

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

## **SECTION 1: Planning Applications SECTION 2: Planning 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 1995 (as amended) and responses to County Matters.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2011/0265	1.1	Willington	Willington & Findern	1
9/2011/0375	1.2	Walton	Seales	7
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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 Head of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Head of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

**Item**            1.1

**Reg. No.**        9/2011/0265/FM

**Applicant:**

Mr Sukh Sandhu  
9 Templar Close  
Stenson Fields

**Agent:**

Mr Tim Foster  
Morley  
2 Broomfield Cottages  
Ilkeston

**Proposal:**        **THE ERECTION OF A REPLACEMENT DWELLING AT  
115 TWYFORD ROAD WILLINGTON DERBY**

**Ward:**            **WILLINGTON & FINDERN**

**Valid Date:**      **14/04/2011**

*Members will recall deferring this application at the July meeting in order that officers could request an amendment to the submitted plans showing the new dwelling on the same line as the adjacent house. An amended plan has been received together with an amended Design and Access statement that shows this amendment. Reconsultation has been undertaken and at the time this report was prepared, no further comments had been received; any that are will be reported at the meeting. The previous report is below. Any additions are added in italics.*

**Reason for committee determination**

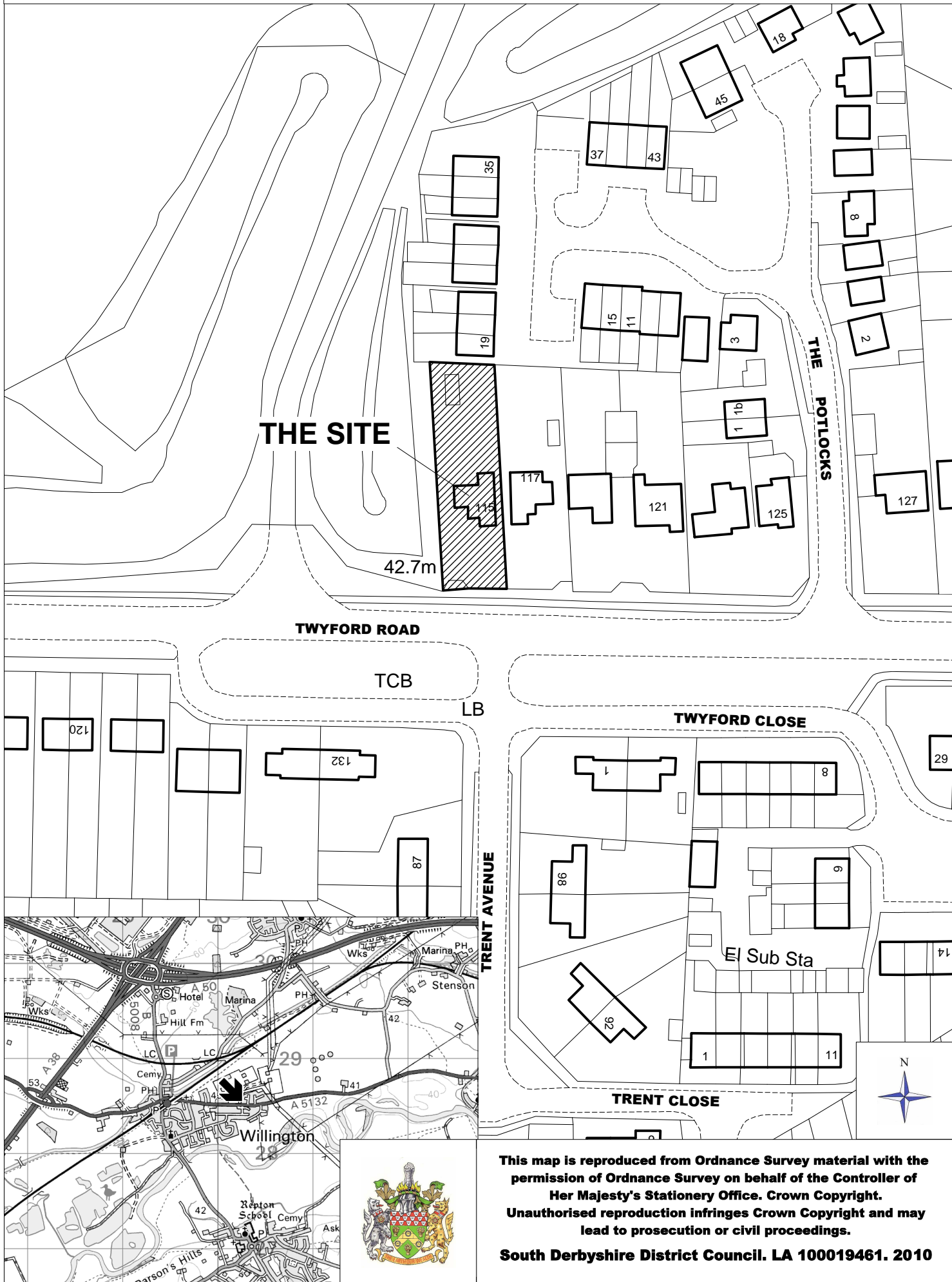
Councillor Ford has requested that the application be brought to Committee so it can consider the impact of the development from the neighbouring property.

**Site Description**

The site lies to the north of Twyford Road accommodating the existing bungalow. There is a bungalow adjoining the east boundary and housing development to the north on The Potlocks that was developed in the 1990s. The access to the National Grid sub station lies to the east of the plot where there is a mound with trees planted on it between the plot and the actual access road. There are fences and hedges to the side boundaries and a fence to the rear boundary. The new dwelling would be served by the existing access to Twyford Road. Beyond Twyford Road to the south are houses, originally constructed as Council houses.

**Proposal**

The submitted scheme (as amended) shows a two-storey element away from the common boundary between this and the property to the east. This leaves a blank gable equivalent to a single-storey dwelling adjacent to this boundary. The roof of the building has been hipped so as to slope away from that boundary and two bedrooms are proposed in the roof space. The house would be constructed in brick under a concrete



tile roof with grey powder coated aluminium frames. Car parking would be accommodated in a single integral garage and on the drive where space for two further cars to be parked is illustrated. The house as now proposed would be set back approximately 2 metres behind the front face of the adjoining property. *The amended plan shows the fronts of the properties lined up as requested.*

### **Applicants Supporting Information**

In response to neighbour objections and the potential breach of Council separation standards, the applicants have amended the proposal as described above. Having now measured the site on the ground, it is larger than first thought – 48m x 13.5m. The new house would be 12m wide and 12.5m deep with a ridge height of 7m with the highest eaves of about 5m. The applicants opine that the single storey element of the proposal with its hipped roof minimises the impact on the neighbour. The reason for the large areas of glazing are to give the property a modern feel to provide a contrast with surrounding houses that are very traditional in their appearance.

