

REPORT OF THE HEAD OF 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 includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) and responses to County Matters.

Reference	Item	Place	Ward	Page
9/2006/1430	1.1	Swadlincote	Swadlincote	1
9/2008/0164	1.2	Etwall	Etwall	28
9/2008/0260	1.3	Melbourne	Melbourne	34
9/2008/0579	1.4	Barrow	Aston	42

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

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

Item **1.1**

Reg. No. **9/2006/1430**

Applicant:

Rokeby (Swadlincote) Ltd & Peveril
Securities Ltd

Agent:

Signet Planning Limited
12B Hornbeam Park Oval
Harrogate
HG2 8RB

Proposal: **The development for non-food retail, leisure (including multi-plex cinema) food and drink uses including retention/extension of existing buildings, housing, means of access and car parking at former Wraggs Pipes Hepworths Coppice Side Swadlincote**

Ward: **Swadlincote**

Valid Date: **04/01/2007**

This application is brought before this committee because this is an application of major importance for Swadlincote and it is a major application that has attracted more than two objections.

Introduction

This application has been in extensive negotiation for the past 18 months and consequently has been through many revisions. The planning assessment section of this report deals with the final submission as received last month (unless otherwise referred to). The scheme has been out to consultation twice before; upon receipt of the original submission (January to March 2007) and for the amended submission received in January 2008.

Site Description

The site was part of a pottery and pipe works formerly occupied by Wraggs and more latterly by Hepworths Building Products but now vacated and derelict. It comprises some 3.6 hectares of land to the southern side of the town centre adjoining the southern boundary of the Morrisons supermarket site (which occupies what was the remainder of the works). Generally the land rises to the south and at the southern edge it is significantly higher than the northern edge by up to approximately 10 metres.

Part of the site lies within the Swadlincote Conservation Area and there remain a number of historic buildings grouped around a Grade II Listed chimney and adjoining workshop which were part of the former pipeworks.

9/2006/1430 Wraggs/Hepworths Site
Swadlincote



Crown Copyright. All rights reserved.
South Derbyshire District Council.
OS Licence No. LA 100019461. 2006

Scale 1:2500 Date Plotted 18/7/2008

Plot centred at 430059 319422

9/2006/1430 Wraggs/Hepworths Site
Swadlincote



There are many significant views of the site from further afield including from the A511 and various approaches to the town from the north and east and particularly from the approach to the town from Derby Road, Sir Herbert Wragg Way and Coppice Side. The site is currently accessed from Coppice Side on its eastern boundary.

Proposal

The scheme comprises two main elements: a retail/leisure development and adjoining that to the south, a housing development.

Some existing relatively modern buildings are to be demolished and it is proposed to refurbish and convert the four existing historic buildings into office, shop and food/drink uses. To the south of the historic buildings it is proposed to construct a shopping mall around a surface car park. The new buildings would comprise ten retail units at ground floor level and a cinema and bowling alley above units 1–4. The maximum height of the two-storey part of the proposal would be some 12.5m. The corner building housing lifts and stairs to the cinema would be some 15 metres high. Linking the modern shopping mall to the historic buildings would be a new building comprising a further three units of smaller scale.

Further south and at a significantly higher level it is proposed to construct 27 houses comprising a mix of one to three bedrooms (21 two-storeys, six 2½-storeys) and 9 two bedroom flats at three-storeys (the affordable housing element). The housing element of the scheme has been reduced from 41 units, which included 2 three-storey blocks of flats, to 36, the main change being the substitution of the second flat block nearest to the existing houses on Highfield Road for conventional two-storey houses.

A shared footpath/cycleway is proposed in a north south direction along the western site boundary.

Applicant's Supporting Information

The application is accompanied by an Environmental Statement (ES) (available on the register) which includes detailed assessment of:

- The proposed development and associated need
- Planning policy context
- Townscape and visual impact
- Townscape and conservation impact
- Cultural heritage and archaeology
- Contamination and ground conditions
- Flood risk and surface water run-off
- Ecology
- Transport and access
- Ecology
- Noise and vibration
- Construction
- Cumulative effects and interrelations.

In support of this are the following related papers:

- Non-technical summary
- Transport assessment (by specialist consultant)

- Geo-environmental report and detailed quantitative risk assessment report (by specialist consultant)
- Planning statement (by specialist consultant)
- Design and access statement (by specialist consultants)

Planning statement summary

The supporting planning statement concludes as follows:

- The planning application by Rokeby/Peveril seeks the regeneration of the former Hepworth Works' site through a mixed-use development comprising non-food retail uses, leisure uses (including a cinema), food and drink uses and the retention and extension of existing buildings for food and drink and also office purposes. In addition, there are proposals for 41 dwellings [now 36] in the southern part of the site.
- The scale of the retail and leisure proposals is that approximately 9,755 square metres of non-food retail are intended, together with approximately 4,693 square metres of leisure and food and drink outlets. Of the leisure provision about 1,298 square metres will be in the form of a five-screen multiplex cinema.
- In addition to the planning application for development, there is an application for conservation area consent to alter industrial buildings in the group close to the northern boundary of the site (within the conservation area) to facilitate the development.
- In planning policy terms there is considered to be a strong case to support the development because it will lead to the regeneration of the site and an enhancement to the retail and leisure facilities currently offered by Swadlincote town centre. The town loses considerable amounts of expenditure to competing centres such as Burton-on-Trent and Ashby because of its lack of attractive retail and leisure outlets. In addition, the cinema and food and drink proposals will enhance the offer of Swadlincote for the evening economy. There are intended to be improved pedestrian linkages to the town centre from the new housing via a footpath down the western boundary; through the Morrisons' car park and through a new footpath along Rink Drive (to be discussed in the context of the Section 106 Agreement).
- The scale of retail development is within the capacity identified as being appropriate for the town within the Donaldsons' retail report prepared for the Council as updated by our retail assessment. In any event, the regeneration benefits of the scheme are substantial and there is thus compliance with the relevant retail policies applying in PPS6, the Structure Plan and the draft (now abandoned) Local Plan.
- The housing proposals on previously developed land comply with the relevant policies in PPG3, the Structure Plan and the draft Local Plan. Within the housing provision there will be affordable housing and potentially better parking for existing residents.
- The small element of partial demolition of existing buildings is required as part of the overall scheme but is more than compensated for by the restoration of those buildings remaining and the construction of a new two-storey building on the northern boundary using traditional materials which will replace those being demolished. (This was part of the initial scheme and does not apply to current one.) In accordance with PPG15, the Structure Plan and draft Local Plan policies, the setting of the conservation area will be enhanced by the proposals.

- Although the existing site was used for employment purposes, the 'loss' of employment land is not considered to be an overriding planning issue because of the very high costs of developing the site for solely employment purposes which would not be commercially viable; the marketing history of the site; the existence of other employment sites in the vicinity of Swadlincote and also because the regeneration of the site will yield some 400 jobs (albeit they are not manufacturing jobs).

In these terms the proposals are regarded as complying with key planning policies and can be supported by the local authority.

Non-technical summary of the ES

The non-technical summary of the ES concludes that overall, the impact of the scheme on the environment when compared to the existing employment buildings on site is regarded as being minor or negligible. To a great extent, if the site was maintained as industrial in its current form, a modern retail/leisure/housing scheme could be seen as beneficial. The main perceived impact for residents and users of Swadlincote Town Centre will be in terms of the visual impact of the new development compared to the existing buildings (although some of these are being retained) and the increase in traffic, which is all likely to be retained within the capacity of the existing road network. There will be temporary impacts caused by the construction of the development in terms of noise, air quality and traffic but these will be controlled by a scheme that will need to be submitted to and approved by the council.

Planning History

There is no planning history relevant to the site as a whole. However, when the Morrison's store was approved the Grade II Listed Chimney formed part of a Section 106 Agreement that required certain repair works. In accordance with that Agreement re-pointing of a section of the chimney from the ground has been undertaken along with repair of the building attached to it.

Responses to Consultations

Original plans

Sustrans (the cycling charity) objected to the proposal on the grounds that it made no provision for improved passage by bike and the 'canal without water' is too pinched at one point even to accommodate pedestrians in reasonable comfort let alone facilitate shared use if the east west option were pursued. Furthermore the proposed east west route is poorly detailed and emerges at one of the most difficult and dangerous places on Coppice Side with no attempt to offer a safe crossing or otherwise consider how riders travel to or beyond this point.

East Midlands Development Agency commented that development of the site would support the Priority Action 'Previously developed land and buildings' which is included in the Regional Economic Strategy 'A flourishing region' and aims to increase the re-use of previously developed land. It has consulted the Derby and Derbyshire Economic Partnership, the Sub-regional Strategic The Partnership for the area, and supports the application.

The Council's Economic Development Officer is supportive of the proposal and comments that it would regenerate a brownfield site, recapture spending that is currently being lost to the District, create employment, address low levels of vacant retail property, enhance the range and mix of retail provision and improve the leisure provision.

The County Council (Strategic Planning) comments that whilst there is no requirement for additional houses in the Swadlincote Sub-Area beyond 2007 the proposed development could help to meet future requirements. With regard to the retail element of the scheme it raised the following concerns:

- The potential impact on the town centre
- The approach to the sequential test and availability of other town centre sites
- The cumulative impact implications which are not assessed by the applicant
- The proposed pedestrian linkages to the town centre

Provided the District satisfactorily addresses these issues the County Council considers that the potential benefits to the town centre are likely to outweigh concerns regarding retail impact and sequential test, particularly if the development is well integrated with the town centre through the provision of good pedestrian linkages.

The County Council Urban Design and Conservation Officer has submitted detailed comments. A number of concerns have been raised regarding the conclusion of the submitted documents. The conclusion is that the proposal would undermine the vitality and viability of the town centre as this site is not conveniently accessible enough to stimulate shared shopping trips. Furthermore it is questioned that sufficient connectivity between the site and the town centre can ever be achieved to justify retail units on this site. There is a strong possibility that the improvement works that have received public funding will be undermined by this proposed development.

The County Council Greenways Officer comments that no provision has been made through the proposed leisure and retail site for the proposed strategic Cycle Network Route 63 that has been identified through both the District and County Council strategic documents. It is vital for the continuity of this route to create this link.

English Heritage was unable to provide specialist advice but draws attention to the requirements of PPG15 and points out that Swadlincote is a potential subject for an area grant scheme and suggests that the authority takes into account any negative impact that this application may have on the Conservation Area.

The County Development Control Archaeologist comments that a condition should be imposed for a programme of recording before any works commence and thereafter a suitable qualified person should provide a watching brief.

The County Highways Authority requested an up to date Traffic Impact Assessment for the retail element of the proposal as the submitted document was out of date and had not commented on the residential part of the scheme.

The County Education Authority requests £181,814 as a contribution to education via a Section 106 Agreement.

Derbyshire PCT requests £444 per dwelling as a contribution to medical facilities via a Section 106 Agreement.

The Council's Head of Housing Services requests 33% of the residential units to be affordable housing all of which are to be rented.

Severn Trent Water has no objection subject to condition.

E-on has no objection.

The adjoining Local Authorities, East Staffordshire Borough Council and North West Leicestershire District Council raise no objection.

The Manager of Environmental Protection (pollution) recommends conditions to deal with the potential for ground pollution, construction noise, noise breakout from the proposed units and a limitation on hours of delivery. Suitable conditions should safeguard occupiers of nearby properties from nuisance from extraction methods and lighting. The pollution control officer (contamination) considers that the applicants need to submit further data to enable further comment. (This will be reported further at the committee and in any event is the subject of recommended conditions below.)

The Commission for Architecture and the Built Environment (CABE) were unable to assess the proposal. However, the proposal was submitted for review by OPUN, the East Midlands Design Review Panel. It stated that the scheme was extremely car dominated and that little consideration had been given to pedestrian and cycle access. There was little evidence of how this development would create a sense of place and help Swadlincote avoid becoming another 'clone town'. The design does not attempt to demonstrate locality. The site contains some buildings of high architectural quality but there appears to be little connection between them and the proposed new structures. The panel made various suggestions including that the block would benefit from being broken up and assimilated into its surroundings. It currently feels like an enclave which is completely separate from the town centre despite its close proximity and likely impact. Links to the town centre are weak and not enticing to potential users. The report accepted that servicing seems to have been approached sensibly but there is a distinct lack of overall masterplan and vision and no consideration of the wider context. With rear car parking the site could begin to be transformed from a standard retail park to a distinctive shopping and leisure complex for all to enjoy whether they arrive on foot or by car.

The Police Liaison Officer has not objected but advised on best practice for consideration of the footpath/cycleway.

Amended Plans (January 2008)

Sustrans are willing to accept the revised scheme subject to the location of some proposed gates being reconsidered under the Disability Discrimination Act and connection through the site to Highfields Road.

GOEM requested sight of the application have been advised that should the Council be minded to grant consent it will be referred under the Shopping Directive.

Central Networks had no objection.

North West Leicestershire had no objection.

EMDA have not commented further.

