

Date: 8 January 2018

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 16 January 2018 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**  
Councillor Roberts (Chairman), Councillor Mrs Brown (Vice-Chairman) and  
Councillors Mrs Coe, Ford, Mrs Hall, Harrison, Muller, Stanton and Watson

**Labour Group**  
Councillors Dr Pearson, Shepherd, Southerd and Tilley

## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 44**
- 5** PROPOSED TREE PRESERVATION ORDER 472 – LAND TO REAR OF **45 - 48**  
45-59 MANCHESTER LANE, HARTSHORNE
- 6** PROPOSED TREE PRESERVATION ORDER 477 – LAND ADJACENT **49 - 51**  
TO 59 MANCHESTER LANE, HARTSHORNE

### **Exclusion of the Public and Press:**

- 7** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 8** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

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

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

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

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## 1. PLANNING APPLICATIONS

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2017/0125	1.1	Swadlincote	Swadlincote	5
9/2017/1082	1.2	Heathtop	Hilton	21
CD9/2017/0003	1.3	Swadlincote	Swadlincote	31

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 Strategic Director (Service Delivery)'s 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 Strategic Director (Service Delivery), arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 1.1

Ref. No. 9/2017/0125/SMD

**Applicant:**  
**De Montford Housing Society Limited**  
**1700 Solihull Parkway**  
**Birmingham Business Park**  
**Birmingham**  
**B37 7YD**

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

**Proposal: THE ERECTION OF 15 AFFORDABLE DWELLINGS INCLUDING ASSOCIATED ACCESS AND PARKING REQUIREMENTS ON FORMER DILKES GARAGE SITE HILL STREET SWADLINCOTE**

**Ward: SWADLINCOTE**

**Valid Date 06/02/2017**

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

This case is presented to Committee as the proposal is not in strict compliance with the requirements of the South Derbyshire Design Guide SPD.

#### **Site Description**

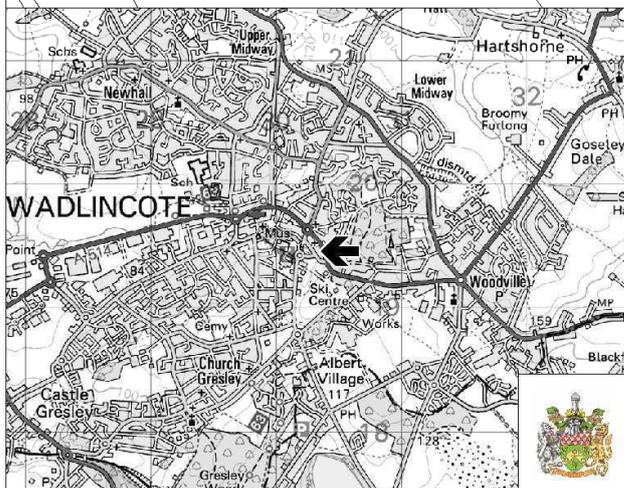
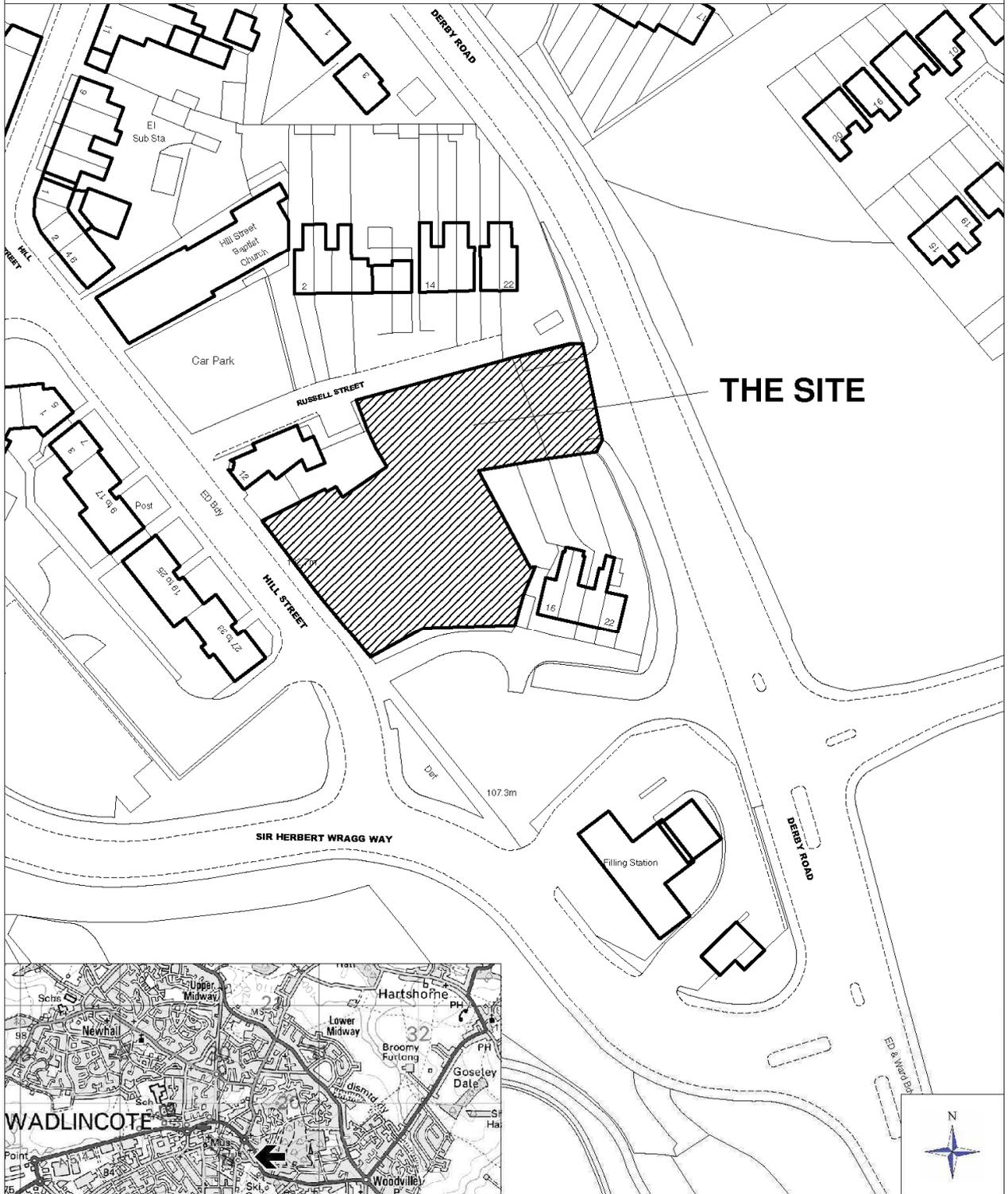
The site has been vacant and overgrown for a number of years but was formerly in use as a motor engineers and petrol filling station. The site is bounded to the north by Russell Street an unadopted street and to the south by a small private driveway serving 16-22 Hill Street. The western boundary of the site is formed by Hill Street itself with an existing social housing development on the opposite side of the street, and the east by the A514 Derby Road.

The site is located within the urban area of Swadlincote and the town centre conservation area. Part of the site appears to be made up ground and as a result lies above the level of the dwellings on Russell Street, with an existing somewhat dilapidated retaining wall forming the site's boundary to the north.

#### **Proposal**

The application proposes the re-development of the site for the erection of 15 affordable dwellings, to be developed by Waterloo Housing Group (de Montfort Housing Society Limited) who are a registered provider of affordable homes.

9/2017/0125 - Former Dilkes Garage Site, Hill Street, Swadlincote DE11 8HL



**This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. South Derbyshire District Council. LA 100019461. 2014**

The scheme is comprised of two terraces of 3 dwellings fronting Hill Street, with vehicular access in-between to a courtyard with parking for all 15 units. Along the northern boundary of the site the scheme proposes a row of three blocks of houses comprising two blocks of three and a pair of semi-detached dwellings, all of which would back on to Russell Street. To the south eastern corner of the site an adapted bungalow is proposed. Within the courtyard 19 parking spaces are proposed along with bin and cycle stores.

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

The Design, Access and Heritage Statement sets out a description of the area, and the physical, social, economic and policy context of the site concluding that the proposal complies with the relevant policies, which support new sustainable residential development. The proposal re-uses previously developed land; is in a highly sustainable location; achieves efficient use of the site; is of a high quality layout, design, scale and uses high quality materials; assists in reducing motor car dependence; and will enhance the visual appearance and character of the area.

A Phase 1 Environmental Assessment supports the application and describes the sites past uses, acknowledging the risks posed by the historic industrial use of the area and past coal mining activity. The assessment concludes that the site is not at significant risk from shallow working, shafts or seams although a Phase II site investigation is recommended in order to quantify the potential contaminant risks at the site.

A Viability Assessment outlines that the build and infrastructure costs of the proposed development would not be sufficient to give surplus over and above the projected development costs. Therefore contributions to off-site infrastructure would result in the development becoming unviable and undeliverable.

### **Planning History**

9/2005/0654 The erection of 18 residential units. Approved 30/11/15.

9/2010/0932 Application for a new planning permission to extend the time limit for implementation for the erection of 18 residential units planning application 9/2005/0645/M. Approved 7/01/11.

### **Responses to Consultations**

The County Highway Authority note that they have commented on two previous applications for the re-development of the site, to which concerns were raised in relation to the height of the proposed access archway and the limited number of off-street parking spaces. It is noted that both of these applications were approved. The current application has removed the previous archway but parking is still limited. However, given the history on the site it considers that it would difficult to request that the level of parking be increased.