### **Planning History**

Planning permission for a new roof on the existing property was granted in the early 1990's but that permission was never implemented.

#### **Responses to Consultations**

Willington Parish Council initially raised no initial objection. However, following a meeting with the neighbours the Parish Council planning committee empathised with the neighbours concerns and objections [these are reported below]. The Parish Council seeks an assurance that the application will be determined taking into account these concerns and objections along with relevant planning law, guidance and policies. In response to the amended scheme a parish councillor has queried whether the large window at first floor level should have a symmetrical appearance.

The County Highway Authority has no objection to the development subject to parking and manoeuvring space being provided prior to the occupation of the house.

Severn Trent Water has comments.

### **Responses to Publicity**

Several letters and emails have been received from the occupiers of the adjacent property. Their objections to the scheme as originally submitted and as amended can be summarised as follows:

- a) The property is too large in height and is not a bungalow.
- b) It is out of keeping with the character of the area, other houses in the area have a render finish and the brick house is much larger than anything else in the locality and have an overpowering effect on bedroom windows that are only 3m from what would be a solid brick wall. It is the wrong design constructed in the wrong materials in the wrong location.
- c) There would be a loss of privacy arising from the development.
- d) Reference is made to sewerage and electrics being inadequate.

In response to the amended scheme the objectors make the following comments:

- a) The house is now even larger, both in terms of its height, now 4.8m and its width, now 12m, and it is still out of character.
- b) The house would now be set back 2m from the front face of the existing houses and the preference would be for the new house to be set on the original line of the house to be demolished.
- c) If it is set back to accommodate parking space, the neighbours have no problem with parking and manoeuvring their 2 cars on the space in front of their dwelling.
- d) There is a question as to where the side building lines would be, as it seems that the plot size has increased from 13m to 13.5m. There are currently 3 metres between the sides of the property.

### **Development Plan Policies**

The relevant policies are:

EMRP: Policies 1, 3, 13

Local Plan: Housing Policy 5 & 11.

### **National Guidance**

PPS 1 & 3 – paragraphs relating to the siting of housing development in sustainable locations.

### **Local Guidance**

Adopted Supplementary Planning Guidance – Housing Design and Layout (SPG).

### **Planning Considerations**

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

- The Development Plan.
- The impact on the character and appearance of the locality.
- The impact on neighbours assessed against the Council's adopted standards.

### **Planning Assessment**

The site lies within the village confine of Willington and subject to an assessment of the impact on the development on the character and appearance of the area, the principle of residential development is acceptable.

#### The impact on the character and appearance of the locality.

There is a mixture of houses in this part of the village ranging from the bungalow on the application site to the later developments along Twyford Road and this is illustrated when passing along the road. The new dwelling is different in its appearance and would be amongst the tallest houses along the road taking into account the highest part of the property. However, the mix of old and modern house types is a feature of the character of this part of the village and it is considered that this proposal is of a modern design that would complement the differing types of houses along the length of Twyford Road.

### The impact on Neighbours

As originally submitted, the scheme did not comply with the Council's adopted standards for new housing development. Whilst it would have been easy for the designer to go and develop a scheme simply based on separation standards, the new proposal is considered to both enhance the varied house types on Twyford Road but also provide the necessary standards for avoiding overlooking and overbearance set out the SPG. The eaves height on the mall adjacent to the neighbour's property is now 2.45m, previously 4.6m. This together with the roof sloping away from the boundary would allow the passage of light to the bedroom window of the adjacent bungalow that has a similar eaves height.

To ensure that any alterations to the permitted dwelling are controlled in the interests of the amenity of the occupiers of adjacent properties, conditions are recommended to remove permitted development rights.

### Conclusion

Whilst the proposed house would change the outlook from the neighbouring property and the views would be different from the conservatory, the separation distances and position of the 2-storey element ensure that the development complies with adopted standards. The dwelling would make a pleasing addition to the architectural variety in the street.

*The amended plan is considered acceptable and as such the recommendation is the same as the last committee. Condition 2 has been amended to reflect the amendment and requires that the development be carried out in accordance with that plan.*

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 320 TR 001 Rev A received on 14 July 2011.  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, 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.

4. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building 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 locality generally.

5. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

Reason: To ensure that adequate parking/garaging provision is available.

6. Notwithstanding the submitted plans gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

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

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

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

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

#### Informatives:

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

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;



- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

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

**Item**            1.2

**Reg. No.**        9/2011/0375/U

**Applicant:**

Jacky Motts  
45 Bells End Road  
Walton On Trent  
Swadlincote

**Agent:**

Peter Diffey & Associates  
Cotesbach Villa  
54 Woods Lane  
Stapenhill

**Proposal:**        **RETROSPECTIVE APPLICATION TO BROADEN THE  
USE OF LAND FROM AGRICULTURE TO  
AGRICULTURE AND DOG EXERCISE AREA INCLUDING  
THE RETENTION OF CHICKEN PENS AT LAND TO THE  
REAR 45-61 BELLS END ROAD WALTON ON TRENT  
SWADLINCOTE**

**Ward:**            **SEALES**

**Valid Date:**      **12/05/2011**

**Reason for committee determination**

The application is considered contrary to Saved Environment Policy 1 within the development plan and therefore requires determination by the Planning Committee.

**Site Description**

The application site is accessed through the rear garden of 45 Bells End Road and is a parcel of land located outside the village confines measuring approximately 75m in width (along the rear of properties 45 to 61 Bells End Road) and projects into the countryside 50m to the rear of 61 Bells End Road, reducing to 0.5m at the rear of 45 Bells End Road, being triangular in shape and form. The application is for retention of a dog exercise area and is an area of land that is mowed and fenced in by hit and miss stock fencing to the open countryside and a variety of 2m high boarded fencing and existing garages to the rear of the existing residential properties. There are also chicken pens erected on the land which are attached to the rear of the existing garaging and are approximately 1.8m in height (max) x 5.5m in depth x 19.4m in width. These consist of a timber frame with chicken wire enclosing the sides and roof.

**Proposal**

The application has been submitted following an ongoing enforcement investigation and is for the retention of the change of use from agricultural land to a dog exercise area and the retention of the chicken pens.



## **Applicants' supporting information**

The agent has submitted a supporting statement and a design and access statement and includes:

'The land is partially screened from neighbours by a block of garages. The land is fully fenced to ensure dogs and chickens do not escape. The land is not generally visible from the surrounding countryside... The land remains open and well managed..'

## **Planning History**

None

## **Responses to Consultations**

The Environmental Protection Manager has commented that the exercising of dogs on this land has potential to cause disturbance due to noise and recommends conditions be attached should approval be given relating to hours of operation, amount of dogs exercised at any one time, personal use of applicant and a temporary period of consent being given.

The County Highway Authority does not raise any objections to the application as submitted subject to the change of use being personal to the applicant.