The County Council's Urban Design and Conservation Officer considered that the proposals do not adequately address any of the design objectives as set out in government advice and therefore it is difficult to accept the design as being the correct solution for the site. He concludes that even if the following elements were addressed, the acceptability of the scheme would still be in the balance:

- the buildings need to be built in appropriate materials with a high level of resolution in their detailing.
- the public spaces need to be of a high quality and relate to the old and new buildings in order to produce an integrated scheme
- the site's connections to the High Street need to be as good as practically possible

However, he does not believe that these elements of the scheme have been adequately addressed and as such the scheme fails to take the opportunities available for improving the character and quality of the area and therefore he recommends the application be refused on design grounds.

English Heritage states that consideration should be given to any negative impact on the conservation area and to seek the views of the Council's Conservation Officer.

Final Amended Plans

The County Highway Authority (CHA) states that the proposal has been the subject of consideration for some time resulting to some extent from the need for the applicant's consultant to carry out further traffic surveys and revise the submitted Transport Assessment. The stage has now been reached where it is satisfied that traffic generated by the proposals would not impact on the highway network to an extent that material harm justifying refusal of planning permission could be demonstrated. However, it considers that there are some elements of the scheme that would benefit from further detailed consideration although it is acknowledged that a balance needs to be struck between material issues. It is likely that the development would result in some additional congestion on the highway network, primarily at the Derby Road/Civic Way roundabout. Whilst this is unlikely to occur to a degree that would justify refusal of permission, the Council would need to recognise that some congestion is an inevitable consequence of this development.

There are also some concerns regarding the internal layout of the commercial part of the development. The CHA considers that the alignment of the access road in the vicinity of the roundabout junction is far from ideal although it understands that this has been dictated by planning and design considerations. Nevertheless it wishes to make clear that the access road alignment and the location of a service vehicle access on the outside of the bend could create a potential for conflict at this location. With further reference to the service vehicle access there is an inference that this also forms part of the pedestrian links between the site and the town centre. Clearly the mix of servicing traffic and pedestrians is not ideal in terms of safety and may have implications for discouraging linked trips.

It is understood that the developer is to be required, via a Section 106 Agreement, to provide/improve a pedestrian route extending northwards across Rink Drive to Bank Passage and thence to High Street. As a matter of principle the Highway Authority is supportive of this initiative.

With reference to the housing element of the proposals, it is acknowledged that this has attracted the concern of local residents on roads leading to and from the site. It is accepted that the network in this area is already subject to significant levels of on-street parking and the perceived implication of additional traffic generated by the proposed dwellings is understood. However, the CHA is not convinced that the obstruction to the free movement of vehicles and nuisance that might result would necessarily be material in comparison to existing conditions, or form the basis of a sustainable reason to refuse the granting of planning permission. The developers will need to be conscious that access to the site during the construction period may be problematic. A series of conditions are recommended for each element of the scheme in the interests of highway safety.

The County Education Authority has revised its request for funding as a result of the reduction in the number of dwellings to £78,935.08.

The Environment Agency has no objection subject to conditions.

The Ramblers Association has no objection but hopes that an existing adjoining section of footpath could be hard surfaced to improve usability and that the proposed footpath linking Weston Street with Highfield Road be made a public right of way.

Responses to Publicity

Prior to the submission of the application, the applicants held an exhibition of their proposals at the Sharpes Pottery Museum in Swadlincote for two days in October 2006. The results are reported more fully in the applicants' supporting planning statement but which featured:

- Attendance by 200 people
- 30 comment forms returned with support from all but two
- A small number of individual traders verbally expressed some concern about the competition from newcomers.

The following comments were made as a result of the Council's usual public consultation and notification procedures.

Original Plans

Cllr Ron Lane has requested consideration be given to securing contributions towards: Eureka Park (including a youth shelter, band stand and play equipment), arts and culture in the town, traffic management survey and the town centre public realm.

Ten letters of objection were received stating the following:

- a) The increase in traffic on Highfield Road, Weston Street, Hastings Road and Coppice Side would cause a greater danger to road users and an increase in noise and disturbance.

- b) These roads are already full up and not wide enough; access is already poor for existing residents, service and emergency vehicles. Drive ways are frequently blocked and car parking at a premium. The scheme would exacerbate all these problems. Further parking restrictions in the area would be difficult to enforce.
- c) The area is already being used as a short-cut for drivers avoiding the Morrison's traffic lights. Speed bumps and access restrictions should be considered.
- d) Construction traffic would cause traffic disruption on Highfield Road.
- e) The junction of Highfield Road and Highfield Street needs improvement to prevent accidents.
- f) There is no provision for safe access by cyclists and inadequate access for them to share the pedestrian route.
- g) The site would be better accessed from Coppice Side.
- h) The housing development would not be in keeping with the area; four storey blocks would be twice as high as neighbouring housing.
- i) There would be a loss of privacy for neighbouring residents whose property would be overlooked and overshadowed and suffer from more noise and disturbance.

A planning consultancy has also written a lengthy letter of objection on behalf of another potential developer in the town to state that (in summary): inadequate supporting information has been submitted; the scheme conflicts with the RSS, PPS6 and PPG13, and conflicts with PPG15, the Wraggs SPG and would be detrimental to the setting of the listed building. It considers that the slow progress made in determining the application is adversely affecting the local retail market and is therefore stifling investment in the town.

Amended Plans (January 2008)

25 letters of objection (many from those already having objected before and many not objecting to the commercial development) were received setting out many of the same points as made to the original plans but also the following:

- a) HGVs are using Coppice Side as a short cut through the area despite a weight restriction. Coppice Side and Herbert Wragg Way are already congested and driveways on Coppice Side are difficult to access.
- b) Local infrastructure is inadequate.
- c) The open space on the housing scheme may attract groups that would cause a public nuisance.
- d) Some of the open space could be used to provide more parking.
- e) As the area suffers from subsidence, piles are likely to be used which could cause noise and disturbance and damage to property.
- f) Pollution levels would increase.
- g) Grass snakes occupy the site.
- h) Swadlincote is at the heart of the National Forest.

2 letters of support have also been received stating the following:

- a) The site is currently a 'tip' and its development would be good for the town.
- b) The proposed extra parking at the top of Weston Street is welcomed.
- c) The development would put life back in to the town and would be beneficial to the younger generations.

Final Amended Plans

Seven letters have been received, many stating similar objections as before and all stating that the amended scheme does not meet the objections set out in previous letters regarding the multiple traffic and highway safety problems that the housing development would cause and one in particular highlights the extra traffic noise that would result forcing her to consider triple glazing. Once again neighbours are requesting that access is taken directly from elsewhere.

Development Plan Policies

The relevant policies are:

RSS8: Policies 3, 4, 5, 23 and 44.

Joint Structure Plan: Town Centre and Shopping Policy 1.

Local Plan: Housing Policies 4 and 11; Environment Policies 12, 13 and 14; Transport Policies 6, 7 and 8; Shopping Policy 1; Recreation and Tourism Policies 1 and 4.

Planning Considerations

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

- The location of development and the retail impact on Swadlincote Town Centre (the PPS6 tests).
- The design and layout of the retail/leisure development and its impact on Swadlincote Conservation Area and the listed building.
- Principle of the housing development.
- Design and layout of the housing development.
- Access, highway capacity and safety and links to the town centre.
- Environmental impacts (including ecology, hydrology, archaeology, landscape).
- Amenity of occupants of nearby dwellings.

Planning Assessment

The location of development and the retail impact on Swadlincote Town Centre

The general thrust of policy set out in RSS8 is the sequential approach to the selection of sites for development in order to make the best use of land and optimise the development of previously developed land in urban areas. More specifically, Policy 3 sets out a number of criteria which should be taken into account when making an assessment about how suitable a site is for development (shown here supplemented by other criteria from the strategy). Broadly these relate to availability of previously developed land and buildings, accessibility and encouraging use by non-car modes of transport (restricting unnecessary car usage) and reducing the need to travel and managing demand, capacity of existing infrastructure, physical and technical constraints, the environmental impact of the development, the likelihood that the site can be developed, suitability for mixed-use development and possible contribution the development might make to strengthening local communities. The Structure Plan Policy and Shopping Policy 1 of the Local Plan seek to ensure that the vitality and viability of Swadlincote as a district shopping centre is sustained and enhanced subject to criteria requiring suitable scale and character, acceptable traffic generation and parking. The Local Plan policy seeks to ensure specifically that developments immediately adjacent

to the centre are permitted provided they cannot be accommodated in the centre, the site is not required for business or industrial use and that adequate links are provided to the centre for pedestrians and the disabled.

These policies are developed further by PPS6 which sets out the government's objectives for development in town centres, namely: in planning for the growth and development of existing centres; promoting and enhancing existing centres by focusing development in such centres; encouraging a wide range of services in a good environment accessible to all. Other Government objectives which need to be taken account of in the context of the key objective are: enhancing consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community (particularly socially-excluded groups); supporting efficient, competitive and innovative retail, leisure, tourism and other sectors, with improving productivity; and improving accessibility, ensuring that existing or new development is, or will be accessible and well-served by a choice of means of transport. The statement sets out the methodology necessary to assess retail developments in five main tests:

- a) The need for development;
- b) That the development is of an appropriate scale;
- c) That there are no more central sites for the development;
- d) That there are no unacceptable impacts on existing centres;
- e) That locations are accessible.

a) The Swadlincote Retail and Leisure Study, undertaken by Donaldsons and published in September 2005 assessed the town's capacity to accommodate new comparison goods floorspace up to 2011 for both high street and bulky goods. The applicants have updated that assessment using new population projections and revised consumer expenditure figures. The applicants demonstrate that there is surplus capacity to accommodate the proposed development together with existing retail permissions in the town. It is therefore considered that the applicants have demonstrated the quantitative need for the proposed floorspace. With regard to qualitative need, the Donaldsons Study advises that Swadlincote lacks the range of comparison (non-food) shops necessary to increase the town's market share and that currently, local residents are forced to travel elsewhere to meet these shopping needs. Donaldsons further advised that the town lacks a range of other facilities such as food, drink and leisure. There is therefore clearly also a qualitative need for the proposed shops and facilities.

b) Swadlincote is defined as a town centre in PPS6 terms and is designated a Sub Regional Centre in the emerging East Midlands Regional Plan. It is also the principal commercial centre in the district. PPS6 advises that the aim should be to "locate the appropriate type and scale of development in the right type of centre". Swadlincote's position within the wider retail hierarchy and its catchment area makes it a suitable location for this scale of development. PPS6 also states that where need has been identified in town centres, local planning authorities should seek to identify sites capable of accommodating larger format developments. It is therefore concluded that the proposal is of an appropriate scale and this test is met.

c) In their sequential assessment, the applicants consider vacant properties, the primary shopping area together with town centre sites at Belmont Street, Midland Road, Alexandra Road and West Street/High Street. They address why disaggregation of the scheme into separate components would not work in this instance. It is accepted that disaggregation of the scheme is not viable and that a site capable of accommodating

the retail and leisure elements together is required. It is considered that the applicants have looked at all the relevant alternative sites and that there is no sequentially preferable site for this scheme to the one proposed, and this test is therefore met.

d) It is accepted that currently, available expenditure is leaking out of Swadlincote. The Donaldsons study states that, “any significant increase in market share can only realistically be achieved by the development of new floorspace of a size and configuration demanded by modern retailers”. The overall trade diversion from Swadlincote town centre due to the proposed scheme is predicted to be 10.6% (£5.72 million). The scheme as a whole has an expected turnover of £27.46 million. Given the high level of leakage from the catchment area, it is considered that Swadlincote will be able to claw-back leaking expenditure, and providing the development is well linked with the existing town centre, the scheme will have a beneficial impact on the town centre overall.

e) The proposed scheme is on an edge of centre site. Whilst a range of links have been incorporated to ensure accessibility, it is essential that the proposed pedestrian link to Rink Passage be provided as part of the scheme. This is to ensure an acceptable degree of accessibility between the site and the established town centre and with public transport services.

With regard to whether the site is required for employment uses, the South Derbyshire Employment Land Study indicates that the site is no longer suitable for this purpose particularly given its close proximity to existing housing.

The design and layout of the retail/leisure development and its impact on Swadlincote Conservation Area and the listed building.

The conservation policies seek to ensure that development is not permitted that would have an adverse affect of the conservation area or the setting of any listed buildings.

Being more than 7m higher than the High Street and separated from it by a Morrisons superstore, the applicants’ architects were set a challenging task to integrate a scheme effectively with the town centre. The scheme submitted appears as an ‘out of town’ typology for the retail and leisure units with a typical horseshoe layout with parking in front thus pushing the built element away from the town centre and the historic workshop buildings producing an environment dominated by cars and car use.

In this context the principle conservation and urban design issues are:

- The integration of the development with the historic fabric of the conservation area
- Creating a high quality development with a sense of place that adds to and enhances the distinctive character of the town
- The creation of strong physical and visual links with the town centre
- Securing high design quality in new buildings and spaces
- The retention and re-use of surviving but redundant historic workshops

The initially submitted scheme did not address any of the above issues adequately. A number of the historic workshops were to be demolished and the remainder were treated in isolation, the quality of the new build and spaces was poor, there was no cycle route or pedestrian link to the residential area to the north and no strong link to the

town centre. Rather than seek to demonstrate a positive impact, the applicants' accompanying Design and Access Statement sought only to demonstrate that the visual impact of the development would be minimal.

