

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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9/2015/0768	1.1	Mickleover	Etwall	15
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9/2015/0862	1.4	Willington	Willington & Findern	75
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9/2016/0047	2.1	Midway	Midway	95

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

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

12/04/2016

Item 1.1

Reg. No. 9/2015/0768/OS

Applicant:
Mr Steve Louth
Richborough Estates Ltd
And The Watson Family
c/o Agent

Agent:
Mr Tom Collins
Fisher German
St Helens Court
North Street
Ashby de la Zouch
LE65 1HS

Proposal: **OUTLINE APPLICATION WITH ACCESS FOR APPROVAL NOW AND ALL OTHER MATTERS TO BE RESERVED FOR FUTURE APPROVAL FOR THE RESIDENTIAL DEVELOPMENT COMPRISING 252 DWELLINGS WITH ASSOCIATED ACCESS, LANDSCAPING, OPEN SPACE AND DRAINAGE INFRASTRUCTURE AT LAND AT SK2934 8494 WEST OF LADYBANK ROAD MICKLEOVER DERBY**

Ward: **ETWALL**

Valid Date: **02/09/2015**

Reason for committee determination

This is a major application not in accord with the development plan and to which more than two objections have been received.

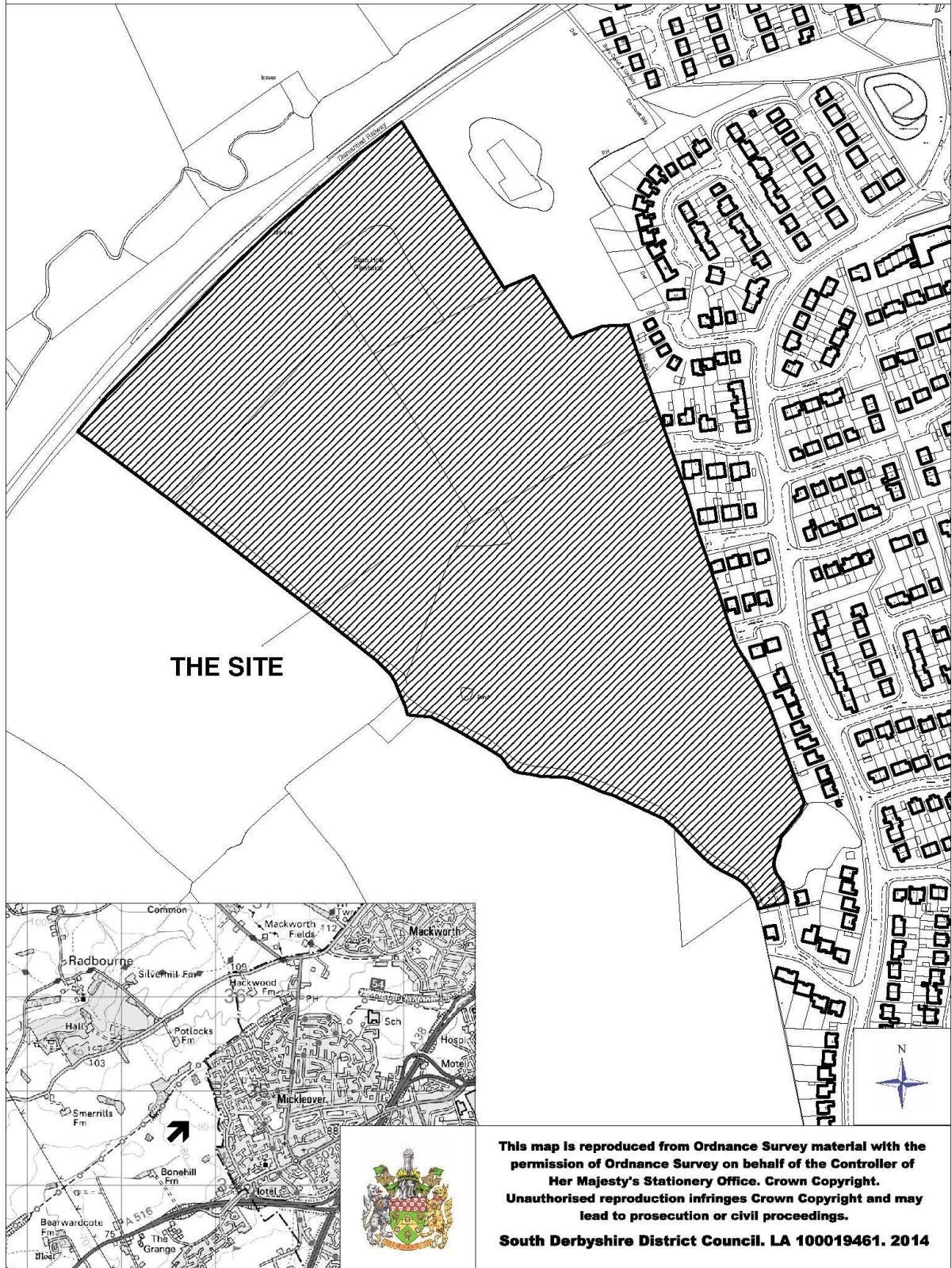
Site Description

The site is situated within South Derbyshire District Council's administrative boundary with land directly to the east sitting within Derby City. The site extends to approximately 14 hectares of arable land.

A public right of way (Radbourn Footpath 8) defines the site's western boundary which connects Greenside Court with National Route 54 of the Sustrans National Cycle Network and Radbourne Lane beyond. Further arable land lies to the north, south-west of the site with the edge of Mickleover to the east and also to the south where it meets Greenside Court.

The site slopes gently from east to west but the northern part of the site experiences a significant fall in levels where the land drops down towards the cycle route.

9/2015/0768 - Land at SK2934 8494, West of Ladybank Road, Mickleover, Derby (DE3 0RG)



Proposal

The application is in outline only with all matters except access reserved for future approval therefore permission is sought for the principle of developing the site for residential purposes of up to 252 dwellings. Access is proposed to be via an extension to Swayfield Close which is an existing cul-de-sac off Ladybank Road, as well as Greenside Court. Ladybank Road itself is the main road through the existing estate in the City which connects Etwall Road to the south, adjacent to the Mickleover Court Hotel, with Station Road to the east. The precise number of dwellings and density would be determined at the reserved matters stage but capacity for up to 252 dwellings is sought. The access to Swayfield Close would serve as the main vehicular access to the site as Greenside Court is indicatively shown to serve only 10 dwellings via a private drive. The existing public right of way (Radbourn Footpath 8) which extends out northwards from Greenside Court is shown to be retained and upgraded to new cycle route within the site to connect with National Route 54 of the Sustrans National Cycle Network. Pedestrian connections between the site with Ladybank Road via Swayfield Close, Taplow Close, Whenby Close and through a small area of POS opposite Dresden Close are also shown. It should be noted that potential bus links are also shown from the site onto the open countryside to the west (towards a suggested Local Plan Part 1 allocation site) as well as to the east onto Taplow Close. Areas of formal and informal public open space (POS) as well as surface water attenuation features would be incorporated within the development and a range of dwelling sizes would be accommodated on the site. A mix of parking solutions would be provided throughout the site. The indicative layout is also structured so that dwellings address the new streets to maximise surveillance of public areas and the orientation of buildings is used to create a clear demarcation between the private and public realm.

Applicants' supporting information

The Planning Statement sets out the site and its general locality, before setting out details of the proposed development. The statement goes on to provide an overview of the planning policy context against which the development must be assessed, followed by a detailed consideration of the development proposals against this policy context and all other relevant material considerations. In making the planning application, the applicant proposes a high quality, sustainable development that will provide significant benefits to the immediate locality, South Derbyshire District and the wider housing market area. The benefits to be delivered by the development will substantially outweigh any minor residual impacts of the proposals. It states it is clear that the site fulfils the three dimensions of sustainable development detailed within the NPPF, by providing a highly sustainable residential development which has positive social, economic and environmental benefits. It is considered that any residual adverse impacts of the development are limited, and are significantly outweighed by the benefits the proposal brings in providing additional housing in a sustainable location. When considered against the test set out in paragraph 14 of the NPPF, the benefits of granting planning permission are considerable, and there are no adverse impacts which would significantly or demonstrably outweigh these benefits. The proposed development is therefore considered to be in full accordance of paragraph 14 of the NPPF, which indicates that in such circumstances planning

permission should be granted, subject to the imposition of appropriate conditions and the completion of a Section 106 agreement.

An Economic Benefits Statement concludes that the benefits associated with approval and delivery of the proposed development on the application site are significant and will contribute not only to meeting local housing need and demand, but will also make a valuable contribution to the local viability and vitality of Mickleover as a sustainable and balanced community. At a strategic level the proposed development will support net additional employment and growth in wider South Derbyshire and Derby and the East Midlands regional economy.

A Design and Access Statement (DAS) details key development principles to ensure a high quality scheme can be delivered. The design philosophy and the rationale behind the proposed indicative Masterplan have been communicated through the provision of development parameter plans which, subject to consent, will ensure key principles of the scheme are not lost or diluted in subsequent detailed stages of design. The Masterplan has been prepared within a comprehensive policy and guidance framework provided at National and Local Authority level. The proposed indicative Masterplan is founded on the best practice in urban design and sustainable development and will create a townscape that is rich, varied and sympathetic to its environment. The indicative Masterplan will create a high quality development with an identity, activity and a 'strong sense of place'. The site is a logical site to extend the suburb of Mickleover. It has a sustainable location being situated adjacent to existing residential communities with local facilities and services within walking distance. The proposals can be delivered without having an adverse effect on the existing highway network and will strengthen linkages to the wider area whilst responding to contemporary design requirements. The development will respect the local character of Mickleover, moving it forward towards a sustainable future through an increase in housing choice. The indicative Masterplan will accord with the requirements of Housing Policy 11 (Layout and design) and Recreation Policy 4 (Provision of outdoor playing space).

A Transport Assessment states that all off-site junctions under assessment currently operate with minimal queues and delays. When the proposed development traffic is added to the network the predicted increase in queues and delays is minimal and all off-site junctions under assessment are predicted to operate well within capacity. Therefore, the proposed development is not predicted to have a material impact on the local highway network. Site access will be provided directly off Greenside Court and Swayfield Close, two existing cul-de-sacs that form priority T-junctions with Ladybank Road. Vehicular and pedestrian access will be provided at these locations. A pedestrian/cycle link will also be provided from the development to NCN Route 54 to the north of the site. Pedestrian links will also be provided to the existing PRow which runs along the western edge of the site. In addition, pedestrian links will also be provided from Taplow Close and Whenby Close which will further enhance the permeability of the site. A very regular bus service also runs along Ladybank Road and stops just 150m from the centre of the proposed development site. The bus service provides direct links to Derby City Centre. In addition, two dedicated school buses provide direct access to local secondary schools in the area. Accident analysis across the local highway network has indicated that there are no specific issues with highway safety that would require remediation as a result of the

development. A CEMP will be implemented at the appropriate time and heavy construction traffic routed via major roads so as to minimise inconvenience and disturbance to existing residents and traffic. A Travel Plan will be implemented for the development including measures such as offering travel pass vouchers for the initial occupants of dwellings and appointing a Travel Plan Coordinator. The assessment work undertaken and detailed in this report demonstrates that, in NPPF terms, the residual cumulative impact of the proposal is minimal. Therefore, it is considered that, in transport terms, this proposal is suitable for planning approval.

The Landscape and Visual Impact Assessment (LVIA) has highlighted the extent to which the site is more closely associated with the urban fringe of Mickleover given the extent of surrounding residential built form. The site represents an arrangement of rural fringe fields where the presence of residential development at the western edge of Mickleover is not incongruous within site-facing views from the wider open countryside. The assessment process has set out that the built development proposals will have local/limited scale Moderate-Minor Adverse effects upon the Landscape Character of Derbyshire Assessment "Settled Farmlands" landscape character attributes. Whilst the scheme proposals will result in a subtle extension to the settlement, it will seek to respond to local landscape circumstances and related policy/SPD objectives by virtue of its design, scaling, use of materials, landscaping and the retention and enhancement of landscape features to ensure an appropriate scheme is implemented in relation to its context. The development will not alter the quality, appreciation or context of the wider Landscape Character Type. The most significant residual visual effects relate to the higher sensitivity residential receptors in closest proximity overlooking or immediately adjoining the eastern site boundaries. At worst the change in visual context is judged as being High to Moderate Adverse; however, the density of the development and balance of open space and development offsets, scaling and green infrastructure considerations will assist in reducing the perceived mass and improving the visual permeability. The arrangement of garden spaces and the introduction of green verges and 'gateways' at proposed access points will assist with the assimilation of proposed dwellings in relation to the adjoining residential boundary. Moderate Adverse impacts are envisaged in relation to the western site boundary public footpath Radbourne 8, where the proposals will result in built form being located in closer proximity to that of the current scenario along the western edge of the site, but the considered incorporation of outward facing units will serve to create an active frontage whilst the provision of new clumps of hedgerow standards and native tree planting within a linear buffer along the western site boundary strive to positively assimilate the new dwellings at the periphery of the scheme. The integrity and amenity of Radbourne 8 will be maintained with the provision of new pedestrian linkages to and across the site and the retention of the footpath within a western boundary green corridor. The provision of a western boundary linear parkland/informal public open space will provide a green edge and buffer to the proposed scheme and act as a transition between the on-site built form and adjoining fields to the west of the site. Largely Neutral or Minor Adverse effects are judged to be experienced by many of the other identified receptors (including distant dwellings, users of local roads and local farm premises) and overall, it has been established that visual and character effects are localised and that the majority of the relevant landscape policy objectives and SPD criteria can be satisfied through an appropriate detailed development response, drawing upon the landscape Masterplan principles set out within the report.

A Heritage Statement supports the proposed scheme and has found that it would have a negligible, and at the most, a minor negative, impact upon surrounding built heritage assets, including the Grade I listed Radbourne Hall. This effect would be restricted to a modest change within their settings, restricted only to their wider settings for the majority of the buildings. This impact would be further reduced by a buffer along the northern boundary, which will help to reduce the impact on nearby heritage assets, notably Potlock Farmhouse. The proposed development would be restricted to heights of 2 to 3 storeys, which means that the scale of the proposal would not be overly prominent in the landscape. Furthermore, the illustrative plan accords to both national and local policy and contains sufficient information in regards to Built Heritage considerations relating to the current planning application for the residential development of the Site.

The Archaeological Desk Based Assessment confirms that the site does not contain any statutorily designated historic environment assets nor are any located adjacent to the site. The closest designated asset is a grade II listed building, Potlock Farmhouse, 350m to the north. The only non-designated heritage asset recorded within the site is ridge and furrow earthworks. Although the Historic Environment Record suggests that the earthworks are present across the entire site, they only survive in the northern half. The fields of the southern and eastern part of the site appear to have been ploughed in the past. No other heritage assets are recorded in the close vicinity. Three extensive geophysical surveys, undertaken to the north east and south of the site, have not identified any features of archaeological significance. It is considered that the site has a low potential for below ground archaeological remains.

The Flood Risk Assessment and Drainage Strategy demonstrate that the proposed development is not at significant flood risk, subject to the recommended flood mitigation strategies being implemented. The Environment Agency Flood Zone mapping shows the site to be located entirely within Flood Zone 1 (Low Probability). The site is predicted to be at low risk of flooding from groundwater and sewer flooding. It is outside the maximum reservoir flood inundation zone. The site is removed from the canal network and not tidally influenced. Environment Agency mapping shows the presence of a pluvial flow route in the south of site. The development design will ensure this is maintained and avoided, in order to ensure there is no increase in flood risk to third parties. It is recommended that finished floor levels be raised approximately 150mm above surrounding ground levels to mitigate against the residual risk of flooding. Ground levels should also be profiled to encourage pluvial runoff and overland flows away from the built development and towards the nearest drainage point. An indicative surface water drainage strategy has been developed for the site. It is proposed that the site be split into two catchments. Runoff from the southern-most part of the site will be directed to the existing surface water sewer network in Greenside Court. The remaining land will outfall to the watercourse to the north of the site. It is proposed that surface water storage for storm events up to and including the 100 year plus climate change event is accommodated on site. On-site surface water attenuation will be provided in the form of underground storage and a series of swales. In compliance with the requirements of National Planning Policy Framework, and subject to the mitigation measures proposed, the development could proceed without being subject to

significant flood risk. Moreover, the development will not increase flood risk to the wider catchment area as a result of suitable management of surface water runoff discharging from the site.

The preferred location for the disposal of surface water is outfall to a watercourse to the north of the site, beyond the dismantled railway. It has been chosen as it allows the development the maximum flexibility in delivery (earthworks/ground levels, etc.). This option would be achievable by a sewer to directly discharge to the watercourse. There are 2 further options for surface water disposal from the proposed development. These are termed 'Option 2' and 'Option 3' and are identified on plan. These options are not recommended as there are either third party ownership issues or are not in accordance with the established hierarchy of disposal.

An Agricultural Land Classification Assessment has been undertaken and finds that the majority of the site is relatively flat in Agricultural Land Classification terms except for the northern extents. The soils are fine loamy over clayey throughout. They are slowly permeable and are limited by soil wetness. The 1:250,000 scale Provisional Agricultural Land Classification Map of the area shows the site as Grade 3. The detailed fieldwork undertaken for this study finds that the site is Subgrade 3b except for a 0.5 ha wooded area. Surplus soil could be used to restore other sites which are short of soil, to preserve the soil and retain soil functions such as water and carbon storage.

A Habitat Survey has been undertaken and concludes that the majority of the site comprises semi-improved grassland broadleaved woodland and species rich poor hedgerow. Precautionary avoidance and mitigation measures have been provided; these include further bat and precautionary otter surveys. It is recommended that vegetation clearance is conducted outside of the bird breeding season (March – August for most species). If this is not possible, a nesting bird check will be required. It has also been recommended that a suitably qualified Ecologist is on site to supervise any site clearance activities which directly or indirectly affect the waterbodies on site. It is recommended that the planting scheme includes native plants, suited to the area and which are of benefit to local wildlife. Where possible efforts should be made to support local BAP species.

A Bat Activity Survey has been undertaken and demonstrates that no bats were seen to emerge from the trees on the site during the course of the surveys. Bat activity was observed along all boundaries of the site and within the site itself, with the majority of activity along the eastern boundary. The transect surveys indicated that only small numbers of bats used the site with 27 passes recorded in June, 21 in July and 50 during the dusk and dawn surveys in August and September. Frequent bat activity was recorded during the static surveys, with 155 passes of common Pipistrelle in June, 65 passes of soprano pipistrelle in September, 322 50kHz pipistrelle in June 157 *Myotis* sp. in September and 2 passes of Leisler's bat in June. Although this indicates relatively high activity, it does not necessarily suggest a large number of bats as one bat may fly past the static automated detector on more than one occasion, for example during feeding. Common pipistrelle was the most frequently recorded species during both the transect and static detector surveys. The report sets out recommendations to retain, protect and increase, where possible, the number of mature trees and hedgerows within the site; provision of a wildlife corridor

along the northern and western boundaries; maintain flight lines where possible across the middle of the site; have mature trees assessed for bats, should they need to be removed; Implement landscaping scheme that provides food sources for bats; Implement a lighting strategy that is sensitive to the presence of bat species; Incorporation of at least 20 bat access tiles, bricks or tubes into the proposed housing to provide additional roosting opportunity.

A Site Investigation Report considers that conventional foundations could be adopted for the proposed development, with foundations placed in the possible natural strata at a minimum depth of approximately 0.9m bgl, designed to a net allowable bearing pressure of 125kN/m² assuming foundations are outside the influence of existing or proposed planting. Foundations will need to be locally deepened through any soft, loose or otherwise unsuitable materials at foundation depth. Where foundations lie within the influencing distance of existing trees, foundations may need to be locally deepened in accordance with NHBC guidelines for medium volume change potential soils. Due to the presence of shallow cohesive natural strata across the majority of the site, it is recommended that a suspended floor slab, with suitable floor void is adopted for the proposed development. Based on the findings of the desk study and the observations made during the fieldwork, the potential for significant contamination to be present at the site is considered to be very low if not negligible. However, it is recommended that as part of any further investigation works completed as part of the planning process, that chemical laboratory analysis is completed to confirm this assessment and the actual contaminative status of the ground conditions at the site.

A Utilities Assessment has been undertaken consulting the relevant statutory undertakers, the responses received suggest that the existing electricity and gas networks do not have sufficient capacity to supply the site, indicating that reinforcement works will be required. However, these improvements are not anticipated to be problematical. Further discussions with Severn Trent Water confirm that the existing foul water network will require a modelling assessment to establish whether the proposed development can connect to the existing network without reinforcement. Following a review of the site topography, it is anticipated that an on-site pumping station will be required. It is recommended that further consultation with the relevant statutory undertakers is undertaken once the development proposals are reasonably fixed, in order to confirm the availability and cost of strategic services supplies to serve the proposed development and to confirm the extents and cost of any localised services diversions required.

A Statement of Community Involvement (SCI) provides an overview of the pre-application consultation undertaken by the applicants prior to submission of the planning application. Early dialogue was established with the relevant local planning and highways authorities, including officers from South Derbyshire District, Derby City and Derbyshire County Councils, as well as other relevant bodies, to ensure that the development proposed by this planning application gives full consideration to all relevant issues. Consultation has also been undertaken with local residents and Ward Councillors, including a public exhibition held on Thursday 2nd July. The feedback received from residents, both through discussion at the event and through written comments forms received subsequently, has been used to inform the final development proposed by this application. Section 4 of this report has summarised

the key issues raised by the local community, and the way in which the application submission has responded to concerns raised. This SCI demonstrates the commitment of the applicants to undertaking meaningful consultation with all relevant stakeholders, and outlines the way in which the responses received have been used to shape and influence the final form of development proposed by this planning application.