The Environment Agency has no objections in principle to the development of the site but note that the site was previously a garage/filling station and as such recommend a condition requiring the submission of a remediation strategy for the site based on the submitted Phase 1 Environmental Assessment.

The Pollution Control Officer has no objection in principle to the development but recommends conditions relating to noise and controls over noise and air quality during the construction phase.

The Contaminated Land Officer notes that the site is located within influencing distance of historic land uses and features that present hazards during the site development (i.e. the former garage use). Conditions are therefore recommended in order to identify and remediate any potential issues on site.

The Lead Local Flood Authority has no objection to the proposal subject to the development being implemented in accordance with the submitted drainage strategy.

Severn Trent Water has no objection to the proposal subject to the inclusion of a condition requiring the submission of a drainage scheme.

The Coal Authority considers that the Coal Mining Risk Assessment Report has been informed by an appropriate range of sources of information; including a Coal Mining Report, BGS Geological Mapping and BGS Borehole Records. Based on this review of existing sources of geological and mining information, the Report is able to conclude that the two shallowest coal seams underlying the site would be at sufficient depth not to impact on ground stability, and as such no specific remedial measures or conditions are considered necessary.

The Southern Derbyshire CCG considers that the surgery most likely to be affected would be Swadlincote Surgery and a financial contribution of £5,706 towards a specific project for the development of additional capacity is requested.

The County Planning Policy Officer comments that the proposed development would generate the need to provide an additional 3 primary and 2 secondary school pupils. As Belmont Primary School is projected to have insufficient capacity to accommodate the additional pupils generated by the development and as such a contribution of £34,197.03 is requested in order to facilitate the provision of classroom extensions in order to create additional classroom space. In terms of secondary provision, the development falls within the normal area of Granville Sports College. The school is projected to have sufficient capacity to accommodate the additional pupils generated by the development and as such no contributions are requested. In addition the comments of County Councillor Paul Dunn are included which raises concern with the amount of car parking, and the impact of the development on nearby junctions.

The County Council as Lead Local Flood Authority has no objection but recommends the use of a range of sustainable drainage techniques in order to attenuate surface water in an appropriate quantity in order to maintain a disposal rate, reduced as proposed, from the current rate.

## Responses to Publicity

Two objections have been received raising the following concerns/points. One of the letters received is addressed as being from the residents of 2-22 Russell Street:

- a) Concern about sewer capacity and overflowing;
- b) The height of the retaining wall is not high enough, the original wall was twice as high;
- c) Loss of privacy, through overlooking;
- d) Concern at traffic and parking on Hill Street due to only one space being proposed per dwelling;
- e) The number of units for the size of the site is excessive and not in keeping with the surrounding area.

## Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy); S2 (Presumption in Favour of Sustainable Development); S4 (Housing Strategy); S6 (Sustainable Access); H1 (Settlement Hierarchy); H20 (Housing Balance) H21 (Affordable Housing); SD1 (Amenity and Environmental Quality); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); SD4 (Contaminated Land and Mining Legacy Issues); SD5 (Minerals Safeguarding); INF1 (Infrastructure and Developer Contributions); INF2 (Sustainable Transport); BNE1 (Design Excellence); BNE2 (Heritage Assets)
- 2017 Local Plan Part 2: BNE10 (Heritage); SDT1 (Settlement Boundaries and Development)

## National Guidance

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

## Local Guidance

- Swadlincote Conservation Area Character Statement
- South Derbyshire South Derbyshire Design Guide SPD

## Planning Considerations

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

- The principle of development;
- Design and impact on the conservation area;
- Residential amenity;
- Highway safety; and
- Section 106 contributions.

## **Planning Assessment**

### The principle of development

The application site is located within the Swadlincote urban area and the re-development of the site would facilitate the re-use of a derelict brownfield site, the site having been rendered without a use following the closure of the garage and the demolition of all buildings on the site a number of years ago. Being previously developed land, the principle draws support from policies H1 and S2 which reflect the presumption in favour of sustainable development and supports residential development in sustainable locations. Vacant brownfield sites within the urban area are considered to be the most appropriate locations to support higher density developments to ensure the efficient use of land in the most sustainable locations, in accordance with Policy H20.

As set out above the application proposes the development of the site for 15 affordable dwellings (100%). The affordable mix is comprised of 8 x two bed dwellings, 4 x 3 bed dwellings, and 3 x 4 bed dwellings. This mix has been developed by Waterloo Housing (who will control the occupancy of the development) in order to meet the identified affordable housing needs of the town, assisting with the sites compliance with policy H21 (i.e. the dwellings to be delivered meeting the requirements of up to date housing needs evidence).

The density of the proposed development equates to around 70 dwellings per hectare, which whilst high is considered acceptable taking in to account the sustainable nature of the site's location, and it is considered appropriate to allow an increased number of smaller dwellings at a higher density which would allow for larger housing to be provided at other locations where they better reflect the local character. Whilst it is accepted that the concentration of affordable housing in one development would not promote the provision of mixed communities (i.e. a mix of affordable and market housing), the scheme has set out to establish a high level of urban design with the key aim of enhancing the built environment and providing a sense of place and as such this is not considered to be a significant shortcoming of the development.

### Viability

Policy INF1 expects that the needs of occupiers of developments are appropriately supported and relevant impacts mitigated, in the interests of sustainability. However the policy recognises that the viability of developments is a material and mitigating factor when determining the extent and priority of developer contributions, as also acknowledged within policies H20 and H21. The issue of viability is also outlined in the NPPF with the aim of ensuring that developments are deliverable taking into account the costs of development, the required mitigation and ensuring competitive returns for willing land owners and developers.

The submitted viability assessment has been interrogated and demonstrates that the scheme would not be viable if infrastructure contributions were required. In this case, education contributions and CCG contributions (as outlined above), are requested and considered to be CIL compliant. With no on-site open space, sports or built

facilities provision, contributions towards identified projects in the locality would also be justified.

The above potential for contributions is however considered to be overridden by the significant benefits this scheme can deliver in respect of affordable housing. Members will be aware that a number of strategic sites around Swadlincote are unable to deliver the policy requirement of 30% affordable housing, and it would go some way of redressing the balance if sites like this can go ahead. This carries significant weight in favour of the proposal. Countering this is the fact that social and environmental needs and impacts might not be adequately served, but it is not considered this point alone makes the development unsustainable in principle. It is therefore considered appropriate to forego any contributions in the interest of ensuring that the proposed affordable housing comes forward.

### Design and Impact on the Conservation Area

The site is located within the Swadlincote Conservation Area where the Council has a duty to pay special attention to preserving or enhancing the character and appearance the area - carefully considering any new development that could affect the setting and significance of the area as a heritage asset. The NPPF is also explicit in its support for the conservation of heritage assets. In addition, adopted local plan policies require new development in conservation areas or affecting the setting of listed buildings to protect, conserve and, where possible, enhance heritage assets' settings.

The site is located in an area of mixed architectural styles, some good quality and some in need of improvement. The aim of local and national design policies and guidance is to improve and raise the standard of design rather than simply copying the built form and design existing in an area. Policy BNE1 requires new development to enhance community safety by providing safe areas with good natural surveillance, to provide attractive legible streets, create a sense of place, create a locally inspired character which is visually attractive and respectful of local townscape and heritage, and the creation of continuity and enclosure of the street scene amongst other things. In addition policies BNE2 and BNE10 expect new developments to protect, conserve and enhance heritage assets and their setting, with particular attention given to the industrial heritage of Swadlincote.

The principal character of Hill Street has evolved in association with both coal mining activity and clay extraction on the eastern edge of the town. The rows of former workers cottages (16-22 Hill Street and 2-22 Russell Street) were constructed perpendicular to Hill Street. Hill Street was once lined on both sides with terraced dwellings which were demolished in the 20th century, with the terrace on the opposite side of the road having been replaced with a modern social housing development which pre-dated the designation of the conservation area.

The design and layout of the scheme has been developed through extensive pre-application and post-submission discussions, with the sensitive setting of the site in mind and the design ethos of Building for Life carried through to the site layout and design of the buildings. This has included ensuring that the dwellings are sited to respect the traditional road layout which has resulted in the dwellings being sited

fronting Hill Street and Russell Street. The layout re-introduces a terrace of dwellings to Hill Street and recreates the enclosure of the street lost during the last century, which would benefit the character and appearance of this end of the conservation area. The Hill Street frontage is proposed with railing atop a dwarf wall enhancing the sense of enclosure to the street scene.

A detached bungalow is proposed to the southern boundary of the site in-between the proposed terrace fronting Hill Street and the existing terrace to the south-east; the bungalow generally has traditional features but due to its position within the site would not form a prominent feature in the street.

The layout of the northern part of the site provides for a built form along Russell Street and would see the sensitive re-building of the existing retaining wall. The siting of these dwellings provides for a form of dual frontage with the dwellings addressing both Russell Street and the central parking courtyard ensuring that the central public realm is overlooked by properties, creating active frontages. The layout of the development provides private amenity spaces to the rear of dwellings.

The dwellings themselves are of a traditional design, with roof design and pitch which are reflective of the area. The use of appropriate and good quality materials is an important part of ensuring that the design ethos succeeds on the site, and as such the proposed materials and detailing should be secured by condition to ensure that an appropriate approach is undertaken which provides a link to the local vernacular to reinforce and enhance the character of the conservation area. Overall, Building for Life principles are followed in creating affordable, functional and sustainable homes and a positive and welcoming built environment, in accordance with policy BNE1. The scheme presented is considered to be one that would greatly enhance the character and appearance of the conservation area and would result in a very positive lift to a long-standing derelict site. The houses have been designed so as to incorporate features which reflect the local distinctiveness of the Swadlincote Conservation Area.