Walton on Trent Parish Council object to the application, advising that:

1. There are irregularities with the application e.g. number of dogs involved
2. The area is overwhelmingly of a residential nature
3. There is evidence of large amounts of dog excrement being deposited
4. The dogs are making noise which is a nuisance to neighbours
5. Environmental Health should be consulted

## **Responses to Publicity**

Five letters of support have been received and the following comments have been noted:

1. The use is for Miss Mott's only
2. There will be no increase in traffic or noise from this area
3. Both the chickens and dogs are well cared for and well behaved
4. Miss Motts keeps the dogs under control and leaves no dog mess
5. Area is fenced, tidy and dogs are only exercised outside - not left unaccompanied

Seventeen letters of objection have been received. The concerns noted are:

1. The land had a covenant stating it is for agricultural use only
2. There are 15 to 16 dogs not 8 as stated in the original submission
3. The application was submitted after complaints were made to the District Council regarding noise from the dogs
4. The applicant and her dogs have damaged land nearby and have been prevented from using this land
5. The fencing erected is not dog proofed
6. Dog excrement is left on adjoining land
7. The chickens pens are to be used for dog housing too as the applicant only has 5 chickens
8. The dogs bark all day and this will only increase if permission is allowed

9. Parking problems
10. The applicant will use the land to run her dog training business (capable canines) on this land
11. Keeping of chickens will attract rats and other vermin due to food being scattered
12. The applicant exercises up to 13 dogs at any one time not 5-8 as the application suggests
13. Increase in traffic
14. Will a bin be provided for all the dog excrement?
15. The land floods
16. Noise issues from whistling, people in the field and dogs barking affect amenity of rear garden areas.

### **Development Plan Policies**

The relevant saved policies are:  
Local Plan: Environment Policy 1

### **National Guidance**

PPS 1 and PPG 24

### **Planning Considerations**

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

- Development plan policy and national guidance and advice
- Impact of the proposal on the neighbours
- Impact on highway safety

### **Planning Assessment**

The application as mentioned previously is for the retention of a change of use of the land to a dog exercising area and also the retention of chicken's pens. The land currently has an agricultural use and the erection of the chicken pens is classed as an agricultural use, has been sited to the rear of existing garaging and is essential to a rural based activity, not harming the countryside and accordingly is fully in accordance with saved Environment Policy 1.

The proposal for retention of the dog exercising area is not strictly in accordance with Environment Policy 1 in that it is not for a rural based activity and there is no justification provided to show that a countryside location is essential other than the applicant living at a property which borders the application site and accesses the application site. However it can be argued that the character of the countryside, landscape quality and wildlife will not be affected as the retention of the dog exercising area being open in design, with stock proof fencing is not unusual or out of character with a rural countryside location. The concerns raised by neighbours all relate to issues which are dealt with under Environmental Health legalisation not planning legislation and the Environmental Protection Team prior to this application being submitted had not received any complaints regarding these issues. Accordingly as the impact on the countryside is negligible, being acceptable and in accordance with requirement (iii) of Environment Policy 1, it is recommended that a temporary personal consent be given

with conditions restricting the hours of operation and amount of dogs exercising at any one time.

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

## **Recommendation**

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

1. This permission shall ensure for the sole benefit of Jacky Motts.  
Reason: In light of Jacky Mott's personal circumstances.
2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises as a dog exercising area only as described in your application and for no other purpose.  
Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.
3. No more than 4 dogs shall be exercised at any one time, and they must be under supervision at all times.  
Reason: In order to maintain control over the dogs.
4. The Dogs shall be exercised only between the hours of 8am and 8pm daily.  
Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.
5. This permission shall be for a limited period only, expiring on 02 August 2012 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.  
Reason: To allow the District Council to monitor the use due to its location in close proximity to neighbouring properties.

**Item**            1.3

**Reg. No.**        9/2011/0422/FH

**Applicant:**

Mr & Mrs R Toone  
83 Hillside  
Findern  
Derby

**Agent:**

Matt King  
Making Plans  
Ivy Lodge  
5 Twyford Road  
Willington  
Derby

**Proposal:**        **THE ERECTION OF EXTENSIONS AT 83 HILLSIDE  
FINDERN**

**Ward:**            **WILLINGTON AND FINDERN**

**Valid Date:**     **23/05/2011**

**Reason for committee determination**

Councillor Ford (ward member) has requested that the Planning Committee determine this application as local concern has been expressed about a particular issue.

**Site Description**

The property in question is a two-storey detached dwelling with an attached single storey garage to side. It is situated on a large residential estate, an estate that features a mix of property types. The immediate site in question is generally flat. Taking the site in its wider context though there is a modest north to south slope.

**Proposal**

The proposal is in three main parts: a two storey extension to the side replacing in part the existing garage, a single storey extension to the rear and a single storey extension to the front.