At the Council's request the scheme was presented to the OPUN East Midlands Design Review Panel in April 2007. The panel considered that there was a distinct lack of overall vision, the development felt like a car dominated enclave separate from the town with little consideration given to pedestrian and cycle access, there was little evidence of how the development would create a sense of place and help Swadlincote to avoid becoming another clone town and there was little connection between the proposed structures and existing buildings of high architectural quality. The panel thought that the site could be transformed by clustering the buildings around a more attractive open space less dominated by cars with parking to the rear. They acknowledged the need for retail units on the proposed scale and recognised the topographical constraints of the site but felt that much could be done to improve the design of the scheme building on the character of what is there, and integrating the development with the town centre without compromising viability. Specifically they recommended that:

- buildings should be clustered around a higher quality space with parking to the rear
- quality of place needs to be demonstrated responding to local character and incorporating contemporary design
- a clear dialogue should exist between the historic buildings and the new and the potential of the old buildings should be realised through a quality approach
- the cinema should be a strong feature that makes a convincing link with the locality that brings the retail development and town centre together using the relationship with the old buildings to add uniqueness
- if Rink Drive is to be the main strengthened pedestrian route, units at northern end of the development should be smaller to create a less intimidating route

The applicant was unwilling to make any radical change to the layout or the building configuration. However the following amendments have been made that improve the proposal:

- a redesign of the cinema block incorporating a high quality projecting tower at the entrance with high level cathode lighting and adjacent angled first floor glazing to the foyer
- a new well designed contemporary 'link block' incorporating a drum shaped tower which sits between the cinema and the listed and other historic buildings creating a well integrated physical and visual connection
- the incorporation of more glazing to shop fronts and improved signage panels
- a concentration of active uses at the northern end of the site creating a hub of activity between the old and new buildings close to the points of access towards the town centre
- a realignment of the access so that all the surviving historic buildings can be retained and their conversion has been handled sympathetically and to a high quality
- a pedestrian and cycle route has been added connecting the site to the residential areas to the south
- spaces between buildings have been redesigned using high quality materials
- landscaping has been developed to soften and reinforce the urban form of the layout

- the quality of cladding materials in the retail and leisure blocks has been improved and have a more locally distinctive character
- the link across the Morrisons car park has been improved with a higher quality contemporary lift and stair with high level cathode lighting.

The overall quality is higher; the development reflects and adds to local character, has a better sense of place and pedestrian and cycle links to the town centre have been improved. Although the best solution would have been to change the layout, it is considered that the overall impact of the revised development would be positive provided a strong enough pedestrian link were created on the west side. This link is not shown on the plans as it is off site but its provision can be further explored via a Section 106 Agreement (the form of the off site link currently proposed by the applicant is considered to be inadequate). Subject to a revised proposal being agreed on this and the incorporation of appropriate conditions, the revised scheme is considered to be acceptable from an urban design and conservation point of view. In particular, the scheme would not be harmful to the character and appearance of the Swadlincote Conservation Area.

Principle of the housing development

The principle of developing part of the site for housing is covered under Housing Policy 4 of the adopted Local Plan which allows for windfall sites such as this within the urban area (as shown on the proposals map) subject to (inter alia) the scheme being of a suitable scale and character. Later Central Government advice does not alter this principle.

Design and layout of the housing development

Housing Policy 11 of the adopted Local Plan (and the Councils Supplementary Planning Guidance: Housing Layout and Design) seek to ensure that the design of residential developments is a reasonable environment, ensures reasonable amenity, has private amenity space and landscaping, adequate public open space. More recent government guidance promotes sustainable layout and design which is locally distinctive.

The scheme has been designed to effectively separate the housing from the retail/leisure element. Therefore, on the ground, with the exception of a footpath and cycle link between the two, they have been designed independently.

The housing layout initially showed 41 units accessed via a new extension road from Highfield Road. The final amendment shows 36 dwellings in a mix of terraced and semi-detached houses and a single block of 9 flats. All of the house designs are of an understated and simple style incorporating features that are locally distinctive. The layout shows a relatively tight close-knit frontage on to the cul-de-sac extension with most parking away from the immediate street frontage. This layout works much better than the originally submitted scheme which showed a further three-storey block of flats adjacent to Highfield Road which would have related poorly to the inter-war semi-detached houses which are set in a relatively low position in the street. Some minor shortfalls in parking provision identified by the County Highway Authority can be dealt with by condition (which the CHA have agreed).

Amenity of occupants of nearby dwellings

The main impacts in terms of residential amenity would come from the proximity of the housing development to those houses in the vicinity (mainly on Highfield Road, Weston Street and Ravenwood). The plans demonstrate that distances between windows in the proposed dwellings from existing would be sufficient to meet the usual standards set out in the Council's SPG. Given its location, the retail/leisure element would have no direct impact on any residential properties. The general impacts regarding potential noise intrusion are dealt with in the environmental impacts section below.

Access, highway capacity and safety and links to the town centre

As stated above, the CHA have been in extensive discussions with the applicants' highway engineer consultants and have only recently come to a view on the development. Whilst it now considers the scheme to be acceptable, it is important to note that if permission were granted, in the view of the CHA, it would not be without fairly significant impact in the form of some additional congestion on the highway network, primarily at the Derby Road/Civic Way roundabout. Whilst the CHA considers that this is unlikely to occur to a degree that would justify refusal of permission, the Council would need to acknowledge that some congestion is an inevitable consequence of this development and should only make the decision on that basis. It also makes clear that there could well be some problems with construction vehicles accessing the housing site.

In terms of access by pedestrians and cyclists particularly to and from the town centre (High Street), there is general agreement about the importance of this, both in terms of convenience and in terms of how the development would compliment shopping in Swadlincote rather than operate as a separate entity. Whilst improvements to the scheme have been made over the various amendments particularly in the form of the modern lift and stairs to link through to Morrisons and the tentative 'offer' of a link via Rink Drive, it is considered that the scheme should stand or fall on the timely provision of these links. With this in mind it is recommended below that permission should only be granted subject to a Section 106 agreement to secure (inter alia) in particular, the construction of a satisfactory link through to the High Street.

Environmental impacts (including ecology, hydrology, archaeology, landscape).

The key environmental issues associated within the proposed development are set out in detail in the ES and in brief within the non-technical summary. Having reviewed the contents of the ES it is considered that the impacts identified are considered in sufficient detail and appropriate mitigation measures have been identified. The ES identifies that the redevelopment of the site provides opportunities to improve the environmental condition of the site in respect of soil contamination and ecology and could also provide opportunities to bring back into beneficial reuse a number of derelict buildings located within the Swadlincote Conservation Area.

However, it is worth noting that the development proposal could still give rise to residual impacts. Perhaps the most significant of these are related to noise and vibration during construction and transport impacts. Although local residents could experience these impacts even after mitigation, the use of conditions attached to the permission should afford some level of control as advised by the Manager of Environmental Protection (pollution). Similarly increased traffic movements which, whilst within the capacity of

existing infrastructure, could lead to notable increases in traffic flows of up to 20% on the roads immediately surrounding the site during peak times.

Notwithstanding these effects, it is considered that there is sufficient information set out in the ES to identify that this project would not give rise to significant environmental impacts such that planning permission should be refused on those grounds.

Conclusion

The foregoing sets out the policy position and how the proposals can be assessed in relation to it. It is fair to say that the development which has now emerged as a result of hours of difficult negotiation is not favoured as 'ideal' by all consultees. Nevertheless the application has progressed to a point where it is considered that no more meaningful progress is likely to ensue from further negotiation and therefore members are now being requested to consider all of the issues in order to make a decision (albeit that the case must be referred to the Government Office for the Secretary of State's consideration). Of particular note, the County Council's Urban Designer offers the strongest objection highlighting the danger of the establishment of retailing on the site that may never be properly linked to the town centre. In particular the importance of the formal link with the town centre is highlighted. The Council's Design and Conservation Officer and the CHA also state the importance of the link. Another clear warning comes from the CHA which is concerned about possible future increases in congestion. However, overall the County Strategic Planning Officer considers that the benefits to the town centre are likely to outweigh concerns regarding retail impact provided the PPS6 tests are met (more specifically, members should also note that there would be some diversion of trade forecast from the High Street to the site but that overall expenditure in the town centre would increase significantly).

In conclusion, with the PPS6 test having been met (via the Section 106 agreement), the decision rests on the weight that can be attributed to the remaining fundamental issues. It is considered that: the potential for the rising levels of traffic congestion; the potential for noise intrusion during construction and those other highway safety issues raised by local residents in relation to the housing development; does not outweigh the opportunity for the town to: secure a future for the historic buildings on the site and bringing a derelict site back into use; secure a significant inward investment and add to the opportunity for retaining local retail expenditure in Swadlincote.

(The list of requirements to be secured by the Section 106 agreement below does not include for any public open space/recreation contribution. It is considered that the scheme would be providing a much needed leisure facility on the site and that the contribution would be better expended by the applicants in pursuit of a good quality pedestrian/cycle link to the town centre and the public realm).

Recommendation

Whilst the application must be referred to the Secretary Of State under the provisions of the Town and Country Planning (Shopping Development) (England and Wales) (No. 2) Direction 1993, members are recommended to determine the application as follows:

- A. Delegate power to the Head of Planning Services to conclude an agreement under Section 106 of the Town and Country Planning Act 1990 to secure satisfactory provision of: a contribution towards medical facilities; a contribution towards education facilities, on-site 25% affordable housing; a contribution

towards heritage facilities in the town; a satisfactory pedestrian/cycle link to the town centre from the west/north western boundary; the satisfactory retention, repair and conversion of the historic buildings described as A-D prior to the first opening of any retail/leisure unit open to the public; and

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

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

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

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

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

3. 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.

4. 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.
5. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.
Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.
6. Notwithstanding the originally submitted details, this permission shall relate to the Commercial/Leisure drawing nos. BNY-SA[08]00 01PL1, 00 11 PL4, 00 12 PL3, 00 21 PL2, 00 21 PL2, 00 15 PL1, 10 01 PL3, 10 21 PL12, 20 01 PL4, 20 21 PL4, M4[08]10 01 PL1, 00 01 PL2, M6[08]00 01 PL7, M7[08] 05 01 PL3, 10 01 PL4, 20 01 PL4, 00 01 PL3, 00 02 PL2, 00 03 PL3, 00 04 PL1, 10 21 PL6, SA[08] 00 24 PL3, M6[08] 00 02 PL2; and Residential drawing nos. 03.121.01A, 02D, 03G, 04G, 05B, 06B, 07B, 08B, 09C, 12E, 13D, 14B and 16A.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
7. Before any other operations are commenced, a temporary access shall be formed into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives and visitor's vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of highway safety.
8. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.
Reason: In the interests of highway safety.
9. The premises, the subject of the application, shall not be taken into use until space has been provided within the site in accordance with drawing no. BNY-SA[08]10 01 PL3 for the parking, loading and unloading, picking up and setting down of passengers, manoeuvring of staff, customers, service and delivery vehicles (including secure covered cycle parking), 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.
10. No development shall be commenced until details of a Travel Plan have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented in accordance with the approved details prior to any development being taken into use and shall thereafter be maintained accordingly.
Reason: In the interests of the sustainable use of the site and highway safety.

11. The premises, the subject of the application, shall not be occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with the revised application drawings (taking account of items (i) - (v) in informative 15 below) to conform to the County Council's current design guidelines, constructed to base level, drained and lit and provided with footways in accordance with the County Council's Specification for new housing development roads.
Reason: In the interests of highway safety.
12. The development shall not prejudice the line, level, structural stability or safe pedestrian use of Public Right of Way Footpath No. 31 in the Parish of Swadlincote on the Derbyshire Definitive Map.
Reason: In the interests of highway safety and retain the public right of way.
13. Prior to the first occupation of any dwelling on the site, the section of Public Footpath 31 lying between the site and No. 2 Highfield Road shall be constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the construction of the footpath and street lighting in accordance with the County Council's Specification for new housing development roads.
Reason: In the interests of highway safety and retain the public right of way.
14. The turning head and associated infrastructure at the end of Weston Street shall be constructed in accordance with a programme of works first submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the County Council's Specification for new housing development roads prior to the first occupation of any new dwelling hereby permitted.
Reason: In the interests of highway safety.
15. The first floor window in the south facing wall of the house on plot 1 shall be permanently glazed in obscure glass unless otherwise agreed in writing by the Local Planning Authority.
Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.
16. Notwithstanding the submitted details and the provisions of the Town and Country Planning Use Classes (Amendment) Order 2005 and the General Permitted Development (Amendment) Order 2005, none of the A1 floorspace hereby permitted shall be subdivided to produce units below 500sqm and no mezzanine floors shall be added.
Reason: The retail impact of the scheme has only been presented and assessed for units of a certain size. The Council would have to reassess the scheme for other sized units.
17. No part of the development shall be carried out until precise details, specifications and samples of the facing materials to be used in the construction of the external walls and roofs of the building(s) have been submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.

18. Large scale drawings to a minimum Scale of 1:10 of all shop fronts together with signage panels, including horizontal and vertical sections shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The shop fronts shall be constructed in accordance with the approved drawings.

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

19. The retail/leisure units shall not be occupied until full details of all hard landscaping (including sections, details of materials, laying patterns, all boundary walls, steps, ballustrades and lighting) has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of any retail/leisure unit hereby permitted.