### Residential amenity

The development in general would comply with the space standards as set out in the latest Design SPD. However there is an area of minor deficiency, the relationship between 20 / 22 Russell Street and plots 9 – 11.

Plots 9 - 11 would be located at their closest point 20m away from the existing dwellings which falls 1m short of the recommended distance within the SPD. However, this is with Russell Street itself, front gardens and parked cars in-between, a situation where the guidelines state that normal distances can be relaxed. All other plots would be beyond the 21 metre minimum distance between windows as detailed in SPD and as such it is considered that the proposed development would not be likely to significantly impact on the amenity of any of the dwellings in close proximity to the site.

In terms of the relationship with the existing dwellings on Hill Street, plots 7 – 11 are located at their shortest distance 4m away from the rear boundary of the rear amenity space of these existing dwellings. In this instance the area in-between the

boundary is proposed to be landscaped to include tree planting in order to screen views of the rear amenity space of these existing dwellings, which, coupled with the fact that this area is at the bottom of rear gardens approximately 25m long and not likely to be the main useable area of amenity space for these dwellings, is a relatively slight shortfall in meeting the required standards and so is not considered to result in a significant impact on the amenity of existing residents.

### Highway safety

The application demonstrates that 2.4m x 43m vehicular visibility splays can be achieved at the proposed access from Hill Street in both directions, with the frontage wall and railings facilitating sufficient pedestrian visibility splays. In terms of parking provision, 19 parking spaces are proposed which equates to two spaces for each of the four bedroom dwellings and the adapted bungalow and one space each for the remaining 11 dwellings.

Whilst this provision is lower than would be expected within residential developments, the site is in a highly sustainable location within the town centre where alternative transport choices to the private car are readily available as are all necessary local services and other off-site parking opportunities are available close-by. It is therefore considered that the spaces provided are sufficient and could even aid in reducing the reliance on the private car for the occupiers of the development.

### Conclusion

The proposal is acceptable in principle taking into account the provisions of the development plan, given the site is previously developed and located within the urban area of Swadlincote. The development is considered to meet a recognised need for affordable housing within the District and significant weight is afforded to the 100% provision offered here. The proposed development is considered to be sensitively sited and designed, having taken account of the sites sensitive location. Overall the development is considered to result in an overall enhancement to the character and appearance of the conservation area though the re-development of this untidy vacant site.

The site has been the subject of detailed site investigations in respect of flood risk, contaminated land and coal mining risk and these matters are acceptable subject to conditions and relevant mitigation so to comply with the relevant legislation and planning policy. The surrounding highway network is considered to have sufficient capacity to accommodate the proposed development, and the level of car parking is considered appropriate for this town centre location. In addition the proposal is not considered to significantly impact on the amenity of any nearby residents.

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

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with drawing numbers 15.3197.21 Rev B; 15.3197.22 Rev A; 15.3197.23 Rev B; 15.3197.24 Rev A; 15.3197.25 Rev A; 15.3197.26 Rev A; 15.3197.27 Rev B; and 15.3197.28 Rev A unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. During the period of construction, there shall be no deliveries, and no plant or machinery shall be used outside the following times: 0800 - 1800 hours Monday to Friday and 0800 - 1300 hours on Saturdays and at no time on Sundays, Bank and Public Holidays.  
Reason: In the interest of protecting the amenity of nearby residents.
4. No generators or pumps shall be used on site during the construction phase of the development without prior written permission from the Local Planning Authority, and there shall be no burning of construction/demolition waste on site.  
Reason: In the interest of protecting the amenity of nearby residents.
5. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.  
Reason: In the interests of highway safety.
6. No development shall take place until a construction management plan or construction method statement, based on the submitted site management plan, has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.  
Reason: In the interests of highway safety and the amenities of nearby residents and the adjacent primary school, recognising that works including the demolition, initial ground clearance and preparation works could compromise highway safety.

7. The affordable housing hereby permitted shall meet the definition of affordable housing in Annex 2 of the NPPF or any future guidance that replaces it. The scheme shall include:
- i. no less than 100% of housing shall be Affordable Housing.
  - ii. the arrangements for the transfer of the Affordable Housing Units to an Affordable Housing Provider;
  - iii. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those households on the District Housing Waiting List; and
  - iv. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other form as may be proposed by the Local Authority and agreed with the Affordable Housing Provider.

Reason: To ensure the provision of affordable housing on the basis that the scheme is of marginal viability.

8. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

9. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

1. A site investigation scheme, based on ('Phase 1 Environmental Assessment' (ref IV.42.16, dated April 2016)) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: As recommended by the Environment Agency to ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution in line with paragraph 109 of the National Planning Policy Framework.

10. Prior to the commencement of any building works on site 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. The surface water element shall be based on the indicative Surface Water Drainage Layout detailed in drawing number 17-173-001

Reason: As recommended by Severn Trent Water in the interests of flood protection and pollution control.

11. A scheme of noise mitigation measures shall be submitted to, and approved by, the local planning authority prior to commencement of building works. This shall include noise from the surrounding road network and any other local noise sources that are deemed significant to the application site.

Reason: In the interest of protecting the amenity of nearby residents.

12. Before any building works commence a new vehicular and pedestrian access shall be created to Hill Street in accordance with the application drawings, laid out, constructed and provided with 2.4m x 43m visibility splays in both directions, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: As recommended by the Highway Authority In the interests of highway safety, recognising that works including the demolition, initial ground clearance and preparation works could compromise highway safety.

13. A scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of any part of the development.

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

14. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before the construction of any buildings.

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

15. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The approved rooflights shall be fitted such that their outer faces are flush with the plane of the roof.

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

16. Notwithstanding the submitted drawings/plans, no development involving the construction of a dwelling or boundary treatment shall commence until revised drawings detailing the height, types and materials of boundary fences and walls and the positions of associated pedestrian gates have been submitted to and approved in writing by the Local Planning Authority. Such drawings shall be based on the positions of boundary fences and walls shown on layout plans hereby approved and be supplemented with elevational plans to show the typical heights and materials of such fences and walls. The fences and walls and the positions of associated pedestrian gates shall be completed in accordance with the approved details before the respective dwellings to which they serve are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

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

18. The access, shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on either side of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: As recommended by the Highway Authority in the interests of highway safety.

19. The dwellings, the subject of this application shall not be occupied until space has been provided within the application site in accordance with approved drawings for the parking and manoeuvring of residents vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.
- Reason: In the interests of highway safety.
20. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme first submitted to and approved in writing by the Local Planning Authority.
- Reason: In the interests of the appearance of the area.
21. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless alternative details are first submitted to an approved 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 their installation.
- Reason: In the interests of the appearance of the building(s) and the character of the area.
22. External doors shall be timber and painted in a colour and to a specification which shall have previously been agreed in writing by the Local Planning Authority and be set back from the face of the wall by a minimum of 50mm.
- Reason: In the interests of the appearance of the building(s) and the character of the area.
23. Gutters and downpipes shall have a black finish.
- Reason: In the interests of the appearance of the building(s), and the character of the area.
24. Pointing of the proposed buildings shall be carried out using a lime mortar no stronger than 1:3 (lime:sand). The finished joint shall be slightly recessed with a brushed finish in accordance with Derbyshire County Council's advisory leaflet: Repointing of Brick and Stonework.
- Reason: In the interests of the appearance of the buildings.
25. 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.

Informatives:

1. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

2. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

3. The applicant is advised to note the following comments on the Highway Authority;

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website [www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp), email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.

4. The remaining phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. 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.

For further assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health department:

thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:

CLR 11: Model Procedures for the Management of Contaminated Land

CLR guidance notes on Soil Guideline Values, DEFRA and EA

Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.

Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.

Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).

BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

5. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

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

**Item**            **1.2**

**Ref. No.**       **9/2017/1082/U**

**Applicant:**  
**Mr G Major**  
**Suite 60 Eurocom House**  
**Derby West Business Centre**  
**Ashbourne Road**  
**Derby**  
**DE22 4NB**

**Agent:**  
**Mrs Janet Hodson**  
**JVH Town Planning Consultants Ltd**  
**Houndhill Courtyard**  
**Houndhill**  
**Marchington**  
**ST14 8LN**

**Proposal:**    **PROPOSED TEMPORARY (5 YEAR PERIOD) CHANGE OF USE OF COMPOSTING SITE FOR USE FOR LORRY PARKING AND FOR THE STATIONING OF A PORTACABIN OFFICE AT LAND AT SK2032 9545 UNNAMED ROAD FROM COTE BOTTOM LANE TO BENT LANE HEATHTOP DERBY**