Planning History

There is no planning application history associated with the application site.

Responses to Consultations

The Environment Agency has no comments to make and advises consultation with the Lead Local Flood Authority at the County Council.

The County Flood Risk Team initially objected to the proposal and requested further information relating to the production and submission of a scheme design demonstrating full compliance with DEFRA non-statutory technical standards for sustainable urban drainage systems. Further information was supplied from the applicant and has satisfied the concerns raised from the initial consultation. Clarity has been received as to the preferred discharge point and, whilst it is appreciated there are two other options which may be explored at the detailed design stage, they are satisfied that the site can be drained.

Historic England (HE) does not comment in detail but offers general observations. The submitted assessment considers the potential impact of development upon Potlocks Farm (Grade II), Mickleover Conservation Area and the listed buildings it contains and the undesignated ridge and furrow which survives on the northern part of the proposed site. However, any potential impact on Radbourne Hall (Grade I listed) to the north is left to the Council to consider. As part of the site is on higher land, it may be possible that some inter-visibility would exist between the Hall, views from its interiors and its surroundings (which will contribute to the significance it derives from its setting). HE therefore advises the Local Authority and the applicant to assess what, if any, impact the proposed development would have on Radbourne Hall. HE notes the indicative Masterplan shows the ridge and furrow on the northern part of the site preserved as open space and welcomes this approach as a means of preserving this area but may also help to mitigate any impacts on Radbourne Hall and Potlocks Farm by creating an area of green and open separation between these heritage assets and the proposed development. The local authority should seek the detailed advice of the County Council Development Control Archaeologist.

The County Archaeologist notes that the site contains a record on the Derbyshire Historic Environment (HER 24308) for medieval earthwork ridge and furrow, also contiguous with a SHINE (Natural England heritage inventory) record according 'medium' significance. The applicant has provided a desk based assessment (including walkover) and a geophysical survey of the site and this is considered to meet the NPPF requirement in establishing the significance of heritage assets. There is no archaeological objection to development of the site. The County Archaeologist

recommends that the detailed layout should retain an area or areas of the best preserved ridge and furrow earthworks because of its scarcity. A condition may be appropriate to secure this. A post-consent scheme of archaeological work, to comprise earthwork survey and evaluation/excavation of below ground archaeological features secured by condition is recommended.

The Conservation Officer advises that the impact of the proposals on the heritage assets should be weighed up using the balance outlined in the NPPF paragraph 134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. He advises that Radbourne Hall is a particularly important Grade I listed building which is surrounded by a significant parkland setting designed by Emms but that having reviewed the site and views to Radbourne Hall he considers the impact to be negligible. The biggest impact on the surrounding heritage assets would be on Potlocks Farm which is judged to be below the level of moderate and less than substantial harm. The impact on other assets, Silverhills and Smerrills Farmhouses, would be above the level of negligible but below moderate given their distances of beyond 1km from the site.

Peak and Northern Footpaths welcome the upgrading of Footpath no 8 running along the western edge of the site. They also note that the walking links from the site to FP8 to the dismantled railway and to Ladybank Rd which were shown on an earlier layout have been removed. These should be restored.

The Derbyshire Campaign for the Protection of Rural England (CPRE) object to the proposal stating that Mickleover is a populous area with few open greenspaces. The public right of way across the site, the footpath to Radbourne and the Mickleover Greenway cycle route next to the sites northern boundary give access to open countryside. Both are easily accessible and well used by local residents. Should the proposal be accepted these routes would be through a large housing estate. The tranquillity of the area will be destroyed and there would be significant loss of ridge and furrow landscape which cannot be replaced. In addition, this site is not part of an agreed Plan. Whilst the emerging South Derbyshire Local Plan does include this site, the Plan is not yet adopted. Building on greenfield sites should be a last resort when previously developed (brownfield) sites are available. With an increasing population, agricultural land such as this should be used for food production.

The NHS Southern Derbyshire CCG states that the GP practices at Mickleover Surgery and Mickleover Medical Centre do not have any spare capacity to manage the increased patient demand calculated to be 630 additional patients. A contribution of £95,860 is requested to contribute towards their expansion.

Highways England has no objection to the proposal.

The County Highway Authority raises no objections to the proposal, subject to conditions, stating that the application is in outline and whilst the application itself is in South Derbyshire, the connecting roads will be in the Derby City area. The amended layout is acceptable as Greenside Court is now a private drive serving 10 dwellings and a potential bus route is included at Taplow Close. In terms of a Travel

Plan they request a monitoring contribution secured through the Section 106 Agreement of £5,000. In addition, a Greenways contribution is to be agreed for the Mickleover Greenway/NCN 54. In terms of design considerations relating to the travel plan consideration of the following for each residence: secure cycle storage; high speed broadband connection; electric vehicle charging points at either all or a proportion of the residences. Consideration of shared space design principles where appropriate. Travel Plan targets are noted but precise target figures will be informed by the results of the initial resident travel survey. A condition relating to the travel plan should also be included to ensure that it is implemented, monitored and reviewed in accordance with the travel plan targets.

The County Public Rights of Way Officer has checked the site and confirms that Radbourne footpath no 8 runs along the western boundary of the site. It appears that the developer has incorporated the footpath correctly into the indicative Masterplan and therefore has no objection to the proposal. He advises that no applications which affect the site have been received at the time of this response under Section 53 of the Wildlife and Countryside Act 1981.

The County Planning Policy Officer seeks developer contributions that would likely be required as a result of the anticipated impact of the proposed development on strategic infrastructure and statutory services. These include:

- £569,950.00 (equivalent of 50 primary pupil) towards the creation of a new primary school to serve the whole of the New House Farm development, subject to a review of normal areas;
- £652,688 for 38 secondary pupil places to be used towards the adaptation of classrooms at John Port School (John Port School Year 7 to Year 11 classroom Project D) or, subject to a review of normal areas, to be utilised for the creation of a new secondary school as defined by the proposal for Derbyshire County Council's Secondary School; and
- £279,405 for 15 post-16 pupil places at John Port School to be used towards the adaptation of classrooms at John Port School (John Port School Post 16 classroom project D) or, subject to a review of normal areas, to be utilised for the creation of a new secondary school as defined by the proposal for Derbyshire County Council's Secondary School strategy.

Advice to be provided via notes to the planning permission, (if granted) on:

- Access to high speed broadband services for future residents (in conjunction with service providers); and
- Designing new homes to Lifetime Homes standards.

Severn Trent Water raises no objections subject to a condition relating to the submission of drainage plans prior to commencement.

The Contaminated Land Officer notes that the preliminary site investigation recommends further intrusive work prior to development, the risk is not deemed

significant enough to recommend this condition but seeks a standard precautionary condition to be included.

The Derbyshire Police and Crime Prevention Officer notes the indicative Masterplan and comments that five connections to Ladybank Road appear excessive. In addition, links through from parking courts would not be recommended as these are best left secured and private. If the central links from Taplow Close and Whenby Close are considered necessary, perhaps one of these could be retained with a reasonable buffer from adjacent housing and a focal facing property such as featured in the Taplow Close link. The footpath link emerging opposite Dresden Close will need to have an open aspect, be to adoptable standards and lit. Bonnie Prince Charlie Walk is subject to misuse by motorcycles consequently the links from this route and around the site will need restrictive measures to prevent wider problems. Query raised regarding the need for the dropped bollards on the Masterplan as it is considered access should be shared, not restricted.

Derbyshire Wildlife Trust originally objected to the proposal as they considered that there was insufficient information relating to the potential for badger population due to the sub-optimal time of year the survey work took place. However, following the submission of an updated badger survey they withdrew their objection and request conditions be imposed instead.

The Strategic Housing Manager advises that Option 1 would be that the 30% of the dwellings on site could be for affordable housing purposes of which 75% should be for rent and 25% for intermediate housing, transferred to a Registered Provider. Option 2 would be for the affordable housing to be built on an alternative site in the SDDC Derby Fringe Sub-housing market area or Option 3 which is to pay a commuted sum to the equivalent value to support delivery of affordable housing in the SDDC Derby Fringe Sub-housing market area with the option for the commuted sum to be used to purchase properties.

The Council appointed Landscape, Architecture and Environmental Planning Consultant examined the LVIA and concludes that, although the landscape changes proposed will result in the loss of open countryside the potential harm has been mitigated by careful understanding of the key views into and out of the site; careful design of the layout and retention of existing hedgerows and woodlands provide structural layout to the site.

Derby City Council commenting on the original submission advise that they are aware of the wider housing allocation proposed by the emerging South Derbyshire Local Plan. Whilst they are supportive of the principle of the wider draft allocation it has concerns about this site coming forward in isolation. A comprehensive approach should be taken to the wider area to ensure the best outcome in terms of sustainability, design, school place needs and transportation. A piecemeal approach to development in this area may not achieve this. A key issue with the current application is the need to assess the traffic impact of the development on the city's road network. Derby City has concerns that this wider area was not included in the Council's transport modelling in 2012. It is the City's view that the wider area needs to be modelled as a whole taking account of the cumulative impact of all of the development in the HMA. Whilst the impact of this proposal is very different to the

impact of development of the whole area, piecemeal development may fail to provide effective mitigation for the wider development of the area. They raise concerns in regards to the impact of the new road from Greenside Court on the group of trees to the east of that access.

Responses to Publicity

Radbourne Parish Council was consulted on the proposal but no response has been received.

109 letters of objection were received on the original consultation with an additional 30 letters following a reconsultation on the amendments. These can be summarised as follows:-

- a) The proposal will have an adverse impact existing residents, the countryside, being outside any settlement boundary, and rural peace;
- b) Loss of agricultural land;
- c) Local services will not be able to cope with additional demand;
- d) Local junior school has already expanded for new housing at Great Western Way – it cannot expand indefinitely;
- e) Ladybank Road is a rat-run for other traffic to get out of Mickleover. Additional traffic will only exacerbate this problem;
- f) Swayfield and Greenside Court are not suitable to be access points for a new housing estate as they are too narrow and insufficient sight lines are proposed. New separate access should be provided;
- g) Swayfield Close too close to the infant school to be appropriate as a proposed access;
- h) Insufficient infrastructure exists to accommodate additional dwellings;
- i) Local doctors surgery is oversubscribed;
- j) Local dentist is at capacity;
- k) Local schools are already full;
- l) No crossing proposed for the infant school close to Ladybank Rd;
- m) Loss of 'green space'
- n) Brownfield sites in Derbyshire/Staffordshire should be built before greenfield sites are developed;
- o) Loss of views from quiet cul-de-sac location of Swayfield Close;
- p) South Derbyshire is not concerned about the potential impacts as all the pain will be felt by Mickleover.
- q) Parking in Mickleover will be even more difficult than at present if these new homes are built;
- r) Wider road network of Mickleover not capable of handling additional traffic;
- s) The area is greenbelt and prime agricultural land;
- t) Loss of trees and hedgerows and habitat for wildlife;
- u) Ladybank Road is in dire need of repair and further increase in use is inappropriate;
- v) Adverse impact on local wildlife/nature;
- w) Proposed access points are not designed to cope with 500+ cars;
- x) No proposals for leisure/community facilities included;
- y) Increased noise on an already busy housing estate;

- z) Cul-de-sac location close to open countryside will be lost to be part of an access to new development;
- aa) Destroying the popular local footpaths and cycle track would be detrimental to the quality of life for all who use them;
- bb) Unacceptable to build adjacent to Derby City boundary/Mickleover as residents will use Derby City's services;
- cc) The site is understood to be a draft allocation but no consultation has taken place yet.
- dd) General disruption including noise, dust, dirt, road damage and delays during construction will affect existing residents;
- ee) Existing drainage system in Mickleover will not be able to cope;
- ff) Proposed design and layout not suitable - 2.5 storey dwellings not in keeping with surroundings;
- gg) Concern about impact on existing footpaths/cycleways by the proposed development;
- hh) Cumulative impact - this application should be considered in partnership with other proposed developments in the area;
- ii) Shopping provision in Mickleover is too small to cope with all the planning applications proposed;
- jj) How will the sub-division separating the two sides of the site be managed;
- kk) The material harm of this application outweighs its benefits;
- ll) Will each dwelling have a minimum of 2 car parking spaces;
- mm) Multiple pedestrian access points may lead to more opportunities for vandalism and theft;
- nn) Local residents views not taken into account – Mickleover residents have already said no to development on the edge of south Derbyshire.
- oo) The site is of importance as it is an example of strip farming that will be lost;
- pp) Perceived errors in the Transport Assessment including too many people expected to cycle; wrong junctions modelled;
- qq) Privacy of existing dwellings affected and loss of existing views to the south west;
- rr) No attempt to create a buffer between existing and proposed development;
- ss) Increased social/behavioural problems as a result of increased population;
- tt) Regular flooding in winter at Greenside Court will not be addressed by the proposed 'flood ponds';
- uu) Bus route may need to be re-directed;
- vv) Negative effect of affordable housing being included on the site;
- ww) Lack of drinking water for new dwellings, as indicated by SDDC's own Water Cycle Strategy;
- xx) Location not considered sustainable as most of the site is not within 400m of a bus route;
- yy) Developer should work with others to achieve access the A516;
- zz) The layout does not include the extension to 4 Whenby Close and the property has habitable rooms on the side elevation facing the development with inadequate separation proposed.
- Aaa) The reduction in proposed dwellings using Greenside Court is an acknowledgment by the developer that the access is poor with restricted visibility.
- Bbb) The trees adjacent to Greenside Court should be protected.

- ccc) The Planning Inspector for New House Farm stated that all construction traffic should use the new island on the A516.
- Ddd) Taplow Close is now proposed to be used as a future bus route but this should be the main access as it could be widened.
- Eee) Would the roads and pavements be acceptable for use by disabled people and what provisions are made for them.
- Fff) There would be an increased risk of air pollution.
- Ggg) There would be an increased risk of surface water flooding as the existing culvert does not currently cope with heavy downpours.
- Hhh) Associated light pollution from development.
- iii) The proposal to use Taplow Close as a bus route is not acceptable, has not been adequately assessed, is not wide enough and would reduce on street parking.
- Jjj) Derby City Council raised concerns regarding links to the adjoining site to the west other than for pedestrians and cyclists.
- Kkk) The increase in garden length by 5 metres to properties on Ladybank Road is an improvement but falls short of what residents hoped for.
- Lll) The choice of option 1 for surface water drainage is welcomed.
- mmm) Some changes to the layout have reduced the visual impact of the dwellings on existing properties.
- Nnn) Further junctions have been considered in light of Derby City Council's comments but trip rates within the TA are underestimated.
- Ooo) A decision should not be made until a transport assessment for the whole 'Land west of Mickleover' site has been completed.
- Ppp) Seek confirmation that the barrier separating the smaller site accessed from Greenside Court would remain in perpetuity.

In addition to the above representations a petition has been received signed by 1184 signatories opposing the proposal.

A letter has been received from John Port School in which they state that the school is operating at capacity in science, Technology and IT. The additional secondary school places generated by this development can only be accommodated by additional capital investment in order to facilitate expansion and refurbishment of the school facilities. Further development will also involve additional traffic and provision will be needed to alleviate the impact of additional vehicle movements.

A letter has been received from Amanda Solloway MP for Derby North, in which she states that she opposes the development on behalf of residents and outlines the issues of access, via two long established cul-de-sacs; the increased congestion the development will cause on Ladybank Rd in what is already a densely populated area; the fact the site is not a preferred site in the Council's Emerging Local Plans of either South Derbyshire and Derby City Councils; the proposal would also result in the loss of green space to urban sprawl and have a negative impact on the local infrastructure, schools, doctors' surgeries and other facilities. She states that these adverse impacts would demonstrably outweigh the benefits and therefore, in line with the NPPF the application should be rejected and that local residents have raised significant objections to a great number of developments on the edge of Derby and she will push hard for more appropriate development in Derby City on sites that already exist and that are crying out for development.

A letter has been received from Cllr Jones, Mickleover Cllr for Derby City Council in which she states that she objects to the proposal due to the increased traffic generated by the development; poor access proposed through two existing cul-de-sacs and the poor visibility these access routes would have; additional cycle access points through Taplow Close and Whenby Close will create routes for crime both to exit the proposed site and past current housing increasing vulnerability; the separation between existing and proposed houses should be as far as possible to avoid overlooking and the existing hedge should be retained and improved where necessary; existing services such as schools, doctors and other community facilities are all oversubscribed; the cumulative impact of this development and others on the edge of Mickleover needs to be considered; the loss of farmland and impact on the wildlife in this area are a concern; the site is also close to listed buildings including Radbourne Hall which will need to be protected from this development and there are concerns about specific infrastructure such as water, gas and electricity supplies.

A letter has been received from Cllr Holmes and Cllr Keith, Mickleover Cllrs for Derby City Council, in which they state that they object to the proposal as the access routes to the development are too narrow and measures to reduce on street parking have not been proposed; additional traffic generated will have severe impact on existing traffic; the cumulative impact of development in the area will be severe and should be refused; schools do not have the capacity for additional pupils; the route for construction traffic has not been identified; the proposed development will clearly have a negative impact on existing residents and no attempt has been made to create an effective buffer between existing and proposed development. They advise that the material harm of the proposal outweighs the economic, social and environmental benefits. In relation to the amended plans, they consider Taplow Close unsuitable for a possible bus route and the Ladybank /Swayfield junction is not suitable for buses. There should not be any vehicle access to the adjacent site and a possible route is shown. The barriers separating Greenside Court from the larger site should remain in perpetuity. There are also concerns regarding the construction traffic access.

Development Plan Policies

Local Plan: Housing Policies 8, 9, 11 and 14 Environment Policies 1, 9, 11, 13 and 14, Transport Policies 6 and 8, Recreation and Tourism Policies 4 and 8, Community Facilities Policy 1

Emerging Development Plan Policies:

Policy S1: Sustainable Growth Strategy

Policy S2: Presumption in Favour of Sustainable Development

Policy S4: Housing Need

Policy S6: Sustainable Access

Policy H1: Settlement Hierarchy

Policy H20: Affordable Housing

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3: Delivering Sustainable Water Supply, Drainage and Sewerage

Policy SD4: Contaminated Land and Mining Legacy issues
Policy BNE1: Design Excellence
Policy BNE2: Heritage Assets
Policy BNE3: Biodiversity
Policy BNE4: Landscape Character and Local Distinctiveness
Policy INF1: Infrastructure and Developer Contributions
Policy INF2: Sustainable Transport
Policy INF7: Green Infrastructure
Policy INF9: Open Space, Sport and Recreation

National Guidance

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

Local Guidance

SPGs - Housing Design and Layout, Developer Contributions, Better Design for South Derbyshire.

Planning Considerations

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

- Principle of development and weight afforded to policy
- Traffic and transport
- Ecology
- Urban design and open space
- Residential amenity
- Drainage and flood risk
- Heritage impacts
- Landscape and visual impacts
- Affordable housing
- S106 contributions
- Planning balance and overall conclusion

Principle of development and weight afforded to policy

The site lies outside any settlement confine in the open countryside although it lies immediately adjacent to the western edge of Micklegate on the western side of Derby. There are no site specific policies affecting the land, which is shown as being outside the settlement limits of Micklegate and is therefore subject to open countryside policies, not catered for by way of saved policy H5 and beyond the scope and intentions of saved policy H8. The proposal therefore engages saved policy EV1 with which it conflicts. EV1 is not intended as a housing policy but as it has the effect of restraining delivery; it is a policy for the supply of housing in the eyes of the NPPF (paragraph 49). Recent appeal decisions have confirmed the policy falls into this category, aligning with recent case law. The presumption in favour of sustainable development is therefore engaged.

This site forms part of a wider suggested allocation (policy H19) through the Local Plan Part 1 that at the time of writing is being considered through a Main Modifications consultation before the Inspector writes her report regarding the soundness of the Plan. The wider site was considered in detail at Local Plan examination hearings in December 2015 as i an additional allocation in the Plan, having been consulted on alongside the Sustainability Appraisal in November 2015. The wider site would provide for around 1650 dwellings of which this current application is a constituent part along with 300 dwellings to the south at New House Farm, accessed from the A516 which was recently allowed at appeal. However, the emerging Local Plan which includes this site remains unadopted and is subject to significant objection hence must be afforded limited weight.

Notwithstanding the above, saved policy EV1 is still relevant and it does accept that some development in the countryside is unavoidable, and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing, such that it can be afforded some weight in principle. The policy also goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide further consistency with the core principles and sections 6 (design) and 11 (natural environment) of the NPPF.

