back of the house would be a more suitable solution.*

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development) and H27 (Residential Extensions and Other Householder Development).

### **National Guidance**

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

### **Local Guidance**

- South Derbyshire Design Guide SPD

### **Planning Considerations**

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

- Principle of development;
- Impact on amenity;
- Highway safety issues; and
- Visual impact

## **Planning Assessment**

### Principle of development

The site is located within the settlement boundary of the village of Melbourne and subject to the proposal having no detrimental impact in terms of amenity to local residents, or the local highway network or a detrimental visual impact, then the principle of the development would be supported by policies H1, SDT1 and H27 of the Local Plan, as the proposed development would not encroach into open countryside and would be in a sustainable location.

In addition, consent was previously granted under application reference 9/2006/0753 for the erection of an annexe which would be of a similar height, footprint and would occupy the same area of the site as the proposed amended plans that have been submitted as part of the current application. Given the planning history at the site, this would lend further weight to the principle of the proposed development being suitable.

### Impact on amenity

The proposed bungalow building would be single storey and in accordance with the South Derbyshire Design Guide SPD, a development of this size would be assessed on its merits.

Concerns have been raised by local residents with regard to overlooking. The proposed building would be single storey, there would be no inter-visibility between the proposed ground floor windows and the ground floor windows of neighbouring properties as there would be existing boundary treatments in place that would act as a physical barrier and would obscure overlooking and inter-visibility between the two. Whilst it is acknowledged that the proposed ground floor windows could look up into the existing first floor windows of neighbouring properties, the proposed windows would achieve in excess of a 21m distance with all first floor windows of habitable rooms at neighbouring properties, or ground floor windows would be positioned on a different angle that would prohibit inter-visibility. Any inter-visibility from the proposed living room window with number 10 Ashby Road would be obstructed by the single storey wing of the proposed building. On the basis of this, it would be considered that there would be no overlooking issues posed by the proposed bungalow building and the proposed building would comply with policy SD1 of the Local Plan and the South Derbyshire Design Guide SPD.

The proposed building would be single storey and would be positioned 1m away from the boundary of number 10 Ashby Road. The proposed building would have a gable end facing the existing dwelling with an eaves height of 2m and an overall height of 3.8m at the centre of the gable end. Concerns have been raised by local residents with regard to potential overbearing and overshadowing from the proposed building and the impact that this would have on the amenity of number 10 Ashby Road. Given that number 10 Ashby Road is set back within its plot, this would mean that the proposed outbuilding would be positioned adjacent to the rear elevation of number 10. However, given the level topography of the site in relation to neighbouring properties and that the immediate height of the proposed building at its

closest point to the neighbouring dwelling would be no higher than the existing boundary treatment, it would be difficult to withhold permission on this basis. Under the requirements of permitted development, an outbuilding could be constructed with an eaves height of 2.5m and an overall height of 4m if it were to be located 1m further away from the neighbouring boundary. Given the increase in the height of the structure it would be considered that the extent of permitted development would have a more harmful impact than that proposed. On this basis, it is not considered that the proposed works would have a harmful impact on the amenity of neighbouring properties that would warrant the withholding of permission.

Amended plans have been submitted which show an “L” shape footprint of the proposed building. In accordance with the Councils Design SPD, this has assisted with creating more separation between the side boundary treatment and the proposed windows and would provide more of an outlook for the proposed occupier whilst at the same time, not compromising the amenity of neighbouring residential properties.

### Highways issues

Concerns have been raised by local residents with regard to the lack of parking proposed to accommodate the proposed bungalow building. However, the proposed building would be used in connection with the existing dwelling for the occupier’s relatives and would function in much the same way an extension to the existing dwelling would, albeit the proposed annexe building would be detached. The annexe would not create a new residential unit in its own right. On the basis of this, there have been no objections raised by the County Highways Authority with regard to the proposed works as the proposed building would be incidental to the existing dwelling and would not warrant separate parking or separate access on this basis. A planning condition would be imposed which would restrict the occupation of the building to relatives of the occupants of the existing dwelling. Therefore, if the main dwelling were to be sold in the future, this would continue to restrict the use of the building if the main dwelling were to change hands. This would also mean that any intention to use the building as a separate dwelling in the future would require a formal planning application to be submitted and considered. In this event, the highways impact would be assessed as a new application. On the basis of this, it is considered that the works would comply with policy INF2 of the Local Plan.