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

20. Notwithstanding the submitted details, the retaining walls around the southern perimeter of the site shall be brick faced and surmounted with a shaped clay coping samples of which shall be submitted to and approved in writing by the Local planning Authority prior to the commencement of the development hereby permitted. The approved walls shall be constructed prior to the first occupation of the scheme hereby permitted.

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

21. Notwithstanding the particulars of the application, revised details of the location and design of the electricity sub-station shall be submitted for approval in writing by the Local Planning Authority prior to commencement of building operations.

Reason: The submitted details are considered unsatisfactory.

22. The retail/leisure units shall not be occupied until full details of the proposed scheme of lighting has been submitted to and approved in writing by the Local Planning Authority. The lighting shall be erected in accordance with the approved scheme prior first occupation of the retail/leisure development hereby permitted and shall be directed so as to avoid nuisance to occupiers of dwellings in close proximity. The lighting shall be designed to provide a standard maintained illumination (LUX) of between 5 and 20 LUX unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the amenities of adjoining properties and the locality generally and to safeguard the visual amenity of the area.

23. Notwithstanding the details originally submitted, the proposed lift as shown on drawing BNY-M6[08]00 01 PL7 shall be constructed, completed and available for public use prior to the first occupation of the retail/leisure development hereby permitted. The lift shall thereafter be maintained and available for public use at no charge in perpetuity.

Reason: To ensure that pedestrian links are maintained in the interests of the vitality and viability of the town centre.

24. Notwithstanding the submitted details, revised details of the junction of the two boundary walls to the west of building A shall be submitted and approved in writing by the local Planning Authority. The walls shall be constructed as

approved prior to the first occupation of the retail/leisure development hereby permitted unless otherwise agreed in writing by the Local planning Authority.

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

25. Notwithstanding the submitted details of the barrier on the entrance to the service access to buildings A, B and C, a detailed scheme showing retractable bollards in lieu of the barrier shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the related buildings.

Reason: The submitted scheme is of an unacceptable design.

26. Notwithstanding the submitted details, large scale drawings to a minimum Scale of 1:10 of all windows and doors, the balustrade to the steps adjacent to the lift and canopies, including horizontal and vertical sections, precise construction method of opening and cill and lintel details where applicable shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The details shall be constructed in accordance with the approved drawings.

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

27. Notwithstanding the submitted details, prior to the occupation of any of the units hereby permitted, a condition survey and a schedule of repairs for the making good of buildings A-D shall be submitted to and approved in writing by the Local Planning Authority. The approved repairs and conversion of buildings A-D shall be completed prior to the first occupation of the new retail and leisure units hereby permitted.

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

28. Notwithstanding the submitted details, prior to the occupation of any of the units hereby permitted, an accurate survey and detailed proposals for elevation 20 of building C shall be submitted to and approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

29. Pointing of buildings A-D shall be carried out using a lime mortar the specification for which shall be submitted to and approved in writing by the Local Planning Authority. The finished joint shall be slightly recessed with a brushed finish.

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

30. A sample panel of pointed brickwork of buildings A-D of 2 metres 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 prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building(s) and the locality generally.

31. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the retail/leisure buildings 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.

32. Gutters on buildings A-D shall be cast metal (with cast metal fall pipes) painted black and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

33. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflight(s) on the retail/leisure buildings shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflight(s) shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.

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

34. All external materials used in the repairs/alterations to buildings A-D shall match those used in the existing building in size, colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

35. Prior to the commencement of the development hereby permitted, a scheme highlighting details of the likely resultant noise levels from activities during the construction phase at the nearest noise sensitive premises shall be submitted to the local planning Authority. The investigation shall address the noise impact that the activities will have on nearby residential properties. This assessment and mitigation measures shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Once approved, all identified noise control measures shall be implemented and thereafter retained.

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

36. Prior to the commencement of any works on site, a scheme for the assessment of noise and the provisions to be made for its control shall be submitted to and approved in writing by the Local planning Authority. The assessment shall address the noise impact that the activities inside and outside the proposed units will have on nearby residential properties. The approved noise control measures shall be implemented in accordance with the approved scheme and thereafter retained.

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

37. Unless otherwise agreed in writing by the Local planning Authority, no deliveries shall be taken or despatched from the retail/leisure site between the hours of 08.00 and 18.00 Monday to Friday and between the hours of 08.00 and 13.00 on Saturday and no deliveries shall take place on Sundays and Bank Holidays.

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

38. Any fixed plant or equipment installed on the retail/leisure site shall not exceed a background noise level (La90,t) as measured at the boundary of the nearest residential property at any time.

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

39. Any installed odour control extraction system on any of the retail/leisure buildings shall be so designed so that there are no detectable cooking odours at the nearest residential properties.

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

40. All footways, footpaths and cycleways shall be fully constructed and be available for free public use prior to the first occupation of the development hereby permitted.

Reason: To ensure proper pedestrian/cycle connection of the scheme to the adjoining areas.

41. Unless otherwise agreed in writing by the Local Planning Authority, details of a location for a public recycling centre on the site shall be submitted and approved in writing by the Local Planning Authority. Any agreed facility shall be made available in perpetuity at no cost prior to the first occupation of the development hereby permitted.

Reason: To enable adequate facilities to be provided locally.

42. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

43. Notwithstanding the submitted details, facilities for the parking of cycles on the retail/leisure site shall be submitted to and approved in writing by the Local Planning Authority. The approved facility shall be installed and made available free of charge prior to the first occupation to any retail/leisure unit hereby permitted.

Reason: In the interests of the provision of non-car access to the site.

44. No development shall take place 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 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.

45. 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.

46. There shall be no goods or materials stored in the open within the parking and/or delivery area(s) as marked on the submitted drawings.

Reason: To prevent interference with the safe manoeuvring and parking/loading of vehicles on the site.

47. The open space shown on drawing 03.121.03 revG shall be laid out in accordance with the approved landscaping scheme and made available for public use prior to the first occupation of the housing site hereby permitted. Thereafter the space shall be available for open public access in perpetuity.

Reason: In the interests of the amenity of the area and in the interests of the adequate provision of landscaping on the site.

48. Notwithstanding the submitted details, details of all bin stores for the site shall be submitted to and approved in writing by the Local Planning Authority. All stores shall be erected prior to the occupation of the part of the development to which it relates.

Reason: To ensure that adequate facilities are provided in the interests of visual amenity.

49. Notwithstanding the particulars of the application revised details of the boundary wall to Coppice Side shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of the development hereby permitted. The approved walls shall be constructed prior to the first occupation of the scheme hereby permitted.

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

Informatives:

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

1. This permission is for (inter alia) conversion of buildings A-D only and does not convey any right to demolition and replacement by a substitute building. Any further demolition/replacement necessitated by on-site works should be first agreed in writing by the Local Planning Authority.

2. The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works.

Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.

3. The grant of planning permission does not entitle developers to obstruct public rights of way affected by the proposal. Development, in so far as it affects the right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of the Town and Country Planning Act 1990 for the diversion or extinguishment of the right of way has been made and confirmed. Nor should it be assumed that because planning permission has been granted an order will invariably be made or confirmed.

4. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

5. The responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. This grant of planning permission does not give a warranty of ground support or stability, neither does it necessarily imply that the requirements of any other controlling authority would be satisfied.

6. That detailed plans of road levels, surface water drainage arrangements and the construction of the new residential street should be submitted to the County Surveyor, Derbyshire County Council, County Offices, Matlock, Derbyshire, DE4 3AG, prior to the commencement of the work.

7. Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

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

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue

environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land. 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 www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm

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.

9. To note and act upon as necessary the attached plan of cables on the site provided by Powergen.

10. The application site is affected by a Public Right of Way Footpath No. 31 in the Parish of Swadlincote on the Derbyshire Definitive Map. The route must remain unobstructed at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Advice regarding the temporary (or permanent) diversion of such routes may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01529 580000 and ask for the Footpaths Officer).

11. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

12. Highway surface water shall be disposed of via a positive, gravity fed system (ie; not pumped) discharging to an approved point of outfall (eg existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

13. 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 Department of Environmental Services at County Hall, Matlock (tel: 01629 580000 or via the County Councils website www.derbyshire.gov.uk). Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the new street 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.

14. Where development has been approved subject to the preparation and implementation of a Travel Plan, the applicant is requested to submit the appropriate documentation to the Local Planning Authority well in advance of the development being taken into use. Advice regarding the content of Travel Plans may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Transportation Section).

15. (i) Although 6m manoeuvring space is shown for parking areas, bays at the end will be difficult to access without an additional reversing bay being provided beyond the last spaces. If bays cannot be provided, it is recommended that the manoeuvring width should be increased to 7m.

(ii) Parking for Plot 8 is too restricted - adjacent bays (Plots 9 & 6) should be moved 1m away.

(iii) Parking for Plot 16 will be difficult to access and therefore requires more width/manoeuvring space.

(iv) Plots 17-21 require a redesign to maximise the parking space availability and minimise the need for indiscriminate parking within the turning head. Spaces for Plots 17 & 18 are currently shown wider - are these plots designed for people with impaired mobility?

(v) It is unclear how refuse bin collection is to be arranged. It needs to be shown where bins are to be stored, and where bins are to be left on collection day. It is assumed that the refuse collection service requires bins to be left adjacent to the highway. The bin store for the flats is not adjacent and it is unclear where bin storage for the terraced houses is expected to be. This issue needs to be taken into account in new housing layouts, for convenience of residents and to avoid bins obstructing the highway.

16. Further to condition 21 above, a possible location of the sub-station would be to the south of Building D.

17. The lighting should be well integrated with the form of the hard landscaping and architecture and shall include elements that form an integral part of their design.

Item **1.2**

Reg. No. **9/2008/0164/FX**

Applicant:

Mr Mrs J McLeish
Egginton Road
Etwall
Derby
DE65 6NB

Agent:

Montague Architects
9 Vernon Street
Derby
DE1 1FR

Proposal: **The erection of a two detached dwellings in the garden
of Rakehill 5 Egginton Road Etwall Derby**

Ward: **Etwall**

Valid Date: **18/02/2008**

Reason for committee determination

Councillors Brown and Lemmon have requested that the application be brought to Committee as local concern has been expressed about a particular issue. *It was deferred at the Committee on 1 July 2008 to enable a site visit to be carried out to clarify issues of fact and to ascertain circumstances on the ground.*

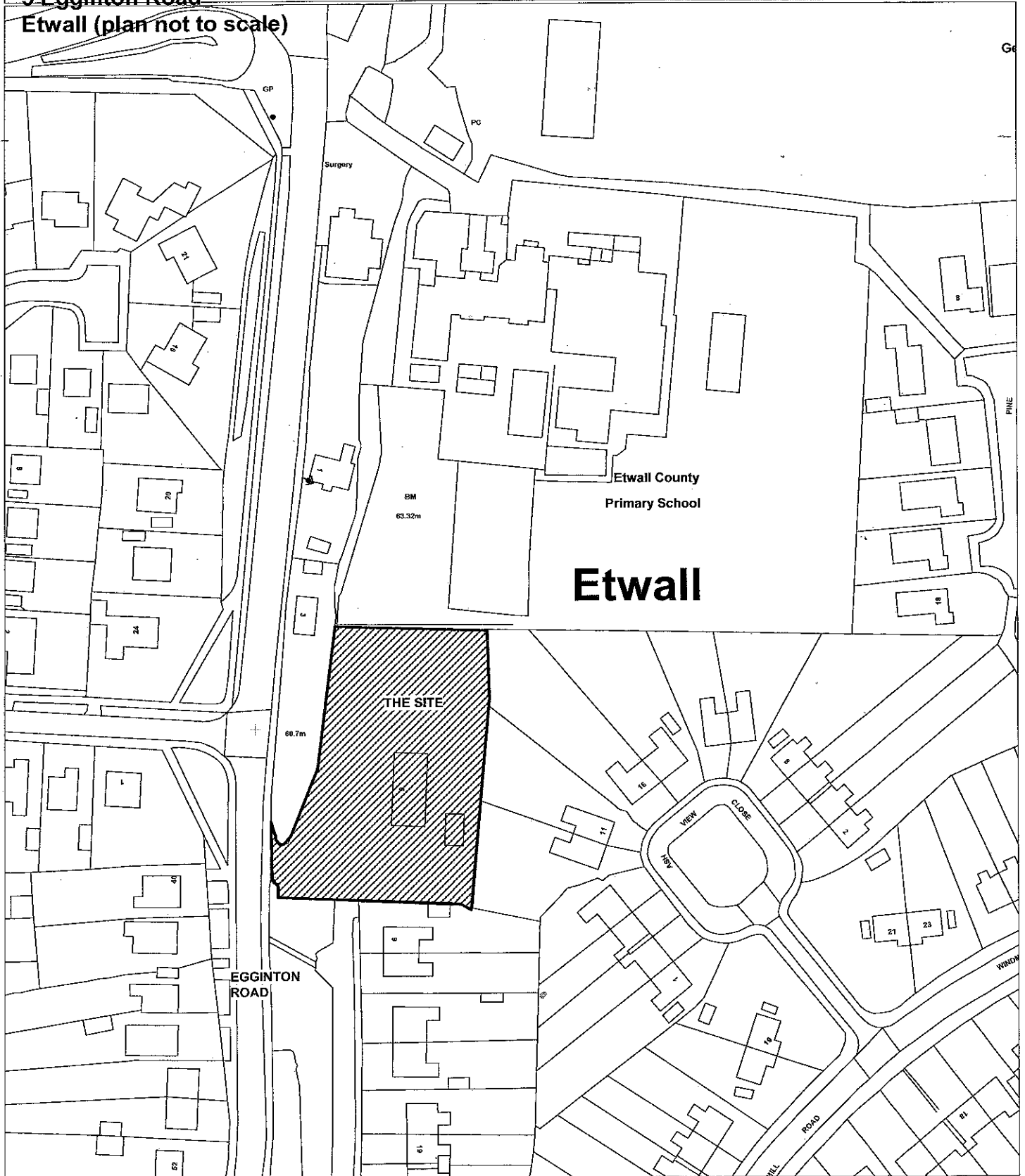
Site Description

The site is set back from Egginton Road; on the frontage to Egginton Road to the west there is a small cottage where the eaves height of the cottage is at the same level as the ground level on the application site. The main habitable room windows of this dwelling look south with no windows that could be discerned on the east elevation; in any event windows on the north side of that cottage would face directly into a bank. To the north of the site are the play areas of the Etwall Primary School. Land to the east is the garden to dwellings on Ash View Close and to the south is a row of dwellings fronting to 'Old Egginton Road'; these are accessed via Belfield Road. These houses are set at a slightly lower level than the application site. The site has numerous trees within it and some of these are to be felled.