The decision rests on the application of the 'planning balance' when considering the above policies and the merits of the proposal. This test aims to strike the right balance between housing delivery and ensuring the environmental, social and economic dimensions of sustainable development, including meeting the needs of occupants and the existing community, which should be mutually beneficial. Whilst a lack of a 5-year supply might engage the presumption in favour of sustainable development, it does not automatically "stand down" local plan policies but merely challenges the weight which may be afforded to them. For the presumption in favour to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

Traffic and transport

The application is in outline form with the matter of access to the site for approval at this stage and therefore the suitability of the access arrangements proposed have to be critically examined. The main vehicular access to the site would be via Swayfield Close, a relatively short cul-de-sac off Ladybank Road. A small, secondary access to serve 10 dwellings via a private drive is also proposed off Greenside Court. The application is accompanied by a Transport Assessment which examines the traffic

impacts of the development. It states that when the proposed development traffic is added to the network the predicted increase in queues and delays is minimal and all off-site junctions assessed are predicted to operate well within capacity. It concludes that the proposed development is not predicted to have a material impact on the local highway network. It is proposed to upgrade the existing footpath no.8 to a cycle route in order to encourage access for cyclists both from the existing and new estate to the existing facilities in Micklegate and beyond as well as to John Port School for secondary and post-16 education as well as Etwell Leisure Centre and its comprehensive sports facilities to the west. Numerous pedestrian linkages with the existing estate are shown which would encourage walking and cycling with good permeability.

It should be noted that the site forms part of a suggested wider allocation in the emerging Local Plan Part 1. However, whilst that allocation has yet to be formalised and the Local Plan adopted, the illustrative Masterplan tries to ensure that this development does not prejudice the delivery of the remainder of the wider allocation, should that be forthcoming. There is no intention for this site to accommodate general vehicular traffic from the wider allocation. However, it is prudent to ensure that should there be a desire for buses, which may serve the wider allocation, to pass through this development to link up with Ladybank Road in the future and therefore the Masterplan incorporates bus access points. One of those bus access points would be on the western boundary of the application site adjacent to the wider allocation with a second bus access point through a small area of open space shown in the Masterplan onto Taplow Close which can be widened by utilising the existing highway verge and removing the modest street trees. In addition to this the indicative road network shown on the Masterplan contains a 6m wide road between the two bus access points. The point of these provisions is to allow a connection to Ladybank Road which currently serves the Micklegate bus service which links into the district centre, the Derby Royal Hospital and city centre beyond. The need for this provision would be examined as part of any further planning application and resulting modelling for the wider allocation but it is considered prudent at this stage to future proof the layout of this scheme to accommodate that eventuality should it be considered necessary and to ensure that this development does not prejudice its delivery.

The highway safety implications of the development are considered to be acceptable to the County Highway Authority provided the City Council accepts the proposal, since most impacts would be within the city. It is also noted that the Highways Agency raises no objection to the proposal in terms of the impact on the strategic road network. The City Council initially raised concerns about this site coming forward in isolation stating that a comprehensive approach should be taken to the wider area to ensure the best outcome in terms of sustainability, design, school place needs and transportation. A piecemeal approach to development in this area may not achieve this. They wanted this application to assess the traffic impact of the development on the city's road network as the wider area needs to be modelled as a whole taking account of the cumulative impact of all of the development in the Housing Market Area. Whilst the impact of this proposal is very different to the impact of development of the whole of the wider site, the City Council is concerned that piecemeal development may fail to provide effective mitigation for the wider development of the area.

Whilst the transport modelling is currently being prepared it will take time to be run and considered. However, the applicants have agreed that they would be prepared to contribute a proportion towards the mitigation measures that would be required to mitigate the impact of the wider allocation which now includes this site. The transport modelling will identify what impact will result and form the basis for a mitigation strategy. It is worth noting in this context that the modelling is designed to look at the extent of necessary mitigation only and not to determine the principle of development.

It is noted that the City Council have not raised objections to the Swayfield Close or Greenside Court access points for access for general traffic, in fact the Greenside Court access has been downgraded to a private drive in order to reduce the impact of that road on the group of trees to the east of that access in line with concerns they did raise in that regard. No comments have been received from the City on the amended Masterplan which includes the bus access points and provision of bus access to Taplow Close. Looking at the proposals, however, it is considered that the use of Taplow Close would be more appropriate for buses due to its width (taking into account the highway verge) and being straighter, rather than Swayfield Close which is narrower and has a bend. It is acknowledged that at certain times the local roads are very busy, as are the routes that provide access into the city centre and its more comprehensive services. However, the proposal does provide appropriate accessibility and offers realistic opportunities for the use of alternative modes of transport to and from the Mickleover area and the city centre as well as towards schooling and leisure facilities in Etwall. There is no evidence to show that the proposed development would have any undue impact on the highway network and thus the potential to affect the wider transport infrastructure.

The NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In this case there is no evidence that the cumulative impact would be severe and as such the proposal is thus considered to be in conformity with Local Plan Saved Transport Policy 6. It is considered appropriate for this development to contribute towards a proportion of the package of traffic mitigation measures that are likely to result from the wider allocation and for which this is a part. Notwithstanding the comments received, in highway safety terms, subject to a contribution to the traffic mitigation measures yet to be identified, the proposal is considered to be acceptable.

Ecology

The submitted ecological reports found that in terms of wildlife and protected species there were no significant constraints in those regards and the submitted reports were assessed by Derbyshire Wildlife Trust considers that the ecological reports have generally been undertaken appropriately. They initially raised concerns in respects of badgers but additional information satisfied those concerns. Subject to the recommended conditions of Derbyshire Wildlife Trust biodiversity at the site would be adequately accommodated.

The site contains numerous trees and hedgerows including significant groups at the access to Greenside Court as well as along existing field boundaries. The Masterplan, whilst illustrative, respects the trees and hedges on site and indicates the retention of many of the trees, including some within areas of public open space, either in hedgerow corridors or the formal open spaces. Concerns were raised in regards the group of trees at the end of Greenside Court. This element of the proposal has been amended so that the 10 dwellings accessed from the end of Greenside Court would be served from a private drive. This will reduce the physical engineering works required from the fully adopted road and footways originally proposed. This is broadly welcomed and would contribute to the character of the development as well as retaining wildlife habitat.

Overall it is considered that the ecological interest on and around the site, in terms of important habitats and protected species, has been properly assessed and suitable mitigation measures and new habitat areas are proposed to safeguard the nature conservation value of the site during and following construction of the development. Derbyshire Wildlife Trust considers that the ecological works have been undertaken to an appropriate standard and that they enable an accurate assessment to be reached. Mitigation can be secured by way of the imposition of appropriately worded conditions.

Any loss of habitat would be appropriately replaced elsewhere on the site and potential disturbance to protected species and habitats would be subject to a suitable scheme of mitigation and enhancement measures.

Urban design & open space

The application is in outline only and all matters except for access are reserved for future approval therefore it is not possible to carry out a full Building for Life assessment at this stage. Nevertheless, the proposal presents some key aspects that would form the basis of a good scheme in urban design terms. It would be close to a frequent, high quality public transport facility which routes along Ladybank Road serving the city centre, Derby Royal Hospital and Mickleover District Centre and within an acceptable distance of numerous facilities within the city, including educational, commercial and community facilities that help to make it a sustainable development. The illustrative Masterplan has evolved in conjunction with and incorporating features promoted by the Council's Design Excellence Officer and it is considered that the Masterplan provides a sound basis from which the development can be planned and evolved. Issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions, although the principle objectives for these to reflect the thrust of the Masterplan can be secured by condition at this stage. In view of the urban design and open space matters considered above, the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policy 4 of the Local Plan.

Residential amenity

The site is immediately adjacent to the established residential properties on Daventry Close, Naseby Close, Swayfield Close, Taplow Close, Whenby Close, Greenside

Court and Ladybank Road and the development of the site would clearly have a significant impact on the nearest of those properties. However, the proposals show that adequate separation could be achieved to deliver the development, even taking into account site levels, to ensure that occupiers of those dwellings would not be unduly affected by the proposal although the interrelationship between the new homes and those existing would be properly assessed at reserved matters stage. A layout and design that accords with the Council's adopted residential space guidelines would be assessed at reserved matters stage and the site therefore provides ample scope for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping. The biggest impact of the development would be on the occupiers of Swayfield Close, Greenside Court and Taplow Close due to the introduction of vehicular traffic on what are mostly currently quiet roads and the significant increase in noise, general disturbance and pollution. However, these impacts are not considered to reasonably justify refusal of the application when balanced against the wider benefits of the development. In terms of policy compliance the proposals are considered to be in accordance with Local Plan Saved Housing Policy 11.

Drainage and flood risk

Severn Trent Water does not lodge an objection and evidence suggests there is sufficient capacity to receive foul water flows from the development though it is anticipated that an on-site pumping station would be required. The company would have a duty to ensure that the development is served by adequate water supply under the relevant legislation. A conditional approach is considered appropriate in regards to foul water. The preferred option is for surface water to be drained to the watercourse to the north of the site beyond the Sustrans route. The Environment Agency raised no objection and the County Flood Risk Team is satisfied that their concerns have been addressed and that the site can be appropriately drained. Localised problems with surface water flood water from the fields that are the subject of the application affecting homes in the city, mean that this issue is of particular importance locally. However, Sustainable Urban Drainage System (SUDS) principles are to be incorporated into the scheme, as shown on the illustrative Masterplan in the form of swales and surface water attenuation areas to the west of the housing. The Environment Agency and County Flood Risk Team have stated that they raise no objection to the proposal subject to conditions and that would secure the requisite details of surface water drainage, fulfilling policy objectives to ensure flood risk is not exacerbated on or off the site. Notwithstanding the comments submitted, in terms of flood risk the proposal is considered to be acceptable.

Heritage impacts

In terms of heritage assets as defined by the NPPF, the overall development site does not contain any designated heritage assets, i.e. Listed Buildings, Scheduled Monuments, Conservation Areas, etc. However, there is a recognised archaeological interest on and around the site, in terms of evidence of medieval agriculture (ridge and furrow field patterns). The proposal would not impact on Micklegate Conservation Area or listed buildings around the historic core of the village. There

are, however, a number of listed buildings that the development would potentially impact on the setting of which have been analysed in more detail.

Radbourne Hall is a particularly important Grade I listed building which is surrounded by a significant parkland setting designed by Emms but the impact on the heritage assets is considered to be negligible. The hall is not orientated towards the site so the vistas over the parkland in both directions would not be impacted. There would be a very minor change in the significance as when viewed from the roof of the hall in winter part of the site can be seen. However, due to heavy belts of planting, the separation distance, and the fact that other modern housing on the edge of Derby impacting on this view means that the impact would not be significant. The other impacts are on three listed farmhouses. The greatest potential for impact would be on the setting of Potlocks farmhouse. This is orientated north west and faces out towards the proposed housing across the valley. The house was designed with this orientation to take advantage of the vista and as such there is an impact on its significance. This impact would be less than substantial harm as there is not an impact on the physical fabric and the application site is not part of the designed landscape. It is located some distance from the site and beyond the 19th century railway line which creates the feel of visual separation between the two areas of land that prior to this may have been linked. In addition there is some planting between the site and the farmhouse and additional buffering proposed. Whilst there is an impact on the setting of the building which does cause some harm above the level of negligible, this harm needs to be given special weight in any consideration when deciding to grant consent or not.

The second farmhouse that would be impacted would be Smerrills Farmhouse. This is situated beyond 1km of the site, however, due to its scale and the topography whilst there would be an impact on its significance it is considered that this impact would be less than substantial and slightly above negligible as it would impact on the wider setting of the farmhouse and views from the upper storey. This has been limited by the tree planting and the distance from the site and thus the impact on the significance would be well below moderate on the level of harm scale.

The final farmhouse that would be impacted would be Silverhills Farmhouse. This is also situated beyond 1km of the site but due to the topography there may be an impact on its wider agricultural setting. This impact is very limited due to the distance involved, the existing planting and the proposed additional landscaping. As such whilst views may be available from the attic storey it is considered that the impact on the setting of this building would be only slightly above negligible.

The desk based assessment and geophysical survey of the archaeological interest on the site have identified that there is potential archaeology within the site, although there are unlikely to be remains of significant historic significance. The County Archaeologist raises no objection subject to conditions in line with NPPF para 141. This approach is considered to be appropriate and proportionate and as such would be compliant with Saved Environment Policy 14 and NPPF Chapter 12.

Overall, it is considered that the proposed development would respect and safeguard as well as the potential archaeological interest on the site. However, in line with the advice of the Council's Conservation Officer the limited impact upon the setting of

affected listed buildings in the area must be considered in the planning balance outlined in the NPPF paragraph 134 (see below).

Landscape and visual impacts

The site carries no statutory or local landscape designations. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by appeal decisions, is to first determine what value the landscape has before reaching a balanced response to the proposals. A recent high court ruling has also shed light on this approach, and it is necessary for the site to have some physical feature or association which elevates it above being just open countryside.

The application is supported by a Landscape and Visual Impact Assessment (LVIA), which has already been summarised elsewhere in this report. However, in order to fully assess the contents and conclusions of the LVIA, the Local Planning Authority has engaged the services of a Landscape, Architecture and Environmental Planning Consultant who has undertaken a review of the LVIA and has provided advice by way of a report setting out his findings. He starts by stating that the LVIA appears to correctly indicate the 'zone of visual influence', and it has been used to influence the design of the proposed layout of this residential development on the outskirts of Mickleover. He states that whilst the development would clearly lead to the loss of open countryside, this particular area of land is fairly well enclosed and is a natural evolution of the existing settlement, leading off a number of existing cul-de-sacs along the current boundary of the settlement. The layout and, importantly, the landscape belt along the western edge of the new development provide a sensitive residential development that respects the landscape and setting of the local area. These landscape changes result in the loss of open countryside but the potential harm has been mitigated by careful understanding of the key views into and out of the site; by careful design of the layout to respect these issues; and, the retention and use of the existing hedgerows and woodlands to provide a structural layout for the site. These mitigation measures would reduce the impact of the loss of open countryside and the development's adverse effects on the local landscape and the existing settlement edge in particular.

One of the core planning principles in NPPF at paragraph 17 is to recognise the intrinsic character and beauty of the countryside and states that the countryside has an intrinsic beauty and it has to be acknowledged that the site is located within an attractive rural scene, on the edge of the city. However, this can be mitigated to a certain extent through good design. There is a clear opportunity to provide a built form that creates a high quality environment incorporating local distinctiveness in accordance with paragraph 60 of the NPPF and Saved Housing Policy 11 of the Local Plan. Whilst the detail would be considered at reserved matters stage, the submitted Masterplan and Design and Access Statement provide a sound basis for this to happen and the development would appear as a logical extension to the city.

Affordable housing

Emerging policy sets a starting point of 30% of the dwellings to be for affordable housing purposes, whilst the NPPF advocates a need to provide a range of housing options. The Strategic Housing Market Assessment (SHMA) also evidences such a need. As a starting point the first option would be for on-site provision to provide 30% of the dwellings for affordable purposes giving rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision. These would consist of 75% for rent with 25% intermediate housing. A second option would be for the affordable housing to be built on an alternative site in the SDDC Derby Fringe Sub-housing market area; or Option 3 is to pay a commuted sum to the equivalent value to support delivery of affordable housing in the SDDC Derby Fringe Sub-housing market area with the option for the commuted sum to be used to purchase properties. These options are in line with negotiations undertaken by the Council's Housing Strategy, Development & Regeneration Manager, and these options should be secured through a Section106 Agreement. The delivery of affordable housing is highly material and recent appeal decisions in the District have seen Inspectors afford significant weight to this element of housing provision alone.

Section106 contributions

As referred to above the Council's Housing Strategy, Development & Regeneration Manager advises that there is a need for affordable housing and her request for 30% on site affordable housing with a split of 75% for rent and 25% for intermediate housing is appropriate. She does, however, also require the option for the housing to be provided off-site in the SDDC Derby Fringe Area or a financial contribution paid in lieu of on-site provision to deliver house in the SDDC Derby Fringe Area, subject to the District Valuer calculating the appropriate sum.

The County Planning Policy Officer seeks developer contributions that would likely be required as a result of the anticipated impact of the proposed development on strategic infrastructure and statutory services. These include:

1. £569,950.00 (equivalent of 50 primary pupil) towards the creation of a new primary school to serve the whole of the New House Farm development, subject to a review of normal areas;
2. £652,688 for 38 secondary pupil places to be used towards the adaptation of classrooms at John Port School (John Port School Year 7 to Year 11 classroom Project D) or, subject to a review of normal areas, to be utilised for the creation of a new secondary school as defined by the proposal for Derbyshire County Council's Secondary School; and
3. £279,405 for 15 post-16 pupil places at John Port School to be used towards the adaptation of classrooms at John Port School (John Port School Post 16 classroom project D) or, subject to a review of normal areas, to be utilised for the creation of a new secondary school as defined by the proposal for Derbyshire County Council's Secondary School strategy.

In terms of ensuring appropriate connectivity as envisaged in the Masterplan there is a need to secure provision for upgrading Footpath 8 to a cycle link through the site

between Greenside Court and the Sustrans route to the north. Furthermore, securing the provision of bus access points to link the western edge of the site to Taplow Close served by a road through the site of an appropriate width to accommodate buses as well as measures to prevent the bus access points from being used by cars, are considered appropriate.

In terms of open space a generous amount would be provided on the site, as well as a play area. No outdoor sports or built facilities would be provided on site but the development would lead to additional pressure on existing facilities elsewhere. In order to address these matters a S106 contribution towards built and outdoor facilities is required towards improvements in the area in line with the Council's adopted standards which is formula based depending on the number of bedrooms. As this is unknown at this outline stage it would be the usual practice to assume an average number of bedrooms of 2.5 per dwelling, thus equating to in the region of £30,744 for built facilities as well as £138,600 for outdoor sports facilities. However, the final layout and housing mix has yet to be confirmed. Consequently the Section 106 agreement (S106) should be worded to reflect this scenario and refer to the relevant formula set out in the document. The S106 should also secure the provision of a quantum of public open space on site in line with the provision shown on the illustrative Masterplan, suitably equipped.

The contribution of £95,860 requested by the NHS Southern Derbyshire CCG towards Mickleover Surgery and Mickleover Medical Centre expansion is considered reasonable.

The County Council request a Travel Plan monitoring contribution secured through the Section 106 Agreement of £5,000 and in addition, a Greenways contribution to be agreed for the Mickleover Greenway/NCN 54.

In the interests of ensuring a holistic approach to S106 contributions it would be reasonable for the wording of the Agreement to include the option for some of the contributions to be directed towards the remainder of the wider development site for more centralised facilities that may be provided. The S106 should allow for the contributions relating to healthcare and primary education as well as securing a proportion of the costs associated with a new community facility and any highway mitigation measures that may be required as defined by the results of the transport modelling associated with the wider site. It is not envisaged that the wider site will include provision for a new secondary school. It should also be noted that at this stage for certainty in the short term, the £569,950.00 for 50 primary pupil places ought to have the option to be used for the creation of additional classrooms at Etwall Primary School in case the delivery of the wider housing development and associated school is not realised.

From a planning point of view legislation states that there are legal tests for when a S106 agreement can be utilised and these are set out in regulation 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended (and as set out in para. 204 of the NPPF). S106 agreements, in terms of developer contributions, need to address the specific mitigation required by the new development. The tests are that they must be:

1. Necessary to make the development acceptable in planning terms

2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

In this case it is considered that the provision of the affordable housing; contributions towards primary education (but to include the option for the sum to be directed to Etwall Primary School); secondary and post-16 education (but to exclude reference to the creation of a new secondary school); healthcare (to include the option for it to be directed to a new facility on the wider site); the provision of on-site open space and equipment as well financial contributions for off-site built and outdoor facilities and off-site open space; the upgrading of the footpath to a cyclepath; the provision of bus access points and roads designed to accommodate buses; a contribution to a community facility on the wider site and highway mitigation measures as identified through the traffic modelling for the wider site are compliant in principle.

The County Council request for the option for the secondary and post-16 sums to be used for the creation of a new secondary school as defined by the proposal for Derbyshire County Council's Secondary School may not be CIL compliant as that project is not advanced sufficiently to do so and hence those elements of the S106 should refer only to John Port School for those sums as specific projects have been identified. Their requests for a Travel Plan monitoring contribution and a Greenways contribution for the Mickleover Greenway/NCN 54 are not considered to be CIL compliant.

As the wider transport modelling has still to be finalised and appropriate mitigation measures identified, it is recommended below that the detail of the Section 106 agreement be delegated to the Planning Services Manager to negotiate.

Planning balance and overall conclusion

The above assessment demonstrates that all the 'technical' issues associated with the proposed development would be acceptable, subject to conditions or obligations, where necessary. The provision of up to 252 dwellings towards the Council's housing needs must be afforded significant weight especially in light of the current shortfall in the five year housing supply. The provision of 30% affordable housing would help meet affordable housing needs and also adds further weight in favour of the proposal. Furthermore, in terms of the planning balance, the following additional benefits will result from the development in terms of the so social and economic aspects of sustainable development:

1. Delivering a supply of housing.
2. Delivery of affordable housing.
3. Retention of existing key hedgerows and extensive additional planting as part of the development and net biodiversity gains.
4. Construction jobs throughout the development and in the supply sector linked to the development industry.
5. Increased expenditure in the local area which would increase the viability of local services and facilities.
6. The provision of Council Tax payments and New Homes Bonus payments to the Council.
7. Supporting growth by ensuring sufficient land of the right type is available in

- the right place at the right time.
8. The provision of appropriate planning contributions to ensure the on-going provision of services and facilities.
 9. The provision of open space, including play provision and enhanced cycling facilities within the development, which will benefit both existing and future residents.
 10. The ability to deliver the proposals in full within 5 years and thus make an immediate contribution to housing need.

In environmental terms the landscape and visual impacts are considered to be acceptable if the development is delivered in accordance with the Masterplan and the provision of planting within the site in terms of biodiversity will add further to the environmental element of sustainable development.