**Applicants' supporting information**

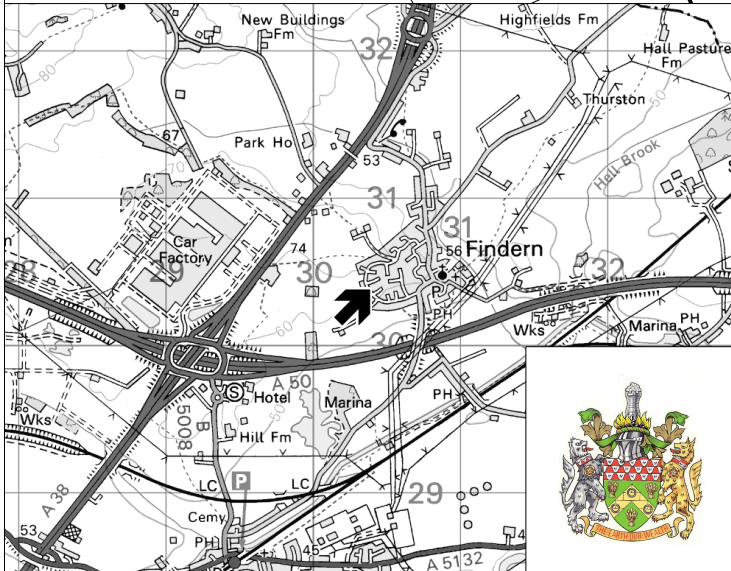
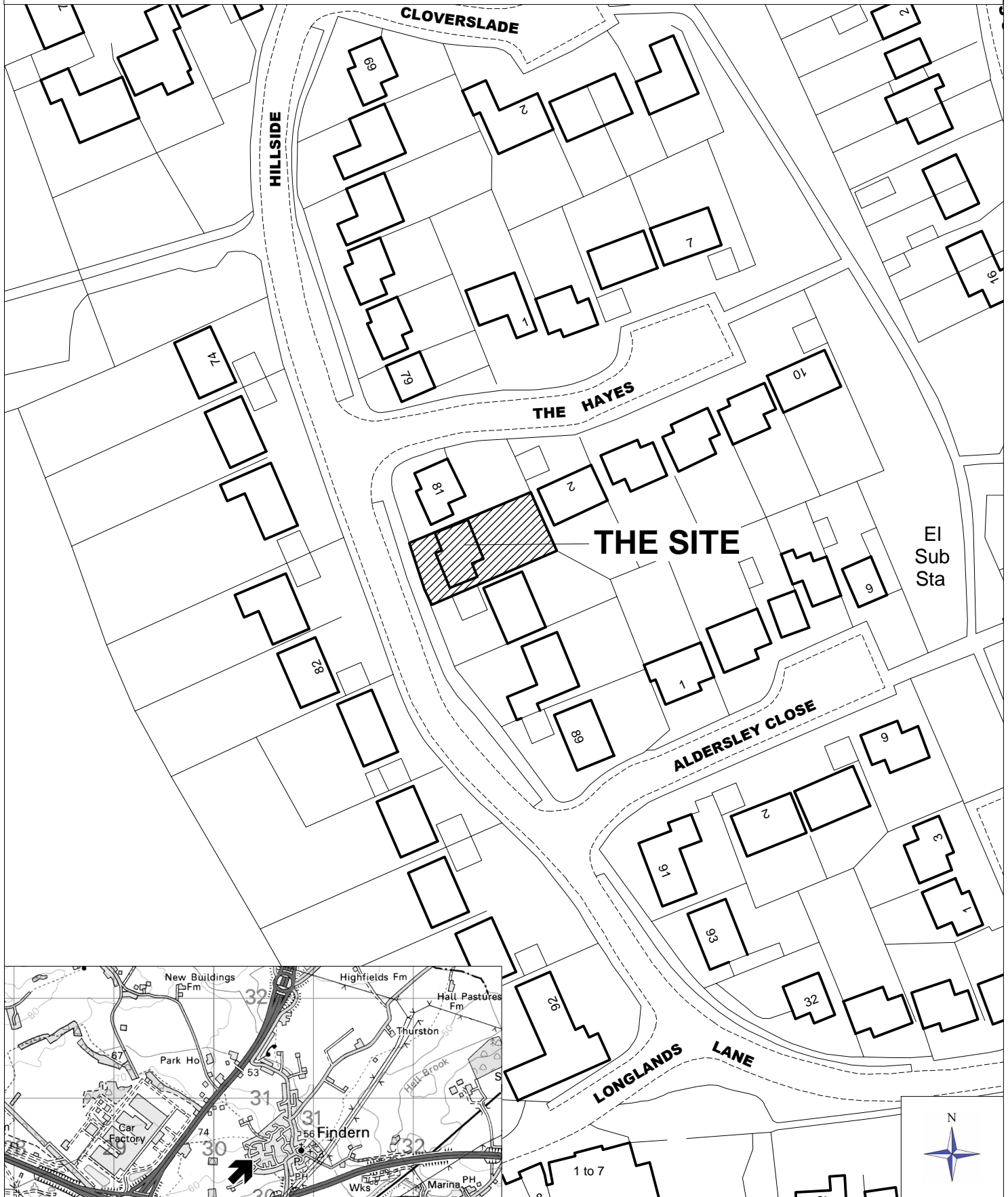
None

**Planning History**

None

**Responses to Consultations**

A neighbour has objected to the scheme and are summarised as follows:



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**South Derbyshire District Council. LA 100019461. 2010**



- a. The planned alterations would have an overbearing effect on neighbouring property;
- b. There is concern over proximity of the extensions to the rear wall of a neighbouring garage;
- c. Loss of light to kitchen window;

A second letter of objection was received from the same neighbour (following the submission of amended plans) with additional points raised:

- d. Loss of light to hallway door – this glazed door allows some light into the kitchen;
- e. The design is not in keeping with the existing situation / surrounding area.

## **Development Plan Policies**

Local Plan Housing Policy13; Supplementary Planning Guidance (SPG): Extending Your Home.

## **Planning Considerations**

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

- Design/Impact on the streetscene
- Residential amenity

## **Planning Assessment**

### Design/Impact on the streetscene

The proposal here is similar to a number of approved schemes (in the same street) that have been seen to be acceptable - this in fact is where the applicant got the idea. As such the forward projection of the gable would be in keeping and without undue detriment. The end elevation (south) is simple in its appearance, with the new mass softened by the built forms adjacent.

### Residential Amenity

The objector has sited that the two-storey side extension here will overbear and reduce light levels to his kitchen window.

No 81 Hillside is a bungalow. As is often the case with bungalows it features a kitchen window on the side. Adopted supplementary guidance 'Extending your Home' however defines 'side' windows as secondary and as such not constrained by minimum distance requirements. Any assessment should be based on the merits of the scheme. In this regard consideration should be made to avoid a wholesale loss of light and views. In an attempt to provide some context, the kitchen window at No 81 is north facing. There are existing built forms in close proximity to that window - a 1.8m boundary fence, garden shed at No.83 and the existing two storey gable of No.83 which is already in close proximity. Accordingly, as acknowledged by the objector, light levels are currently not ideal.

The originally submitted plans featured a two-storey extension to the side and a two-storey addition to the rear. These two elements working together would not have been acceptable and would have been unduly detrimental to the amenity of the neighbour. Not only would it

have meant a loss of light over and above the existing, but also an unacceptable loss of outlook.

In an attempt to be 'considerate' the applicant has subsequently amended the plans to reduce the rear extension to single storey and remove the large garden shed that presently sits adjacent to the boundary. It is considered that the amendment offers a good compromise and provides a reasonable outlook for the adjoining neighbour.

## **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. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.  
Reason: To safeguard the appearance of the existing building and the locality generally.
3. This permission shall relate to the amended drawing, no J1520/4 Revision D showing in particular: the replacement of the rear two storey element with a single storey lean to extension  
Reason: For the avoidance of doubt.
4. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.  
Reason: To ensure that adequate parking/garaging provision is available.

**Item**            **1.4**

**Reg. No.**        **9/2011/0540/TP**

**Applicant:**

MR MARTIN P BUCKLEY  
SOUTH DERBYSHIRE DISTRICT  
COUNCIL TREE OFFICER  
CIVIC OFFICES  
CIVIC WAY  
SWADLINCOTE

**Agent:**

MR MARTIN P BUCKLEY  
SOUTH DERBYSHIRE DISTRICT  
COUNCIL TREE OFFICER  
CIVIC OFFICES  
CIVIC WAY  
SWADLINCOTE

**Proposal:**        **THE FELLING OF VARIOUS TREES (AS IDENTIFIED IN  
THE SCHEDULE ACCOMPANYING THE APPLICATION)  
COVERED BY SOUTH DERBYSHIRE DISTRICT  
COUNCIL TREE PRESERVATION ORDER NUMBER 132  
AT LAND AT WILSON CLOSE MICKLEOVER DERBY**

**Ward:**            **ETWALL**

**Valid Date:**      **29/06/2011**

**Reason for committee determination**

This application has been made by the Council for works to trees on Council owned land at Mickleover Country Park and as such Committee determination is required.