Proposal

The proposal is to erect one dwelling either side of the existing house. This will involve adaptations to the original dwelling, as this would have windows that would suffer overbearance should the new houses be built. The adaptations are relatively straightforward and easily achieved; a plan has been submitted to show what would be required.

9/2008/0164 Rakehill
5 Egginton Road
Etwall (plan not to scale)



Crown Copyright. All rights reserved.
South Derbyshire District Council.
OS Licence No. LA 100019461. 2006

Scale 1:1250 Date Plotted 18/7/2008

Plot centred at 426888 331584

9/2008/0164 Rakehill
5 Egginton Road
Etwall (plan not to scale)



Access to the three dwellings would be via a new vehicular access to 'Old Egginton Road' that is serviced from Belfield Road, currently a pedestrian access only; if permitted it is proposed that the existing access to Egginton Road would be reduced to a pedestrian only access to the site. An amended plan has been submitted to show this detail.

Applicants' supporting information

The applicants note that planning permission was granted in the 1970's for three new houses on the site; that permission was not implemented. It is now proposed to retain the original dwelling, with adaptations to prevent overlooking and overbearance, and position a dwelling to each side. The larger of the two is sited to the north of the existing house, the other dwelling of a simpler design is proposed to the south of the existing dwelling.

The southern most dwelling is designed to provide a transition between the existing dwellings and the larger plots to the north (including the existing dwelling)

Although trees would be removed as part of the development, a substantial number of trees would be retained. The trees to be removed are indicated on the plan accompanying the application.

The dwellings will be designed to be thermally efficient and other sustainable energy sources would be considered and included as part of a detailed design of the dwellings. The applicants consider that the scheme is well designed in accordance with the Local Planning Authority's requirements and is a scheme that would have little impact on the surrounding environment and existing streetscape.

Planning History

Permission to redevelop the site with 3 dwellings was permitted in the mid 1970's and permitted again in 1978. In 1981 permission was granted for the extension of the existing dwelling.

Responses to Consultations

Etwall Parish Council has no objection to the principle of the development but would prefer to see the development served via the existing access to No 5 from Egginton Road, would object to the loss of trees on the site and would support any objections from neighbours. However, in response to the amended drawing, it has no objection but states that it can find no evidence that the access was previously in use.

The County Highway Authority would object to the increased use of the existing access to Egginton Road because of the lack of visibility available for drivers emerging from the site. It has considered the proposal to serve all the dwellings from 'Old Egginton Road' and has no objection subject to the imposition of conditions.

The Environmental Protection Manager has no comments.

Responses to Publicity

6 letters have been received that object or comment on the proposal in the following terms:

- a) There has never been a vehicular access to the site off 'Old Egginton Road' and the formation of a new access is objected to. There is no objection to the houses solely the proposed means of access. Many school children use 'Old Egginton Road' to get to school and they could be at risk during building operations.
- b) The development would result in the loss of a substantial amount of greenery and trees particularly those houses to the rear of Rakehill. A large horse chestnut tree is sited close to the boundary that could be compromised and cause a loss of habitat.
- c) The boundary between the school and the plots is not clear and this will need to be addressed, as it appears that the existing fence is in fact set within the school grounds. In addition it is not agreed that the boundary to the school is well screened

Development Plan Policies

The relevant policies are:

RSS8: Policies 1,2 & 3.

Retained Local Plan Policies: Housing Policies 5 and 11; Environment Policy 9.

Planning Considerations

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

- The Development Plan
- Access considerations
- Impact on neighbours
- The design of the buildings.
- Impact on trees

Planning Assessment

The development is in accord with the development plan policies for the use of land within the defined village framework for housing. The issues are the impact on neighbours and the access to the site.

The proposed vehicular access is clearly a new one; there is no existing vehicular access. There is a pedestrian gate but that does not appear to be well used. The applicants have provided evidence of ownership of the land between the end of 'Old Egginton Road' and the site boundary and are therefore in a position to create the new access. This is a clear alternative to the existing access that does not meet the requirements for visibility expected by the County Highway Authority. On the advice of the County Highway Authority the new access is acceptable form a highway safety point of view subject to the imposition of the recommended conditions.

The impact of the dwellings on neighbouring properties has been carefully assessed. The houses on Ash View Close and on 'Old Egginton Road' would not be unduly affected by the development. There would be some loss of trees and thus screening but the windows in walls facing the development are sufficiently far away as to comply with the separation standards in the Councils Adopted SPG – Housing Layout and Design. 3 Egginton Road is set significantly lower than the proposed larger dwelling; its main windows are in the end elevations. In addition the rear of the house is set into the

ground and windows in the rear elevation are adversely affected by that fact rather than the presence of the new dwelling. The main habitable rooms windows in the end elevation would be unaffected by the proposed dwelling.

The design of the proposed buildings employs features that reflect local distinctiveness and are of a suitably modest scale in relation to the size of the developable area. As such they are considered acceptable and would complement the mixed form of the dwellings in the locality.

The loss of trees is a concern for the Parish Council and some local residents. The reason the application was withdrawn from a previous Committee was to ensure that there were no trees of outstanding significance that should be retained within the site that are proposed to be felled. Of the trees within the site a cedar tree was identified as one that could merit consideration for a tree preservation order.

The site is set in a well treed environment provide both by trees within the site and may others outside the site. The cedar tree is not easily distinguished amongst these other trees from outside the site and the conclusion is that it does not contribute to the wider character of the area or contribute significantly to the immediate surroundings within the site.

Other trees would be retained within the site that have a greater contribution to its setting and as such the conclusion is that the loss of trees arising from the development of the site would not be significant and subject to the submission of a detailed landscaping scheme, the development conforms to the above development plan policies.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no.1898-05C dated 14 April 08. The alterations to the north and south elevations of Rakehill 5 Egginton Road Etwall shall be undertaken prior to the first occupation of either of the dwellings hereby permitted.
Reason: For the avoidance of doubt, the original submission being considered unacceptable and to ensure that the new dwellings do not overbear on habitable room windows in the original dwelling.
3. Prior to any other works commencing, the new access shall be formed with the service road on the southern side of the site. The access shall have a minimum

width of 4.1m and be surfaced in a solid bound material for at least the first 5m into the site from the highway boundary.

Reason: In the interests of highway safety.

4. Prior to any other works commencing (except condition 2 above), the existing access shall be permanently stopped up in accordance with the revised drawing 1898-05C and the footway reinstated in accordance with a scheme first submitted to and approved by the Local Planning and County Highway Authorities.

Reason: In the interests of highway safety.

5. Prior to the occupation of the first new dwelling, the car parking and manoeuvring space shall be laid out in accordance with the revised application drawing 1898-05C and maintained thereafter free of any impediment to its designated use.

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

6. Prior to the first occupation of the dwellings hereby permitted, the works to Rakehill, 5, Egginton Road Etwall shall have been completed in accordance with the information on Drawing 1898-05C and the windows shall thereafter remain blocked up in accordance with the submitted details.

Reason: In order to ensure that the occupiers of the existing dwelling do not overlook the occupiers of the new dwellings.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, none of the dwellings hereby permitted shall 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 having regard to the setting and size of the development, the site area and effect upon neighbouring properties.

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

Reason: In the interests of ensuring that alterations do not adversely affect the amenity of the occupiers of the adjacent dwellings.

9. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority.

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

10. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets unless otherwise agreed in writing with the Local Planning Authority.

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

11. No development shall take place 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 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.

12. 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.

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

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

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Item 1.3

Reg. No. 9/2008/0260/F

Applicant:

Melbourne Property Ltd
Clifton Campville
Tamworth
Staffordshire
B79 0BE

Agent:

Brownhill Hayward Brown
Georgian House
24 Bird Street
Lichfield
Staffordshire
WS1 6PT

Proposal: **The erection of shop, office and residential units at
Land At 10 14 Derby Road Melbourne Derby**

Ward: **Melbourne**

Valid Date: **29/02/2008**

Reason for committee determination

The application is brought to Committee at the request of Councillor Harrison because local concern has been expressed about a particular issue. *It was deferred at the Committee on 1 July 2008 to enable a site visit to be carried out to clarify issues of fact and to ascertain circumstances on the ground.*

Site Description

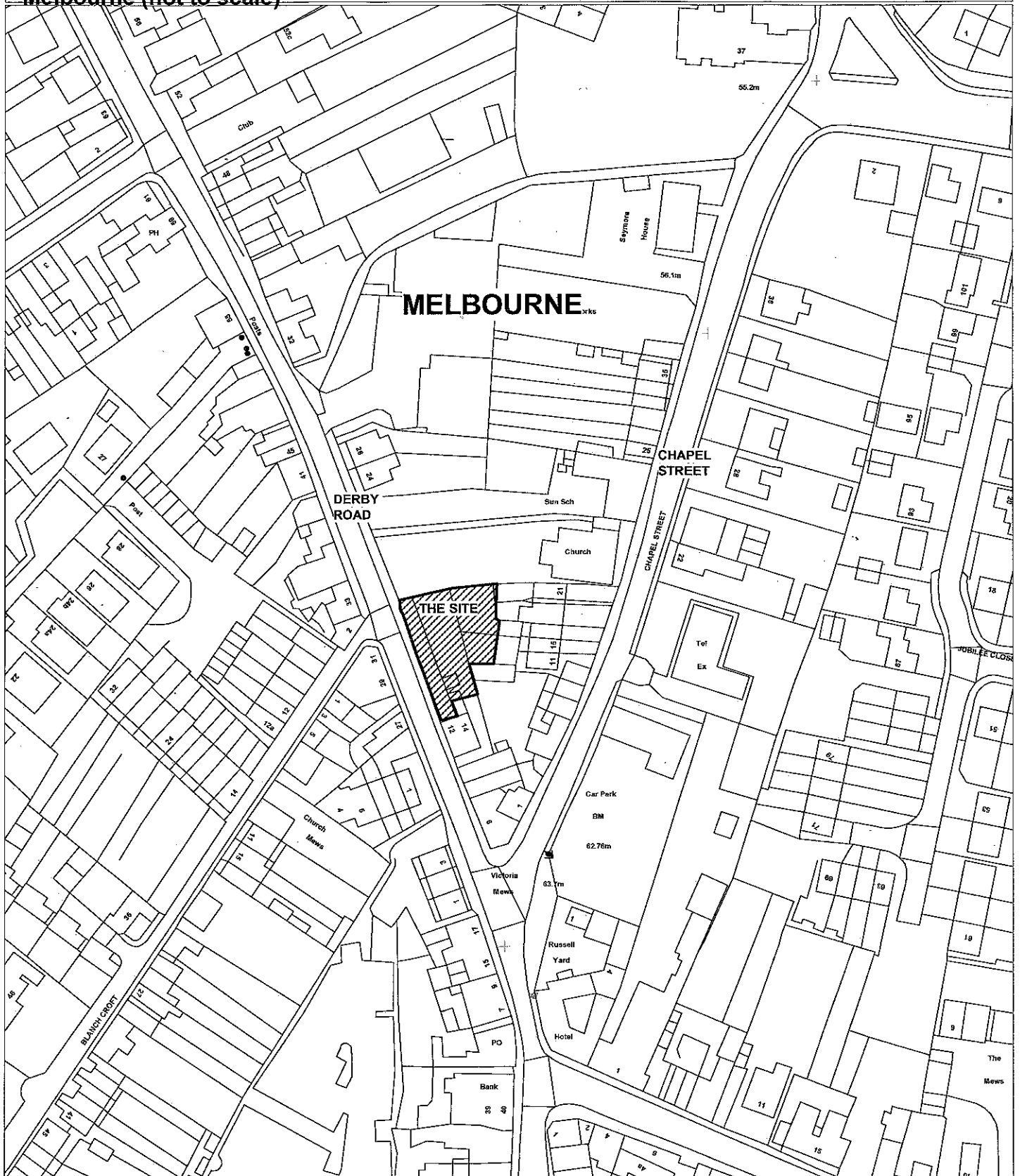
The site is presently used for car parking to its rear part. The frontage is used as an informal open space. Buildings once occupied the site. The area is characterised by a traditional mixture of domestic and larger scale buildings including a number of three storey properties. The site lies within the conservation area.