**Ward:**        **HILTON**

**Valid Date**   **06/10/2017**

**Reason for committee determination**

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

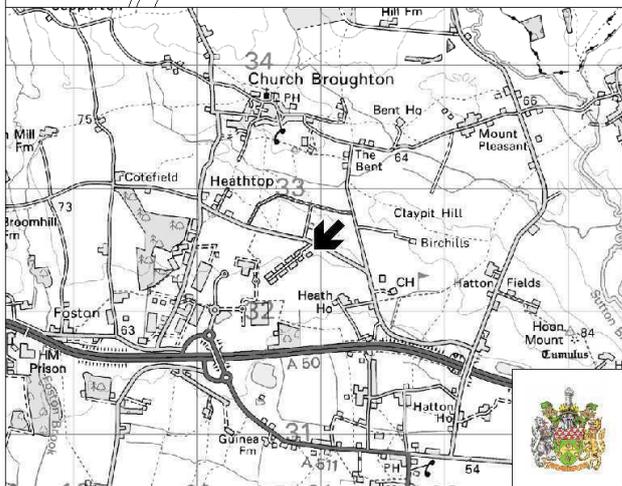
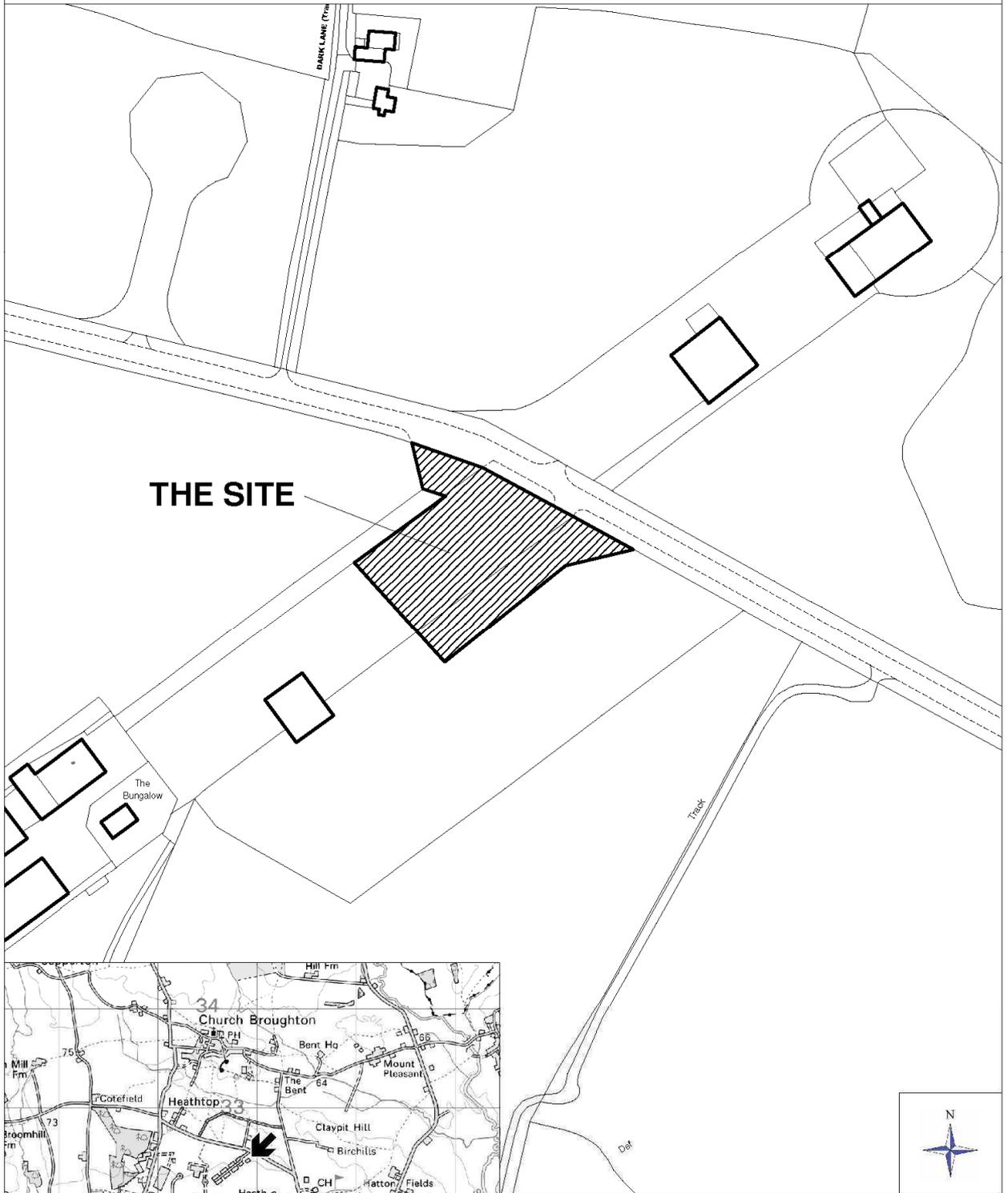
**Site Description**

The 0.2 Ha site is located off an unnamed road that links Cote Bottom Lane and Bent lane to the east of Heathtop and south of Church Broughton. The site is flat and hard surfaced with the north western and north eastern boundaries enclosed by 2m high green security fencing. There are floodlights on the south eastern and north western boundaries. Twelve concrete cylinders have been placed along the road frontage. There is a building that was associated with the composting use to the immediately to the south of the site that was recently granted permission for a change of use to B1c/B2/B8. To the south are the large industrial units within Dove Valley Park.

**Proposal**

Planning permission is sought for a lorry park which is a sui generis use for a temporary period of 5 years. This application proposes a lorry park for up to 20 lorries including a 14m x 3.9m temporary office block. This building would be located in the north eastern corner adjacent to the road boundary.

9/2017/1082 - Land at SK2032 9545 Unnamed Road from Cote Bottom Lane to Bent Lane, Heathtop, Derby DE65 5AY



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## **Applicant's supporting information**

The Planning Statement describes the site and outlines the proposal. It states that the proposal is required for re-location of a haulage contractor currently based at Hilton Business Park which operates 16 vehicles but holds a licence for 20. The majority of the fleet would leave the depot at 04:00 on Monday and return on Friday afternoon around 16:00. The company employ 22 people, with 3 based on site in the office. The drivers vehicles would be parked at the site whilst the lorries were away. 4 lorries would be based locally and would return to the depot during the week. The site history section mentions the former airfield and the floodlighting application in association with the composting use. The composting use included the adjacent building which has been granted permission for an employment use as has the turkey farm, however, this reverted back to turkey production 10 years ago. The planning policy assessment considers the proposal as an existing employment site and is in accordance with LPP1 Policy E2 and the proposal would have “*no adverse impact on the landscape*”. The access is described as ‘an established wide and well defined, with clear visibility’ and there is no adverse highway impact.

Further information on the former use of the site was provided by the agent who contends that composting is an industrial process and thus has a B2 use class. Two appeal decisions are noted which relate to waste transfer station and waste recycling uses both considered to be B2 uses. It is stated that the threat of enforcement action supports the view of the previous use being B2 as does the floodlighting surrounding the site. In relation to the previous airfield use, it is considered that this is sui generis and the use of the site is not agricultural. It is considered that the site is both a B2 use class and previously developed land and as such should be assessed against LPP1 Policy E2 and paragraphs 17 and 28 of the NPPF.

## **Planning History**

9/2017/0571 – Change of use of former composting building to form B1c/B2/B8 employment units, Granted 25/7/17 (adjacent site)

9/2017/0573 – The erection of 310 m of green security fencing and gates front a highway and private way, granted 24/7/17

9/2010/0954 – The Change of use from B1/B8 use to agricultural / Turkey Rearing, Withdrawn 30/11/10 (adjacent site)

9/2005/0931 – The use of the site for B1/B8 (light industry and warehousing), granted 7/3/06 (adjacent site)

*Condition 2 required access improvements to the junction of Heath Top with Woodyard Lane /Cote Bottom Lane secured through a Unilateral Undertaking.*

9/2004/0877 - The change of use of premises from agricultural to storage (B8), Granted 25/2/05 (adjacent site)

9/2004/0840 - The retention of a portable building, Granted 23/8/04

9/2003/1320 - The change of use from agricultural to light industrial B1 and storage B8, Granted 5/1/04 (adjacent site)

9/1998/0769 - The erection of a coldstore and a replacement workshop building at the premises of Brandons Poultry Limited, Granted 18/3/99 (adjacent site)

9/0889/0594 – Retention of eight 10m high floodlights on boundaries of premises of Agronomics Ltd, Granted 2/3/1990 (applicant stated use of land – compost- agricultural)

## **Responses to Consultations**

The Highways Authority has no objection based on the previous use of the site and recommends a condition for laying out the site in accordance with the submitted plan. (Attach condition)

The Health and Safety Officer recommends informatives regarding toilet provision and portacabin protection. (Attach informative)

The Environmental Health Manager has undertaken a full assessment of the case with regard to noise impact. His report concludes that noise from HGVs can be highly variable depending on the type of vehicle, road condition, speed and driving style. Therefore a quantitative assessment of the potential of the impacts of the noise of passing HGVs could contain so many uncertainties as to make it meaningless to help the planning committee reach a decision. He advises that government guidance contained in PPG Noise para 5, sets out a framework to help planning authorities reach a decision when noise is a material factor taking into account opportunities for mitigation. His assessment advises about how to treat the application based on how the impacts of the noise compare against the Lowest and Significant Observed Adverse Effect Level. In this case considering the application in isolation and based on current environmental conditions, in his opinion, the effect of the development falls within the 'Noticeable and disruptive' description due to the potential for peak noise events in the early part of Monday morning, although he recognises the high level of uncertainty about whether these peak noise events will occur, their magnitude and frequency. In addition, given that the local acoustic environment will be altered by virtue of the permitted Dove Valley Industrial Park and that the development is for a five year temporary use, he considers that the development falls within the 'Noticeable and Intrusive' description. On this basis the national guidance advises the local planning authority to approve the application whilst ensuring that the impact is mitigated and reduced to a minimum. In cases such as this where there is significant uncertainty, temporary permissions can enable the local planning authority the opportunity to assess and then review the evidence from an active development. In his view, a temporary permission over a shorter timeframe to that applied for would in this case be proportionate to the national guidance. He therefore recommends that the permission be limited to two years. However, if the noise from the HGVs proves in the short-term to be cause a statutory nuisance to the residents of Heath Top, then legal intervention under statutory nuisance law is still possible. He therefore suggests that, if approved, an Informative be attached to the permission warning of such.