### Visual impact

Policy H27 of the Local Plan allows for the erection of annexe buildings where they would be of a scale and character that would be in-keeping with the existing property. Following the submission of amended plans, the proposed building would be single storey and would form an “L” shaped footprint. This amended design allows the overall roofline of the building to remain low and the proposed building would appear as a subordinate structure to the main dwelling. The proposed building would be constructed to the rear of the garden and would not be visible from Ashby Road or another area of public realm. On the basis of this, the proposed building would be of a suitable scale and proportions and would have no wider visual impact and would comply with the principles of policies BNE1 and H27 of the Local Plan.

Whilst the properties fronting Ashby Road benefit from a strong front building line, to the rear of Ashby Road, there is a mix of dwellings positioned at different angles and building lines due to the layout of the road network to the rear. Therefore, the position of the building to the rear of the existing property would not impact, or break up a strong, uninterrupted rear building line as the rear of the site is already characterised by sporadic buildings. The proposed building would therefore, not result in unsuitable development or compromise a strong symmetrical layout in the area.

### Conclusion

Based on the assessment, it would appear that the principle of the proposed building would be suitable. It has been demonstrated that the annexe would not result in a detrimental impact on the living conditions of neighbouring properties by way of overshadowing and overbearing and that the building would be of a suitable, subordinate scale to the main dwelling. On the basis of this, the proposed works would comply with policies H1, BNE1, SD1, SDT1 and H27 of the Local Plan and it would be recommended that permission be granted subject to conditions.

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

### **Recommendation**

**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 plan/drawing ref. 14.3009.12 C, received on 12th November 2018, 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 living accommodation hereby permitted shall be occupied solely by members of the household of 14 Ashby Road or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.  
Reason: Although the erection of an extension to provide additional accommodation to be used in conjunction with the existing dwelling is acceptable, the Council would not normally be inclined to allow the formation of a separate residential unit in this locality. Since the extension includes all the domestic facilities necessary for the establishment of a separate self-

contained unit, the Council hereby seeks to make it clear that separate occupation is not authorised by this permission.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

5. The building, to which this permission relates, shall not be constructed until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

18/12/2018

Item 1.7

Ref. No. 9/2016/1068/L

**Applicant:**  
**Mr John Harrison**  
**Hope Cottage**  
**55 Penn Lane**  
**Melbourne**  
**Derbyshire**  
**DE73 8EQ**

**Agent:**  
**Mr John Harrison**  
**Hope Cottage**  
**55 Penn Lane**  
**Melbourne**  
**Derbyshire**  
**DE73 8EQ**

**Proposal: THE INSTALLATION OF SECONDARY GLAZING AT HOPE COTTAGE 55 PENN LANE MELBOURNE DERBY**

**Ward: Melbourne**

**Valid Date 22/12/2016**

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

The item is presented to Committee as the applicant is a member of the Council.

#### **Site Description**

55 Penn Lane is one of a row of terraced 19<sup>th</sup> Century Grade II listed houses – 55 Penn Lane has been combined with no. 57 to form one property. The site is within the Melbourne Conservation Area.