In terms of the impact of the proposals on the heritage assets these must be weighed up in the planning balance outlined in the NPPF at paragraph 134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The biggest impact on the surrounding heritage assets would be on Potlocks farm which we judge to be below the level of moderate and less than substantial harm. The other assets impacted Silverhills and Smerrills farmhouse would be harmed close to but above the level of negligible. It is considered that neither the harm to these heritage assets nor the impact on neighbours resulting from noise, general disturbance or pollution resulting from traffic accessing the site via Greenside court, Swayfield close or Taplow Close, nor increases in traffic or pollution on the wider road network, would outweigh the overall benefits.

The absence of a five year housing land supply does not mean an automatic approval must follow it merely affects the weight which may be afforded to the Development Plan, but the NPPF must still be considered in the round and in the eyes of sustainable development, as set out in paragraphs 6 to 8. Hence, when considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered these have been adequately addressed and none of the disadvantages of the scheme would outweigh the benefits outlined above. The proposal is, therefore, considered to be sustainable in overall terms and in this light it is considered that the benefits of the development outlined above are clearly and demonstrably outweighed by any of the adverse impacts of the proposal. As such the development is considered to be unacceptable.

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

Recommendation

- A.** That delegated authority be granted to the Planning Services Manager to secure the appropriate level of contributions for mitigation of the impact of the development under Section 106 of the Town and Country Planning Act 1990 (subject to compliance with the CIL Regulations 2010);

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

1. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for the development shall be obtained from the Local Planning Authority in writing before any development is commenced. Plans and particulars of the reserved matters shall be submitted in writing to the Local Planning Authority and the development shall be carried out as approved.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

2. a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

3. No part of the construction of any of the dwellings hereby approved shall take place 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 that particular dwelling 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 character and appearance of the area.

4. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2012.

The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

Reason: To ensure adequate protection measures are in place in the interests of the character of the area.

5. Prior to the construction of any of the floorslabs of any of the houses hereby permitted details of the finished floor levels of each building shall have first been submitted to and approved in writing by the Local Planning Authority. The buildings shall be constructed in accordance with the approved details.

Reason: In the interests of visual amenity and to protect the amenity of neighbours.

6. Prior to the construction of any dwellings a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra Non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the occupation of any of the dwellings.

Reason: In the interests of flood protection.

7. The reserved matters submitted in accordance with condition 1 and details submitted in accordance with any other condition of this planning permission shall accord with the principles outlined in the revised Design and Access Statement ref: BIR_4643_12B dated February 2016 and the amended Indicative Masterplan ref: BIR_4643_20, dated 8th February 2016.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

8. No development shall take place until details of the materials proposed to be used within the phase on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenity of the area.

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

Reason: To protect the amenity of residents.

10. During the period of construction, no plant or machinery shall be used outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: To protect the amenity of residents.

11. The access from Greenside Court shall be a private drive serving no more than 10 dwellings and shall be implemented incorporating features which limit access to that private drive to the 10 dwellings which it serves. Details of measures to prevent vehicular access to Greenside Court from the remainder of the development shall be submitted to and approved in writing before the private drive to Greenside court is first brought into use. The measures shall

be implemented before the private drive to Greenside court is first brought into use and shall be retained in place as approved throughout the lifetime of the development.

Reason: In the interests of highway safety and to protect the adjacent trees in the interests of visual amenity.

12. No part of the development shall take place until details of the proposed means of disposal of foul sewage for the phase have been submitted to and approved in writing by the Local Planning Authority. All foul water shall be directed into the main foul sewerage system. The development shall be carried out in accordance with the approved details.

Reason: To ensure that adequate drainage facilities are provided.

13. 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.

14. The internal layout of the site shall accord with the Highway Authority's Policy Document ""6C's Design Guide"" and national guidance laid out in Manual for Streets.

Reason: In the interests of highway safety.

15. The gradient of the new road shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.

16. Any full or reserved matters application should be accompanied by a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site.

Reason: In the interests of highway safety.

17. The new dwellings shall not be occupied until the proposed new estate street, between each respective plot and the existing public highway, has been laid out in accordance with the approved application drawings to conform to the County Council's Design Guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

18. No dwelling shall be occupied until surface water drainage works have been implemented in accordance with the approved details required by condition 6 have been submitted to and approved in writing by the Local Planning Authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable

drainage system and the results of the assessment provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: 1) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; 2) include a timetable for its implementation; and 3) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: In the interests of flood protection and highways safety.

19. Prior to the first occupation of any dwelling, space shall be provided within the site for the parking and manoeuvring of vehicles in accordance with 6C's Design Guide, maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions should not be less than 3m x 6m.

Reason: In the interests of highway safety.

20. Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to its designated use.

Reason: In the interests of highway safety.

21. Prior to the construction of any dwelling, the Travel Plan, submitted with this application shall be amended in accordance with the attached comments. The approved details shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures in accordance with the objectives of the Travel Plan shall be submitted annually to the Local Planning Authority for approval for a period of five years from the date of first occupation of the relevant phase of the development. In the event of an annual report concluding that the objectives of the Travel Plan are not being met, the annual report shall also include for the approval of the Local Planning Authority a scheme detailing remedial measures to be undertaken in order to achieve the objectives of the Travel Plan, as well as a timetable for the implementation of the remedial measures. The scheme detailing the remedial measures shall be implemented as approved and in accordance with the approved timetable.

Reason: In the interests of highway safety.

22. 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 human health.

23. 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
- (i) The programme and methodology of site investigation and recording
 - (ii) The programme for post investigation assessment
 - (iii) Provision to be made for analysis of the site investigation and recording
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - (v) Provision to be made for archive deposition of the analysis and records of the site investigation
 - (vi) Nomination of a competent person or persons/organization 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.
- 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 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To ensure that archaeological interests at the site are suitably addressed.

24. Prior to commencement of development a walkover badger survey of the site shall be undertaken and results submitted and approved in writing by the Local Planning Authority.

Reason: To ensure that ecological interests are protected in accordance with paragraph 118 of the National Planning Policy Framework; in order to control impacts from the outset as an early incursion could otherwise not be rectified.

25. No development shall take place (including demolition, ground works and vegetation clearance) until a grassland survey of the north - western fields undertaken at an appropriate time of year has been submitted to and approved in writing by the Local Planning Authority. The survey is needed to help inform the use of this area for greenspace / open space and to ensure that management is optimised to the existing habitat interests.

Reason: To ensure that ecological interests are protected in accordance with paragraph 118 of the National Planning Policy Framework; in order to control impacts from the outset as an early incursion could otherwise not be rectified.

26. No development of any phase shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP:Biodiversity shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period of the relevant phase strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that ecological interests are protected in accordance with paragraph 118 of the National Planning Policy Framework; in order to control impacts from the outset as an early incursion could otherwise not be rectified.

27. Before development of any phase begins a landscape and ecological management plan (LEMP) for all retained and created habitats shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed / created.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details for each relevant phase.

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

28. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), prior to the erection of boundary treatments plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of visual amenity.

29. No development shall commence until the Local Planning Authority has approved in writing the details of and arrangements for the setting out of the public open space within the development. Such arrangements shall address and contain the following matters:

- (i) The delineation and siting of the proposed public open space within the development.
- (ii) The type and nature of the facilities to be provided within the public open space, including where appropriate the provision of play equipment within a play area, which shall be supplied and installed to a specification as agreed by the Local Planning Authority.
- (iii) The arrangements to ensure that the public open space is laid out and completed during the course of the development.
- (iv) The arrangements for the future management and maintenance of the public open space.

The public open space within the development shall be completed in accordance with the approved details.

Reason: To ensure adequate and appropriate open space and associated facilities are provided.

Informatives:

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

The applicant is advised that following consultation with Derbyshire County Council Rights of Way Section, they advise the following as a result of Radbourne Public Footpath No.9 abutting the site:

- a) The route must remain open, unobstructed and on its legal alignment at all times.
- b) There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area.
- c) Consideration should be given to members of the public using the route at all times.
- d) 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.
- e) 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.

The proposed development should be designed to accommodate a potential bus route and provision should be incorporated on any reserved matters application layout with roads of a minimum width of 6m and including submission of a swept path diagram of a bus.

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 English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

The applicant is advised that following consultation with Derbyshire County Council, they advise the following:

- a) The developer makes enquiries with broadband providers and ensures that future occupants have access to sustainable communications infrastructure, giving appropriate thought to the choice and availability of providers which can offer high speed data connections. Further advice can be found at:

http://www.openreach.co.uk/orpg/home/contactus/connectingyourdevelopment/downloads/developers_guide.pdf

The application is the subject of an agreement under Section 106 of the Town and Country Planning Act 1990.

12/04/2016

Item **1.2**

Reg. No. **9/2015/0555/RSD**

Applicant:
Bloor Homes Midlands Ltd
c/o agent

Agent:
Miss Joanne Althorpe
Pegasus Group
Unit 4 The Courtyard
Church Street
Lockington
DE74 2SL

Proposal: **APPROVAL OF RESERVED MATTERS (EXCEPT LANDSCAPING) ON LAND SUBJECT TO OUTLINE PERMISSION 9/2013/1040 FOR 100 DWELLINGS, PUBLIC OPEN SPACE, DRAINAGE AND ASSOCIATED WORKS ON LAND AT SK2731 3037 WILLINGTON ROAD ETWALL DERBY**

Ward: **ETWALL**

Valid Date: **24/08/2015**

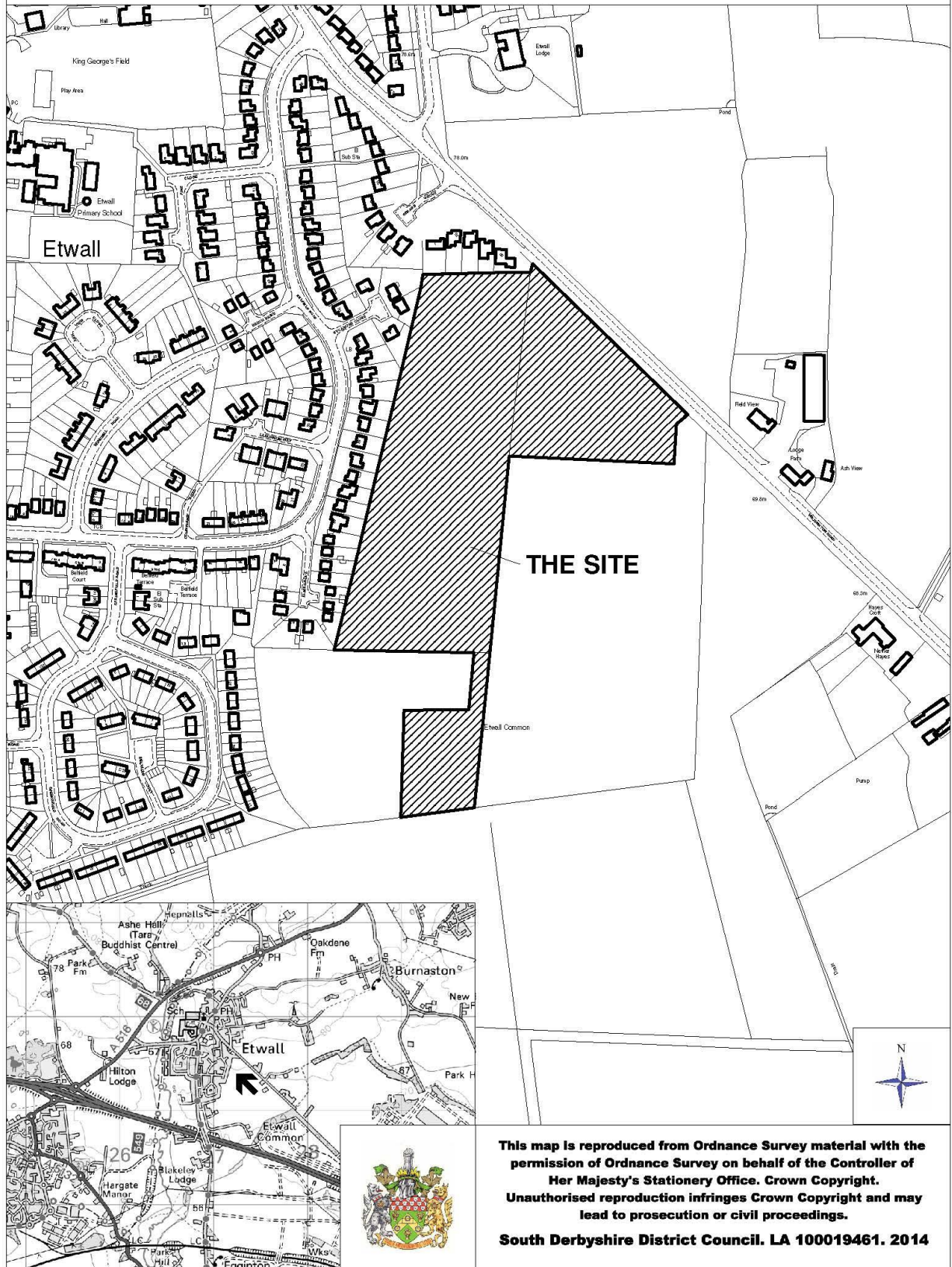
Reason for committee determination

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

Site Description

The application site comprises agricultural, greenfield land, situated to the south of Willington Road and a number of properties on that frontage, east of properties on Belfield Close, Sycamore Close and Elms Grove. The site has mature hedges on the Willington Road frontage, punctuated by numerous mature trees with hedges on the eastern boundary and southern boundaries and a hedgerow crossing the middle of the site in a north-south direction. The land levels across the site drop significant from Willington Road to the southern boundary with a fall of up to approximately 9m though they are consistent across the site in an east-west direction. Etwall Lodge, a Grade II listed building, is located to the north of the site, across Willington Road and an Ash tree protected by TPO 285 is located adjacent to the location of the proposed water attenuation pond.

9/2015/0555 - Land at SK2731 3037 Willington Road, Etwall, Derby (DE65 6JN)



Proposal

The application seeks approval of Reserved Matters for access, layout, scale, appearance but specifically not landscaping for the erection of 100 dwellings and associated infrastructure such as roads, sustainable urban drainage systems (SuDS) and open space. The application relates to outline permission originally granted permission for up to 100 dwellings and which is subject to a Section106 Agreement.

Planning History

9/2013/1040 - Outline application (all matters reserved) for development of up to 100 dwellings, public open space, drainage and associated works – Resolution to approve at Planning Committee meeting held 16/09/2014 and permission issued on 01/04/2015 following the completion of the signing of the S106 Agreement.

9/2015/0354 - Outline application with all matters reserved for the development of up to 99 dwellings, public open space, drainage and highways infrastructure – Resolution to approve at Planning Committee meeting held 27/10/2015, S106 Agreement still under negotiation.

Responses to Consultations

The Police Crime Prevention Design Adviser comments that most matters are good from a crime prevention perspective but asks for secure garden gates at the fronts of shared accesses plus additional windows to specific plots.

The County Flood Risk Management Team comments that they have no objection subject to conditions relating to surface water drainage; the destination for the surface water and that drainage incorporates surface water treatment stages. In response the outline permission adequate controls the submission of surface water drainage details by virtue of appropriately worded conditions.

The Open Space and Facilities Manager has been involved in negotiations with the agent and advises that the layout is acceptable in terms of play provision, landscaping and public open space.

The Design Excellence Officer advises that the amended layout is considered acceptable and recommends the green screens proposed be trialled on two corner plots with the remainder brick walls. Materials require further negotiation and should remain a condition of the outline and barge boards, soffits and fascia should be black in colour.

The County Highway Authority advises that the proposed layout is acceptable and the widening of Willington Road and footway should extend along the entire site frontage as indicated on plans submitted for Phase 2 (9/2015/0354). Conditions were attached to the outline permission 9/2013/1040.

The Housing Strategy, Development and Regeneration Manager advises that the proposed housetypes and tenure mix complies with the outline S106 agreement.

However, she considers that the clustering of 20 affordable housing units does not comply with the 'contiguous' statement referred to within the agreement.

Responses to Publicity

Etwell Parish Council object to the proposals on the following grounds: there are eleven three-storey dwellings but the outline only shows one and these are out of keeping and would dwarf the neighbours; there are no single storey properties and there is an identified need dating as far back as 2006; there is no landscaping detail; the SUDS pond appears too small and has the potential for deep water; swales adjacent to play areas is a hazard and the roads would not accommodate the development by others proposed to the south. Comments on the amendments are that they approve of the relocation of the three storey dwellings from the Bellfield Road boundary, require assurances that the landscaping screen to existing houses would be incorporated and protected legally or through a TPO, they can't locate the play equipment on the amended plan and would the new road in the south western corner be retained.

17 letters of objection were received on the consultation on the original plans. These can be summarised as follows:-

- a) It would increase traffic using the Willington Road / Main Street Junction.
- b) There is a high level of traffic through the village at peak times in association with Etwell Primary School and John Port School.
- c) A footpath route from the site to Etwell Primary school should be considered to reduce school traffic and encourage walking.
- d) The proposal would impinge on the rural nature of the village.
- e) The medical and educational facilities are at capacity and would not cope with an increase.
- f) Require assurances as to whether the sewerage system capacity would be able to accommodate the increase in population.
- g) Landscaping has not been included which directly affects properties adjacent to the northern and western boundaries in terms of potential shading and maintenance of the 5m landscape buffer.
- h) There is an ownership issue on the northern boundary in relation to the hedge and ditch which should not be left to the phase 2 part of development.
- i) The lack of landscaping detail means that the mitigation of impacts on existing properties cannot be assessed.
- j) There is no detail regarding the maintenance of rear boundaries of existing properties.
- k) External material and lighting should be included in the application.
- l) The heights of the proposed properties are not in keeping with the height and scale of existing properties.
- m) Details of the sewer diversion are unclear.
- n) The ridge height of the proposed adjacent property and garage are higher than 1 Elms Grove and the land level is also higher.
- o) Three storey properties are out of character with existing properties in the area.
- p) The hours of construction should be reduced to end at 18:00 and not 19:00.
- q) Overlooking and loss of privacy of properties on Elms Grove and Belfield

Road.

- r) House types made be changed in the future and may be higher than approved.
- s) The affordable housing is concentrated in the corner adjacent to existing properties.
- t) The proposal is nothing like the original outline plan.
- u) The application should be rejected until the local plan is in place.

11 additional letters following a re-consultation on the revised plans have been received and additional comments (not included above) are summarized below:-

- aa) The amended plans do not include building heights.
- bb) A section of hedge on the eastern boundary has been removed without landscaping being agreed.
- cc) The buffer zone should not be included in the garden area and/or conveyance to the future residents as it would be encroached upon over time and the fencing proposed is likely to be removed.
- dd) There is no indication of the proposed location of the site compound.
- ee) The proposed garage on plot 19 would shade the greenhouse of 1 Elms Grove.
- ff) Existing hedgerows on site have recently been removed.
- gg) The ridge heights of proposed garages at 4.5 m is considered out of keeping and they should be positioned away from boundaries.
- hh) They appreciate that the developers have amended the garden depths in light of residents comments.
- ii) The site sections plan does not match the site layout, specifically in relation to section F

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 5, 8, 9, 11 and 14 Environment Policy 1, Transport Policy 6, Recreation and Tourism Policy 4.

Emerging Development Plan Policies:

Policy S1: Sustainable Growth Strategy

Policy S2: Presumption in Favour of Sustainable Development

Policy S4: Housing Need

Policy S6: Sustainable Access

Policy H20: Affordable Housing

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3: Delivering Sustainable Water Supply, Drainage and Sewerage

Policy BNE1: Design Excellence

Policy INF2: Sustainable Transport

Policy INF7: Green Infrastructure

Policy INF9: Open Space, Sport and Recreation

National Guidance

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

Local Guidance

SPGs - Housing Design and Layout, Better Design for South Derbyshire.

Planning Considerations

Planning permission has been granted in outline for this development therefore the principle of the development is established through that extant outline permission (9/2013/1040). This application seeks approval of details of access, layout, scale and appearance only; landscaping would be subject to subsequent application, consultation and consideration. This reserved matters application relates to the erection of 100 dwellings and associated open space and also access.

In view of the above the main issues in regards to the consideration of this application are considered to be:

- Compliance with the outline permission,
- Highway safety,
- Design,
- Affordable housing,
- Impact on trees, and
- Impact on neighbours.

Planning Assessment

Compliance with the outline permission.

When the outline permission was granted condition 3 of that permission required the reserved matters to comply with the concept Masterplan and accompanying Design and Access Statement (DAS). Condition 17 requires the internal site layout to accord with the “6C’s Design Guide” as well as “Manual for Streets” and condition 23 also requires the reserved matters application to include swept path diagrams to show access for emergency and service vehicles whilst condition 24 requires a Travel Plan be submitted. It is also noted that the reserved matters had to improve the relationship with existing residents adjacent to the site relative to the concept Masterplan. The submission generally accords with the concept Masterplan and DAS which accompanied the outline application whilst in order to improve the relationship to the neighbours adjacent a 5m wide landscaping area is indicatively shown with separation distances between the existing and proposed dwellings exceeding the Council’s adopted standards. Swept path diagrams have been submitted for consideration and whilst the Travel Plan has yet to be submitted there is to be a further outline application for a subsequent phase of development which could more appropriately include this at that stage. In view of the above it is considered that the submission complies with the requirements of the outline.