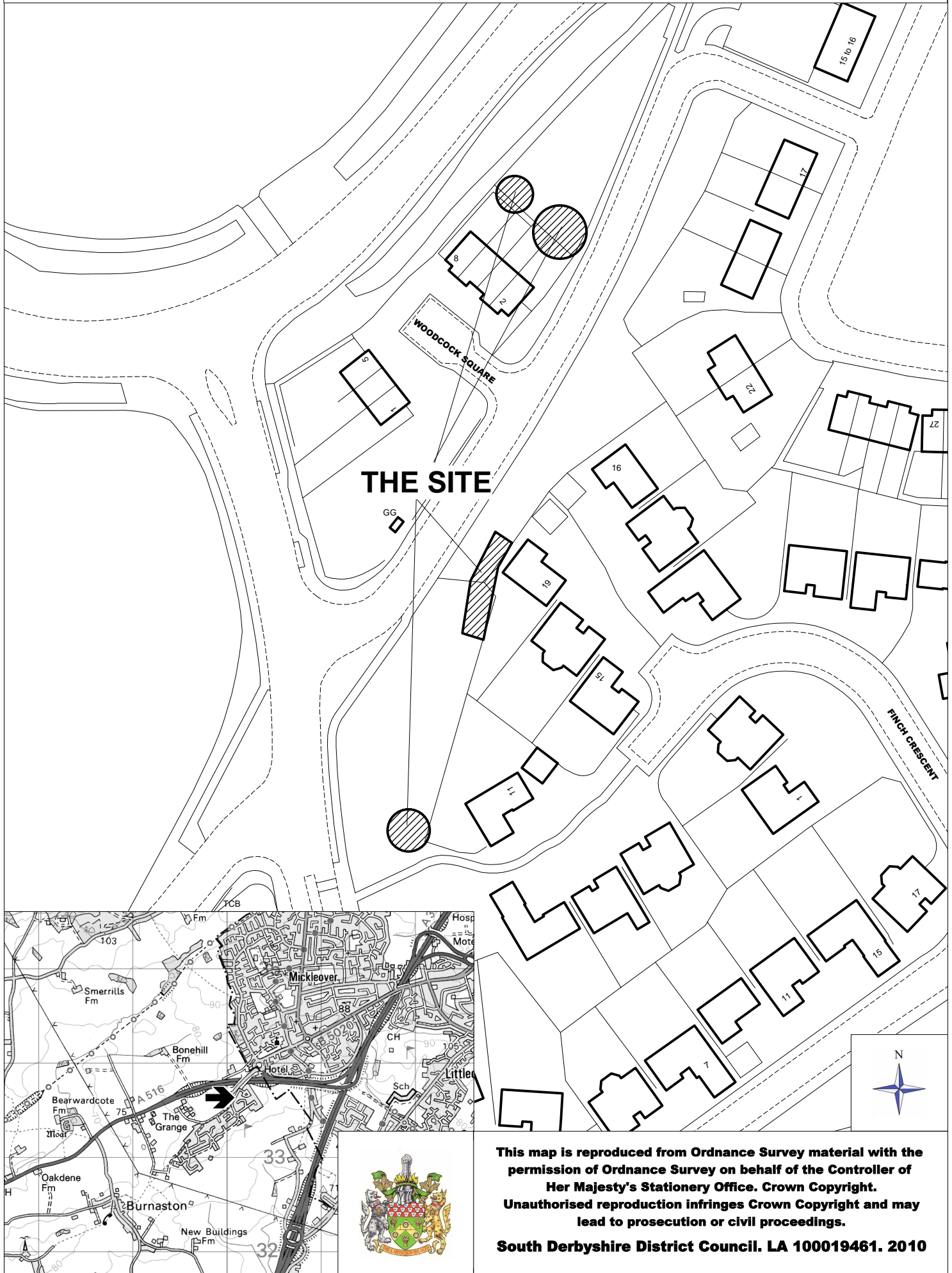
**Site Description**

The trees in question are either side of Wilson Close before it turns in the housing area and houses on Woodcock Square and Finch Crescent back on to areas affected by the application.

**Proposal**

The trees to be felled are 4 larches, one Cherry and an Ash. The larches are all identified as weak species of little amenity value. The trees lie in close proximity to housing and there is a strong probability of failure resulting in potential danger/damage to adjacent property. There are other trees of similar species growing in the immediate vicinity. The Cherry sits at the southern end of the same group of trees it sits adjacent to a public footpath; it overhangs an adjacent property and is multi-stemmed.

The ash tree lies to the north west of Wilson Close. It is multi stemmed and overhangs an adjacent property; the junction of these stems requires monitoring and this would need to continue until consent is granted to remove it if the Committee is so minded.



Whilst there is limited life left in these trees, there is a risk that they may cause 3rd party damage to property if no action were taken.

The works to the oak involve raising its crown to 2.5m above ground level in the interests of public safety as the lower branches overhang a path along Wilson Close; the removal is necessary in the interests of public safety.

### **Planning History**

TPO 132 was imposed on these trees amongst many others prior to the redevelopment of the former Pastures Hospital site. There have been numerous applications for works to and felling of trees covered by the Order. The Local Planning Authority has sought to resist some of these applications but in some cases has been overruled at appeal. Consent was sought recently and subsequently approved for the removal of other trees in the group south east of Wilson Close.

### **Responses to Consultations**

None at the time this report was prepared.

### **Responses to Publicity**

None at the time this report was prepared.

### **Development Plan Policies**

The relevant policies are:  
Local Plan: Environment Policy 9

### **National Guidance**

N/A

### **Planning Considerations**

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

- The necessity for the works.
- Impact on the immediate area.

### **Planning Assessment**

TPO 132 was imposed to secure a well-treed site within which the housing development at Mickleover Country Park could then take place. These trees for which the Council has become responsible as the development was completed have not developed well over the years and as a Council we have a duty to ensure that the trees are not a threat to people or property.

As a part of its role as a responsible tree owner the Council has a role to map and inspect all trees on SDDC land, to record their location, details, and condition in order to provide the Council with details of any remedial work required. Work will be recommended on a health and safety basis, where trees are in poor health and/or pose

a risk to public or property. Accordingly the Council's Tree Officer has undertaken surveys at Mickleover County Park and identified that the felling of some trees in this area and works to the other tree is necessary for its long-term health and to protect property.

The larch and cherry tree lie in a much larger area of trees subject to the TPO and as such the removal of this relatively small number of larch and the cherry is unlikely to have any wider amenity impact, as the remaining trees would provide the context for the housing development that lie behind this group of trees.