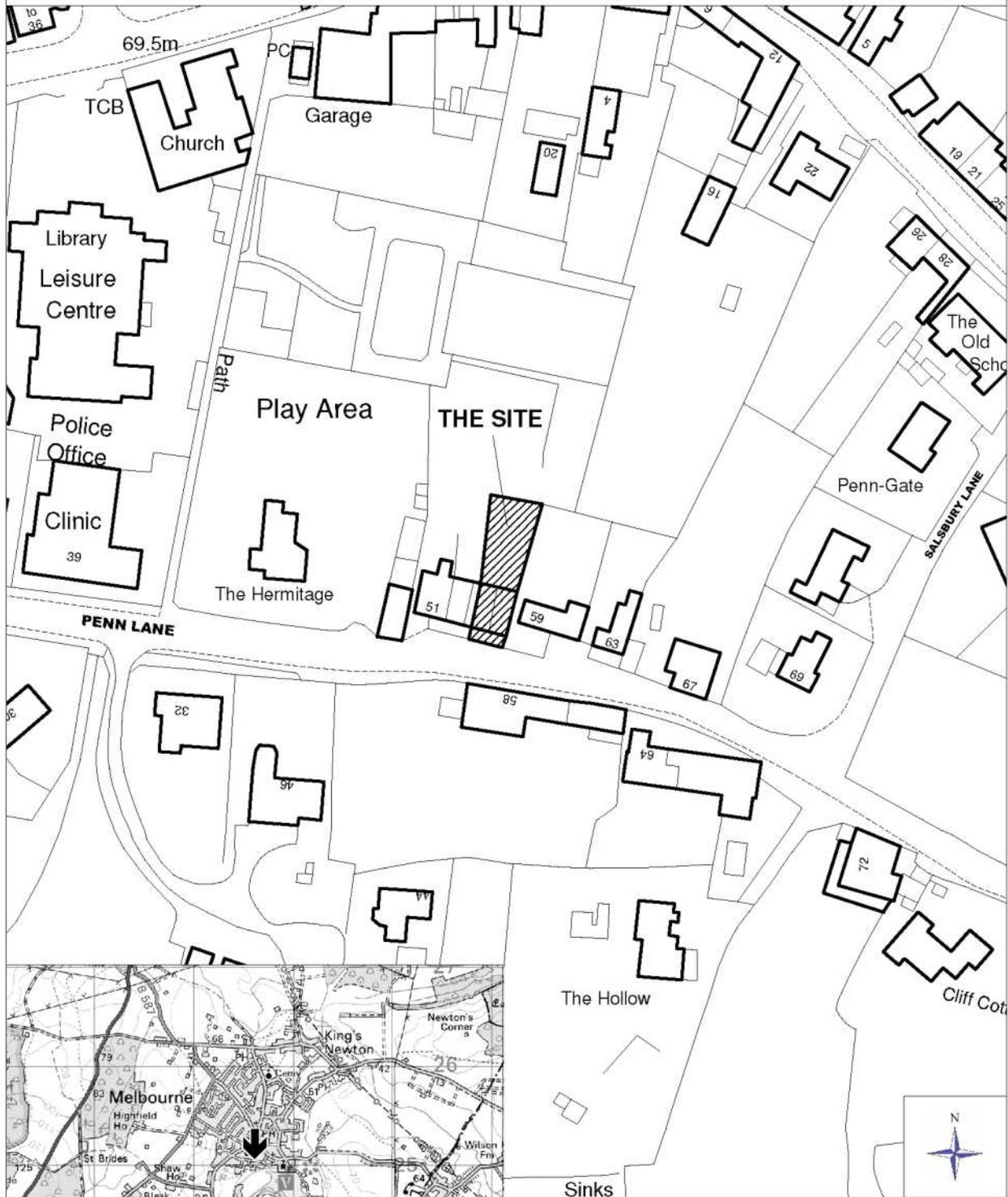
#### **Proposal**

Listed Building Consent is sought for the installation of secondary glazing to 2 ground floor sash windows to the south (front) elevation of the property; 1 ground floor 2 light casement window and an external door to the west side; an external door, a set of French doors with casement windows either side; and a first floor 3 light casement window to the north (rear) elevation of the property.

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

The Heritage Impact Statement submitted includes the listing description for the property and the design principles for the proposal. The secondary glazing products specified have been selected for a number of reasons, namely:

9/2016/1068 - Hope Cottage, 55 Penn Lane, Melbourne, Derby DE73 8EQ



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- Negates the need to re-glaze the existing units therefore preserving the original features;
- The units will be discretely fitted with minimal change in appearance to the windows when viewed externally;
- The units are demountable if future reinstatement is required. The glazing unit frames are fixed mechanically using small, lightweight fixings at regular intervals to the inside of the existing timber frames. This makes them removable with very little making good required to reinstate the joinery to its previous condition;
- The inclusion of secondary glazing can be an acceptable enhancement as they are reversible adaptations; and
- Improved thermal efficiency and removal of draughts.

### **Planning History**

None relevant

### **Responses to Consultations**

None

### **Responses to Publicity**

Melbourne Civic Society has no objection provided the secondary glazing frames do not intrude on the sight lines of the existing windows.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: BNE2 (Heritage Assets)
- 2017 Local Plan Part 2: BNE10 (Heritage)

### **Emerging Policies**

The relevant policies are:

- Melbourne Neighbourhood Development Plan (NDP): No relevant policies.

### **National Guidance**

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

### **Local Guidance**

- South Derbyshire Design Guide SPD

## **Planning Considerations**

The main issue central to the determination of this application is the impact on the historic and architectural character of the listed building.