Highway safety

Approval of the means of access is for consideration as part of this application and a new access to Willington Road, to the east of the existing field gate access, is proposed along with the provision. The internal layout has been designed to not only allow the access to this development but for it to also serve the next phase of development which has a resolution to approve subject to the completion of the S106 Agreement. An extension of the footway and street lighting from Willington Road to allow access for pedestrians between the site and the village is shown. The road layout includes design features to define the street hierarchy and emphasise important junctions for legibility through the site. Pedestrian links through the site which would also connect with the paths and public open spaces within the next phase of development are also shown. Off-street parking takes the form of generally on plot parking solutions. The safety of the access and appropriateness of the internal road layout for the development is considered to be acceptable to the County Highway Authority. As such the proposals are considered to be acceptable in highway safety terms.

Design

Significant negotiations have taken place between officers and the applicant to ensure an appropriate design and layout is achieved. These included alterations to the access, feature properties set on prominent corners in the site to provide a double frontage, improving the natural surveillance of the street and appropriately addressing public open space as well as ensuring connectivity within the site. The appearance and layout of the proposed development is considered on balance to be acceptable and appropriate for the site. The house types create a strong character for the overall development includes the selective use of strong gable features and symmetry across the fenestration details. The mix of house styles and scales creates an evolving built environment that sensitively reflects the better parts of the local vernacular whilst providing its own identity in the evolution of Etwall's built environment. It is considered that the layout and housetypes would result in an acceptable built form that would create a good sense of place for future occupiers and which would sit harmoniously with the existing built form.

Affordable housing

A S106 Agreement is in place for the outline planning permission to which this application relates that requires 30% of the dwellings to be affordable. The proposed layout shows clusters of affordable housing in the south-east corner of the site as well as in a group in the centre of the site adjacent to the central pedestrian link which runs north-south through the development adjacent to the proposed swale and existing mature hedge. Whilst the Council's Housing Strategy, Development and Regeneration Manager considers the housetypes and tenure mix to comply with the outline's S106; she raises an issue regarding the clustering of 20 affordable housing units. However, plots 41 to 50 have quite a distinct point of access (from the road to the south) from plots 59-64 (accessed from the north) and the tenure in the grouping is mixed rather than being all social rent. As such they could be considered to comply with the S106 which specifically refers to 'contiguous' which this single cluster would not be. The S106 does include a caveat of 'unless otherwise agreed in writing' should this remain an issue.

Impact on trees

The site has numerous trees on the frontage to Willington Road and as a result of the outline application for the adjacent site having a resolution to approve, significant negotiations have taken place between officers and the applicant who has revisited access arrangements to both developments and now proposes that the access for this current reserved matters application will ultimately serve both developments. This will mean that when the reserved matters for the next phase is submitted, no second access further along Willington Road will be proposed which means that the carriageway will not be widened beyond this access and no footway will be provided beyond this access. This will mean that most of the Willington Road frontage trees will now be retained as well the mature trees on the boundary of the site adjacent to existing properties.

The ash tree to the southern part of the site which is protected by a TPO would be adjacent to the surface water attenuation pond but the works associated with the creation of the pond would not jeopardise the integrity of that tree. In view of the above the impact of the development on trees is considered to be acceptable.

Impact on neighbours

The application site runs adjacent to an existing housing estate; the properties along the northern and western edges of the site would back onto the rear gardens of properties on Willington Road to the north and Belfield Road/Elms Grove/Sycamore Close. When the outline permission was granted it required the reserved matters to improve the relationship with existing residents adjacent to the site relative to the concept Masterplan that was submitted at that time. This reserved matters submission generally accords with the concept Masterplan and DAS which accompanied the outline application (as required by condition 3 of the outline). However, in order to improve the relationship to those affected neighbours, a 5m wide landscaping area is shown with separation distances between the existing and proposed dwellings exceeding the Council's adopted standards. Whilst the detailed planting schedules/types etc. for those areas would be the subject of a separate reserved matters application, this approach is considered to be a reasonable balance between protecting the neighbours and delivering the development. Where the new properties back onto the existing properties on Belfield Road/Elms Grove/Sycamore Close, the spacing provided between them ranges from approximately 23 to 33 metres back to back from window to window and 13 to 24 metres back to side from window to side wall. This means that the respective 21 and 12 metres detailed within the Council's SPG are complied with. In regards to that part of the development where the new properties back on to the existing properties on Willington Road the spacing provided between them ranges from approximately 33 to 37 metres back to back from window to window and 13 to 16 metres back to side from window to side wall. Again, this means that the respective 21 and 12 metres detailed within the Council's SPG are complied with and overall the amenity of existing neighbouring occupiers will not be unduly affected by the proposed development in compliance with Housing Policy 11.

Conclusion

The proposal represents an appropriate form of development that appropriately balances the competing and conflicting issues: layout; design; impact on trees and impact on neighbours and would provide a sound basis on which this development should proceed.

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

Recommendation

GRANT approval of reserved matters subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with drawing No's EMS.2287_01-2C, MI106-SL-001D (Coloured and Affordable Housing version) ,MI106-SECT-01, MI106-EN-101J, MI106-EN-500A, MI106-PD-060A, MI106-EN-107C, 5835-A-03E, MI106-PD-100, MI106-PD-101, MI106-PD-102, MI106-PD-117, MI106-PD-103, MI106-PD-104, MI106-PD-105, MI106-PD-106, MI106-PD-107, MI106-PD-108, MI106-PD-109, MI106-PD-110, MI106-PD-111, MI106-PD-112, MI106-PD-113A, MI106-PD-114, MI106-PD-115A, MI106-PD-116A, MI106-PD-500A, MI106-PD-501A, MI106-PD-502B, MI106-PD-503B, MI106-PD-504A, MI106-PD-505A, MI106-PD-506A MI106-PD-507B, MI106-PD-508B, MI106-PD-509A, MI106-PD-510A, MI106-PD-511, MI106-PD-512A, MI106-PD-513, MI106-PD-750, MI106-PD-751 and MI106-PD-752 received on 15th March 2016 unless as otherwise required/varied by condition attached to this approval or allowed by way of an approval of a non-material or minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

2. Notwithstanding annotations shown on the approved drawings, fascias, barge boards, soffits, gutters and downpipes shall have a black finish.

Reason: In the interests of the appearance of the buildings, and the character of the area.

3. Notwithstanding the submitted details, large scale drawings to a minimum scale of 1:10 of, window cills and heads, eaves and verges and porch canopies shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The window cills and heads, eaves and verges and porch canopies shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the buildings would be acceptable.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), there shall be no alteration to any wall which forms the principal elevation or side elevation of any dwellinghouse and fronts a highway or public open space; there shall be no alteration to any gate wall

fence or other means of enclosure adjacent to any highway or public open space; and there shall be no alterations to any roof of any dwellinghouse which forms the principal elevation of the dwellinghouse and fronts a highway or public open space.

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

5. Prior to the provision of the temporary foul water pumping station and turning head opposite plots 28-30, details of a permanent location for the temporary foul water pumping station and alternative arrangements other than the turning head and to include details of the reinstatement of the land associated with these features as well as a timetable for their relocation and the reinstatement of the land shall be submitted to and approved in writing by the Local Planning Authority prior to the provision of either of these temporary features. The removal and relocation of these features shall be undertaken in accordance with the approved details and timescales unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area and to ensure that adequate open space is ultimately provided.

6. Prior to the construction of the substation opposite plots 49 and 50, details of the external appearance of the substation including the materials to be used in all external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The substation shall be implemented in accordance with the details approved by this condition.

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

7. Notwithstanding the approved drawings/plans, no development involving the construction of a dwelling shall commence until details, including samples and/or drawings where necessary, of the following materials/features have been submitted to and approved in writing by the Local Planning Authority:
 - a. fascia and barge boards and mortar for verges;
 - b. utility cupboard colours (both wall and ground mounted); and
 - c. highway kerb styles to all road typographies.

Thereafter the dwellings/highways shall be constructed, and trees planted, in accordance with the approved details.

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

Informatives:

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

This permission does not include approval of the 9/2013/1040 outline conditions 10 (external materials) and condition 11 (boundary treatments) as the submitted materials layout drawing no. MI106-MAT-MOE-001B is not considered acceptable.

When discharging Condition 11 of the outline permission it should be noted that the green screens should be trialled on less prominent plots such as 69 and 76.

12/04/2016

Item **1.3**

Reg. No. **9/2015/1000/FM**

Applicant:
Mr Dee Sandhu
Stainsby House
Main Road
Smalley
Ilkeston

Agent:
Mr Tim Foster
2 Broomfield Cottages
Morley
Ilkeston
DE7 6DN

Proposal: **THE ERECTION OF A REPLACEMENT DWELLING WITH
DETACHED GARAGE AND ENTRANCE GATES AT
LAND ADJACENT TO 7A PINFOLD LANE REPTON
DERBY**

Ward: **REPTON**

Valid Date: **12/11/2015**

Reason for committee determination

The application is reported to Committee at the request of Councillor Stanton because a local concern has been expressed about a particular issue and unusual site circumstances should be considered by committee.

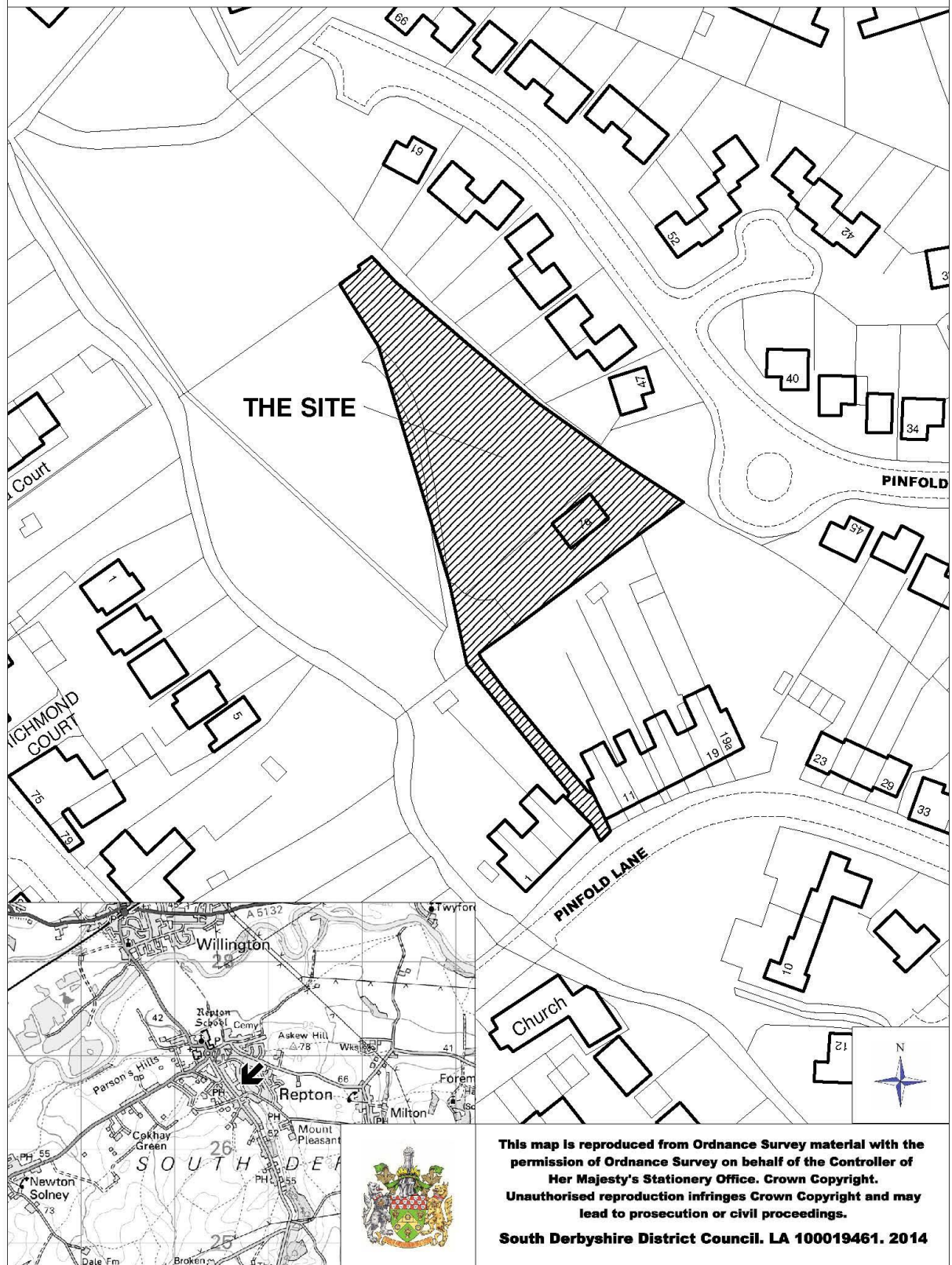
Site Description

The application site is situated within Repton village and is currently occupied by a derelict bungalow within an enclosed area of land surrounded by a number of trees and un-maintained vegetation. The site is bordered to the south east by an access serving the garages to the terraced properties fronting onto Pinfold Lane. To the north east at approximately 5m higher ground level with rear elevations overlooking the site are residential properties on Pinfold Close. Repton Brook lies to the southwest of the site and Repton Footpath No. 26 runs from Pinfold Lane along the access to the site and across the applicant's land edged blue but not through the application site. The site is situated within the revised Repton Conservation Area adopted on 31st January 2013, the boundary of which now runs along the rear boundaries of residential properties fronting onto Pinfold Close to the north east along the boundary of the application site.

Proposal

Full planning permission is sought for a replacement dwelling at 7a Pinfold Lane. The application is a re-submission of a previously approved scheme that has not

9/2015/1000 - Land adjacent to 7a Pinfold Lane, Repton, Derby DE65 6GH



been implemented within the time limit prescribed and has therefore lapsed. The design of the current scheme is the same design as that of the approved scheme which has recently lapsed except that the applicant has rotated the dwelling through 90 degrees in an anti-clockwise direction so that the front elevation would now face the entrance on the south east of the site and sited the dwelling and garage further into the site to the north west. Following discussion during the application the replacement dwelling and garage have now been located closer to the south eastern corner in a similar location to the previously approved location of the approved scheme. A further addition to the application is the inclusion of gates set back from the existing vehicular access with 1.8m brick walls and pillars on either side of the gates. The proposal is a six bedroom two and a half storey dwelling and separate triple garage with games room above. The red line (application site) has also been adjusted to ensure that no part of the site was within a flood risk area and thus not requiring the submission of a flood risk assessment.

Applicants' supporting information

The Design and Access Statement describes the site and the proposal and addresses issues including scale, appearance and access. The height of the building would be 9.2m to ridge and the chimneys would be a further 1.8m above this height. The design of the new dwelling is intended to be in keeping with the surrounding area by using some of the features of 9 Pinfold Lane at the entrance of the site. The building would therefore be built of red brick and natural stone lintels and cills and have feature brick coursing at eaves and a traditional clay tile roof and timber windows. A tree survey and report was undertaken identifying trees both within and outside the application site on land in the applicant's ownership which includes most of the trees to the northwest and northeast covered by TPO 082 and the Horse Chestnut in the eastern corner covered by TPO 128.

The application is also supported by a Habitat Survey which concludes that, apart from the location of a badger sett, the site is of relatively low wildlife value as it lacked floristic diversity. The Report sets out recommendations to ensure the sett is protected from the development and also lists other recommendations in respect of other protected species. Following Derbyshire Wildlife Trust's consultation response, a Method Statement setting out how Badgers would be protected during construction was prepared dated 23rd February 2016.

Planning History

9/1995/0459 - The residential development with access from Pinfold Close of approximately 0.57 hectares of land being the site of the bungalow and outbuildings. Outline permission granted 04/03/1999.

9/2001/1185 - The renewal of planning permission 9/0995/0459/O for the residential development. Granted 19/11/2003.

9/2006/1325 - Outline application (all matters except means of access to be reserved) for the demolition of 7A Pinfold Lane and 53 Pinfold Close and the residential development. Refused 23/01/2007 (Indicative layout proposed 7 dwellings) Dismissed at appeal (impact on conservation area) 11/1/08.

9/2010/0684 – The erection of a replacement dwelling. Withdrawn 27/09/10.

9/2011/0037 – The erection of a replacement dwelling. Approved 15/3/11.

9/2011/0316 – The erection of a replacement dwelling (amended plans). Approved 12/08/2011

Responses to Consultations

The County Highway Authority has no objection to the application. Previous comments stated that this replacement dwelling would have no significant impact on existing highway conditions but requested conditions relating to the submission of details of parking and manoeuvring of residents and service and delivery vehicles and the protection and unobstructed use of the public footpath on its legal alignment at all times throughout construction of the development.

Derbyshire County Council Flood Risk Management Team has no objection to the proposal and refers the applicant to their standing advice.

Derbyshire County Council Rights of Way Officer has no objection to the proposal but requests conditions be attached to any permission ensuring the route remains open, unobstructed and on its legal alignment at all times;
A temporary closure may be granted to facilitate public safety during the construction phase subject to conditions.

Natural England were consulted and raised no objections but referenced their standing advice relating to protected species.

Derbyshire Wildlife Trust has no objection provided a minimum 20m buffer is demonstrated and a Badger Mitigation Plan submitted setting out how the badgers and sett would be protected during construction. The South Derbyshire Badger Group raises no specific objections and agrees with the findings of the Ecology survey. The Group notes the presence of an entrance to the badger sett beneath an existing metal water tank. To move the tank would be illegal as it would be interfering with the badger sett. Early involvement with Natural England is advised.

The Conservation Officer comments that the proposal has previously been approved and that the design and materials are acceptable as these would not be detrimental to the character of the conservation area. The demolition of the existing building would not have a detrimental effect on the character of the conservation area. Conditions relating to the submission of all external materials, rainwater goods, joinery details, finish and landscaping should be subject to approval.

The Contaminated Land Officer has no objections to the proposal but states that the site is within influencing distance of an area of former quarrying of sand and clay which has been infilled conditions are suggested relating to a suitable scheme for ground gas ingress has been submitted to and approved in writing by the LPA. In addition, given the above, if during the development any contamination is identified

that has not previously identified or considered, a written scheme shall be submitted by the applicant to identify or control that contamination.

Severn Trent Water raises no objections but request the inclusion of an informative relating to the location of public sewers.

Responses to Publicity

Repton Parish Council considers the property would be within the conservation area and this footpath corridor should be maintained and enhanced and objects to the size of the garden extending into this open space. It also believes that the extremely narrow entrance to the property could be dangerous. The many trees on the site may also be damaged and affect the wildlife in Brookside Walk. In addition the septic tank could be a pollution issue.

Repton Neighbourhood Development Plan Group objects to the proposal on the basis that the area has been identified as open space to be protected in a recent survey, the first stage towards the preparation of a neighbourhood plan. This survey, in which 638 responses were received, 96% of those who responded showed local concern for existing green spaces in the village.

Twenty-two neighbour representations have been received raising the following concerns:

- a) Considerably larger footprint than existing building and associated hardstanding in a location close to the floodplain;
- b) The access road is very narrow and the access is sub-standard;
- c) Loss of wildlife and adverse impact on badgers in particular;
- d) Visibility of the site from the public footpath and public road (Pinfold Close);
- e) Concern regarding size and appearance of the proposed three storey property being inappropriate and that it could become two dwellings;
- f) The site is surrounded by a number of trees, hedgerows and vegetation which may be lost or damaged;
- g) Access was for 2 cars to the existing bungalow and not for 6 vehicles, as proposed;
- h) Garage appears to have a one bed roomed apartment above;
- i) Plans seem to show a high wall on the river side of the footpath which could adversely affect the surface water run-off and may impact on the properties in Pinfold Lane;
- j) Applicant needs to notify owner of no 7 Pinfold Lane as owner of the access;
- k) Concern that the property would not be accessible to emergency services;
- l) Loss of privacy for existing residents from the proposed two, two-storey buildings;
- m) The Tree survey has not been agreed for this proposal.
- n) The brook floods;
- o) Approval of one dwelling will lead to more houses in this location;
- p) The site is now within the conservation area and the proposal is not considered to fit well with the existing character of the conservation area;
- q) No flood risk assessment submitted;
- r) The design and access statement is out of date;

- s) Concerned about the way the tree survey portrays the horse chestnut, which is covered by a TPO, as of low quality/value;
- t) Concern at the loss of well-established trees/shrubs at the rear of properties on Pinfold Close either temporarily or permanently;
- u) The proposal is clearly visible from the public footpath;
- v) Details of location of septic tank have not been agreed;
- w) This scheme represents a notable improvement to previous schemes and the current derelict and overgrown site;
- x) Applicant should be encouraged to enhance the wildlife corridor;
- y) Change of use of the garage should be discouraged;
- z) Amended location of the garage is where the horse chestnut tree is located;

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 5 and 11 (H5 and H11) Environment Policies 9 and 12 (EV9 and EV12) Transport Policy 6 (T6)

Emerging Development Plan Policies

- Submission Local Plan Part 1: Policies S2 (Presumption in Favour of Sustainable Development) S6 (Sustainable Access) SD1 (Amenity and Environmental Quality) BNE1 (Design Excellence) BNE2 (Heritage Assets) BNE3 (Biodiversity) BNE4 (Landscape Character and Local Distinctiveness)

National Guidance

- National Planning Policy Framework (NPPF) 14, 17, 32 , 49, 56, 58,131 196, 197
- National Planning Policy Guidance (NPPG)

Planning Considerations

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

- Principle of development
- Scale and design
- Residential amenity
- Heritage
- Ecology
- Loss of open space/neighbourhood plan

Planning Assessment

Principle of Development

The fact that a very similar scheme for the site was recently approved and has only recently lapsed is a material consideration in this case which carries substantial

weight. The test therefore is to examine whether there has been any material change in circumstances (e.g. policy considerations) that would suggest an alternative outcome this time.