The ash tree is a multi-stemmed tree of a fairly young age with a minimum of 4 trunks. The removal of this tree that is set against a large and tall thorn hedge would not have any significant impact on the amenity of the area albeit it has the potential to become a significant specimen. However, the tree is in close proximity to the houses on Woodcock Square and given the potential for the trunks to split apart, the view is that the tree should be removed.

The works to raise the crown of the oak tree represents good Arboricultural practice and as such works should be undertaken.

Whilst the loss of trees in a TPO is always a matter for concern, it is considered that in this case their removal is justified on the basis of the submitted application with supporting information.

In terms of replacement trees, there are no funds immediately available to the Council but in order of preference should funds become available, the replacement of the ash is considered to have a higher priority than the larch or cherry tree as the loss of these trees is considered to be compensated by the presence of many other trees in the group. An ash tree would not be a suitable replacement because of the presence of houses nearby. A tree suitable for residential areas would therefore be appropriate should funds become available.

## **Recommendation**

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

1. The works hereby granted consent shall be carried out within two years from the date of this permission.

Reason: To enable the Local Planning Authority to retain control over the works.

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

(references beginning with a 9 is planning appeal and references beginning with an E is an enforcement appeal)

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2011/0005	Thulston	Aston	Dismissed	Committee
9/2010/0665	Etwall	Etwall	Dismissed	Delegated
9/2011/0051	Castle Gresley	Linton	Allowed	Delegated
9/2010/0683	Swadlincote	Swadlincote	Dismissed	Delegated
E/2009/00154	Boundary	Woodville	Upheld (as corrected)	Delegated



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# Appeal Decision

Site visit made on 11 July 2011

**by Alan Gray MRICS DipTP MRTPI RICS Accredited Mediator**

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

**Decision date: 14 July 2011**

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**Appeal Ref: APP/F1040/D/11/215625/WF**  
**26 Brook Road, Thulston, Derby DE72 3WA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Peter Green against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0005/FH, dated 15 December 2010, was refused by notice dated 26 April 2011.
  - The development proposed is the erection of a two storey extension to the side, a first floor extension to the rear and a single storey extension at the front of the existing dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. It is the effect of the proposals on the general character of the area.

## Reasons

3. The surroundings of the appeal site in this part of Brook Road are relatively spacious and being on the edge of open countryside, are attractive in their own right. I consider they are worthy of care when assessing change against saved Local Plan Policy H13 and supplementary planning guidance (SPG). It is helpful to do that separately for each of the three proposed extensions.
4. Regarding the first floor rear extension, a single storey extension exists, in my opinion there would be no serious concerns about neighbourliness, the residual private amenity space would be adequate, the design is sensitive in relation to the host dwelling and it would not be easily seen from the public realm. Turning to the single storey front extension, a two storey extension already exists, there is a similar forward projection at No 28 and there are single storey porch-type projections at Nos 20, 22 and 24. Consequently, I am satisfied that the proposed rear and front extensions would be in keeping with the general character of the area, would not conflict with the development plan and otherwise be unobjectionable.
5. I do, however, have serious concerns about the proposed side extension. The immediate surroundings are characterised by the rhythmic separation of five similar dwellings at the end of a cul-de-sac. The proposed extension would disrupt that by creating a 'terraced effect' for Nos 24 and 26, which SPG



specifically seeks to prevent where dwellings are set at regular intervals and look alike, as here. The 'set back' in its design would not in my opinion alleviate this effect. I believe that the proposed side extension would adversely affect the appearance of the immediate surroundings and the general character of the area contrary to development plan policy and supporting guidance.

6. Of the three proposed extensions, two are acceptable but one is not and it is necessary to consider whether it would be appropriate to allow the appeal in part by granting planning permission for the front and rear extensions while otherwise dismissing it. However, I take the view that the extensions are essentially inter-connected and need to be considered as a whole, and I have therefore concluded that a split decision would be inappropriate.
7. A single storey side extension was previously approved and there was significant pre-application consultation ahead of these proposals. I therefore realise this outcome will be disappointing, but I remain of the view that the appeal should not succeed.

*Alan Gray*

Inspector



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# Appeal Decision

Site visit made 4 July 2011

**by Richard High BA MA MRTPI**

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

**Decision date: 20 July 2011**

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**Appeal Ref: APP/F1040/A/11/2147863**  
**115 Springfield Road, Etwall, Derby, DE65 6LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Michael Ottey, against the decision of South Derbyshire District Council.
  - The application Ref 9/2010/0665/FM, dated 15 July 2010, was refused by notice dated 25 August 2010.
  - The development proposed is the erection of a detached 1 bed bungalow.
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## Decision

1. The appeal is dismissed.

## Main issue

2. The main issue is the effect of the proposed dwelling on the character and appearance of the area.

## Reasons

3. The proposed bungalow would be built in the garden of 115 Springfield Road to the side of the house. The greater part of Springfield Road is a roughly circular road of semi-detached houses of similar style dating from the mid-twentieth century. The appeal site lies on a corner at one of two entrances to the circle where a spur of Springfield Road connects it with Egginton Road. The wide side garden at No.115 is replicated on the other side of the road at No.117. An earlier proposal for a two storey detached dwelling on the site was dismissed (Appeal Ref: APP/F1040/A/08/2085971). I concur with the Inspector's view that the wide gardens on either side of the road make an important contribution to the character of the estate by providing a sense of space at the entrance to it. This spaciousness is particularly important because of the narrowness of Springfield Road at this point.
  4. The proposed development would be a bungalow and would be less prominent in the street scene than the previous proposal, but it would still have the effect of detracting from the sense of openness. The uniformity of the development on the estate is a defining characteristic and the one bedroom bungalow would be a quite different form of building. Its position on the site facing the spur road would be anomalous as no other dwellings face in this direction and its
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- alignment would relate poorly to No.115 with the side wall set back from the front of No.115 and the rear wall running along the boundary. It would thus appear an incongruous and contrived form of development which would sit uncomfortably with the consistent form of development around it.
5. I accept that the design of the estate is not totally regular and that there have been extensions to several dwellings, but they are not similar to the development proposed. I also looked at Nos.32 and 32a Bellfield Road to which the appellant has referred, but these are not in a comparable corner location and are thus less prominent in the street scene.
  6. For these reasons I find that the development would be harmful to the character and appearance of the area and contrary to Saved Housing Policy 5 of the South Derbyshire Local Plan 1998 which requires development to be in keeping with the character of the settlement. It would also fail to comply with Saved Environmental Policy 8 of the Local Plan which aims to protect gaps which make an important contribution to environmental quality from development.
  7. I accept that the development would contribute to the efficient use of land. However the recent changes to PPS3 whereby garden land is no longer regarded as previously developed land have reduced the priority to be attached to the development of gardens. Moreover PPS1 indicates that development which is inappropriate in its context should not be accepted. The estate here has a quite distinct character and the proposed development would detract from that.
  8. I note that planning permission has been granted for a two storey side extension to No.115. I do not have the details of this proposal but I can understand how this could be more sympathetic to the character of the area. I also note that an outbuilding similar in form to that proposed could be erected as permitted development. However I find it unlikely that an outbuilding of this size would be built and it does not follow that a new dwelling should be allowed. Moreover the withdrawal of permitted development rights would not make the proposal development acceptable.
  9. For the reasons I have given and having carefully considered all other matters before me I conclude that the appeal should be dismissed.