Church Broughton Parish Council objects to the application for the following reasons:-

- 1) The road is too narrow and increased use by HGVs would increase risk to existing users.
- 2) Existing industrial development in the locality generates HGV traffic on the local roads.
- 3) The condition of the road is poor and in need of repair.
- 4) The landowner could negotiate access from Dove Valley Park.
- 5) There is a concern that such a 'temporary' permission is likely to be extended in the future.

## **Responses to Publicity**

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

- a) The site has poor access and Woodyard Lane is unsuitable for large vehicles.
- b) The lane is dangerous as it is narrow and too many bends.
- c) The access to the site and the existing unit should be from Dove Valley Park.
- d) The proposal may mean lorries park on the road if they can't get access or there is insufficient parking available.
- e) It would have an adverse impact on the local toad and Great Crested Newt population as they use the road to access the pond.
- f) There is light pollution from the floodlights.
- g) No specific opening hours have been included but the planning statement mentions 4am.
- h) The proposal would exacerbate HGVs use on this lane.
- i) The increased use of HGVs would make walking and cycling on the country lanes dangerous for residents.
- j) Lorries accessing sites on Woodyard Lane going to Sapperton Park already cause significant issues for access for residents.
- k) There was a change of use at the farm for turkey sheds to be used for storage approx. 7 years ago which caused significant traffic issues at the time.
- l) The road surface is poor and floods regularly.
- m) The junction with Woodyard Lane is tight and further HGV use would result in damage to the verge.
- n) There should be sufficient space to re-locate the lorry park to the existing industrial estate at Dove Valley.
- o) The owners of Heath House Farm, close to the development are concerned about noise disruption from reversing trucks.
- p) Lorries park for days alongside the road and leave litter.
- q) The junction with Sutton Lane onto the A516 is substandard with no 45 degree visibility splays.
- r) The site has not been used for composting until recently when soil appeared on site for a 2 month period.
- s) Concrete blocks have been erected adjacent to the road to prevent parking.
- t) Lorries leaving the site a 4am would disturb local residents.
- u) Has permission been given for the fencing or concrete blocks?
- v) The entire route to the major road network (A50) needs to be considered and not just the road with direct access to the site.
- w) Hours of use should be 9am to 5pm and a noise bund with trees should be put in place to reduce noise.

- x) A protected bird (The Black Redstart) has been seen on the application site.
- y) The lorry park would be an eyesore.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: E2, SD1, BNE1, BNE4, INF2
- 2017 Local Plan Part 2: SDT1, BNE5

## **National Guidance**

- National Planning Policy Framework (NPPF) 7, 11, 14, 17, 28, 32, 196, 197
- Planning Practice Guidance (PPG)

## **Local Guidance**

- SDDC Design Guide (SPD)

## **Planning Considerations**

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

- Principle of Development
- Landscape Impact
- Highways
- Amenity Impact

## **Planning Assessment**

### Principle of Development

Planning permission is sought for a lorry park which is a sui generis use for a temporary period of 5 years. This application proposes a lorry park for up to 20 lorries including a 14m x 3.9m temporary office building. This building would be located in the north eastern corner adjacent to the road boundary.

In terms of the previous use of the land, in 1990 the planning committee considered that the composting use was ancillary to the agricultural use of the land as a Turkey Farm. This was on the basis that 50% of the materials comprised of Turkey manure and that not all the waste from the site was used for processing as there was some stockpiling of poultry waste for spreading. Thus, there is no planning permission or Lawful Development Certificate in relation to the composting use on the site.

Therefore, on the basis of the evidence available with regard the composting use, it is considered that the composting was ancillary and incidental to the agricultural use of the land and the view taken in 1990 is upheld.

However, the land is considered to be previously developed as it was part of a former airfield and the hardstanding still exists on the site and it has not blended into

the landscape as little natural screening exists. A former airfield has a sui generis use class. Previously developed land is defined in the glossary of the NPPF as:

*“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time”.*

LPP1 Policy E2 states that development of land for uses classes B1(b), B1(c), B2 and B8 will be permitted where iii) *“the proposal is for the redevelopment of established industrial or business land or premises”* and that the proposal is in scale with the existing built development and would not give rise to undue impacts on the local landscape. The proposal does not squarely fit with this policy as the previous established land use is a former airfield which is a sui generis use and would not be usually described as industrial or business, however, the land is considered to be previously developed land. A core planning principle of the NPPF paragraph 17 is to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided it is not of high environmental value. Industrial uses have been granted for the existing farm in 2005 and the existing composting building in July 2017 with the land to the west of the application site allocated for employment uses. The application site is set within the context of large scale employment buildings and thus would be in scale with existing buildings and the landscape impact is considered to be limited. On the basis of the former use and industrial character of the site it is considered that the proposal complies with this Policy.

The proposal is a result of the allocation of Hilton Depot for housing in LPP1 Policy H7. The applicant has an established haulage contractor business based at Hilton Depot for over 10 years and now need to relocate as a direct consequence of the allocation and subsequent permissions for housing on the site. As such the established business requires a temporary permission in order to continue the business and safeguard jobs.

The site is located within the countryside (albeit surrounded on two sides by the employment allocation in LPP1 Policy E5) and as such LPP1 Policy E7 and LPP2 Policy BNE5 are relevant. Policy E7 supports development proposals which diversify and expand the range of sustainable employment activities on land outside settlement boundaries provided they support the social and economic needs of rural communities within the district. The Policy goes on to state that proposals for the re-use, conversion and replacement of existing buildings and development of new buildings will be supported where they meet criteria in terms of a sound business case, highway impact, impacts on neighbouring land, design and scale and visual intrusion.

LPP2 Policy BNE5 states that outside settlement boundaries planning permission will be granted where the development is allowed by policies H1, H22, E7, INF10,

H24, H25, H26, H27 or H28, otherwise essential to a rural based activity, unavoidable outside settlement boundaries, infill of dwellings and will not unduly impact on landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.

This proposal does not squarely fit with the wording of LPP1 Policy E7, as it relates to an existing business based currently within a Key Service Village within the District. However, an inspector in a recent appeal decision in Cambridgeshire considered that the interpretation of wording of Local Plan policies should not be literal and rigid. He states that even if there would be conflict with the wording of the policy, the underlying aim of the policy should be considered. In this case, the policy seeks to diversify and expand sustainable employment activities within rural areas for the benefit of rural communities. The re-use of this previously developed site for industrial use by an existing local business is considered to be sustainable development as the local highway network is capable of accommodating the traffic generated, neighbouring land is industrial on two sides, it has a temporary nature and would have limited impact on the character of the locality given its current concreted state. In general terms the proposal is considered to comply with the overarching aim of this policy.

The established business has been in operation at Hilton Depot for over 10 years and employs 22 people. The business was given notice by the landlord to vacate the existing site by the 28<sup>th</sup> February 2018. The application site itself is located within 3 miles of the existing site and requires little in terms of alteration as hardstanding, floodlighting and fencing exists on site. The floodlighting was granted permission in relation to the composting use in 1990 and an application to enclose the land with 2m high security fencing was granted in July 2017.

Adjacent to the south west is an existing single storey metal clad building which formed part of the previous composting use and was granted permission for industrial B1/B2 and B8 uses in July 2017. This site is also enclosed by fencing and has floodlights. The main Turkey farm is to the south west and remains in operation. The site is adjacent to existing industrial and agricultural uses and would utilise the existing access. Land to the west forms part of the Dove Valley Park allocation LPP1 Policy E5 and an outline application (9/2017/0816) has been made for three industrial buildings on the land which is yet to be determined. The character of the site is considered to be urban / industrial in nature due to the hardstanding, floodlighting and fencing and would be viewed from the road in context with the large industrial buildings on Dove Valley Park to the south. The proposal involves siting a portacabin adjacent to the road frontage and has the potential to involve up to 16-20 lorries and / or 22 cars being parked at the site, which would have a limited visual impact.

### Landscape Impact

LPP1 Policy BNE4 states that the character, local distinctiveness, and quality of the district's landscape will be protected and enhanced through careful design and sensitive implementation of new development and development that will have an unacceptable impact on landscape character, visual amenity and sensitivity cannot be satisfactorily mitigated will not be permitted.

It is acknowledged that the site is open and flat with little natural screening, however, the harm on the surrounding landscape is considered to be limited due to the site's existing character and context. It would be viewed in context with the large industrial buildings to the south west and similar buildings may be granted on land immediately to the west. The scale of the proposal is thus dwarfed by these buildings and the proposal itself has a temporary nature with a portacabin and vehicle parking. On this basis of this temporary nature and timescale, landscape mitigation is not considered appropriate as the site can be restored without any works being undertaken.

#### Highway Impact

The Highway Authority has assessed the case taking into account the numbers of vehicles proposed and the improvement works undertaken at the junction with Woodyard Lane and considers that safe and convenient access can be achieved in relation to the proposed use and therefore has no objections. Utilising the Dove Valley Park access has been investigated by the landowner and it is not feasible as there is a ransom strip between his site and Dove Valley Park. The proposal therefore accords with LPP1 Policy INF1 and NPPF paragraph 32.

#### Amenity Impact

LPP1 Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. LPP1 Policy BNE1 h) requires that new development should not have an undue adverse effect on the privacy and amenity of existing nearby occupiers.

The amenity of neighbouring properties in relation to the movement of HGV vehicles has been assessed in detail by the Environmental Health Manager. Factors that have been taken into account in reaching his advice relate to the existing unrestricted HGVs that use the road in relation to the existing Turkey Farm, the number of dwellings affected, noise generated by existing industrial units to the south and current commitments on neighbouring land as set out in the Local Plan. On this basis, a condition restricting the period of the permission to two years is recommended.