The location of the site is within the confines of the settlement of Repton where new development is considered acceptable in principle. The settlement has a number of services and facilities, including a number of shops, schools and a regular bus service making this a sustainable site in general terms consistent with Local Plan saved policy H5. The proposal is also consistent with National Planning Policy Framework paragraphs 14 and 49 being a sustainable location and adopted housing policies being out of date and therefore applications need to be considered in the light of the presumption in favour of sustainable development. Whilst part of the site could be considered outside of the original domestic garden, the land to the north west was not previously in residential use but had previously been used for storage, having a number of small buildings on site. The location would not lead to the adverse intensification of housing as the proposal is for a single replacement dwelling, albeit significantly larger than the existing bungalow. Notwithstanding the concerns of neighbours, the site can easily accommodate the proposal without adverse impact on adjacent dwellings in this location.

Repton is identified as a key service village in Policy H1 of the emerging Local Plan which is based on the number of services, its accessibility by all modes of transport and community facilities. The site is located close to the main route through the village, within walking distance of facilities and services.

Scale and Design

The existing dwelling, what remains of an unassuming 1960s bungalow, is not considered to be worthy of retention given it is not a heritage asset and in a derelict state. The opportunity therefore exists to enhance the character and appearance of the conservation area, itself extended to include this site since consent was previously granted for a substantial replacement dwelling in a similar location, and provide a traditional detached family home. The proposed dwelling is larger in scale and form being a two storey dwelling with some accommodation in the roof space providing three floors and located to the west of the footprint of the existing bungalow. The accommodation also includes a separate three car garage with ancillary accommodation at first floor level to the east of the proposed dwelling. These two buildings sit well within the plot and, due to the enclosed nature of the site, are not viewed in relation to the surrounding dwellings but would be visible to those using the public footpath that runs in a north west/south east direction.

Whilst it is accepted that the proposal is significantly larger than the building that it replaces, being both larger and higher due to its two and a half storey design with a ridge height of 9.2m, the building would be built on rising ground with a difference of approximately 5m between the proposed dwelling and the dwellings on Pinfold Close. However, the building would be built at a lower level than the dwellings closest to it, and be predominantly screened by the existing boundary treatment. There would be little impact on the properties of Pinfold Close and the distance between the proposal and the dwellings on Pinfold Lane are in excess of 50 metres

away and it is not thought to dominate its neighbours, being sufficiently distant and adequately screened.

The architectural style has drawn on examples to be found in Repton and is reminiscent in terms of features and detailing to a Victorian house with full height bay windows, outward facing gables and gabled dormer windows. The materials to be used are not specified in the application but the design and access statement acknowledges the red brick and clay tiles in the vicinity and the use of stone cills and headers used in Repton and, in particular, the Victorian terrace on Pinfold Lane. These are expected to be the pallet of materials specified and to be discharged via condition. As the dwelling would be in a conservation area a condition seeking the details of timber windows is included.

Residential Amenity

In terms of the amenity of neighbouring properties, due to the location of the proposed dwelling set within the proposed plot separated from other dwellings by mature planting and rear garden areas, overlooking of areas immediately adjacent to the rear of properties due to the difference in ground floor levels would not occur. No main room windows are proposed on the side of the new house and therefore rear gardens of Pinfold Close to the north east are protected from overlooking. The closest neighbouring property to the south east is 55 metres away and direct views are obscured by mature trees. The impact on the amenity of neighbouring properties is therefore not considered to be significant and accords with the Council's space standards, Housing Policy 11 and NPPF paragraph 17.

Heritage

The extension of the designated Repton Conservation Area is a material change in circumstances that needs careful consideration. As noted above the existing bungalow is of limited architectural interest such that its demolition would not be detrimental to the setting of the Conservation Area. The proposed dwelling would be substantial and have a greater impact by virtue of the greater massing of the proposal. However, given its proposed design, which, on the advice of the Council's Conservation Officer, is considered to be sympathetic to the location, it is considered that the proposal would have a positive impact on the significance of the setting of the Conservation Area by introducing an improved design of a single dwelling within the recently designated addition.

Ecology

The habitat survey submitted describes the site as relatively low in habitat value being low in floristic diversity. The main issue raised was the existence of badgers which are protected. Following advice from Derbyshire Wildlife Trust which initially led to an objection relating to the proximity of the proposed dwelling to the active badger sett, a badger method statement was provided setting out the way that the work would be undertaken to ensure minimum disruption to the badgers in addition to the relocation of the dwelling further away from the badger sett to a minimum distance of 20m which is considered acceptable. In assessing the boundary treatment to be provided to the property the recommendations of the habitat survey

should be taken into account to ensure that badgers are not constrained by it and have access outside of the application site.

Loss of Open Space

The Repton Neighbourhood Plan Forum submitted representations seeking the refusal of this proposal on the basis of the recent initial survey carried out to identify issues for the plan to address. The evidence put forward suggests that a large majority of those who took part had concerns about the loss of open space within the village and specific concerns about this site. However, whilst the survey clearly indicated that residents who took part in the survey were concerned about the loss of the open space, the site is not in public ownership and furthermore not all of the site is included within the red line, leaving a large section of the site covered by trees both within the conservation area and also protected by a group Tree Preservation Order. This area is accessible via the public footpath across the open space but outside the application site's red line.

Given the limited weight that can be afforded to 'emerging' neighbourhood plans and the fact that the site would continue to be accessible and largely undeveloped, there is no justification for refusing this proposal on the basis of the loss of open space.

Other Matters

Existing trees can be protected by way of condition and surface water drainage would be dealt with by soakaways where possible. The installation of a septic tank or localised sewage treatment works are standard features on houses where no existing foul sewer is located in close proximity. As noted above, Severn Trent Water has no objection and a condition is included requiring the submission of details of foul and surface water drainage.

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. Before any works involving the construction of any dwelling commences 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 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 safeguard the appearance of the existing building and the locality generally.

3. Large scale drawings to a minimum Scale of 1:10 of eaves, verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

4. Notwithstanding the submitted details, external joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority.

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

5. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

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

6. Gutters and downpipes shall have a black finish.

Reason: In the interests of the appearance of the building(s), and the character of the area.

7. Before any works involving the construction of any dwelling commences a landscaping scheme shall be submitted to and approved by the Local Planning Authority and it shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

8. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. 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. Pointing of the proposed buildings shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.

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

10. A sample panel of pointed brickwork 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority before the work is generally executed.

Reason: In the interests of the appearance of the buildings and the locality generally.

11. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), prior to the erection of boundary treatments plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

12. Before any works involving the construction of any dwelling commences details including paving patterns, specifications and samples of the materials to be used in the hard landscaping works have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.

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

13. Before any works involving the construction of any dwelling commences , details of the finished floor levels of the building hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

14. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the submitted drawing 311 PL 001 Rev C for the parking and manoeuvring of residents 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.

15. No development shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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. 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.

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

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

18. The development hereby permitted shall be carried out in accordance with the recommendations contained within Section 5 of the Report on Badger, Bat and Breeding Bird Study carried out by Ecolation on 4 January 2011 unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of biodiversification and the preservation of protected species.

19. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.

Reason: To protect the trees/landscape areas from undue disturbance

20. There shall be no tipping or deposition of materials within the area fenced under condition 12 above without the prior written authorisation of the local planning authority.

Reason: To protect the trees/landscape areas from undue disturbance

21. Notwithstanding the submitted details, prior to commencement on site details of the construction methods to be used in the construction of the driveway in relation to the adjacent protected trees shall be submitted to and approved in

writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: To safeguard the health of the trees.

Informatives: You are advised:

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

The application site is affected by a public Right of Way (Footpath No. 26, Repton). The granting of planning permission is not consent to divert or obstruct a public right of way. The route must therefore remain open, unobstructed and on its legal alignment at all times both during and on completion of the development. This also applies to the obstruction of the route by parked vehicles, plant and equipment.

Consideration should be given at all times to members of the public using the path, especially as the site access follows the line of the public footpath. It would be preferable for the path to remain open during the works, however, a temporary closure of the route may be granted during the demolition and construction phases if a risk to public safety is identified. The applicant should contact Karen Horobin on 01629 533396 or email espro@derbyshire.gov.uk for further information and an application form.

There should be no disturbance to the path surface without prior authorisation from Zoe Woodhouse, the Rights of Way Inspector 01629 580000 Ext 33262.

No structures, for example fences, gates or barriers, may be installed on the path without prior authorisation from Derbyshire County Council Rights of Way Section.

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk.

12/04/2016

Item 1.4

Reg. No. 9/2015/0862/SMD

Applicant:
Peeveril Homes Ltd
c/o agent

Agent:
Paul Stone
Signet Planning
Pure Offices
Lake View Drive
Sherwood Park
NG15 0DT

Proposal: **VARIATION OF CONDITION 2 OF PLANNING**
 PERMISSION REF: 9/2013/0745 (RELATING TO THE
 ERECTION OF 77 DWELLINGS, PUBLIC OPEN SPACE,
 ACCESS AND DRAINAGE INFRASTRUCTURE) ON
 LAND AT SK2928 5584 ETWALL ROAD WILLINGTON
 DERBY

Ward: **WILLINGTON & FINDERN**

Valid Date: **17/09/2015**

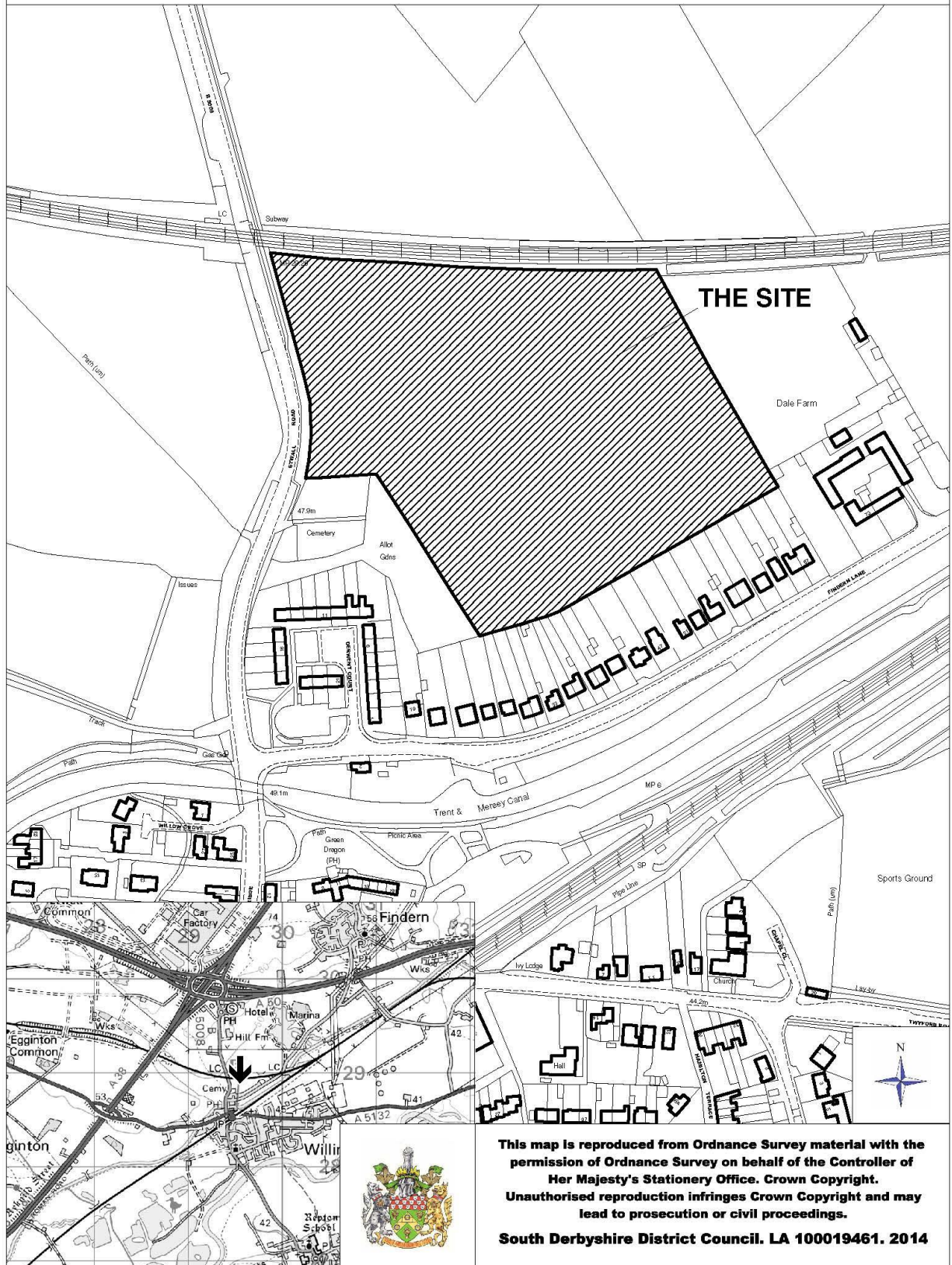
Reason for committee determination

The item is presented to Committee as it is a major application, not in accord with the Development Plan.

Site Description

The application site comprises a former agricultural field, covering approximately 3.45 hectares to the eastern side of Etwall Road. Pursuant to the existing permission, it is presently a construction site for 77 dwellings and associated infrastructure. It is relatively flat in nature. To the north is the Derby to Stoke railway line on a slightly raised level, to the south are the rear gardens of existing residential properties along Findern Lane, and to the east is farmland and buildings (Dale Farm). The south-west corner is bordered by existing allotments and the cemetery, whilst there is a level-crossing adjacent to the north-east corner. The site is bordered by mature hedgerow to the east and west sides, and broken hedgerow around the allotments. Mature trees complement the setting of the cemetery. A new access to serve the site has already been created pursuant to the existing permission at the apex of the bend on Etwall Road.

**9/2015/0862 - Land at SK2928 5584 Etwall Road, Willington, Derby
(DE65 6RD James Clarke Road)**



Proposal

It is proposed to substitute and swap a handful of plots on the site towards the south-western corner. Consequential amendments to the affordable housing mix would also occur although the proportion and tenure would remain unchanged.

Applicant's supporting information

The applicant has also requested that plans, drawings and reports/documents approved pursuant to condition under the existing permission be incorporated into the submission to avoid the need for conditions to be discharged for a second time.

Planning History

9/2013/0745: The erection of 77 dwellings, public open space, access and drainage infrastructure – Approved January 2014

9/2013/0480: The erection of 77 dwellings, public open space, access and drainage infrastructure – Not determined (returned)

Responses to Consultations

The County Highways Authority notes that there are no material changes to the highway layout other than an additional tree, for which an additional commuted sum would be levied for its future maintenance.

The County Flood Risk Team has no comments to make.

Network Rail has no observations to make.

Derbyshire Wildlife Trust does not have any comments in relation to the amendments.

The Strategic Housing Manager, following negotiation and amendment to the proposed changes, has no objection subject to the changes being secured in a Deed of Variation to the Section 106 agreement.

The Environmental Health Officer has no comments to make.

The Police Crime Prevention Design Advisor considers the proposed changes don't cause any concern, although it is still considered that a raised kerb to the open space boundary would not adequately protect against misuse and damage by vehicles.

Responses to Publicity

None received.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 9 and 11 (H9 and H11).

Emerging Development Plan Policies

The relevant policies are:

- Local Plan Part 1: S4 (Housing Need) and H20 (Affordable Housing).

National Guidance

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

Local Guidance

- Housing Design & Layout Supplementary Planning Guidance (SPG)
- Affordable Housing Provision in South Derbyshire SPG
- The Strategic Housing Market Assessment 2013 (SHMA)

Environmental Impact Assessment

The original application was screened under Regulation 7 of the Environmental Impact Assessment (EIA) Regulations 2011, with it falling within paragraph 10b of Schedule 2 to those Regulations. Since then the Regulations have been amended to exclude schemes of less than 150 dwellings, and coupled with the determination previously that the proposal is not considered to give rise to significant environmental effects; it remains the case that an Environmental Statement is not required.

Planning Considerations

The application is made under Section 73 of the 1990 Act, seeking to vary approved plans specified under condition 2 of the existing permission. The changes are limited to a 'swap' of plots in the south-western corner of the site. A single 2-bed bungalow would be replaced by a pair of 2-bed bungalows to accommodate the loss of a 1-bed house nearby. Parking and garden provision would be reconfigured to accommodate this change, with a garage block to replace the 1-bed house (increasing parking provision to the adjoining plots). Accordingly the principle of development has already been secured here and Members should focus solely on the proposed changes.

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

- Design and amenity; and
- Affordable housing provision.

It should also be noted that a Section 73 application results in a new permission, and accordingly the conditions contained in the recommendation below reflect progress to date in discharging the conditions on the existing permission.

Planning Assessment

Design and amenity

The impacts arising from the development and layout of the wider site have been previously considered as acceptable. The proposed changes are considered to provide a net improvement in amenity terms for existing residents abutting the site, improve parking provision to a couple of plots. The changes would have a negligible effect on the overall design approach to the site, which remains acceptable.

Affordable housing

28.5% affordable housing provision was secured under the existing permission, following viability work. That overall proportion would remain unaltered under these proposals. The tenure split would also remain unchanged with social and affordable rent provided across the site. The mix would alter slightly, as outlined above. However the loss of a 1-bed house for a 2-bed bungalow is considered to both safeguard the provision of the original bungalow (specifically requested pursuant to local needs data at the time of the original application), and provide a further bungalow for which there may be a wider demand. These changes can be secured in a Deed of Variation to the Section 106 agreement.

Recommendation

- A. That delegated authority be granted to the Planning Services Manager to complete a Deed of Variation to the existing Section 106 Agreement to secure the affordable housing changes referred to in the body of the report;
- B. Subject to A, **GRANT** permission subject to the following conditions:
 - 1. The development hereby permitted shall be carried out in accordance with the plans/drawings/statements specified in the Schedule attached to this permission; 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 proper planning.

- 2. 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 garage accommodation/parking space to be provided in connection with the development shall not be used other than for the parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure adequate parking provision for the dwellings hereby approved remains in perpetuity in the interests of safety on the public highway.

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

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

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

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

5. Subsequent replacement or insertion of windows and doors and any conversion of loft space by owner/occupiers of the dwellings shall be done in a manner to ensure the same level of acoustic protection as specified in the Noise Impact Assessment (ref: R12.0508/3/DRK) is achieved.

Reason: To protect the health of occupiers of the dwellings hereby approved and to ensure an acceptable standard of amenity for those occupiers.

6. External lighting shall be maintained in accordance with the approved details.

Reason: In the interests of safety on the rail network, in the interests of species and habitat conservation, and in the interest of visual amenity.

7. The building marked as housetype 14A within the rear garden of plot 56 shall only be used as an annexe to plot 56 and shall not be sold off, let or used separately to the host dwelling.

Reason: In the interests of clarity, noting that the annotation on the housetypes plan is not precise, and in the interests of providing adequate parking and amenity provision for plot 56 as a whole.

During construction

8. No construction works relating to this development shall take place except between the 0800 and 1800 hours Monday to Friday, and 0800 and 0100 on Saturdays. There shall be no construction works on Sundays, Bank Holidays or Public Holidays with the exception of work needed during an emergency.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

9. No deliveries relating to this development shall be taken at or despatched from the site except between the hours of 0800 and 1800 hours Monday to

Friday, and 0800 and 0100 on Saturdays. There shall be no deliveries on Sundays, Bank Holidays or Public Holidays.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

10. No removal of hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

Reason: In the interests of safeguarding against harm to protected species.

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

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

12. Measures for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site shall be implemented (where not already in situ) and retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity.

13. The agreed dust mitigation measures shall be implemented (where not already in situ) prior to any further works which would release dust and thereafter retained until completion of all external works on the site.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

14. Space shall be provided within the site curtilage for the storage of plant and materials/site accommodation/loading and unloading of goods vehicles/parking and manoeuvring of site operatives and visitors vehicles, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

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

Timing of specific works and pre-occupation

15. The Locally Equipped Area of Play (LEAP) shall be installed in accordance with the approved timetable and maintained as such until the LEAP is transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of securing appropriate and high quality play and open space provision for occupiers of the dwellings hereby approved.

16. The surface and foul water drainage schemes shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

17. No dwelling, the subject of the application, shall be occupied until the proposed new estate streets between that respective plot and the existing public highway have been laid out in accordance with the application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of safety on the public highway and to ensure reasonable access for all users during the course of construction.

18. No dwelling, the subject of the application, shall be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents and visitors vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

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

19. 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 first occupation of the dwellings 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 (ten years for trees) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of visual amenity and to secure appropriate open space provision for occupiers of the dwellings hereby approved.

Other

20. 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 2A and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the Local Planning Authority.

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.