*Richard High*

INSPECTOR



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# Appeal Decision

Site visit made on 4 July 2011

**by Sarah Colebourne MA, MRTPI**

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

**Decision date: 8 July 2011**

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**Appeal Ref: APP/F1040/D/11/2153037**

**3a Wood Street, Castle Gresley, Swadlincote, Derbyshire, DE11 9QB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr W Lunn against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0051/FUL, dated 17 November 2010, was refused by notice dated 22 March 2011.
  - The development proposed is a loft conversion.
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## Decision

1. The appeal is allowed and planning permission is granted for a loft conversion at 3a Wood Street, Castle Gresley, Swadlincote, Derbyshire, DE11 9QB in accordance with the terms of the application, Ref 9/2011/0051/FUL, dated 17 November 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans: existing elevations and layout plan (25/01/11), sectional and loft floor plan excluding front dormers details (25/01/11), proposed elevations and layout plan excluding front dormers details (25/01/11), proposed front elevation (14/03/11).
  - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building unless otherwise agreed in writing with the local planning authority.

## Main Issue

2. The main issue is the effect of the proposed loft conversion on the character and appearance of the dwelling and the area.

## Reasons

3. Wood Street comprises mostly terraced houses, some modern and some traditional. 3a Wood Street is one of two modern dwellings which are accessed from a long, sloping drive and sited well back from the street and below street level. Whilst I saw no other dormer windows in the street scene, the roofscape

contains little interest and does not contribute significantly to the character and appearance of the area.

4. The proposed loft conversion would have two dormers in each of the front and rear elevations. Those to the rear would not be visible in the street scene. Those to the front would be similar in proportion to the existing windows in the property and would be in keeping with the scale and character of the dwelling. They would add some variety to the existing roofscape in the street scene and would positively enhance the character and appearance of the area.
5. I conclude, therefore, that the proposed development would not significantly harm the character and appearance of the dwelling or the area. It would accord with policy H13 in the South Derbyshire Local Plan which seeks to ensure that proposals are of a scale and character in keeping with the property and are not detrimental to the character of the area.

### **Conditions**

6. There has been no objection in terms of the effect on the living conditions of neighbouring occupiers from either the Council or those occupiers and no request in the appeal documents from the Council for any condition relating to that. The Council's officers report considered that a condition requiring the fixing and obscuring of those windows would stop any overlooking. However, given the distance of the appeal dwelling, and its siting at a lower ground level, from nos 1 and 5 Wood Street, such a condition is not necessary and any overlooking would not result in significant harm to the living conditions of neighbouring occupiers.
7. A condition requiring matching materials is necessary in the interests of the appearance of the dwelling and the area.

### **Conclusion**

8. For the reasons stated above, the appeal should be allowed.

*Sarah Colebourne*

Inspector



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# Appeal Decision

Site visit made on 28 June 2011

**by B S Barnett BA MCD MRTPI**

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

**Decision date: 6 July 2011**

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**Appeal Ref: APP/F1040/A/11/2149063**

**95 Lansdowne Road, Swadlincote, DE11 9EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Chris Forrett against the decision of South Derbyshire District Council.
- The application Ref 9/2010/0683/FO, dated 6 June 2010, was refused by notice dated 14 September 2010.
- The proposal is residential development.

**Summary of Decision: The appeal is dismissed.**

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## Preliminary Matters

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
2. The application is made in outline with all matters of detail reserved for subsequent determination. However, in a 'revised indicative layout' attached to his design and access statement the appellant states an intention to demolish the existing house on the site and build four new dwellings – two on the frontage separated by an access leading to parking and two more dwellings to the rear. I have determined the appeal on that basis.
3. In assessing the proposal, I have taken into account comments received from local residents and other interested parties.

## Main Issues

4. The main issues in this appeal are the effect of the development on the character and appearance of the area and the effect of traffic using the access road on the living conditions of those in the houses proposed on the frontage.

## Reasons

5. A feature common to most of the properties along this section of Lansdowne Road is their long narrow rear gardens which slope down from the road and, in some cases, adjoin the playing field to the south. These gardens, and the vegetation within them, give the area behind the houses a relatively open, spacious and verdant character. At the end of the gardens there is a pleasant feeling of being remote from buildings. Even if they were only single storey, two new dwellings well behind the line of those on the road frontage, as now proposed, would affect the outlook from houses and gardens to either side. They would erode the character of the area and make it a more intensively developed and less pleasant place in which to live. Their erection would be

inconsistent with the aims of Housing Policy 4 of the South Derbyshire Local Plan.

6. Permitting their erection would make it difficult for the Council to resist similar developments elsewhere in the area which would cause further harm to the area's character and appearance and this reinforces my conclusion that the development is unacceptable.
7. Pedestrian and vehicular traffic using the proposed access would pass close to habitable rooms in the dwellings on the frontage. It seems to me, however, that it would be possible to design these dwellings and their means of enclosure in such a way that their occupants would not be unduly disturbed by noise, disturbance or lights arising from this traffic. In this respect the proposal is acceptable, but this does not outweigh the harm the development would cause to the character and appearance of the area. Because of that harm, the appeal fails.
8. In coming to this conclusion I am aware that the Council has recently granted outline planning permission for residential development of the site. The development permitted would not have the harmful consequences which would flow from the current proposal as a condition attached to the permission restricts building to the frontage of the site.
9. The appellant has referred to several sites in the area where what he considers to be similar developments have been permitted. I visited three of them. I do not know the circumstances in which these permissions were granted but the sites I visited are in areas with characteristics different from those of Lansdowne Road. The existence of these permissions does not justify allowing the harm which the current proposal would cause.

### **Decision**

10. The appeal is dismissed.

*B Barnett*

INSPECTOR



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# Appeal Decision

Site visit made on 28 June 2011

**by B S Barnett BA MCD MRTPI**

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

**Decision date: 6 July 2011**

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**Appeal Ref: APP/F1040/C/10/2135176**

**Land and building to the north east of 421 Ashby Road, Boundary, Swadlincote, DE11 7BA**

- 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 Shaun William Russell against an enforcement notice issued by South Derbyshire District Council.
  - The Council's reference is E/2009/00154.
  - The notice was issued on 23 July 2010.
  - The breach of planning control as alleged in the notice is *change of use of the land from garages serving the land known as 421 Ashby Road to use as a separate dwelling without planning permission*.
  - The requirements of the notice are:
    1. *Permanently cease the use of the land as a dwelling.*
    2. *Permanently remove from the land any and all worktops, appliances, sinks, cupboards, cabinets, wardrobes, beds, baths, showers, toilets, and all other fixtures, fittings, furniture and soft furnishings, and any other item associated with the domestic use of the building.*
    3. *Permanently remove the brick wall between The Gables, 421 Ashby Road and the land.*
    4. *Permanently remove the post box outside the land marked Blue Leaves.*
  - The period for compliance with the requirements is 182 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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**Summary of Decision:** The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Decision.