## **Planning Assessment**

In general secondary double glazing is a reversible method to improve noise and thermal insulation in historic buildings. The applicant has provided affirmation from the supplier that the glazing frames will be fitted so as to be not evident from the outside, and that should they need to be removed in the future this could be undertaken without any structural or decorative disruption.

In these circumstances the proposal would not detrimentally affect the architectural or historic character of the building and is thus in conformity with the aforementioned development plan policies.

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** consent subject to the following conditions:

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the submitted '1st 2nd-ary Glazing' specifications as clarified by e-mails dated 15 and 29 November 2018, unless as otherwise required by condition attached to this consent.

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

18/12/2018

**Item** 1.8

**Ref. No.** CW9/2018/0012/CW

**Applicant:**  
**Mr Dean Willshee**  
**Willshees Skip Hire Ltd**  
**22 Granary Wharf**  
**Wetmore Road**  
**Burton On Trent**  
**DE14 1DU**

**Agent:**  
**Mr David Alcock**  
**AC Environmental Consulting Ltd**  
**Longport Works**  
**Chemical Lane**  
**Stoke On Trent**  
**ST6 4PB**

**Proposal:** PROPOSED EXTENSION TO THE SITE AND CONSTRUCTION OF A WASTE HANDLING BUILDING FOR THE STORAGE, TREATMENT AND PROCESSING OF REFUSED DERIVED FUEL (RDF) (COUNTY REF. CW9/1018/63) AT DEPOT 3 BURTON ROAD CADLEY HILL SWADLINCOTE

**Ward:** Linton / Newhall and Stanton

**Valid Date** 29/10/2018

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

The item is presented to Committee at the discretion of the Planning Services Manager.

#### **Site Description**

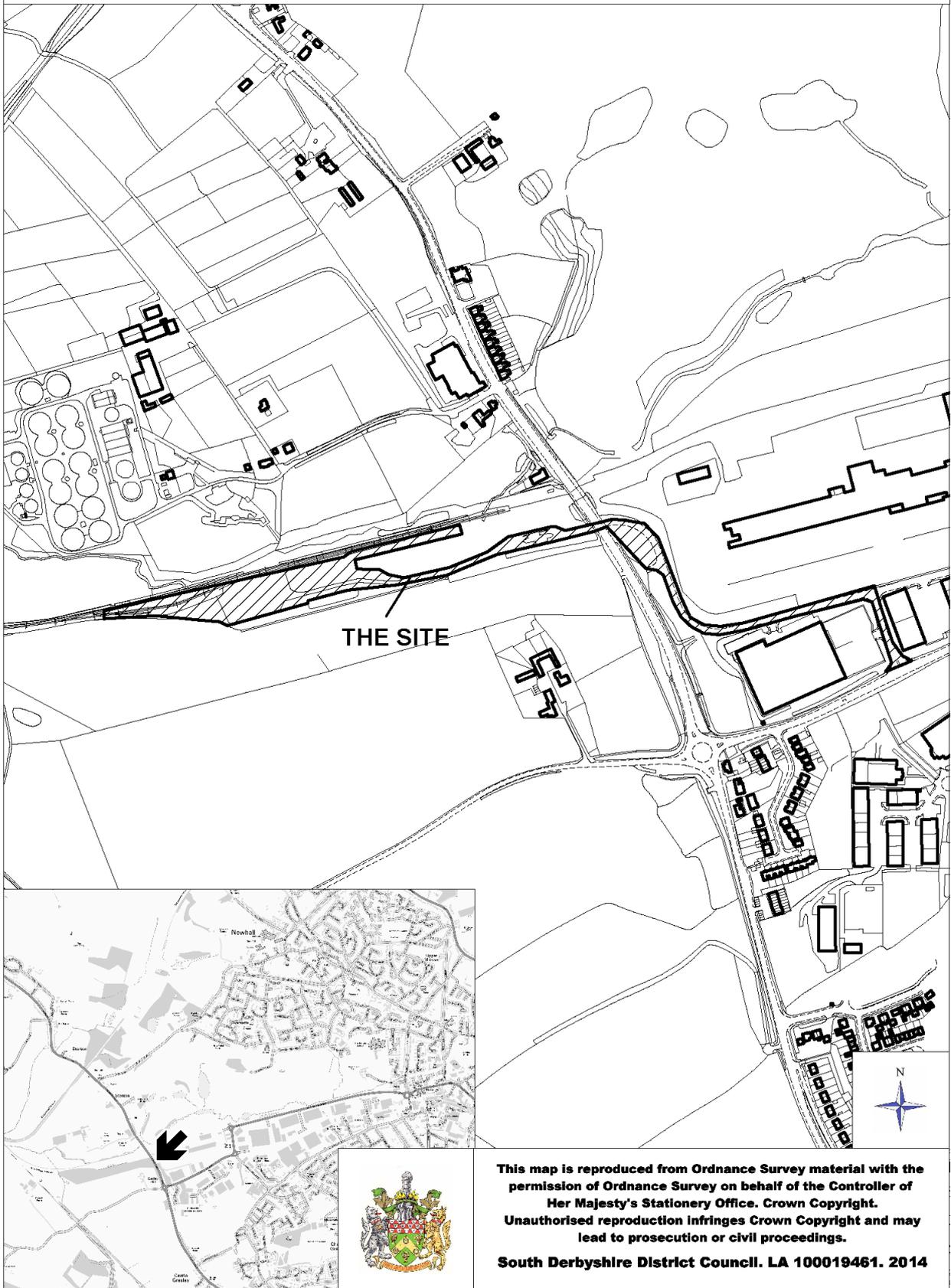
The application site is located on previously developed land which is currently vacant. The site is located adjacent to the A444 Burton Road, to the west of Swadlincote. The site has been cleared of structures apart from a concrete access road and concrete pad, and has, in part, self-regenerated with trees and vegetation.