The large concrete cylinders on the road frontage have been mentioned in objections. These are outside the application site and the Enforcement section has investigated and found there to be no breach of planning control.

Overall, in terms of the planning balance the proposal would deliver a substantial economic benefit in the retention of an existing established business utilising previously developed land in the area retaining jobs for 22 existing staff. This holds significant weight in favour of the proposal. Its location adjacent to existing industrial uses and proximity to main transport routes also weigh in favour of the proposal. The impact on amenity of neighbouring properties through increased HGVs using the road can be mitigated to some extent by conditions. The site's character and context is considered to be industrial in nature and as such the landscape impact is considered to be very limited. The limited environmental harm identified does not significantly and demonstrably outweigh the economic benefit of the proposal and thus the proposal is considered to constitute sustainable development.

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 for the following reasons:

1. This permission shall be for a limited period only, expiring on 31st January 2020 or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason:

2. The HGV vehicles shall not operate from the site outside the following times: 04:00 - 18:00 Monday to Saturday nor at any time on Sundays, Bank or Public Holidays.

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

3. The number of HGV vehicles operating from the site shall not exceed 20.

Reason: In the interests of highway safety.

## Informatives:

The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of part III of the Environmental Protection Act 1990 be received.

Item 1.3

Ref. No. CD9/2017/0003/CD

**Applicant:**  
Mr Jeremy Goacher  
Derbyshire County Council  
County Hall  
Smedley Street  
Matlock  
DE4 3AG

**Agent:**  
Mr Ben Neves  
Derbyshire County Council  
Corporate Property  
Chatsworth Hall  
Chesterfield Road  
Matlock  
DE4 3FW

**Proposal:** DEMOLITION OF PART OF EXISTING CHILDRENS HOME AND ERECTION OF NEW EXTENSION ALONG WITH INTERNAL RECONFIGURATIONS AND RETENTION OF EXISTING OUTBUILDING ON THE CORNER OF THE SITE (COUNTY REF: CD9/0317/107 - AMENDED SCHEME) AT LINDEN HOUSE CHURCH STREET SWADLINCOTE

**Ward:** SWADLINCOTE

**Valid Date** 29/03/2017

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

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

#### **Background**

This item is a consultation from the County Council as the County Planning Authority seeking the views of the District Council on the proposal to demolish the Linden House Family Centre. The proposal was previously presented to the Committee in May 2017 where it was resolved to object to the then proposal to demolish the home in its entirety and erect a replacement in its place, the objection stating:

*“The proposal results in a high level of harm to and impact on the significance of the Conservation Area, taking into account both the loss of a building which contributes positively to the special architectural and historic character of it, and its replacement with a building which does not preserve or enhance the character of the area. Whilst the reasons behind the proposal are recognised, they fail to justify the level of harm brought about and equally the public benefits which arise are not considered to outweigh this harm. Consequently, the proposal fails to comply with policy BNE2 of the Local Plan Part 1, saved*

CD9/2017/0003 - Linden House, Church Street, Swadlincote DE11 8LF



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*policies EV12 and EV13 of the Local Plan 1998, emerging policy BNE10 of the Local Plan Part 2 and policies within the NPPF”.*

This report follows continued efforts by the applicant in liaison with both County and District planning and conservation officers to overcome the reasons for the objection.

## **Site Description**

The site is the Linden House Family Centre, a five children-bedroom, two staff-bedroom children’s home which is owned and managed by the County Council. The site is located within the Swadlincote Conservation Area which encompasses the Emmanuel Church and graveyard across the road – a grade II listed building and the buildings to either side – the Angel Inn public house and number 34 Church Street (occupied by a building society and accountants firm).

The existing premises comprise a large domestic plot, set back from the road behind a row of mature limes. There is a single storey outbuilding on the north-eastern corner of the site which backs onto the pavement and neighbouring public house. To the front there is a forecourt which provides car parking for 5 to 6 vehicles. Flanking either side of the home is a timber, close boarded and concrete post 2.0m high fence. There is also a very large mature ash tree in the centre of the rear garden. To the rear of the property is a large garden area, enclosed by mature deciduous trees, beyond which is a small area of informal open space and local authority housing on Drayton Street.

The house is a three storey building with a pitched, hipped roof with a central valley gutter. The roof is tiled with Staffordshire blue plain clay tiles. The original brick walls have been painted white. The original building appears to have a number of extensions added over the years.

## **Proposal**

Following receipt of amendments, it is now proposed to demolish later additions to Linden House, provide a new two-storey extension in their place and internally reconfigure the remaining, original floorspace of the home. The footprint would be of a similar extent whilst external patio space would be provided on a terrace. The existing outbuilding to the front would be retained along with all but one existing tree – that removed being a small, isolated lime in the middle of the forecourt. Six parking spaces would be retained. Six bedrooms would be provided, as is currently the case.

## **Applicant’s supporting information**

A number of reports accompanied the original submission, with these summarised below as per the original report:

A Design and Access Statement (DAS) sets out that it was initially intended to provide a refurbishment scheme to upgrade the property in line with recommendations and criticisms by Ofsted inspectors. The inspectors advised that the home was in need of renovation and should appear as domestic and as close to a typical private home as possible. An Asbestos Survey identified

a substantial amount of asbestos in the building, whilst existing services were found to be in need of upgrading/replacement. The structural engineer advised there were significant structural stability issues, settlement cracks in the front, side and rear elevations would need to be addressed and possibly underpinned. The resultant scheme would have meant the building would need to be completely renovated, stripping the building and the roof back to the shell, at substantial cost. Accordingly a scheme to demolish and redevelop the premises was developed. The proposed design has been conceived to be a cost effective solution, with the user requirements, robust specification and the nature of procurement meaning the construction costs are higher than standard typical dwellings. The scheme has been value engineered to reduce the floor area to the essentials. The proposals have been informally considered by the County planning officer who highlighted a number of concerns regarding the proposals in view of the historic context of the Conservation Area, including concerns regarding the demolition of the existing home and the outbuilding, lack of detailing compared to the existing ornate detail, and the need to justify demolition over the option of retention. It is considered that the proposals preserve the historic character of the setting, with the building use being a continuation of the existing usage; the footprint of the new building being the same as the existing, and located within the same position within the site; the massing is similar to the existing; the proposed materials are to replicate the appearance of the existing with pale rendered walls, and traditional tile roofing; and window and door openings being designed to traditional proportions. It is concluded that the scheme is a carefully considered design which preserves the existing setting and street scene, complies with planning policies and should receive permission.

A Historic Impact Statement (HIS) identifies Linden House and outbuilding on the first OS mapping in its present footprint. The Statement identifies a variety of building periods and materials within the Conservation Area, the majority of buildings appear to have been built around the mid to late nineteenth century. The prominent building material in the locality is red brick with stonework detailing around openings, and slate or tile roofs. A small number of buildings are rendered or are finished with painted brickwork. The cost of the works for a refurbishment scheme is substantial and far exceeds 75% of the proposed new build cost – a guide to indicate when refurbishment is not viable and new build should be considered. In addition it was highlighted that the existing internal plans, despite modifications, were still not 'fit for purpose'. There are a number of features of the property which cause operational issues, such as the narrow ground floor corridor which is not wide enough to allow two people to pass; an open fire escape route from the first floor; and basement and third floor accommodation which cannot be used; insufficient space in the kitchen area to accommodate all the occupants; and no separate washing facilities for staff on the first floor. A relocation of the home to new premises has been considered, but alternative sites have been rejected due to additional cost to modify those for use as a Children's Home or their location being inappropriate. It is concluded that it is unavoidable to demolish the existing building. The Statement considers the Swadlincote Conservation Area character statement, identifying it as falling within Area 4, but considers that in terms of harm the proposed scheme would preserve the appearance of a

'substantial detached house', 'set within large gardens'. The house would be located on a similar footprint to the original house, and maintain a similar frontage, set-back the same distance from the road at the front. The existing outbuilding would be retained. The proposed new building also replicates the style, appearance and details on the neighbouring building on Church Street whilst the composition of the proposed front elevation replicates that existing. All these factors are considered to mitigate the harm caused by the loss of the heritage asset.

A Preliminary Ecological Appraisal notes a habitat survey undertaken in 2013 identified potential bat roosts in the existing roof structures. Further surveys in summer 2016 confirmed that there were no bats emerging from the either building and bat activity in the site was generally low. No statutory or non-statutory designated nature conservation sites occur within the site, with the closest site approximately 260m away. Notable habitats recorded on the site include a young orchard and mature broad-leaved trees. However, with the exception of three lime trees at the front of the property, these habitats would not be affected by the proposed works. The site provides potential habitat for common amphibians and birds. The Appraisal advises that ecological impacts of the proposed works are likely to be minimal on the basis that recommendations are followed.

The Coal Authority Report notes multiple records of past underground coal mining, some directly beneath the property, whilst there are probably unrecorded shallow workings. A mine entry is also nearby.

The Tree Survey Report indicates the location and typical characteristic of each tree, and also records the landscape value of the tree and if any remedial action is required. The root protection areas are defined from this Survey which indicates where development needs to be restricted.

The submission is now supported by a Design Options Statement (DOS) which examines a range of options for the development of the home, comparing these options in terms of heritage impacts – including recognition of the need to consider public benefits against the potential harm to the heritage asset, Ofsted requirements and budgetary cost. 6 options have been considered:

- Option 1 – Total refurbishment with no demolition;
- Option 2 – Re-locate the children's home;
- Option 3 – New-build in the grounds and demolition of the existing (in full or in part);
- Option 4 – Demolish home and outbuilding, and erect a new-build replacement;
- Option 5 – Demolish home, retain outbuilding and erect a new-build replacement; and
- Option 6 – Refurbish home, demolish more recent extensions and erect a new extension.