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## Preliminary Matter

1. The notice refers to a period for compliance, but also indicates that this will expire on 20 February 2011. As an appeal has been made, this latter statement is now inaccurate and potentially misleading. I will delete it.

## Ground (f)

2. The appellant does not dispute the requirements to cease use as a dwelling and to remove the post box, but argues that the other steps required are excessive.
3. In 1997 planning permission was given retrospectively for the erection of this building. It is clear from the appellant's statement that what was permitted



was a building to be used as a garage and store incidental to use of the neighbouring house, The Gables.

4. The building has been used as a dwelling and the requirements of the notice are clearly intended to remove all trace of this unauthorised use. The purpose of the notice is not just to end the use but to restore the land and building to their condition before the breach of planning control took place. The decision in *Somak Travel v SSE [1987] JPL 630* made it clear that an enforcement notice relating to a material change of use can require more than just cessation of the unauthorised use. It can require restoration of the land by undoing works done to facilitate the change of use, even though they might not have involved development, provided that those works were integral to, or part and parcel of, the change of use.
5. The wall referred to in the allegation is about a metre high. It divides the appellant's land into two separate plots, each with its own access from the lane, and prevents direct access from the area surrounding 'The Gables' to the area where the building referred to in the notice has been erected. Because of the slope, it would not be unusual to see a retaining wall somewhere on the land. However, if such a wall was intended to facilitate use for purposes incidental to the enjoyment of The Gables, one would expect to see access around or through it so that the whole site was accessible internally without having to use the lane to get from one part to the other. Such an arrangement existed previously. The remains of a flight of steps are still visible.
6. Even though there is a break in the brick bonding where the steps were, the wall appears to have been built as a single unit with the intention of splitting the appellant's land into two separate residential planning units. On the evidence and on the balance of probabilities, its erection facilitated and was integral to, and part and parcel of, the change of use alleged in the enforcement notice.
7. Part of the wall has been incorporated into an outbuilding attached to and forming part of 'The Gables'. This has changed the character of this section of wall as it now forms part of a building rather than being solely a means of dividing the land. Removing it would have the effect of demolishing the outbuilding and go beyond what can reasonably be required to remedy the unauthorised change of use. With this exception, however, I find that the requirement to remove the wall is not excessive but is necessary to restore the land to its condition before the breach of planning control took place. The appellant's suggestion of removing only the section of wall blocking access to the former steps would not achieve the purpose of the notice. In this respect, the appeal under ground (f) fails.
8. I saw inside the building, among other things, some kitchen units with worktops and a sink, a fridge, a fully fitted bathroom with bath, basin and toilet, and a double bed. There may well be other domestic appliances<sup>1</sup>, sinks, beds or showers which I was unable to see because of the very cluttered conditions within the property. These are not items one would normally find in a building used as a garage and domestic store in association with a house some distance away. Although the appellant claims that they could have been put there in connection with use of The Gables, there is nothing to suggest that

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<sup>1</sup> I prefer the term 'domestic appliances' to make it clear that the notice is not intended to refer to appliances of a medical or other nature.

this actually occurred. They provide facilities essential to use of the building as a dwelling and they appear to have been put there to facilitate the change of us. On the balance of probabilities, their provision was integral to, and part and parcel of, the change of use alleged in the enforcement notice. The requirement to remove them is not excessive but is necessary to restore the land to its condition before the breach of planning control took place. In this respect, the appeal under ground (f) fails.

9. In respect of the other items referred to in the second requirement, however, the position is less clear.
10. There are numerous items of furniture including cupboards, cabinets, chests of drawers, book shelves and chairs within the building. These may have been of use to the appellant when he lived in the building, but they are not fundamental to residential use. Some of them at least were probably brought onto the land after the building was first used as a separate dwelling. Some may have been in use there before the change of use occurred. It is unlikely that in all cases their provision was part and parcel of the change of use.
11. The requirements to remove 'other fixtures and fittings' and 'soft furnishings and any other item associated with the domestic use of the building' is imprecise and potentially extremely far reaching. The Council's representative at the site visit suggested that fittings would include a lighting unit fastened to the garage wall, but this did not seem to me to facilitate use as a dwelling. Both within the building and on the land around it I saw many items including piles of cloth (which may have been soft furnishings or clothes), an old car and a tractor, tools, books, CD's, fuel cans and a pool table. It is arguable that all these items are associated with domestic use as they appear to be the appellant's personal possessions. However, it seems probable that many of them were brought onto the land after the building was first used as a separate dwelling and some were probably there before the change of use occurred.
12. To require all these items to be removed goes beyond what can reasonably be required, as the provision of at least some of them is likely not to have been integral to, or part and parcel of, the change of use alleged in the enforcement notice. I do not see how the notice can be varied to differentiate between furniture, fixtures and fittings and other items which are part and parcel of the change of use and those which are not. I conclude that this part of the requirements is excessive and to this extent the appeal under ground (f) succeeds.
13. I appreciate that this conclusion may appear to conflict with that in an earlier appeal decision referred to by the Council (APP/R1010/C/09/2101913). The circumstances in that appeal were, however, different. In particular it concerned the erection of a building not a material change of use.

### **Ground (g)**

14. The appellant asserts that 182 days is insufficient time to remove the wall.
15. The wall retains the higher land around the building addressed by the notice and if it is removed other means of support would need to be provided or the land would have to be battered to produce a self supporting slope. The difference in level is about a metre and the amount of land available is such that this should not be a particularly difficult or complex task. I do not accept the appellant's assertion that there would be a need for lengthy site

investigations or that it is likely to require underpinning of any building. 182 days is ample time to undertake the work involved if the matter is addressed promptly. The appeal on ground (g) fails.

16. It is open to the Council to extend the time for compliance at a later date if they are satisfied that circumstances warrant such action.

**Decision**

17. The appeal is allowed on ground (f) only.

18. The enforcement notice is corrected by deleting from section 6 the phrase '(midnight on 20 February 2011)'.

19. The enforcement notice is varied by:

1. deleting the second requirement and substituting for it the following requirement: *Permanently remove from the land any and all kitchen units, worktops, domestic appliances, sinks, beds, baths, basins, showers and toilets, and*
2. adding to the end of the third requirement the following words: *except where that wall now forms part of the outbuilding attached to The Gables.*

20. Subject to this correction and these variations, the enforcement notice is upheld.

*B Barnett*

INSPECTOR