The site includes part of a disused rail siding with vehicular access to the site via a road under a road bridge near to Tetron Point Industrial Estate which is accessed off Cadley Hill Road.

Residential properties lie to the south and north of the site, as well as a waste water treatment plant to the north. To the east is Tetron Business Park. Whilst the site is not affected by any heritage designations, it adjoins to the north the Green Belt land and is identified as a Local Wildlife Site (LWS).

The total site area within the applicant's ownership is 13.62Ha, with the current application site amounting to 2.12Ha.

9/2018/0012 CW - Depot 3, Burton Road, Cadley Hill, Swadlincote DE11 9EL



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

Planning permission was granted in October 2017 by Derbyshire Council for the use of the wider site as an inert waste and wood waste transfer station and skip storage.

## **Proposal**

The application is for an extension to the approved site, and the construction of a waste handling building for the storage, treatment and processing of refuse derived fuel (RDF).

The proposed building is located towards the western end of the site with access to the building created and circulation space provided around the building. The roof of the building is proposed with a roof mounted solar PV system.

The site would act as a storage and processing facility for RDF prior to its transfer to waste to energy plants, which is likely to include the Drakelow Renewable Energy Centre once constructed. The proposals would increase waste / RDF capacity at the site by 120,000 tonnes per annum, with around 25 new jobs created.

The application represents EIA development and as such is supported by an Environmental Statement (ES) which considers the environmental impacts of the proposed development.

## **Planning History**

The site is known to have been used as a former coal stocking yard.

CW9/0816/45: Change of use to an inert waste and wood waste transfer station and skip storage. Approved by Derbyshire County Council 9 October 2017.

## **Responses to Consultations and Publicity**

Having considered the potential environmental impacts of the development Environmental Health have no objection to the proposals, providing the proposed mitigation measures highlighted in the ES in relation to air, odour and noise are implemented by means of a suitably worded planning condition.

## **Planning Considerations and Assessment**

### The provision of a new rail freight terminal on the site

The application site is identified within the 2016 South Derbyshire Local Plan Part 1 (Policy INF2) as 'Land at Tetron Point and the associated rail siding connecting to the Burton to Leicester railway line' and is protected from development that would compromise the capacity of the site to be used for rail freight purposes in future. This concern was raised at the time of the County Council's consideration of the previous application for the site. As a result of this concern the permission was granted for a temporary period of 10 years from the commencement of development in order for the site to remain available for rail freight terminal use if deemed feasible in the future.

This application is supported by a 'Rail Freight Feasibility Study' which considers the usability of the site as a rail freight terminal for the existing user i.e. for the transfer of wood and waste, and the potential for future use of the site for rail freight. A new terminal is not deemed by the study to be feasible for the existing waste operations. In addition, the size of the site, loading gauge of the railway line, and demand (amongst other points) results in the study not considering the site suitable for future use as a rail freight terminal.