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. Network Rail wishes to draw attention to the following points:
 - The developer/applicant must ensure that their proposal, both during construction and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail air-space (including by scaffolding) and no encroachment of foundations onto/under Network Rail land. All operations, including the use of cranes or other mechanical plant working adjacent, must be carried out in a “fail safe” manner such that in the event of mishandling, collapse or failure, a 3 metre “stand-off” is achieved. Any future maintenance must be conducted solely within the applicant’s land ownership such that buildings/structures should be constructed at least 2 metres from Network Rail’s boundary;
 - Security of the railway boundary will need to be maintained at all times, and all roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development;
 - During and after construction, no part of the development, including the access off Etwall Road, shall cause the level crossing sight lines, road traffic signs and markings, or the crossing itself to be obstructed;
 - Network Rail has serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets (e.g. level crossings). Network Rail request that the applicant contact the Asset Protection Project Manager to confirm that any proposed route is viable and to agree a strategy to protect asset(s) from any potential damage caused by abnormal loads. Where any damage, injury or

delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability.

- Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary; and
 - Network Rail would like to include promotional material for the safe use of level crossings in any “welcome pack” distributed to the first residents of the new development. Please contact the “Asset Protection Project Manager, Network Rail (London North Eastern), Floor 2A, George Stephenson House, Toft Green, York, YO1 6JT”; email: assetprotectionlne@networkrail.co.uk.
- d. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
- e. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway (new estate streets) measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- f. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- g. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant’s responsibility to ensure that all reasonable steps (e.g: street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- h. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the

cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.

12/04/2016

Item 1.5

Reg. No. 9/2015/0871/FM

Applicant:
Mrs Y Spare
Syson Dale
Rolleston on Dove
Burton on Trent
DE13 9DS

Agent:
Mr T Johnson
41 Faraday Avenue
Stretton
Burton on Trent
DE13 0FX

Proposal: **THE ERECTION OF 1 PAIR OF SEMI-DETACHED
DWELLINGS (2 DWELLINGS) AT 28 BURTON ROAD
CASTLE GRESLEY SWADLINCOTE**

Ward: LINTON

Valid Date: 05/10/2015

Reason for committee determination

The item is presented to Committee as the development does not accord with the Council's Housing Design and Layout SPG.

Site Description

The site is presently vacant and comprises a former builder's yard. It is surrounded by existing residential development forming part of the Castleton Park development, bordered by a 2m high close boarded fence in the main. The site has direct access onto Burton Road (A444).

Proposal

The application seeks approval for the erection of a pair of semi-detached dwellings, each dwelling comprising of three bedrooms with associated parking and an altered access to Burton Road.

Planning History

9/2008/0361 - Outline application (all matters except means of access to be reserved) for the residential development – Approved 23/04/2008

9/2011/0386 - The approval of reserved matters of outline application 9/2008/0361 for the residential development – Approved 11/07/2011

9/2015/0871 - 28 Burton Road, Castle Gresley, Swadlincote DE11 9EP



Applicants supporting information

A Design and Access Statement outlines that the application seeks permission for two, three bedroom starter homes which would blend in with the current street scene. The proposed dwellings would be constructed out of similar materials to the existing neighbouring properties. It is noted that there is sufficient capacity to connect to the mains foul water drainage, and the site is located on Burton Road with good access to public transport.

A Coal Mining Risk Assessment (CMRA) confirms the site falls within a likely zone of influence from 8 coal seams at 100m to 340m depth, last worked in 1963. The Coal Authority confirms that any ground movement from the above mentioned coal seams should by now have stopped. Therefore, the risk posed to the ground surface from recorded workings is assessed as negligible.

Responses to Consultations

The Environmental Health Officer has no objection in principle but recommends that conditions are attached which would limit the hours of construction, hours of delivery in connection with the construction of the dwelling, no generators or pumps to be used on site without prior written permission and no burning of waste on site. In addition they seek a scheme of noise mitigation measures to be required to address noise from the surrounding road network and any other local noise sources of significance.

The Contaminated Land Officer has no comments or concerns.

The County Highways Authority has no objections to the proposal in principle. It is considered that a suitable parking layout can be achieved to provide 2 parking spaces per dwelling with adequate manoeuvring space. A new central access means the existing access would need to be closed and the verge/footway reinstated by way of condition.

The Coal Authority has no objection subject to a condition that would ensure that the remedial works set out in the CMRA are integral to the development.

The County Archaeologist notes that the proposal area is peripheral to a site on the Derbyshire Historic Environment Record relating to an area of ridge and furrow earthworks. However, this is now ploughed out and the site retains no heritage significance. Therefore there is no requirement for archaeological work.

The County Flood Risk Officer has no comments to make.

No comments have been received by Severn Trent Water.

Responses to Publicity

There have been no comments received.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 4 and 11.
- Emerging Local Plan Part 1: S2 – Presumption in Favour of Sustainable Development, S4 - Mining legacy, H1 – Settlement Hierarchy, SD1 – Amenity and Environmental Quality, BNE1 – Design Excellence, BNE4 – Landscape Character and Local Distinctiveness and INF2 – Sustainable Transport

National Guidance

National Planning Policy Framework (NPPF), in particular:

- Paras 6-10 (Achieving sustainable development)
- Paras 11-14 (The presumption in favour of sustainable development)
- Para 17 (Core Principles)
- Chapter 3 (Supporting a prosperous rural economy)
- Paras 196-197 (Determining applications)

National Planning Policy Guidance (NPPG): ID26 (Design)

Local Guidance

- Housing Design and Layout SPG

Planning Considerations

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

- The principle of development
- Highway safety
- Impact on neighbours
- Design

Planning Assessment

The principle of development

The site is located within the Swadlincote Urban Area and is already contained on all sides by existing residential development. The development is therefore consistent with saved policy H4 of the Local Plan. The site is currently a vacant builder's yard and is not a space that is integral to the character of the immediate area, or that adds value to it. The site is clearly visible from Burton Road and the development of the site would complete the layout created by the Castleton Park development which surrounds it.

Highway Safety

The site is accessed directly from Burton Road (A444) where the speed limit is 40mph. Therefore it is necessary that any vehicles leaving and accessing the proposed site to leave/access the site in a forward gear. The County Highways Authority considers that the site can accommodate the necessary parking provision of two spaces per dwelling with sufficient manoeuvring space. The proposal would involve the relocation of the dropped kerb to the centre of the site to create more manoeuvring space within the site. The position of the parking bays, and access could be secured by condition.

Impact on neighbours

The relationship between the surrounding existing dwellings on Castleton Park and the proposed dwellings submitted would not strictly comply with the minimum separation distances of 21m from the rear facing windows, or the 45 degree line to the front of the property, as set out in the SPG. However, it should be noted that the previous permission was approved with the same separation distances as the proposed two dwellings, since that permission preceded the erection of dwellings surrounding the site. The proposed dwellings adhere to a distance of 18.5m between habitable windows on dwellings at the rear, similar to that previously approved, whilst the breach of the 45 degree line to the front of a neighbouring property is equally similar. On the basis that a dwelling house has recently been approved on the site that technically breaches the SPG in a similar manner; a development that could have been implemented until recently, it would not be appropriate to withhold permission on this basis. It is also worth noting that no objection from any of the surrounding dwellings has been received.

Design

The proposal seeks consent for the erection of a pair of semi-detached dwellings, with a single storey porch to the side. The design and layout of the proposal is similar in size and scale to the neighbouring properties which have been approved as part of the wider Castleton Park scheme. The proposed materials could be controlled through the use of planning conditions to ensure that the proposed materials are in-keeping with the surrounding development.

Conclusion

The proposed development would result in the re-development of a redundant builders yard which is a prominent and less than complementary site, and the consequential improvement to the frontage along Burton Road. The site is located within the built up area of Swadlincote and the size and scale of the proposed dwellings would be in keeping with the neighbouring properties. On the basis that a development of a similar footprint and scale has been approved on the site at similar separation distances, the proposed dwellings are not considered to give rise to unacceptable standards of amenity for neighbouring occupiers.

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 Proposed Site Plan (amended) Drg/02, received on 15th March 2016; plan/drawing Ground Floor Plan as Proposed (amended) Drg/03, received on 15th March 2016; plan/drawing First Floor Plan as Proposed (amended) Drg/04, received on 15th March 2016; plan/drawing Front Elevation as Proposed (amended) Drg/05, received on 15th March 2016; plan/drawing Side Elevation as Proposed (amended) Drg/06, received on 15th March 2016; and Rear Elevation as Proposed (amended) Drg/07, received on 15th March 2016; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.
3. No development shall take place until details (including precise dimensions and proposed surface materials) of a vehicular turning area, four car parking spaces and access within the site curtilage adequate to enable all vehicles to enter and leave the site in a forward direction have been submitted to the Local Planning Authority. The turning area as approved by the Local Planning Authority shall be laid out and hard surfaced accordingly prior to the first use of the development and shall be retained available for that purpose thereafter.

Reason: In the interests of highway safety.
4. The dwelling houses shall not be constructed until details of a scheme for the disposal of surface water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that it is possible to incorporate important flood avoidance features including construction levels before the development begins In the interests of flood protection.
5. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before construction work of the dwelling houses occurs.

Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.

6. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), the dwellinghouses shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

7. The dwelling houses shall not be occupied until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on or adjacent to the site (including those which would have their root or canopy structure affected), and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the appearance of the area, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

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. Prior to construction of the dwelling houses 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.

10. No construction work shall take place on the site outside of the following hours: 0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Public Holidays with the exception of work needed during an emergency.

Reason: To protect the amenity of the local residents.

11. No deliveries associated with the demolition or construction works shall be taken or despatched from the site except between the hours of 0800 to 1800

Monday to Friday and 0800 to 1300 Saturdays; with no deliveries on Sunday or Public Holidays.

Reason: To protect the amenity of the local residents.

12. There shall be no burning of waste on site during the demolition and construction phase and no generators or pumps shall be used on site during the demolition and construction phase.

Reason: To protect the amenity of the local residents.

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

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

14. 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.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to improve the quality of the proposal and through meetings and negotiations. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at:
www.coal.gov.uk/services/permissions/index.cfm.

The 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.

10/05/2016

Item **2.1**

Reg. No. **9/2016/0047/FH**

Applicant:
Mr & Mrs G Drakeley
27 Sandcliffe Road
Midway
Swadlincote
DE11 7PQ

Agent:
Mr David Granger
David Granger Design Ltd
The Old Dairy
Mill Street
Packington
Ashby de la Zouch
LE65 1WN

Proposal: **THE ERECTION OF A DETACHED GARAGE AT 27**
 SANDCLIFFE ROAD MIDWAY SWADLINCOTE

Ward: **MIDWAY**

Valid Date: **18/01/2016**

Reason for committee determination

The item is presented to Committee at the request of Councillor Dunn.

Site Description

The application property fronts Sandcliffe Road and has its north side boundary abutting Ladyfields. The house is set back approximately 20m from Sandcliffe Road and has a large frontage area currently free of any built structures apart from boundary treatments. There are several trees/bushes present on the front of No.31 Sandcliffe Road that bounds the other side of the approach to Ladyfields. The application site occupies a similar position on the corner by way of its plot size and shape, and the way that the house is set back within the plot and its frontage land being free from any built structure.

When travelling towards the application site in a southerly direction there are several dwellings within 5m of their front boundaries; the next plot is the first of several larger residential plots with larger houses and a substantial set back from the front boundary and no built structures within the frontage land.

Sandcliffe Road has a considerable sloped incline in a southerly direction. This slope results in no.23 being less than 1/4m higher and no.31 being less than 1/4m lower than the application property.

9/2016/0047 - 27 Sandcliffe Road, Midway, Swadlincote DE11 7PQ



Proposal

The erection of a detached garage in the most eastern part of the frontage land.

Applicant's supporting information

None.

Planning History

None

Responses to Consultations

None

Responses to Publicity

A neighbour has expressed a concern that the height of the proposal is not acceptable.

Development Plan Policies

The relevant policies are:

- Saved Local Plan: H13(LP)

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: SD1 & BNE1.

National Guidance

- National Planning Policy Framework (NPPF) 11-14, 17, 58, 196 & 197.
- National Planning Policy Guidance (NPPG) ID21b, ID26.

Local Guidance

- SPG Extending Your Home.

Planning Considerations

The main issue central to the determination of this application is the appearance of the garage in the proposed position.

Planning Assessment

Design guidance at chapter 7 of the NPPF looks to *secure ‘...high quality and inclusive design for all developments including individual buildings, public and private spaces ...’* Policy BNE1 of the emerging Local Plan seeks to ensure that new developments create *‘...places with a locally inspired character and respond to their context ...’* The design of the garage is acceptable in terms of its relationship to the design of the host dwelling. However, when considering the wider context of the garage and its position in the street, it would be wholly out of character with the open nature currently present in the frontage land of no.27 Sandcliffe Road and its immediate neighbours and therefore contrary to the foregoing policy.

The garage would not adversely affect the amenities of any neighbouring property.

Recommendation

REFUSE permission for the following reason:

1. Design guidance at chapter 7 of the NPPF endeavours to secure '...high quality and inclusive design for all developments including individual buildings, public and private spaces ...' Policy BNE1 of the emerging Local Plan seeks to ensure that new developments create '...places with a locally inspired character and respond to their context ...' The design of the garage is acceptable in terms of its relationship to the design of the host dwelling. However, when considering the wider context of the garage and its position in the street, the frontage land of the property and that of its immediate neighbours are characteristically free from built structures where dwellings are set back to give the appearance of an open entrance to Ladyfields. The proposal would therefore be wholly out of character with the open nature which characterises the area and therefore contrary to the foregoing policy.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and advice providing the opportunity to overcome reasons for refusal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated	Page
9/2014/1157	Swarkestone	Aston	Dismissed / PartAllowed	Delegated	100
9/2015/0038	Midway	Midway	Allowed	Delegated	105
9/2015/0530	Melbourne	Melbourne	Dismissed	Delegated	114



Appeal Decision

Hearing and site visit held on 10 February 2016

by Paul K Jackson B Arch (Hons) RIBA

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

Decision date: 03 March 2016

Appeal Ref: APP/TPO/F1040/4490

Wengen, Woodshop Lane, Swarkestone, Derbyshire DE73 7JA

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
 - The appeal is made by Mr David Bayliss against the decision of South Derbyshire District Council.
 - The application Ref: 9/2014/1157/TP, dated 19 December 2014, was refused by notice dated 11 February 2015.
 - The work proposed is the felling of a beech tree.
 - The relevant Tree Preservation Order (TPO) is South Derbyshire District Land at Wengen, Woodshop Lane, Swarkestone, DE73 7JA Tree Preservation Order No. 371 (2013), which was confirmed on 3 September 2013.
-

Preliminary matter.

1. The full description of the proposed works on the application form reads as follows: *'The felling of a beech tree T1 on the sketch in order to reduce the amount of work involved in cleaning and to remove any possibility of it falling over and causing damage to the surrounding area'*. Notwithstanding the desire to remove the tree completely, at the site visit which formed part of the Hearing, the appellant agreed that selective pruning and raising the crown would be possible as an alternative to felling, if complete removal of the tree was considered unacceptable. I shall determine the appeal on this basis.

Decision

2. The appeal is allowed and consent is granted to carry out works to a tree protected by the South Derbyshire District Land at Wengen, Woodshop Lane, Swarkestone, DE73 7JA Tree Preservation Order No. 371 (2013) in accordance with the terms of the application 9/2014/1157/TP, dated 19 December 2014, dated 11 February 2015, subject to the following conditions:
 - 1) The works hereby permitted shall begin not later than two years from the date of this decision.
 - 2) No works shall take place until a scheme for selective pruning and raising the crown of the protected tree by no more than 4 metres has been submitted to and approved in writing by the local planning authority. The works shall be carried out in strict accordance with the approved scheme.
 - 3) Notwithstanding the application wording, no felling of the protected tree shall take place.
-

Main Issues

3. The main issues in this case are:

- The amenity value of the tree;
- The effect of the proposed felling on the character and appearance of Swarkestone Conservation Area: and
- Whether the felling would be justified in the circumstances of this case.

Reasons

Background

4. 'Wengen' is a detached house built in the 1960s as part of a row of similarly sized dwellings. The single tree subject of the TPO is a beech tree, once part of a hedge planted across the width of the rear garden about 50 years ago. Four other trees that formed part of the same hedge were removed in 2010 under a previous application ref. 9/2010/0766, which at that time also included the tree subject of this appeal. The appellant left this tree until after the 2 year period of consent expired, and on submitting a further application to fell in 2013, a TPO was confirmed on the basis of a report from the Council's Tree Officer.

Amenity value

5. The tree lies in an area of domestic gardens behind mainly post war housing. Two new 2 storey 'backland' houses are being built behind 'Wengen' and these significantly increase the distinct sense of a locally suburban environment. The tree is of medium height and of rather dense appearance, having become bifurcated early at a low level, as is common in plants intended for hedging. Two substantial subsidiary shoots have also sprung from the node, rising high into the crown and providing several opportunities for water penetration at the junction. However, there was no evidence of any rot at the site visit and the tree appeared healthy. The crown has an attractive symmetry. There is very little sign of any disease or included bark at the node which might have indicated a degree of structural weakness.
6. The tree is quite prominent in the back garden area amongst other garden species but is not easily visible from Woodshop Lane, except from one point next to 'The Dimble' across 4 other gardens containing other mature planting. There are only 2 other public viewpoints; from Barrows Lane to the north through a new access, and from the car park of the Crewe and Harpur public house, though this latter view is partially obscured by other trees. The tree is part of the background. However, it would be more significant seen from nearby houses especially first floor accommodation; and it would be particularly prominent seen from 'Brymar' next door to 'Wengen'. It also serves to mitigate, to an extent, the urbanising effect of the 2 new houses, neither of which I was told are subject to any condition requiring new tree planting. I conclude that it has a role in contributing to the environmental quality of the area, an aim of policy ENV9 of the adopted South Derbyshire Local Plan of 1998 (LP). Whilst now of some age, the aims of this policy are consistent with the tree protection objectives of the 2012 National Planning Policy Framework.

The effect on the conservation area

7. The Swarkestone Conservation Area Character Statement (CACS) identifies the key heritage significance of the conservation area as lying in the historical development of the village on fertile ground around the important crossing over the River Trent, which possibly dates from the 11th century. It has two distinct areas of character; an area grouped east of the church, and the central part of the village near the bridge. Examples of 20th century infill housing on the west side including 'Wengen' is referred to as having a neutral impact on character. No important views are identified that include the protected tree. Nevertheless, trees in the garden areas behind the houses on Woodshop Lane and Barrow Lane are important in maintaining an overall rural impression. The protected tree is one of the highest and more significant of the trees in the backland area that perform this role. Its removal would diminish and chip away at an important aspect of character which is not of great importance in heritage significance terms but which is regarded as contributing to the character of the village as a rural settlement.
8. Policy ENV12 of the LP resists development which would have an adverse effect on conservation areas and seeks to preserve aspects including trees, gardens and open spaces within them. This reflects the statutory duty in section 72(1) of the Listed Buildings and Conservation Areas Act 1990, which says that special attention must be given, with respect to any buildings or other land in a conservation area, to the desirability of preserving or enhancing the character or appearance of that area.

Justification for felling

9. The appellant wants to remove the tree for several reasons. Its increasing potential for leaf drop is likely to involve some effort on behalf of himself and his neighbours, but the tree is not exceptionally large. Beech leaves do not rot quickly, but leaf fall is a natural process that accompanies all trees to some extent, and the resulting nuisance is not a reason to fell a protected tree which contributes to the character of the area. I note that the appellant has a number of other sizeable deciduous trees on his property.
10. The appellant is also concerned about the likelihood of windthrow, but the tree is sheltered from the wind by nearby houses including recently erected brick walls and buildings to the rear. The fear of falling trees is understood, but there is no evidence that this tree is weakened to any extent. Although bifurcated, it retains a healthy appearance. No analysis beyond a visual assessment has been carried out to show that any hidden rot exists. There is no guarantee that any tree will remain 100% safe and fear of falling boughs and branches is not a reason to fell every tree that is near to a dwelling or garden. Any serious risk that arises can be addressed by regular assessment as the tree grows. There is no evidence that there is a serious current risk.
11. There is a strong sense of grievance because the opportunity was not taken to fell the tree when consent existed in 2010. The Tree Officer's Report in 2013 noted that the tree was barely suitable for a TPO, but it would be worthy of protection if it was highly valued by neighbouring occupiers. Representations indicate that this is the case. The appellant queries what has occurred to change the situation since 2010, but it is sufficient to observe that the value of this remaining beech, despite its lowly origin and imperfect appearance, has been recognised by the community. I consider that its value is enhanced

because of its proximity to new housing and garaging which has distinctly increased the density of built development in a previously open backland area.

12. The appellant pointed out a greenhouse under the tree, but there are other locations in the garden where a greenhouse could be situated where more daylight would fall. However, I recognise the inconvenience this would cause. The value of the tree essentially lies in its upper crown. The lower somewhat spindly growth contributes less to local character. Moreover, the tree is likely to benefit from selective pruning and raising the crown to remove some of the lowest dense, twiggy growth that is obstructing sunlight. This would also reduce leaf fall and wind resistance; and would represent no more than responsible tree care.
13. Many occupiers carry the responsibility of protected trees on their property. The accompanying tasks may be a burden to some and a pleasure to others, but their existence gives pleasure to all. The tree does not significantly block anyone's outlook or obstruct a great deal of daylight or sunlight. I accept that it will grow and do not rule out the possibility that in future years, the crown may require further thinning or pruning to ensure its continuing safety and health. In the meantime the tree will continue to contribute to the character and appearance of the area.