Whilst the applicant has a preference for demolition and rebuild on the same site, total refurbishment would not address the problems with the existing internal layout.

It is recognised that total loss of the heritage asset is an option which has been resisted by both the District and County, with there being a duty to protect the asset. After consultation it has been established that the proposal which delivers the most public benefits with the least loss of historic fabric is option 6 – refurbishment of the main house with selective demolition and extension. It is advanced that the proposed design closely follows the massing and form of the existing building.

A Public Benefits Statement also provides support, outlining the nature of children's care in the County. The County Council currently has 11 children's homes, of which 4 care for children with severe disabilities and 7 for young people with a range of needs. Of the 7, Linden House is the only home in the South Derbyshire and Southern Dales (SDSD) area, which is an area of growing population. This increase in overall population is also reflected in the numbers of children in care from the SDSD area. Whilst the overall number of Derbyshire children in care has remained broadly level between 2012/13 and May 2017, in 2012/13 SDSD had 24 children in care whilst at end May 2017 there were 42. Whilst in exceptional cases it is in the interests of young people to move away from the vicinity of family or friends; for the majority of young people in care it is crucial to maintain local school, activities, contact with family and friends, etc. Furthermore, the new national strategy 'Staying Close' promotes children's homes forming close relationships with local accommodation providers to enable young people to make a supported and gradual transition. There is also a recognised regional, and national, shortage of all types of placements for children in care, especially for teenagers. There are a number of private providers of children's homes, but some are of poor quality whilst others will not accept more complex cases, recognising they cannot meet their needs. Thus without sufficient Local Authority homes, it is hard to ensure that children receive the best possible care for the money spent. In addition, the average costs of County non-disability children's homes are £2,865 per week, such that the financial impact of losing 4 or 5 residential places is significant.

Ofsted regulates children's homes, carrying out inspections every year. Standards and expectations have raised nationally on an annual basis and recognised the shortcomings of Linden House back in November 2014, issuing a statutory requirement to "ensure the premises for the purposes of a children's home are of a physical design, layout and maintenance, which are suitable for the purpose of meeting the needs of the children's accommodated and achieving the aims and objectives set out in the home's statement of purpose". When visiting in June 2017, Ofsted expressed strong concern about the lack of progress, with there now being a risk of further regulatory action. Such enforcement activity brings significant damage and reputational risk for the Local Authority, thus the need to resolve the building at Swadlincote within a short timescale is imperative.

## **Planning History**

None relevant.

## **Responses to Consultations**

The County Council is responsible for carrying out consultation in respect of this application and interpreting consultation responses. As a consequence consultation

has not been undertaken with the Coal Authority, County Highway Authority, County Flood Risk Team or Derbyshire Wildlife Trust.

## **Responses to Publicity**

Again the County Council is responsible for carrying out consultation in respect of this application and interpreting consultation responses.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2: BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

## **National Guidance**

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

## **Local Guidance**

- Swadlincote Conservation Area Character Statement (CACS)
- South Derbyshire Design Guide SPD

## **Planning Considerations**

The purpose of this report is to assist the Planning Committee to provide South Derbyshire District Council's updated comments on this, now amended, planning application. The final decision rests with the County Council and the views of this Committee will assist it in reaching a decision without binding the County Planning Authority to following this Council's comments.

## **Planning Assessment**

With the principle of residential development acceptable given its position within the settlement confines for Swadlincote, attention is given the heritage impacts and other observations relevant to the development.

## Heritage and Design

Linden House is a large detached mid-Victorian building, established in its present form by 1871, with a separate detached range of single storey outbuildings. The building has an asymmetrical main elevation to Church Street, with a prominent projecting entrance bay with decorative arched doorcase and carved panel. The details adopted are typical of Gothic Revival architecture with some Early English details. There is a lower attached service range, but this is much plainer, although it contains the same lintel and eaves details. Built in brick, with stone and moulded brick dressings and shouldered arch lintels, the whole house has been painted which has contributed to the poor condition of some of the brickwork. It is likely that, as originally designed, the building was quite decorative but this has been lost by over-painting. The main house has blue, plain clay tiled hipped roofs. Sash windows have all been replaced in uPVC. Whilst over-painting has affected the ability to appreciate the importance of this building, it nevertheless retains a high proportion of its original details, and there have been no modern extensions.

The outbuilding forms an important, linear feature as seen in approaching the site along Church Street. They are typical of the locality, similar to other outlying parts of the Conservation Area. The house is set back from the Church Street frontage, in its own large private garden, and this corresponds with its higher status than the majority of houses in the vicinity. The mature trees, including limes which were probably planted in the 19th century as indicated by its previous name, add considerably to its positive character. The relationship of house, outbuildings and trees form a mature group which contributes positively to the character of the Conservation Area. It is for the above reasons that the building is singled out in the CACS as a building with increased 'importance' with the Area – one which contributes positively to the special architectural or historic character of it.

Whilst the building is not pivotal to the significance of the Conservation Area, the Area was extended across Civic Way to pick up the group of buildings along Church Street close to Emmanuel Church – including this property. This was a deliberate and conscious decision to include the buildings, and the loss of these buildings (individually or collectively), which are particular to the mid-19th century development of Swadlincote, would cause harm to its significance. Whilst the applicant's desire for the complete demolition and rebuilding of the property is noted, the primary aim here is to preserve and enhance the Conservation Area. Demolition rarely achieves the former, and it would certainly not do so here, such that that level of harm – if were proposed – would have to be outweighed by very real, public benefits, in line with the NPPF. It is for this reason that an objection was previously lodged with the County.

The DOS has considered the range of options outlined above, and scored them in respect of heritage, cost, Ofsted requirements and time. In heritage terms, the least harmful option would be to relocate the children's home, leaving the existing fabric intact. This option has however been discounted due to a lack of suitable alternative sites. A new build in the grounds might equally have less harm, although this would create its own separate considerations in terms of setting and arboricultural matters. Following these options, a complete refurbishment is preferable over any demolition – this approach preserving the exterior fabric and the main significance of the asset. The demolition of existing extensions would feature next in order of preference, before the demolition of the entire home (and the outbuilding too).

The total refurbishment scores highest in respect of heritage considerations, but lowest in terms of addressing the Ofsted issues. Conversely, the complete demolition and rebuild scores the lowest in heritage terms, whilst fully addressing the Ofsted issues. The continued negotiation over the last 6-7 months has resulted in a more appropriate balance being found between the two ends of the scale, with the public benefits being realised in both terms of preserving the significance of the heritage asset as far as is practicable whilst satisfying other legislative requirements and ensuring the continuity of children's services at the site and across the wider area. This is also despite the amended proposals being amongst the most costly options to deliver. These public benefits are quite tangible and clear, and carry considerable weight against the harm which arises from the partial loss of historic fabric. The Conservation Officer considers the benefits outweigh the harm generated such that the principle of the revised scheme can be supported.

The internal changes to the main part of the home are generally minimal, looking to reconfigure awkward first floor arrangements and widen circulation spaces at both levels. The removal of the extended side wing also addresses multiple steps in floor level at first floor, and assists in being able to accommodate services in a more sympathetic manner in the proposed extension. The removal of the external escape staircase and accommodating it internally further assists in enhancing the character and appearance of the host. The latest designs do however require some modest amendments to fully realise the correct balance in heritage terms – namely a reduction in the height of the new first floor eaves (and corresponding window reveals) which would in turn reduce the height of the ridge and make this part of the overall property appear subservient – it is presently does. A minor change to a ground floor WC window is also required, to better reflect the lean-to and functional character of this element of the extension. The material palette can be left to conditional control, although it has been suggested that a good quality red brick be utilised over incorporating render or painted brickwork.

### Land Stability

The findings of the Coal Authority Report are noted to reveal significant potential for below ground mining legacy which may affect the structural integrity of any redevelopment. At the time of writing the previous report, it was noted that a Coal Mining Risk Assessment had not been carried out, attracting objection from the Coal Authority. Since then, the Assessment has been undertaken and considered by the Coal Authority, who has lifted their objection, satisfying policy SD4 and paragraphs 120-121 of the NPPF.

### Summary

It is not considered that biodiversity, ecological or highway matters, or neighbouring amenities, would be offended by the proposal, with conditions able to resolve the residual design matters here. The principle of the partial demolition of Linden House and replacement with a new extension is considered to be justified, with the public benefits demonstrated and outweighing the harm which arises. The proposal would ensure the character and appearance of the conservation area is preserved, with some enhancement to the property itself also realised.

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**

That Derbyshire County Planning Authority is advised that South Derbyshire District Council does NOT OBJECT to the grant of planning permission subject to the aforementioned amendments being secured and the conditions to address the following matters being attached:

- i) Use of traditional materials, including plain clay tiles and timber joinery;
- ii) Ensuring appropriate detailing of verges, eaves, cills and lintels; and
- iii) Appropriate tree protection measures being installed prior to construction works commencing, with any new hard surfaces within root protection areas constructed on geo-textile load bearing systems.