However, the study fails to take account of potential improvements to the loading gauge of the Leicester – Burton line, and also the potential for existing businesses at Tetron Point utilising rail freight and/or the employment allocations in the wider Tetron point area not simply the area under the control of the applicant. It is therefore considered appropriate to recommend that a similarly worded condition i.e. a limited 10 year permission is appropriate.

### The National Forest

The site is located within the National Forest where major schemes are required to contribute towards on-site woodland planting, in line with Policy INF8 of the Local Plan Part 1. As the site area extends to over 1 ha the expectation that 20% of the site is provided as woodland planting and landscaping, or an appropriate financial contribution provided in lieu of on-site provision should be highlighted to the County Council as a requirement for the development.

### Environmental Effects

**Ecology:** The ES considers protected species and habitats, and outlines the impact of the development on an existing Local Wildlife Site (Cadley Hill Railway Area LWS). It also considers the potential to affect locally present wildlife species with specific focus on Great Crested Newts which are known to be located within the study area. The proposals would lead to the loss of 0.71ha of an existing LWS (equivalent to 6.1% of the site). Whilst the loss of this area is relatively modest this loss needs to be adequately compensated for through of-setting elsewhere, a matter which should be highlighted in a response to the County Council.

**Water Environment:** The local receptors (surface and ground waters) and demolition/construction effects and operational impacts are the main effects on the water environment. Mitigation to address construction impacts include the use of bunds, temporary lagoons and silt traps. Operational mitigation includes and the siting and layout of building, the use a sustainable drainage system to attenuate flows prior to discharge to the Darklands Brook at a greenfield rate and the creation of flood compensation areas to ensure that flood flows are not displaced. These mitigation measures are considered to adequately address impacts on the water environment.

**Contamination:** During its operation the site could have an effect on land quality through the introduction of contaminants from off-site, mainly in the form leachable substances within imported wastes. Operational risks would be mitigated by the placement of a drained impermeable pavement across the operational areas.

**Air and Odour:** The proposal would have potential impacts on air quality both during construction and operation. Measures to mitigate effects comprise the use of a dust management plan to suppress dust generation; the plans include covered HGV vehicles depositing waste during delivery within the building and use of air filters to reduce dust within the building. Subject to the implementation of these mitigation measures the impacts on air quality are not considered to be significant.

**Traffic and Transport:** An assessment of transport effects is set out in the ES, which notes that during the construction phase a minimal increase in traffic would have a negligible impact on the road network, with operational phase impacts are also highlighted as being of negligible significance.

**Landscape and Visual:** Due to the sites generally contained nature and existing woodland screening it is considered that the effects of the proposed development would be localised and limited in their physical extent and would not give rise to any unacceptable long-term landscape or visual harm.

**Noise and Vibration:** Subject to the mitigation outlined in the ES, the construction phase of the development is unlikely to lead to any significant noise or vibration impacts. In terms of operations the plan used in the operations have the most potential to impact on the amenity of the area however, the required noise levels at the boundary of the nearest residential properties have been agreed with Environmental Health and the plant installed at the site would be chosen to ensure compliance with these levels.

## **Recommendation**

That the County Planning Authority be informed that this Authority raises **no objections** subject to the following:

- That the mitigation measures outlined within the Environmental Statement are secured by condition(s) as it is imperative that these measures are carried out. In particular; The Construction Environment Management Plan; A Dust and Odour Management Plan; and Noise Action Plan.
- The loss of part of the Cadley Hill Local Wildlife Site needs to be adequately mitigated for which should go beyond the beyond the management required by the previous permission on the site. This may be provided by through biodiversity offsetting.
- The scheme should include National Forest Planting, which in accordance with policy INF8 the site should provide 20% of the development area as woodland planting and landscaping. If this is not achievable on-site this could be provided as an off-site financial contribution.
- In order to safeguard the long term potential for the provision of a rail freight terminal on the site a similar condition to that imposed on the previous permission for the wider site (CW9/0816/45) for a 10 year permission (from implementation) should also be imposed if permission is granted.