Conclusions

14. I conclude that the tree has an attractive form in limited views from the public realm and from local properties. It makes a small but significant contribution to the character of the area. Its felling would conflict with local and national development plan policies that seek to resist removal of trees. However there would be advantages to the appellant and the health of the tree in selective pruning and the crown could be raised modestly without at all affecting its public value. For these reasons, I am allowing the appeal to the extent that such works can be carried out in accordance with a scheme that the Council must approve.

Paul Jackson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Bayliss
Martin Edwards

FOR THE LOCAL PLANNING AUTHORITY:

Tony Burdett DipURP MRTPI

DOCUMENTS

- 1 Emerging policy BNE4, supplied by the Council
- 2 Adopted Environment Policy 12, supplied by the Council
- 3 Swarkestone Conservation Area Character Statement of 2014, supplied by the Council

Appeal Decision

Site visit made on 19 January 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 24 March 2016

Appeal Ref: APP/F1040/W/15/3137783

The Coppice, 576 Burton Road, Midway, Swadlincote DE11 0DP

- 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 W Hughes against the decision of South Derbyshire District Council.
 - The application Ref 9/2015/0038, dated 7 January 2015, was refused by notice dated 5 May 2015.
 - The development proposed is an outline application for two detached dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved for two detached dwellings at The Coppice, 576 Burton Road, Midway, Swadlincote, DE11 0DP in accordance with the terms of the application ref: 9/2015/0038, dated 7 January 2015, subject to the conditions set out in the Schedule to this decision.

Application for Costs

2. An application for costs was made by Mr W Hughes against South Derbyshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline, with all detailed matters reserved. I have dealt with the appeal on this basis, treating the indicated layout, elevations, access and landscaping within submitted plans as illustrative.
4. The South Derbyshire Local Plan Part 1 was submitted in August 2014. Hearings were held in October and December 2015 (in addition to an initial round of Hearings in November/December 2014). The Council expects to adopt this document later in 2016.

Main Issues

5. The main issues are whether the proposed development complies with planning policies relating to the location of new housing; and the effect on the character and appearance of the surrounding area, with particular regard to important views of the countryside.
-

Reasons

6. The appeal site is existing garden curtilage of 576 Burton Road (The Coppice) and its detached residential annexe, which is located on the fringe of the built up area of Midway and outside of the development boundary of Swadlincote as defined in the South Derbyshire Local Plan (LP), adopted May 1998. The topography of the site slopes steeply away from The Coppice and its residential annexe at the side and Burton Road at the front.
7. Housing Policy 4 of the LP permits new development on the fringe of the built up area of Midway provided that the site is substantially surrounded by development. Additional requirements of Housing Policy 4 also seek to avoid the development resulting in a prominent intrusion into the rural landscape, prevent ribbon development other than the infilling of a small gap in a substantially built up frontage and ensure that the proposal is of a suitable scale and character.
8. The site lies adjacent to a row of houses with varied build lines and an intermittent frontage onto the same side of Burton Road and is opposite to a continuous row of properties. However, due to the presence of a public footpath and woodland to the north of the site and open countryside at the rear to a north eastern aspect, it could not reasonably be regarded as substantially surrounded by development. Furthermore, although the development would infill a small gap between the houses and the footpath with woodland beyond, this gap cannot reasonably be considered to be within a substantially built up frontage on this side of Burton Road due to the clustered nature of development. The appeal proposal would therefore not comply with Housing Policy 4 of the LP.
9. Nevertheless, the site is available for development, would make efficient use of land and would contribute to the supply of housing. The Council are progressing post-submission modifications to the emerging Local Plan Part 1 relating to the distribution of housing need and have commenced early preparation of a Local Plan Part 2 which will provide detailed site allocations. These Local Plan documents are however unadopted and notwithstanding the respective stages of preparation include housing figures that are unconfirmed and could change. The Council therefore cannot currently demonstrate a 5-year supply of deliverable sites against its housing requirements as required by the National Planning Policy Framework (the Framework). In accordance with the Framework, Housing Policy 4 of the LP relating to the location of housing is therefore not considered to be up-to-date and accordingly can only attract very limited weight in this appeal. The presumption in favour of sustainable development with respect to paragraphs 14 and 49 of the Framework is therefore engaged.
10. It is common ground between the main parties that the site is within a sustainable location. I have no reason to take a different view given that the site adjoins a settlement with local services and facilities and is approximately 2 miles from Swadlincote town centre, with regular bus services along Burton Road (also known as A511) and nearby on Lime Tree Avenue and Springfield Road. There are also minor economic benefits of a development of this scale in terms of economic activity associated with the construction of the dwellings and their subsequent occupation. The Council's concerns therefore relate to environmental aspects of sustainability with respect to the effect upon the

character and appearance of the area through loss of important views of the countryside.

11. The Framework at paragraph 17 identifies the core principle of decisions recognising the intrinsic character and beauty of the countryside, and at paragraph 109 seeks to protect and enhance valued landscapes. The appeal site due to its location on the edge of the settlement and the proximity of an adjacent public footpath offers opportunities for views across it by many people each day. Nevertheless, such existing views relate primarily to domestic curtilage with only restricted views of open countryside available looking across the site from Burton Road and from the public footpath at the side of the site. This is due to the extent of boundary screening provided by existing trees to the south western and north eastern boundaries, established woodland to the north and the topography of the site. Although a number of trees within the appeal site are deciduous, I observed during my visit that the boundary screening remains substantial during winter months.
12. With regard to the above, the development would not result in a prominent or harmful intrusion into the rural landscape as the contained nature of the appeal site broadly aligns with the north eastern curtilage boundaries of adjacent properties and would be viewed against and partially screened by a greater depth of woodland to this aspect. Furthermore, the likely set back position from Burton Road and the significantly lower land levels of the proposed dwellings than their surroundings would ensure that development could be appropriately assimilated into the landscape, whilst largely preserving the narrow views of the open countryside which exist from Burton Road and the public footpath adjoining the existing residential curtilage. This would be achieved through a transition of the proposed residential development on lower ground to the existing built form of The Coppice and its residential annexe on higher ground. In such circumstances, I consider that the infilling of this small gap with development as proposed would not result in the loss of important views of the countryside or valued landscape, nor would it harmfully alter the character of its surroundings.
13. Dwellings of appropriate design, scale, form and materials within the site would complement the diverse character and appearance of the residential properties in the surrounding area and appropriately integrate with the semi-rural character of its wider setting. The precise siting, size and appearance of the proposed dwellings, together with associated landscaping would be appropriately controlled through the reserved matters stage, notwithstanding the inclusion of illustrative details as part of the outline application.
14. In reaching the above view, I have taken into account that the development would comprise part of the garden area of The Coppice and that the Framework at paragraph 53 advises local planning authorities to consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. However, the Council has no such policy and in any case, given my findings above, the development would not harm the character and appearance of the local area.
15. The Council have expressed concern with respect to the proposed planting of a hedge along the boundary with the footpath. However, such planting would adversely affect only existing public views across domestic curtilage with restricted views of open countryside beyond due to the varied topography and

existing landscaping. Based on my observations from the footpath, the most important views into the surrounding countryside relate to the open entrance located beyond the existing north-eastern boundary of the appeal site which would be unaffected by the proposed development. In any case, such matters of boundary planting are illustrative at this stage and relate to landscaping which is reserved for subsequent approval and therefore could be altered, including to improve natural surveillance of the footpath. Furthermore, I am also mindful that boundary planting could be added within the appeal site and in close proximity to the footpath without the need for planning permission.

16. I have considered the Council's argument that the grant of planning permission would set an undesirable precedent for other similar developments. However, no directly comparable sites to which this would apply were put forward. Each application and appeal must be determined on its own merits, and a generalised concern of this nature does not justify withholding planning permission in this case.
17. I conclude that proposal would not harm the character and appearance of the surrounding area, nor important views of the countryside. As such the proposal would accord with paragraphs 17, 53 and 109 of the Framework. In addition, the proposal would represent sustainable development and the Framework advises that there should be a presumption in favour of such development. Whilst there is conflict with Housing Policy 4 of the LP in so far as the policy seeks to guide housing development to locations which are substantially surrounded by development and in a substantially built up frontage, the weight attributed to this policy and the conflict is considerably less than would be case if there had been a 5-year supply of deliverable sites for housing. This conflict is far outweighed by the benefits of the scheme that I have set out above, including increasing housing supply, albeit to a small degree, in the District where currently a 5-year supply of deliverable housing does not exist.

Planning Conditions

18. The application was made in outline with all matters reserved and it is, therefore, necessary to impose conditions relating to the submission of reserved matters and implementation of development.
19. I have imposed a condition specifying the relevant approved plan relating to the red line site boundary. This provides certainty given the submission of additional illustrative drawings relating to reserved matters for which approval is not granted in outline.
20. In view of the varied topography of the site and the relationship to The Coppice and its residential annexe, a condition is necessary to secure agreed details of proposed site levels and the proposed slab levels of each dwelling to ensure the positive relationship of building heights which would preserve the character and appearance of the area and the living conditions of occupants. This would be a pre-commencement condition as it addresses matters that must take place before any development can commence and is necessary irrespective of the illustrative details submitted to this appeal.
21. I note that the Council raised no concerns with respect to the living conditions of occupiers of neighbouring properties and highway safety. Based on the evidence before me including the illustrative plans, together with the

observations during my site visit, I have no reason to take a different view and therefore consider that development of the site is feasible with respect to access and layout. These are issues which would appropriately be controlled at the reserved matters stage through the submission of details relating to the layout and appearance of the proposed dwellings and proposed landscaping, together with access and car parking arrangements.

22. A Tree Survey was submitted by the appellant in seeking to demonstrate the acceptability of the removal of three trees (identified as T2 and T3 - Black Poplars and T4 - Silver Birch) which are not subject to statutory protection. The Council has offered no contrary view to the evidence and the classification of the trees as C or U category specimens in accordance with BS 5837: 2012¹ and consequently offered no objection with respect to their suitability for removal given their existing condition, restricted lifespan and limited merit. Based on the evidence before me and my observations during my visit, I have no reason to take a different view. However, the Council's suggestion of a condition to secure adequate replacements and implementation of other planting, seeding and turfing is not necessary at this stage as such matters relate to landscaping which is reserved for subsequent approval.
23. The Council have requested that conditions be imposed related to submission and approval of details of materials and boundary treatments. However, such matters relate to the appearance and landscaping of the development which are matters reserved for subsequent approval.
24. National Planning Practice Guidance advises that conditions should restrict national permitted development rights only where there is clear justification to do so. I am not satisfied that the extent of permitted development rights that the Council recommends to be removed from both dwellings is reasonable or necessary as no detailed justification is provided.

Conclusion

25. For the reasons given above, I conclude the proposal would accord with the Framework as a whole. Accordingly, the appeal should be allowed and planning permission granted subject to the planning conditions set out in the attached schedule.

Gareth Wildgoose

INSPECTOR

¹ BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations.

SCHEDULE

CONDITIONS

- 1) Details of the layout, scale, appearance, access and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of the approval of the last of the reserved matters to be approved.
- 4) This permission relates to the site as denoted by the red line on Drawing No: BLJT-00315222.
- 5) The erection of the dwellings hereby permitted shall not begin until a plan indicating the existing site levels, proposed site levels and the proposed slab levels of each dwelling has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

END OF SCHEDULE OF CONDITIONS

Costs Decision

Site visit made on 19 January 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 24 March 2016

**Costs application in relation to Appeal Ref: APP/F1040/W/15/3137783
The Coppice, 576 Burton Road, Midway, Swadlincote DE11 0DP**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr W Hughes for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal to grant outline planning permission for two detached dwellings.
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Decision

1. The application for an award of costs is dismissed.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that otherwise would not have arisen. In addition, substantive matters include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include the failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. The appellant's application for costs relates to both the procedural and substantive matters listed as examples above, with particular reference to the failure to produce evidence to justify the decision to refuse planning permission following positive pre-application meetings.
 5. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It clearly identifies what the Council considers to constitute harm and states the policy of the South Derbyshire Local Plan (LP) that the proposal would be in conflict, together with paragraphs within the National Planning Policy Framework (the Framework) considered to be relevant. The Council's evidence predominantly relies upon an officer's delegated report to substantiate the reason for refusal in this respect, rather
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than specifically respond to the appellant's statement aside from selected responses to an appended landscape statement. Nevertheless, such a course of action remains at the Council's discretion where the reason for refusal is substantiated with respect to judgements made, which I consider to be the case.

6. With respect to the detail of the case, the Council accepts that it is unable to currently demonstrate a 5-year supply of housing. However, in doing so it places some reliance upon LP Housing Policy 4 which is a policy for the supply of housing that should not be considered to be up-to-date in such circumstances in accordance with paragraph 49 of the Framework. In making its decision, the Council therefore to my mind incorrectly attributed overriding weight to LP Housing Policy 4, together with paragraph 17, 53 and 109 of the Framework, without having full regard to the assessment required by paragraph 14 of the Framework when relevant policies of the development plan are out of date. However, notwithstanding the balance of considerations in my decision on the appeal, the assessment required by paragraph 14 of the Framework remains a matter of judgement relating to a planning balance of adverse impacts and benefits.
7. Whilst I do not agree with the approach taken by the Council in making its decision, given the reasoning within its evidence I cannot be certain that the outcome of the planning application would have been different if an assessment under paragraph 14 of the Framework was undertaken more methodically. It therefore follows that given the possibility of an equivalent outcome to the planning application, an appeal may have been necessary in any case. I cannot therefore conclude that the Council has behaved unreasonably with respect to preventing or delaying development which should clearly be permitted, or that its actions in this respect caused the appellant to incur unnecessary or wasted expense in the appeal process as a result.
8. The appellant's submissions to the appeal included a landscape statement appended to the statement of case providing detailed evidence in response to the Council's reason for refusal relating to the impact of the proposed development on the landscape and character of the area. This evidence included reference to views from public footpath no.63 together with a number of recommendations including new native hedgerow and intermittent tree planting. In such circumstances, it is entirely reasonable that the Council provided a response to such matters within its statement of case. Furthermore, it is also logical that such a response would not constitute a new argument or reason for refusal, nor would it be fresh and substantial evidence at a late stage necessitating extra expense for preparatory work by the appellant that would not otherwise have arisen. In reaching this view, I am mindful that the Council's evidence in the officer's delegated report relates to the loss of a gap in development in so far as locations where important views of the countryside can be obtained.
9. The Council's response to the landscape statement reflects a reasonable difference of opinion based on planning judgement by suitably qualified officers, rather than vague, generalised or inaccurate assertions about a proposal's impact. Notwithstanding my decision concurring with the appellant's evidence, I consider the Council's approach of selectively responding to the technical landscape judgements derived from a Landscape and Visual Impact Assessment methodology is reasonable and precise. In this respect, I have

taken into account that the photographs 1, 2 and 3 provided in Appendix B of the Council's statement demonstrate the available views into the countryside and screening surrounding the appeal site in winter months from private viewpoints experienced during the Council's original site visit. As such they are not a direct comparison to or an inaccurate representation of the public viewpoints within the landscape statement taken from Burton Road and the public footpath.

10. Informal advice provided before an application is given without prejudice and cannot pre-determine the outcome of the subsequent application, which must take account of all material factors. The information provided as part of this appeal does not include a formal record of the pre-application advice provided or whether it related to the subsequently submitted plans. I therefore have no firm basis to conclude that informal advice given before the submission of the planning application was so misleading as to amount to unreasonable behaviour on the part of the Council.
11. Additional concern was also expressed regarding an absence of engagement of the Council before making the decision despite agreement from the appellant to an extension of time for determination. However, based on the evidence before me it is apparent that the Council's reason for refusal related to the principle of development whereby it considered amendments were not possible to resolve an identified conflict with Housing Policy 4 of the LP and the Framework. Notwithstanding the outcome of the appeal, in such circumstances the Council's approach to decision making without further discussion with the appellant was not unreasonable.
12. The separate matter relating to the appeal timetable has no bearing on this costs decision, as the appeal procedure is set by the Planning Inspectorate and the Council adhered to the timetable.

Conclusion

13. I conclude that unreasonable behaviour on the part of the Council has not been demonstrated. I therefore determine that the costs application should fail.

Gareth Wildgoose

INSPECTOR

Appeal Decision

Site visit made on 10 February 2016

by Alison Roland BSc DipTP MRTPI

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

Decision date: 3 March 2016

Appeal Ref: APP/F1040/W/15/3135539

Lambert House, Ashby Road, Melbourne, Derby, DE73 8ES.

- 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 Alan Dunncliff against the decision of South Derbyshire District Council.
 - The application Ref: 9/2015/0530, dated 15 June 2015 was refused by notice dated 11 August 2015.
 - The development proposed is erection of one dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area, with specific regard to the settings of Melbourne Park Conservation Area (CA) and Melbourne Hall Park, a Grade I Registered Park and Garden, both designated heritage assets.

Reasons

3. Lambert House is a substantial dwelling set within extensive wooded grounds occupying a position beyond the periphery of the settlement of Melbourne and immediately abutting the CA boundary to the South and East. It sits in an elevated and somewhat commanding position above the surrounding rural landscape. The woodland grounds of Lambert House including the appeal site, are subject to Tree Preservation Order No 381 (2014) (TPO).
 4. The Melbourne CA is geographically widespread and as well as encompassing the historic core of the settlement, extends to include extensive tracts of the rural countryside to the South and East. The CA also includes the grounds of Melbourne Hall Park; a Grade I Registered Park and Garden which stands to the East of the appeal site. The grounds of the park are set within attractive rolling countryside interspersed with stands of mature trees and the appeal site forms part of its wider setting. One of the noteworthy features of the park is The Pool, an extensive and informally landscaped body of water to the East of the appeal site. The more formal landscaped gardens stand beyond the Pool to the East and are not visible from the appeal site.
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5. The siting of the proposed dwelling would be in the south eastern corner of the grounds to Lambert House; an area occupied by dense semi natural woodland. The land has been subject to quarrying in the past and accordingly is uneven with a large central hollow and embankments along the North, South and Eastern edges. The Landscape and Visual Mitigation Plan (Figure 2 Landscape and Visual Appraisal), depicts that the majority of the trees around the site perimeter would be retained and additional tree planting would take place.
6. However, having regard to the siting of the dwelling in a somewhat oppressive and damp hollow, surrounded by mature trees, I consider that there would be likely pressure in future to fell or prune back trees to improve daylight to the house and lessen nuisance caused by falling leaves. This would especially be the case along the Southern site perimeter, as the dwelling would have its principal outlook across the attractive countryside vista along that boundary. This would be likely to significantly open up the site and increase views of the house from the surrounding CA, most especially from the well used Public Footpath Numbers 17 and 23 to the South.
7. At present, the appeal site comprises part of a larger elevated ridge of trees that sits above the open countryside to the South and East and significantly enhances the setting of the CA and wider setting of the registered park. It also forms an attractive backdrop to the grounds of Melbourne Hall Pool when viewed from a position to its South (view point 03 Figure 1- Landscape and Visual Constraints) of the Landscape and Visual Appraisal.
8. The proposed house would clearly extend the built form at the appeal site and would urbanise this semi natural rural woodland, which occupies a particularly sensitive position abutting the attractive rolling countryside of the CA. The effect would be exacerbated as the design incorporates extensive areas of glazing to its southern elevation and glare and light pollution therefrom would increase the physical presence of the dwelling. In so doing, the dwelling would not be in sympathy with its rural setting and appear to assert itself on the landscape in an incongruous fashion.
9. Moreover, whilst individually of little merit, the TPO trees when seen as a woodland group, significantly enhance the appearance of the appeal site and wider setting of the CA and registered park. The likely loss of trees adds to my concerns about the assertiveness of the proposed dwelling on the landscape. The existing hedge to the site perimeter would also be clipped back to 1.5 metres in height, which would further present a more manicured, suburban appearance, at odds with the semi natural appearance of the appeal site and its rural setting.
10. I appreciate that the siting of the dwelling has been moved further back into the site compared to that considered in the previous appeal (APP/F1040/A/14/2219795) and the house itself is also smaller in size. However, the fact remains that it would stand significantly closer to the site boundaries than Lambert House and would for the reasons outlined above, encroach into the countryside in an urbanising fashion.
11. I also understand that planning approval was secured under the terms of application Ref: 2014/1215 for the erection of a dwelling elsewhere within the grounds. However, the location of that property was appreciably different, in

that the house stood to the West of Lambert House, closer to Ashby Road and in a less prominent position relative to the open countryside. I therefore do not consider it is directly comparable to the appeal before me which I must in any event, determine on its merits.

12. For these reasons, I conclude on the main issue that the proposal would harm the rural character and appearance of the area and the setting of the both the Melbourne CA and registered park. The harm would be less than substantial in terms of paragraph 134 of the Framework, but I find no public benefits that would outweigh it. It would also not amount to sustainable development for the purposes of paragraph 14 of the Framework, as that concept enshrines within it an environmental role, contributing to protecting and enhancing the natural and built environment.
13. The proposal would thus conflict with Environment Policies 1 and 12 and Housing Policy 5 of the South Derbyshire Local Plan (1998), which seek to ensure that development in the countryside protects its landscape quality and character, would not have an adverse effect on Conservation Areas and is in scale and character with settlements. Housing Policy 8 only allows housing development in the open countryside when specific exceptions apply, none of which relate to the appeal proposal. However, as this policy is not consistent with the advice in the Framework, it is not definitive in my determination of this appeal.

ALISON ROLAND

INSPECTOR