There is a row of dwellings in Chapel Street, set at a lower level, that have outlook from kitchen and bedroom windows across the site. The main habitable rooms of these dwellings face onto formal gardens fronting Chapel Street.

Proposal

The proposed development would be attached to the existing building at 12-14 Derby Road and would be of variable height, from two to three storeys. The highest part of the building would be some 11.5 metres above ground level. A complex individual design approach has been employed. The building would occupy most of the frontage of the site. An archway would provide pedestrian access to the rear of the development where there would be a single storey shop unit projecting behind the main building (with accommodation in the roof space). External stairs and a walkway would provide access to first floor office accommodation.

9/2008/0260 Land at 10-14 Derby Road
Melbourne (not to scale)



Crown Copyright. All rights reserved.
South Derbyshire District Council.
OS Licence No. LA 100019461. 2006

Scale 1:1250 Date Plotted 18/7/2008

Plot centred at 438611 325361



9/2008/0260 Land at 10-14 Derby Road
Melbourne (not to scale)

The main bulk of new building would be set at an angle to the rear elevations of properties in Chapel Street, such that the distance between them would range from about 14.5 m to 20 m. The single storey range to the rear would be about 10 m from the dwellings although one has a kitchen extension, which would be some 6.5 m distant.

The development would comprise a mix of shops and offices on the ground and first floors, with two apartments at second floor level. No on-site parking is proposed.

Compared with a scheme subject to an extant grant of permission (see Planning History below) the principle differences are that the proposed usage of floorspace has changed, there would be less three storey, the building footprint would be bigger towards the rear, and the style adopted would be more traditional and decorative.

Applicants' supporting information

- The scheme is designed to reflect the height, scale and to some extent the appearance of neighbouring and adjacent properties.
- The use of the rear part of the building tends towards service rooms, stairs, WCs and circulation corridors, to minimise impact on properties in Chapel Street.
- The passageway from Derby Road through the building would provide intriguing and inviting glimpses in to the rear yard, which would have a sitting area and possible tea garden.

Planning History

Permission was granted for the erection of a three storey building on the site in 1997 (9/1296/0695/F). The ground floor would be taken up by shops, with four flats over. Permission was granted for a terrace of similar mass, containing four dwellings, in 2001 (9/2000/0986/F) and this was renewed in 2006 (9/2006/0010/B).

Responses to Consultations

The Parish Council objects to the lack of parking on site.

Melbourne Civic Society comments/objects as follows:

- a) The development would improve the appearance of the conservation area.
- b) Existing parking problems would be exacerbated.
- c) The lack of loading facilities would lead to congestion and disruption to traffic.
- d) The viability of other premises in the village could be adversely affected.
- e) There would be overshadowing and overlooking to neighbours.

The Design and Conservation Officer considers that the scheme would have a similar impact on the character of the conservation area to the former permitted scheme and in some respects would be better. As a result in the change in its use the building would address the street more successfully, as it would have more active frontages, which is to be welcomed. The introduction of a courtyard intensifying the use to the rear would add vibrancy to the street because of the views through the arch into it, and the comings and goings of customers. The ridge heights in the Derby Road range would relate well

to the existing buildings on the same side of Derby Road and the three storey gables retain the strength of the elevation and reflect the three-storey building opposite.

The Highway Authority is concerned about the lack of off-street parking. However in view of the site's location and the existing car parking situation in Melbourne, it would be difficult to demonstrate that approval of the proposal would result in a material increase in the demand for parking spaces within the town centre. As such the Highway Authority considers that it would be difficult to sustain an objection.

Severn Trent Water Ltd has no objection.

The Council's consultant arboriculturist has given advice on minimum distances required to avoid serious damage to the roots of two Yew trees in the adjacent church yard.

Responses to Publicity

Three letters have been received objecting in the following terms:

- a) Previous changes of use of premises to offices have increased parking and congestion problems.
- b) The area is regularly congested with parked vehicles.
- c) One of the effects of parked vehicles is to obscure the frontages of local shops, deterring passing trade.
- d) The public car park is frequently full.
- e) Derby Road and Chapel Street are bus routes and increased parking would affect these.
- f) There would be adverse impact on the cottage in Chapel Street.
- g) Delivery vehicles would cause disruption to traffic flow.
- h) There would be increased risk of accident.
- i) The lack of parking has led to arguments and a resident's car has been regularly vandalised.

Development Plan Policies

The relevant policies are:

RSS8 Policies 3 & 31

South Derbyshire Local Plan: Housing Policy 5 & 11 Environment Policies 9,12 &13 and Transport Policy 6.

Planning Considerations

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

- The principle.
- The effect on the character and appearance of the conservation area.
- Residential amenity.
- Highway safety and parking.
- Trees

Planning Assessment

The site lies in the heart of a village with a good range of local facilities and would involve the re-development of previously used land. Therefore the principle of development would be in general accord with sustainability objectives.

The site fails to make a positive contribution to the conservation area in its present state. Development of the site in an appropriate manner would therefore be desirable in this regard. The proposed building has been carefully designed to respect the historic pattern of the built form of the Melbourne Town Centre area. The proposed mix of uses would introduce vibrancy and vitality to the commercial heart of the village. As such the development would produce a significant enhancement to the character and appearance of the conservation area.

The residential properties in Chapel Street are affected to varying degrees depending on the distances between them and the proposal. Their main elevations face onto Chapel Street. The elevations to the rear, which could be affected by the new building, contain secondary and non-habitable room windows. Supplementary planning guidance on space about dwellings seeks a minimum distance of 9 m from a secondary aspect window to a two-storey side elevation. In this instance the minimum distance between the main blocks and the existing dwellings would range from 14.5 m to 19 m. The mass of the new building would be considerably greater than a normal two-storey block, particularly in view of the fact that the application site is at a higher level than Chapel Street. Nevertheless it is considered that the guideline minimum distance is exceeded by a sufficient amount such as to avoid unreasonable overbearing on the neighbouring properties.

The rear single storey range would be about 9.5 m away from the main rear facades of the Chapel Street properties but the extension to the rear of No 19 would be some 6.5 m away. Because of its fairly narrow gable width (5.5 m) and a height to the ridge of 6 m the mass of the building would not have unacceptable impact on the living conditions of the occupants of those dwellings, particularly as sitting rooms and main bedrooms are orientated towards Chapel Street.

The kitchen window to one of the apartments could cause overlooking to the rear windows of dwellings in Chapel Street. However a condition requiring obscure glazing, as necessary, would satisfactorily overcome this problem. The access deck and stairs serving the first floor offices would allow views towards Chapel Street but they would be further away from neighbours' windows (16 m – 20 m) and transitory. Because the offices would tend to be closed when the dwellings are most used the scope for any conflict would be minimal.

There is no realistic prospect of providing on-site car parking without seriously compromising the design. However there is a public car park within easy reach of the development. Furthermore it is likely that many of the people visiting the shops will be in the town centre for other reasons. The offices would have a greater tendency to generate specific journeys but on the advice of the Highway Authority it is unlikely that a material increase in demand for town centre parking could be demonstrated. Notwithstanding local concern about parking the proposal offers to introduce a very positive townscape and character feature to this important site and area. A condition could be imposed to provide facilities for cyclists.

The building would be sited so as to satisfy the recommendations of the consultant arboriculturist. This will enable the preservation of the Yew trees in the churchyard, subject to appropriate pruning works.

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. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. 2195.02.02 rev A, 03 Rev A, 04 Rev A, 05 Rev A, 07 Rev A, 09 Rev A.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building and boundary walls have been submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Notwithstanding the submitted plans, drawings to a scale of not less than 1:20 of the following shall be submitted to and approved in writing by the Local Planning Authority prior to their incorporation in the development:
 - a. external joinery, including sections, precise construction, method of opening and cill and lintel details;
 - b. eaves, verges and parapets;
 - c. band courses and oversailing courses;
 - d. rooflights;
 - e. chimneys;
 - f. the bay windows; and
 - g. the external stairs and gallery.
Reason: To ensure that these details are appropriate to the conservation area.
5. Pointing of the existing/ proposed building(s) 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 building.

6. A sample panel of pointed brickwork/stonework 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 prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

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

7. 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. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise 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.

8. 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.

9. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place 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.

11. Unless as may otherwise be agreed in writing with the Local Planning Authority the kitchen window to Apartment No 2 shall be permanently glazed in obscure glass up to transom level, in accordance with details that shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

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

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

13. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their approval a scheme showing the type, height and position of protective fencing to be erected around two Yew trees adjacent to the site, and a scheme and timetable for pruning of the trees. The scheme shall comply with BS 5837:2005. The area surrounding the trees 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.

The pruning shall be undertaken in accordance with the approved scheme and timetable.

Reason: To ensure that the long-term amenity value of the trees is protected.

14. No development shall commence until design details of the cycle storage facilities for the offices and apartments have been submitted to and approved in writing by the Local Planning Authority and the buildings shall not be occupied until these facilities have been provided on site.

Reason: To make adequate provision for cyclists in the interests of sustainable development.

15. Before any other operations are commenced, a temporary access shall be formed into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives and visitor's vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

16. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.

Reason: In the interests of highway safety.

17. Prior to the first use of the development the existing vehicular crossing fronting the site shall be reinstated in accordance with a scheme that shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Item **1.4**

Reg. No. **9/2008/0579/U**

Applicant:

Mr Adrian Dawson
Barrow-on-trent
Derby
DE73 1NH

Agent:

Mr Christopher Thorp
Chris Thorp Planning Ltd
20a Hazelwood Road
Duffield
Belper
Derbyshire
DE56 4DQ

Proposal: **The change of use of paddock into residential curtilage
at The Hill Lodge Deep Dale Lane Barrow-on-trent
Derby**

Ward: **Aston**

Valid Date: **23/05/2008**

Reason for committee determination

The application has implications for policy on development away from settlements. It was deferred at the Committee on 1 July 2008 to enable a site visit to be carried out to clarify issues of fact and to ascertain circumstances on the ground. The report has been updated in italics with regard to the response from the Parish Council that was reported verbally at the last Committee.

Site Description

The site is the former lodge to The Hill and is served by a private drive shared with that property. Whilst the property has a large garden about half of the land attached to the property does not benefit from lawful use as residential curtilage. However a stable, a garage and hardstanding and a store have been built on this land in recent years, as detailed in the planning history below.

Proposal

The proposal would enable the remainder of the land to be used for purposes incidental to the enjoyment of the dwellinghouse.

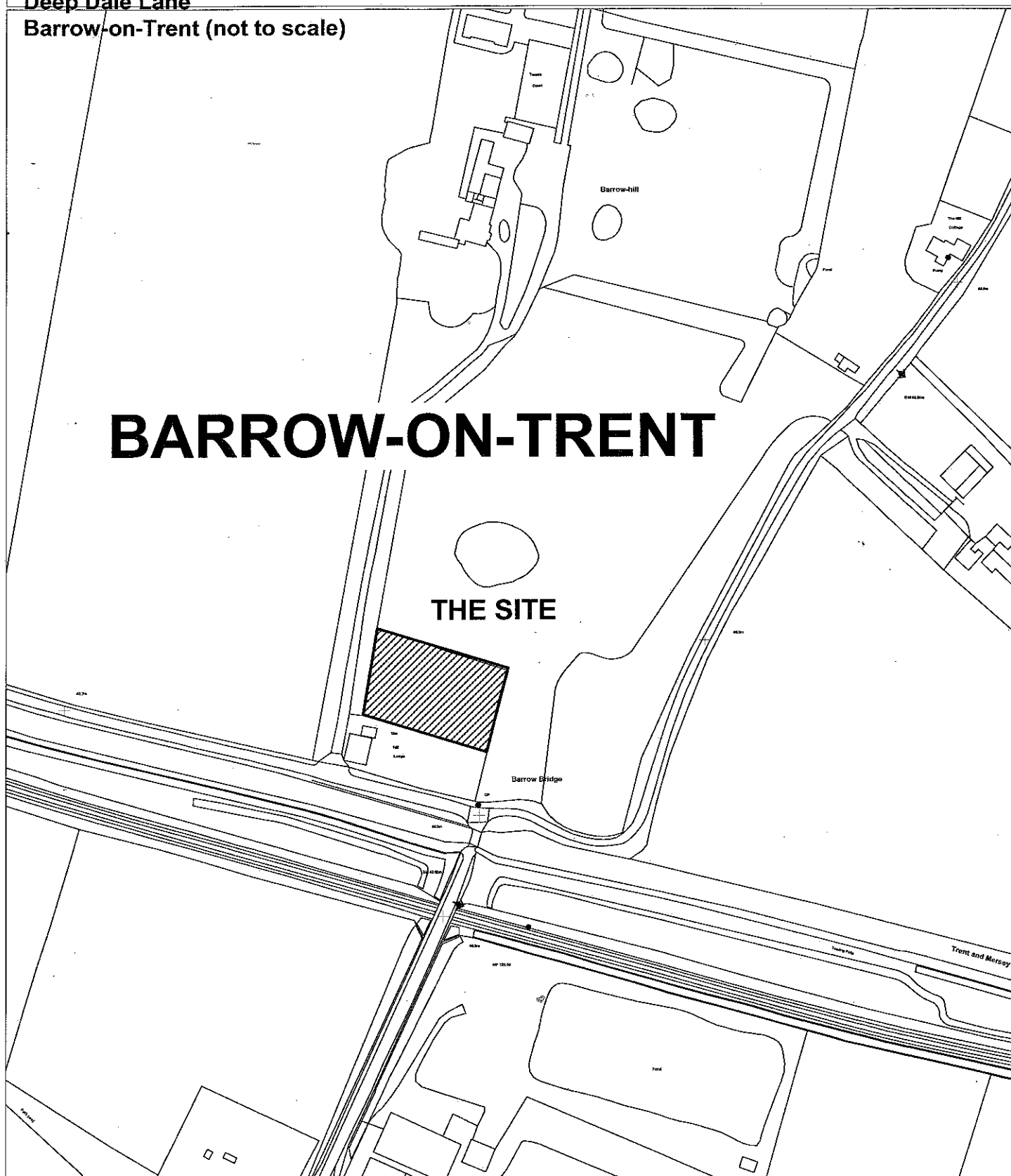
Applicants' supporting information

- The office use that was carried out from one of the outbuildings has ceased. As a result there is no useful purpose for that building because the applicant has no