## **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> |
|------------------|--|-------------|-----------------|------------------------|-------------|
| 9/2017/0343      | 64 Fabis<br>Close,<br>Swadlincote            | Swadlincote | Dismissed       | Committee              | 95          |
| E/2016/00113     | Land at<br>Kingfisher<br>Lane,<br>Willington | Willington  | Part<br>Allowed | Delegated              | 98          |



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## Appeal Decision

Site visit made on 9 October 2018

by **D Child BA BPL MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 November 2018

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**Appeal Ref: APP/F1040/W/18/3203495**

**64 Fabis Close, Swadlincote, Derbyshire DE11 9SN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mrs Teresa Hawkins against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/0343, dated 14 March 2017, was refused by notice dated 29 November 2017.
  - The development proposed is described as proposed new 2B 4P bungalow on land to the rear of 64 Fabis Close.
- 

### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - The effect of the development on the character and appearance of the area;
  - The effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance; and
  - Whether the proposal makes adequate provision for access, parking and servicing.

### Reasons

#### *Character and appearance*

3. No 64 Fabis Close (No 64) is situated on a small cul-de-sac of modern two-storey detached dwellings. On this part of the street, dwellings have a frontage with the highway and front gardens, some of which are used as parking areas. Rear gardens to Nos 64, 66 and 68 Fabis Close extend up to a public footpath which runs along their rear boundaries. The staggered layout of dwellings as they fan around the highway establishes a strong sense of place. The development would introduce a single-storey detached dwelling at the end of the rear garden to No 64, and behind the rear garden to No 62. The proposed dwelling would have limited garden space and would not have any frontage with Fabis Close.
4. The proposed development would not be visible from Fabis Close. Nevertheless, it would be visible from the footpath at the rear of the appeal site and from the rear of Nos 46, 48, 50, 62, 66 and 68 Fabis Close, and the host dwelling. In

views from the footpath, being of only single-storey construction, it would not appear overly dominant. The proposed dwelling would, however, fail to follow the existing pattern of development, especially when viewed from surrounding dwellings. It would introduce a dwelling to a rear garden without any road frontage. It would appear larger than most outbuildings that might be permitted development and would be highly anomalous, contrary to the existing layout of development in the area.

5. Concluding on this main issue, I find that the proposed dwelling would be harmful to the character and appearance of the area. Accordingly, it would be contrary to the design aims of Policy BNE1 of Part 1 of the South Derbyshire Local Plan 2016 (Local Plan) which, amongst other things, seeks to ensure new development creates places with a locally inspired character that respond to their context. It would also conflict with paragraph 127 of the revised National Planning Policy Framework which, amongst other things, promotes developments that are visually attractive as a result of layout, are sympathetic to local character, and which maintain a strong sense of place.

*Living conditions*

6. The proposed dwelling would be sited to the south east of the host dwelling and Nos 66 and 68, and to the east of No 62. It would be situated to the north west of Nos 46, 48 and 50. The Council argues that the proposed development would introduce a source of noise and disturbance within a rear garden space.
7. Access to the proposed dwelling would run between the houses Nos 62 and 64. The existing driveway to the garage of No 64 already follows this route. I consider that vehicular movements associated with the proposed development would not represent a material increase on the current situation so as to be a source of noise and disturbance to the neighbours. Given the appeal site is already in use as garden and that houses in the area are set at varying angles and distances from one another, I also consider that an additional dwelling would not be likely to result in any undue disturbance for existing residents.
8. Despite the area's topography, the scheme would not be overbearing on the occupants of Nos 62 to 66 or cast an unacceptable shade. This would result from the degree of separation and the single-storey hipped roof design of the scheme. In addition, subject to appropriate boundary treatments which could be secured by condition, the proposed dwelling would not give rise to negative effects on privacy to Nos 62 to 66. To the south east of the site Nos 46 and 48 Fabis Close occupy land at a similar level to the appeal site. High boundary fencing and existing garden structures to their rear gardens would prevent any overlooking of them. The proposed dwelling would not be overbearing on them or cast unacceptable shade.
9. I conclude that the proposed development would not harm the living conditions of neighbours, with particular regard to noise and disturbance. Accordingly, the development would accord with Local Plan policies BNE1 and INF2 which together, amongst other things, seek to protect the privacy, amenity and living conditions of neighbours from harm arising from development and associated travel generated.