9/2008/0579 The Hill Lodge
Deep Dale Lane
Barrow-on-Trent (not to scale)

BARROW-ON-TRENT

THE SITE



Crown Copyright. All rights reserved.
South Derbyshire District Council.
OS Licence No. LA 100019461. 2006

Scale 1:2500 Date Plotted 18/7/2008

Plot centred at 435527 329119

9/2008/0579 The Hill Lodge
Deep Dale Lane
Barrow-on-Trent (not to scale)



wish to sub-let the office to a third party, partly because he does not want the potential security issues that would be associated with such a use, and partly because commercial uses have been the source of friction with his neighbour at The Hill.

- Secondly, the land in question currently benefits from a variety of uses, including office, agriculture and a domestic for the garage. The opportunity arises to consolidate the application area and the residential area into a single planning unit, with advantages to the local planning authority and to the applicant with regard to the potential future disposal of the property as a single entity.
- Now that the use of the office building has ceased, the building is not being put to any beneficial use, whereas by incorporating it into the curtilage of the adjoining dwelling it can be put to a useful purpose such as ancillary recreational activities, guest accommodation, and storage. None of these would have any adverse impacts on the enjoyment of the nearby dwelling at The Hill, and nor would they have any impact on the character or appearance of the site and the surrounding area.
- With regard to Local Plan Policy EV1, whilst the use is not essential to a rural based activity and is not unavoidable in the countryside, the site has legitimately acquired uses in addition to the original agricultural use. Furthermore the site is exceeding well screened and there would be no harm to the character or appearance of the countryside.

Planning History

9/0390/1320/F - Stable block. Work commenced within five years of the grant of permission.

9/2002/1020/F - Conservatory. This has not been built.

9/2002/1038/F - Two storage sheds (one in the garden and one in the paddock) and revised plan for stables.

9/2002/1211/F - Hardstanding and access.

9/2003/0267/F Erection of feed store and tack shed to be attached to stable.

Permission refused on the grounds of visual impact.

9/2003/0480/F - Conservatory and garage.

9/2003/1026/U - Change of use and alterations to stables for office use. Refused on the grounds of traffic and the visual impact of the proposed changes.

9/2004/0534/FH - The installation of a balcony, and alterations to previously approved shed.

9/2005/0194/F - Animal rearing shed. Refused on the grounds of visual impact.

9/2005/0040/F – Garage (revised elevations).

9/2005/0807/U – Change of use of stable to office and retention of hardstanding.

9/2006/0423/F – Animal rearing shed. Refused on the grounds of visual impact.

9/2007/0076/F – Extension to office. Refused on policy, visual impact and sustainability grounds. Appeal dismissed.

Responses to Consultations

Barrow on Trent Parish Council is concerned about creeping development at the site. It has concern regarding traffic impacts given the state of Deepdale Lane and that it is used by speeding traffic using it as a 'rat run'. Conditions are sought to ensure that the paddock remains as garden use only and any future building or business use prohibited. (conditions 2 & 3 deal with this

Responses to Publicity

None received.

Development Plan Policies

The relevant policy is:
Local Plan: Policy EV1

Planning Considerations

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

- The principle
- Impact on the character and appearance of the countryside.

Planning Assessment

The application does not accord strictly with the requirements of Environment Policy 1 of the South Derbyshire Local Plan. However, whilst the use is not essential to a rural based activity and is not unavoidable in the countryside, the application site has legitimately acquired uses in addition to the original agricultural use. The office use in particular could presently be severed from the dwelling, which would not be in the best interests of sustainability. The residual paddock is unlikely to be capable of supporting a free-standing agricultural business. The inclusion of the land in the curtilage of the dwelling would render the entire site a single planning unit with unambiguous lawful use for such purposes.

The site is well screened, and with regard to the underlying policy objective of ensuring that there would be no demonstrable harm to the character or appearance of the countryside. Appropriate conditions would control the use of the existing buildings and prevent any new buildings from being built on the application site under permitted development rights. As such neither the policy nor the character of the area would be prejudiced.

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. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no buildings and no gates, walls, fences or

other means of enclosure shall be erected on the application site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the character and appearance of the locality.

3. On commencement of the use hereby permitted the existing buildings on the site shall be used for purposes incidental to the enjoyment of the dwelling known as The Hill Lodge Deepdale Lane Barrow on Trent only.

Reason: In the interests of sustainability.

2. **PLANNING AND OTHER APPEALS**

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

Reference	Place	Ward	Result	Cttee/delegated
9/2007/0395	Woodville	Woodville	Allowed (with costs)	Committee
9/2007/0705	Willington	Willington/Findern	Dismissed	Delegated

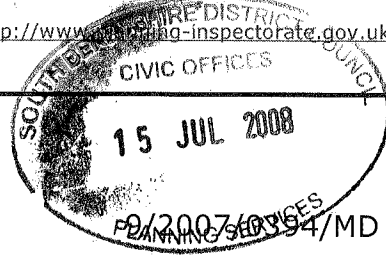


The Planning Inspectorate

Room: 304
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-8160
Switchboard: 0117-372-8000
Fax No: 0117-372-8443
GTN: 1371-8160

<http://www.planning-inspectorate.gov.uk>



Miss N Toon
South Derbyshire District Council
Development Control Technician
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Your Ref:

Our Ref:

Date:

PD/2007/00394/MD

APP/F1040/A/07/2060549/NWF

14 July 2008

Dear Miss Toon

Town and Country Planning Act 1990

Appeal by Alruba Manufacturing

Site at Land At And Adjoining, 1 Frederick Street, Woodville, Swadlincote, DE11 8BX

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website - www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

Please note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely



Attila Borsos

COVERDL2

You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹.

This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 0207 9477124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court². This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

² Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.



Costs Decision

Hearing held on 22 April 2008

Site visit made on 22 April 2008

by **R. Owen-Smith** BA(Hons) DipTP MSc
MSocSc MBA MRTPI MIHT

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
14 July 2008

Costs application in relation to Appeal Ref: APP/F1040/A/07/2060549 Land at Frederick Street, Woodville, Swadlincote, Derbyshire DE11 8BX

- 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 Alruba Manufacturing for a full award of costs against South Derbyshire District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for eight new semi-detached houses, three new detached houses and twelve new flats.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Applicant

1. The application, made at the Hearing, is based on 7 grounds.
 2. Firstly, with reference to paragraph 8 of Annex 3 to Circular 8/93, the Council failed to cite a complete, precise and specific reason for refusing the proposed development in its Decision Notice and failed to particularize any development plan policy or other material considerations in support of its reason for refusal. The Decision Notice is flawed.
 3. The Council failed to properly consider its reason for refusal in the context of the development plan and any other material considerations. No weight of evidence is submitted in the appeal papers or produced at the Hearing to substantiate the reason for refusal or to show why the proposal could not be permitted.
 4. Secondly, with regards to paragraph 9 of Annex 3, whilst the Council is not bound to accept Officers' advice, in this case it failed to show, and substantiate, reasonable planning grounds for taking a decision contrary to that recommended. In coming to its view, the Council sought no specific advice from experts in respect of any impacts of the proposal on the forest setting or in terms of design regarding the appearance of the building. Notwithstanding this, it refused permission on these grounds.
 5. Thirdly, in terms of paragraph 10 of Circular 8/93, the Council failed to produce or co-ordinate the provision of professional or technical evidence upon which its decision relied. Furthermore, the Council did not seek such advice subsequently in order to substantiate its case at the Hearing.
 6. Fourthly, with respect to paragraph 12 of Circular 8/93, the Council, in coming to its decision, failed to provide evidence and show how the proposed development would not accord with the policies and provisions of the
-

development plan or any other material considerations which would support such a refusal.

7. Fifthly, with reference to paragraph 14 of Circular 8/93, the Council sought to control the design of the buildings to a degree that is not warranted by the sensitivity of the location.
8. Sixthly, with regards to paragraph 15 of Circular 8/93, the Council was unduly influenced in coming to its decision by local opposition to the proposed development. The Council failed to decide the application on the merits of the case.
9. Finally, in terms of paragraph 17 of Circular 8/93, the Council, in its opposition to the proposed development, raised matters in terms of scale and height of the buildings which it did not raise or condition at the outline stage.
10. In these circumstances, the Applicant contends that the Council acted unreasonably in refusing planning permission, resulting in the Applicant incurring unnecessary costs in coming to the Hearing since the appeal application should have been granted and it was thereby not necessary for the matter to be determined by the Secretary of State.

The Response by the Council

11. In response to the first ground, whilst it is correct that no development plan policies were cited in the Decision Notice, the Council set out clearly in the reason for refusal that appearance was the primary consideration. The Council contends that this was sufficiently informative for the Applicant to prepare its case and that no undue extra expense or resources have been expended. Furthermore, the Council's case relies upon the relevant adopted Local Plan policies which are included within its Hearing Statement.
12. The Council considers that the proposed development could not be permitted on account of the apartment block. Since this building could not be separated from the proposal, it was not possible to refuse one aspect and approve another, hence the reference to "development" in the reason for refusal.
13. In respect of the second ground, the Council is not bound to adopt, or include as part of its case, the planning or technical advice given by its own Officers. It has given reasonable planning grounds in its Statement and at the Hearing for taking a qualitative decision contrary to that recommended. Its decision is based upon the view that the appeal site warrants careful consideration in terms of the scale and character of the development under the provisions of the relevant planning policies. The Council has given evidence to support its opinion based upon the present site characteristics.
14. In respect of any expert advice required for the preparation of its case, the Council notes that the Applicant did not consider it necessary to retain the services of a landscape architect or an urban designer.
15. With regard to the third and fourth grounds, the Council considers that it has provided sufficient evidence in its Statement and at the Hearing, setting out reasonable planning grounds based on policies. On that basis, no further advice was sought.

16. In terms of the fifth ground, the Council considers that the forest park (Swadlincote Woodlands) is a valuable asset in the urban area and a determining factor in place-making. The Council maintains that it is a strong factor when considering the context of the site. Consequently, it is entitled to have regard to the future of the parkland and its role in the community in relation to any impacts of development on the appeal site.
17. In response to the sixth ground, the Council maintains that, whilst the application resulted in a number of objections being received, it disagrees that its decision was influenced unduly by these representations.
18. With regard to the final ground, Members view the outline stage as being indicative and only at the Reserved Matters stage can the Council determine the application in the interests of the community.
19. In summary, the Council submits that all the Applicant can demonstrate is a difference in opinion on a qualitative matter. It therefore considers that it did not act unreasonably and that it has not caused unnecessary expense. On this basis, an award of costs is not justified.

Conclusions

20. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
21. With reference to the first ground, I find as a matter of fact that the Council did not include within the reason for refusal reference to any development plan policies. The reason did not identify with clarity in what way the proposal would have a detrimental impact and did not demonstrate clearly why the proposed development could not be permitted in accordance with the policies and provisions of the extant development plan. For these reasons, I consider that the reason for refusal was not complete or specific.
22. Furthermore, the Council did not support the landscape and urban design aspects of its refusal with substantial evidence, by reference to the development plan or other material considerations.
23. Accordingly on this ground, I consider that the Council acted unreasonably in these respects.
24. With regards to the second ground, both Officers' Reports state that the appeal proposal would be of a satisfactory design and would not materially harm the character and appearance of the surrounding area or the forest setting. In my view, the recommendation to grant planning permission was based on sound planning grounds. Whilst Members are not bound to adopt the professional advice provided by its Officers, the Council does have to demonstrate that it had reasonable grounds, based on the development plan and other material considerations, for taking a decision contrary to that advice.
25. Whilst matters of design are subjective, they can constitute reasonable planning grounds for refusal, if articulated and supported by evidence. Members can bring their local knowledge and experience to bear on these

matters. However in this case, the Council failed to demonstrate clearly that, on grounds of design, the proposal would be out of context with the surrounding area and would have a detrimental impact on the forest setting. Indeed, in its Hearing Statement, the Council acknowledges that the proposed dwellings, apart from the block of flats, are designed to take into account the location and character of the area. In this context, its opposition to the design of the block of flats and its decision to refuse the planning application on this basis is unsubstantiated by evidence. As such, I consider that the Council, on this ground, acted unreasonably.

26. In terms of the third and fourth grounds, the Council asserts that sufficient evidence based upon the relevant policies has been provided. However, its submissions do not, in my view, constitute evidential based support for the decision. In this context, I find it significant that the Decision Notice does not refer to development plan policies. Furthermore, the Council did not seek the provision of professional or technical evidence subsequent to its decision, prior to appeal proceedings. Only at the Hearing was the Council's position clarified. Accordingly, I consider that the Council acted unreasonably in these regards.
27. With regard to the fifth ground, the Council maintains that it is entitled to have regard to the future of the parkland and its role in the community in relation to any impacts of development on the appeal site. Whilst the forest park has a role to play within the local community and the Council is justified in safeguarding its future, it does not benefit from any specific planning designations. In my opinion, the Council gave undue weight to it in coming to its decision to refuse the application and sought to control the proposal's detailed design where the sensitivity of the location does not warrant it. Accordingly, I consider that by so doing it acted unreasonably.
28. In terms of the sixth ground, a number of representations opposing the proposed development were received by the Council. I am not persuaded by the evidence that the Council was influenced unduly or attributed undue weight to the views of local residents when coming to its decision. On this ground, I consider that it did not act unreasonably.
29. Finally, in terms of the seventh ground, the Council in its submissions and evidence to the Hearing maintained that the design, size and mass of the block of flats and the fact that the proposal would not feature or form a transition to the built-up area would detrimentally affect the forest park setting.
30. I find it significant that the Council's concerns regarding the building's height and scale, the forest park setting and the objective of featuring a transition were not articulated at the outline planning stage. The outline consent and the conditions are silent on these matters. Accordingly, I consider the Council acted unreasonably in introducing such considerations and were not able to show good reason why they should apply at the reserved matters stage.
31. For the reasons given above, I conclude that unreasonable behaviour has been demonstrated, as described in Circular 8/93, and has resulted in unnecessary expense to the Applicant in presenting its case at the Hearing. I further conclude that an award of costs is justified.

Formal Decision and Costs Order

32. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that South Derbyshire District Council shall pay to Alruba Manufacturing, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of planning permission for the construction of eight new semi-detached houses, three new detached houses and twelve new flats on land at Frederick Street, Woodville, Swadlincote, Derbyshire DE11 8BX.
33. The Applicant is now invited to submit to South Derbyshire District Council, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for detailed assessment by the Supreme Court Costs Office is enclosed.

R. Owen-Smith

INSPECTOR



Appeal Decision

Hearing held on 22 April 2008

Site visit made on 22 April 2008

by **R. Owen-Smith** BA(Hons) DipTP MSc
MSocSc MBA MRTPI MIHT

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
14 July 2008

Appeal Ref: APP/F1040/A/07/2060549

Land at Frederick Street, Woodville, Swadlincote, Derbyshire DE11 8BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Alruba Manufacturing against the decision of South Derbyshire District Council.
- The application Ref: 9/2007/0394/MD, dated 28 February 2007, sought approval of details pursuant to conditions Nos. 1 and 2 of a planning permission Ref: 9/2006/0202/M, granted on 27 June 2006.
- The application was refused by notice dated 31 July 2007.
- The development proposed is eight new semi-detached houses, three new detached houses and twelve new flats.
- The details for which approval is sought are: layout, scale, external appearance and landscaping.

Application for costs

1. At the Hearing, an application for costs was made by Alruba Manufacturing against South Derbyshire District Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for the construction of eight new semi-detached houses, three new detached houses and twelve new flats on land at Frederick Street, Woodville, Swadlincote, Derbyshire DE11 8BX in accordance with the terms of the application, Ref: 9/2007/0394/MD, dated 28 February 2007 and the drawings, numbered 03J, 07D, 09E, 11B, 12E and 13C, submitted therewith, subject to the following conditions:-
 - 1) No development shall take place until appropriately scaled construction details including sections where necessary of the entrance door porches, eaves, verges, cills and lintels, window frames and chimneys have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with those approved details.
 - 2) The doors and windows shall be set back 50mm from the external face of the brickwork unless otherwise agreed in writing by the Local Planning Authority.
 - 3) Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

- 4) Notwithstanding the submitted details, the garage doors shall have a vertical boarded effect and prior to occupation shall be finished in a dark colour, details of which shall have been approved previously in writing by the Local Planning Authority.

Main issues

3. The main issues in this appeal are firstly the effect of the proposed development on the character and appearance of the area, and secondly, upon the forest setting in terms of outlook, siting and design.

Reasons

Character and appearance

4. The appeal site lies on the edge of a predominately residential area of Woodville with its western boundary abutting a forest park (Swadlincote Woodlands). The locality is characterized by Victorian terraced and semi-detached 2-storey dwellings situated close to the back of the footway, and interspersed with occasional detached properties.
5. The site, now vacant with most of the vestiges of its previous industrial uses removed and the former dwelling demolished, fronts onto Frederick Street and its junction with Court Street. Ground levels fall across the site from north to south and westwards away from Frederick Street before rising up to form a prominent knoll within the forest park.
6. The proposal would site 3 pairs of semi-detached dwellings a short distance from the back of the footway on Frederick Street, replicating the disposition of the properties opposite. These proposed dwellings would present a 2-storey appearance to Frederick Street whilst comprising 4 storeys at the rear due to ground levels. Their front elevations, in terms of size, scale, design and detailing, would reflect the style and appearance of the properties opposite and in the locality. A similarly designed pair of properties, to be sited adjacent to No. 61 Court Street, would contribute tangentially to the street scene.
7. In my opinion, the proposed dwellings on Frederick Street would create a sense of enclosure and place. I consider that they would make a positive contribution to the quality of the environment and improve the street scene.
8. The proposal also includes a 3-storey block of flats and 3 detached dwellings, positioned along the site's western boundary. The Council contends that, due to the size, mass and scale of this block of flats, it would be atypical within the locality and therefore alien to its character and appearance.
9. From my site inspection, I have seen the relationship that would exist between the proposed block of flats and the other appeal development as viewed from the western end of Court Street and from a property on Bernard Street, adjoining the appeal site to the south. Whilst the block of flats would comprise three storeys with accommodation in the roof-space and have a ridge height marginally higher than the other proposed properties on the site, it would not look out of context in the area or be disproportionately tall when viewed next to the adjacent detached dwellings, due to its siting on relatively lower (and falling) ground levels. I note that the area hereabouts features terraced properties with broken ridges in a similar fashion to that proposed.

10. Partial views of this rear building group would be possible from the western end of Court Street. In terms of the street scene, such views would be secondary to those of the proposed properties fronting Frederick Street. I consider that these rear properties would not form a noticeable or prominent feature in the street scene but, where viewed, would complement those of Frederick Street.
11. Accordingly, I conclude that no material harm would be caused by the proposal to the character and appearance of the area. As such, it would represent a beneficial use of a brownfield site in conformity with national planning objectives contained in Planning Policy Statement 3, *Housing*, regarding development in a sustainable location offering a range of accommodation. It would also not be contrary to saved Housing Policies 4 and 11 of the South Derbyshire Local Plan (LP), adopted by the Council in May 1998, which seek to ensure that new residential development achieves a high standard of design and layout, and does not prejudice the continued viability of community facilities. I further conclude that the proposal would comply with the supplementary planning guidance (SPG), *Housing Design & Layout*, adopted by the Council in April 2004 for development control purposes.

Forest setting

12. The Council maintains that the block of flats would cause harm by obscuring the presence of the woodland from the rest of the appeal development and the immediate residential area. However, views of the forest park from the other proposed dwellings on the appeal site and the immediate surrounding residential area would not, in my assessment, be prevented by the block of flats, due to its siting on relatively lower (and falling) ground levels, its broken ridge and the prominence of the knoll to the west within the forest park. Views of the forest park would be possible to the side of, or above, the proposed block of flats, depending on the viewpoint. Accordingly, I consider that the outlook from these vantage points would not be unacceptably harmed.
13. The flats would be situated relatively close to the site's western boundary, abutting the forest park. There are no public rights of way or formally laid out footpaths in this vicinity within the forest park; indeed, in the past the Council sought to restrict access hereabouts for security reasons. Furthermore, no access from the appeal site to the forest park would be possible. Whilst access is permitted throughout the forest park, I noted from my site visit that the adjacent lands within the forest park exhibit few signs of such use. As a consequence, I consider that the siting of the flats would not have a detrimental impact on the forest setting at the rear of the appeal site.
14. The Council sought amendments to the flats' design by introducing gaps into the building block in order to take account of the woodland setting. However, due to the building's design and detailing, its siting on relatively lower ground levels and the form of the local topography, I consider that the forest park setting would not be unacceptably harmed by the proposal's design.
15. For the reasons set out above, I conclude that no unacceptable harm would be caused by the proposal to the setting of the forest park. As such, it would not be contrary to saved LP Housing Policies 4 and 11 and the Council's SPG in these regards.

Other matters

16. The Council contends that the proposal would not form a "transition" to the built-up area and that it would harm the forest park setting. Reference was made at the Hearing to saved LP Environment Policy 7 in the context of the forest park. I note that that policy safeguards such open lands in Swadlincote from development. However, its ambit does not encompass the protection of the setting of such areas from adjacent developments or the incorporation of a "transition" within the development's design. Accordingly, I find that the proposal would not therefore contravene its provisions.
17. The Council also maintains that the proposal would not take account of the recently established practice in new residential developments adjacent to the boundary of Swadlincote Woodlands. This contention is not supported by submitted evidence or any indication as to how this recent practice has been implemented by the Council. However, it is not self-evident that such developments are comparable directly to the proposal before me. In any event, it is a planning principle that every application is considered on its own merits.
18. Concerns have been raised in connection with the appeal application regarding car parking and extra traffic on Frederick Street. I note that the Local Highway Authority raises no objections to the proposed development, subject to Conditions Nos. 12, 14, 15, 17, and 18 of the outline consent being discharged. From observations on my site inspection and from the submitted material to the Hearing, I consider that the proposal would not lead to conditions adding a significant hazard to road safety.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted, subject to conditions. I have considered the conditions imposed by the Council on the outline consent, some of which remain to be discharged, and those suggested in respect of the appeal application and impose conditions based on Circular 11/95. I consider it necessary to impose conditions requiring details of construction and finishes to be provided to, and agreed by, the Local Planning Authority in the interests of the appearance of the proposed development and the character of the area.

R. Owen-Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Janet V Hodson BA(Hons) DipT&CP MRTPI	Principal of JVH Town Planning Consultants Limited, Houndhill Courtyard, Houndhill, Marchington, Staffordshire ST14 8LN
Mr D Johnson	Owner/Applicant

FOR THE LOCAL PLANNING AUTHORITY:

Cllr S Taylor	Local Member, South Derbyshire District Council
assisted by: Mr T Sylvester	Development Control Manager

INTERESTED PERSON:

Mr C Pegg	18 Highgrove Drive, Chellaston, Derby DE73 5XA
-----------	--

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1	South Derbyshire District Council; letters (dated 17 January 2008 & 25 March 2008) Re: notification of Hearing and circulation schedule.
Document 2	Map indicating public rights of way.
Document 3	South Derbyshire District Council, Supplementary Planning Guidance, <i>Housing Design & Layout</i> , April 2004.



Appeal Decision

Site visit made on 23 May 2008

by **David Fitzsimon MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
24 June 2008

Appeal Ref: APP/F1040/A/08/2068614

1 Spilsbury Close, Willington, Derby DE65 6PF

- 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 G. Bowcott against the decision of South Derbyshire District Council.
- The application (Ref 9/2007/0705/FH), dated 13 June 2007, was refused by notice dated 9 August 2007.
- The development proposed is a first floor extension.

Decision

1. I dismiss the appeal.

Reasons

2. The proposed extension would be built above an existing double garage which projects at right angles from the front elevation of the appeal property. Several similar detached houses are present within this modern, open plan housing estate and I consider that their projecting garages successfully assist in breaking up the wider estate and add interest to the street scene without being overly dominant.
3. The proposed extension would not increase the footprint of the existing dwelling. However, it would result in a substantial two storey blank wall facing directly onto the street, which would be a bland and uninteresting addition. Furthermore, although the extension includes a hipped roof, lowered eaves and modest dormers, I find that its overall massing and forward projection, when added to the double garage, would be unacceptably dominant within the street scene. This negative effect would be exacerbated by the prominent position of the appeal property, not least when approaching from the north.
4. For the above reasons, I conclude that the proposal would be an incongruous addition which would appear overly prominent within the street. Accordingly it conflicts with Housing Policy 13 of the South Derbyshire Local Plan and the Council's Supplementary Planning Guidance titled 'Extending Your Home'.
5. I acknowledge that planning permission has been granted for an extension above the appellant's double garage. However, as this of a materially smaller scale to the proposal before me, it would have a lesser impact. I also appreciate that the proposal would provide additional accommodation for the appellant's growing family. However, as the proposal is likely to remain long after this matter ceases to be material, I give it limited weight in determining this appeal.

David Fitzsimon INSPECTOR