*Access and parking provision*

10. The Council states that access and parking would be cramped and the proposed dwelling would be difficult to service due to restricted geometry. I note, however, the Highway Authority raises no highway safety objections to the development subject to the use of conditions. I see no reason to disagree with that view as the access would have good forward visibility. Furthermore, parking and manoeuvring areas would allow vehicles to enter and leave the site in a forward gear, and 2 parking spaces would be sufficient to serve a 2 bedroom dwelling.
11. I therefore conclude that the proposed development would make adequate provision for access, parking and servicing. Accordingly, it would accord with Local Plan Policy INF2 which, amongst other things, seeks to ensure safe and convenient access and provision within developments for private vehicles.

*Other matters*

12. The appellant states the application was originally recommended for approval by officers but that members of the Council's planning committee overturned the recommendation. Whilst disappointing for the appellant, it is possible for members of the Council's planning committee to take a contrary view.
13. Whilst the proposed dwelling would have good access to local services and facilities, this does not overcome the harm identified to the character and appearance of the area. There are other examples of 'backland' development elsewhere in the locality. However, none would appear to be located in a comparable context and each case must be considered on its merits.

**Conclusion**

14. The proposed development would not be harmful with regard to access, parking and servicing, or the living conditions of neighbouring occupiers, with particular regard to the potential for noise and disturbance. However, this would not outweigh the harm I have found to the character and appearance of the area. For the reasons given above, and having regard to all other matters, the appeal should be dismissed.

*D Child*

INSPECTOR



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## Appeal Decision

Site visit made on 14 November 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2018

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Appeal Ref: APP/F1040/C/18/3205492

land at Kingfisher Lane, Willington, Derby DE65 6QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Persimmon Homes North Midlands against an enforcement notice issued by South Derbyshire District Council.
- The enforcement notice was issued on 23 June 2018.
- The breach of planning control as alleged in the notice is the formation of a grasscrete access track.
- The requirements of the notice are:
  1. Permanently remove the grasscrete track, including all edgings and foundations.
  2. Reinstate the land to its previous condition, that being a grassed bank that forms part of the sustainable drainage pond.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal succeeds in part and the notice is upheld with a variation.**

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### Appeal

1. According to the appellant, Great Crested Newts are present on the site. In order to carry out the requisite works, a newt trapping licence would have to be applied for and a trapping exercise undertaken. As it is estimated that this process would take approximately 3 months from start to finish, it is contended that the notice cannot be lawfully complied with within the period indicated. A 16 week extension to the date when the notice takes effect is sought.
2. The Council do not question the presence of newts, nor has the appellant's estimated timescale been challenged either. Instead, it is submitted that dialogue with Natural England indicates that a full newt trapping licence may not be required and compliance with the requirements of the notice should be capable of being carried out by a Low Impact Class Licence.
3. The appellant has not queried the alternative approach highlighted by the Council. But, although the possibility of a 30 day turnaround period is also mentioned, I am concerned that the Council's comments are qualified by the use of words such as 'may' and 'should'. To my mind, this imparts an element of uncertainty into this part of the Council's case, to the extent that I am reluctant to attach great weight to it. So, while the Council say they are

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prepared to 'acquiesce' to an 8 week compliance period, the possibility that this could prove to be over-optimistic cannot be discounted.

4. The appellant states that a licence would be applied for whilst the appeal is running, but I have not been advised whether anything has actually been done in this respect. Moreover, having been acquainted with the history of the matter, the decision to resort to enforcement action appears to have been borne out of, in part at least, exasperation on the part of the Council. This is perhaps understandable in the circumstances, and it may well be that carrying out the physical works required would not take long, as the Council say. However, given that the process of securing compliance with the notice is likely to necessitate the involvement of another party, I consider that both the 30 day compliance period and the suggested 8 week 'alternative' are too short.
5. Having regard to the particular circumstances involved in this case, I find the 16 week compliance period sought by the appellant is more reasonable. The appeal under ground (g) therefore succeeds to this extent, and I shall vary the enforcement notice accordingly, prior to upholding it.

#### **Other Matters**

6. An interested person has expressed concern about the implications of the enforcement action insofar as gaining access to the land to the west is concerned. As the planning merits of the case do not fall to be determined, this matter lies outside the ambit of the current appeal, so I make no specific comment on it. That said, extending the compliance period would give the parties the opportunity to consider this matter, and any consequences arising from it, if need be.
7. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

#### **Formal Decision**

8. I direct that the enforcement notice be varied in section 6 by the deletion of '30 days' as the period for compliance and its substitution by '16 weeks'. Subject to this variation, I uphold the enforcement notice.

*D H Brier*

Inspector