### **Informatives:**

- 1.
  - i) Use of traditional materials, including plain clay tiles and timber joinery;
  - ii) Ensuring appropriate detailing of verges, eaves, cills and lintels; and
  - iii) Appropriate tree protection measures being installed prior to construction works commencing, with any new hard surfaces within root protection areas constructed on geo-textile load bearing systems.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2017/0388	Weston	Aston	Dismissed	Delegated



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## Appeal Decision

Site visit made on 19 December 2017

by **Andrew Owen BA(Hons) MA MRTPI**

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

Decision date: 3 January 2018

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**Appeal Ref: APP/F1040/D/17/3185231**

**The Moat, Weston Hall Drive, Weston on Trent, Derby DE72 2BJ**

- 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 N Price against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/0338, dated 28 March 2017, was refused by notice dated 25 August 2017.
  - The development proposed is double/single storey rear and front extensions; construction of attached triple garage, new hard surfacing and entrance gates to front of dwelling; removal and replacement of existing roof with raised ridge height.
- 

### Decision

1. The appeal is dismissed.

### Preliminary matters

2. Since the time of the Council's decision and the submission of the appeal, the Local Plan Part 2 has been adopted. As such Policy H13 of the South Derbyshire Local Plan, referred to in the decision letter, is no longer in effect and I can give it no weight. Policy H27 of the Part 2 Local Plan is not materially different to the submission version of this policy identified in the decision letter and therefore, although the appellant has not had the opportunity to comment on the adopted policy, I do not consider they are prejudiced by this.
3. Similarly, the Council have very recently adopted the South Derbyshire Design Guide Supplementary Planning Document (SPD) which replaces the Extending your Home Supplementary Planning Guidance referred to in the decision letter. However the extract of the SPD provided to me closely reflects this superseded guidance and therefore, although the appellant has not had the opportunity to comment on the adopted SPD, I do not consider they are prejudiced by this.

### Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the area, and the effect on the living conditions of the occupiers of the adjacent dwelling at 7 The Green, with respect to their privacy and outlook.

### Reasons

#### *Character and appearance*

5. The site accommodates a large detached dwelling set back from the road in a spacious plot. There is a tall hedge on its front boundary which hides the

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

house from viewpoints generally west along the road. Nonetheless, from in front of the vehicular driveway, and from positions further east near the triangular green, the dwelling appears prominently as it can be seen across the open front garden of 7 The Green. From here it visually sits in the context of the significant vegetation to its west and the terrace of small dwellings to its east at 5-7 The Green, and it makes a significant contribution to the street scene.

6. The part of the proposal which would be most visible from the public realm would be the alterations to the height of the roof. At present the roof is rather muddled as it comprises a number of shallow pitched gables and differing ridge heights. The proposal would consolidate the roof into a single span with dormer windows and fewer gable ends, but would also raise its height significantly. Although dormers are not uncommon in the area and the pitch of the new roof would not be dissimilar to the existing, the increase in the height of the roof would result in a substantial increase in its massing which would contrast with the more modest roofs of the other houses in the area. In particular it would jar harshly with the smaller roofs on the adjacent terrace.
7. I accept there is no overriding uniformity in the design or form of the dwellings in the immediate area with detached houses, terraces, dormer bungalows and two-storey properties all being present. However, the resultant scale of the dwelling would be of such a contrast with that of the neighbouring houses that the character and appearance of the area would be unacceptably harmed.
8. I recognise the existing property uses two types of bricks. Nevertheless, the adverse effect of this is not glaring and the benefits of rectifying this as part of the development would not outweigh the harm resulting from the scale of the proposal.
9. Accordingly, I consider the development would fail to accord with Policy BNE1 of the Local Plan Part 1, which aims to ensure development responds to its context, and Policy H27 of the Local Plan Part 2 which requires extensions to be of a scale and character in keeping with the property. It would also fail to accord with the advice in the SPD which seeks to ensure that extensions reflect the character of the area and the main dwelling, and the National Planning Policy Framework (the 'Framework') which supports high quality design.
10. I understand that the existing roof is failing, but I see no reason why this or the general maintenance of the property could not be addressed without the proposed extensions taking place.

*Living conditions*

11. The existing dwelling is positioned behind the line of the houses at 5-7 The Green, and is angled such that it faces towards No 7. However there is a tall, thick hedge within the appeal site, along the boundary with No 7, which reaches the eaves level of No 7 and is so close to this dwelling that it almost touches its northern corner. As such, it is very close to the nearest windows on its rear elevation.
12. The proposal would add an additional window at first floor level to serve bedroom four. However, notwithstanding that the hedge would obscure any view into the rear of No 7 from this additional window, it would not materially

- increase the degree of overlooking to No 7 as it would serve a room which already has a window facing this direction.
13. The development would also provide a dormer window at second floor level which would be above the height of the hedge. However this dormer would be set slightly further away from the neighbouring house than the existing first floor window and, again, largely due to the proximity of the hedge to the windows at the rear of No 7, I do not consider there would be any significant loss of privacy at No 7 as a result of this dormer.
14. Similarly, the outlook from No 7 is restricted by the boundary hedge and, despite the increase in the height of the dwelling on the appeal site, I do not consider it would become an overbearing feature when seen from the rear of this neighbouring property.
15. Although I acknowledge the development would breach the distance guidelines in the Council's SPD, these assume little or no screening which is clearly not the case here. Moreover though the hedge may not always be relied upon, it appeared in good condition at the time of my site visit and I could see no reason why it should not continue to provide a screening function in future. Indeed it would be possible to secure the retention of this hedge by planning condition.
16. Consequently, I do not consider the proposal would lead to an unacceptable loss of privacy or overbearing effect for the occupiers of No 7, and as such their living conditions would not be harmed. Accordingly the development would accord with Policy H27 and Policies BNE1 and SD1 of the Local Plan Part 1 which all aim to ensure the amenity of residents of adjoining properties is not adversely affected. It would also align with an aim of the SPD, which is to not detrimentally impact on the living conditions of nearby occupiers, and the Framework which, as one of its core principles, seeks a good standard of amenity for all occupants of buildings.

#### **Planning balance and Conclusion**

17. Although the development would not harm the living conditions of the occupiers of 7 The Green, this does not outweigh the harm it would cause to the character and appearance of the area.
18. Therefore, for the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

*Andrew Owen*

INSPECTOR

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>16<sup>th</sup> JANUARY 2018</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>STRATEGIC DIRECTOR (SERVICE DELIVERY)</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>RICHARD RODGERS (01283) 595744 <a href="mailto:richard.rodgers@south-derbys.gov.uk">richard.rodgers@south-derbys.gov.uk</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>PROPOSED TREE PRESERVATION ORDER 472 – LAND TO REAR OF 45-59 MANCHESTER LANE, HARTSHORNE</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>WOODVILLE</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

1.1 That this Tree Preservation Order (TPO) be confirmed without modification.

## **2.0 Purpose of Report**

2.1 To consider confirmation of this TPO.

## **3.0 Detail**

3.1 This tree preservation order was made on 24<sup>th</sup> August 2017 in respect of a single Ash tree and 140 hawthorn trees (forming a group) on land to the rear of 45 -59 Manchester Lane, Hartshorne.

3.2 The TPO was made at the request of the owner of the land on which the trees sit. The land (that to the south west of the trees) is currently the subject of a planning application 9/2017/1184 for the siting of 4 holidays cabins for holiday accommodation. A similar proposal was previously considered and refused – see application 9/2017/0342.

3.3 A number of comments relating to the proposed Order have been received mainly from local residents and are summarised as follows:

- The collective has always been seen more as a native hawthorn hedge, maintained (and owned) by the adjacent farmer. To confirm it (as trees) as such could be flawed and open to legal challenge;
- The feature has the same planting pattern and unbroken continuation of a hedge, principally of the same species (hawthorn) and has been part maintained (on the agricultural side – i.e. flailed) as a hedge. It is not normal farming practice to flail trees;

- Quoting Stanton v Jones 1995 a hedge is a number of woody plants , whether capable of growing into trees or not which are so planted as to be in a line with, and when mature to be so integrated together as to form both a screen and a barrier – these definitions clearly apply to this boundary;
- Hedgerows are protected by separate legislation. That legislation would apply here;
- DCLG states hedges cannot be protected by way of a TPO;
- No other SDDC TPO has this appearance;
- Necessary maintenance of the hedge has been held up by a boundary dispute;
- The hedge serves no amenity and was arranged to be laid (prior to the serving of the TPO);
- The hedge has amenity in terms of acting as a field boundary only, providing pattern and texture to agricultural land;
- The Council's Tree Officer has said the larger dominant hawthorns will become standouts. However he also says it currently has the appearance of an overgrown hedge;
- Plans relating to the failed planning application labelled the feature as hedge. Why the sudden shift in terminology?
- The hedge does not warrant an Order, it having no future potential other than serving as a field boundary, rather than a visual 'buffer'; and a well-kept hedge has greater environmental benefits (as a habitat for wildlife) than simply a visual buffer. Relict hedgerows are discouraged as inferior habitats;
- Why is this hedge protected and not all others (by way of a TPO). If it is for height only I suggest it is flawed;
- I am surprised and shocked the council has chosen to protect the hedge from future development. At the time of writing there was no approved development from which to protect the hedge from;
- The hedge will not always be there, as to its screening qualities. Hedges however require correct maintenance which limits their screening qualities;
- The hedge is situated in an area deemed important by SDDC's landscape adviser as 'a setting for views' – the retention of the overly tall hedge is contrary to that opinion and to the locality and its history;
- Hedgelink refers to hedges being used to screen unsightly buildings;
- Hawthorn is not a threatened species;
- Its height has negative impact on the land; crops not growing near to it due to shading;
- The hedge is an eyesore and should be kept in line (in terms of its height) with other hedges in the locality;
- The applicant is using his position and knowledge of the system to obtain personal gain;
- The land (that related to the above mentioned planning applications) was cleared of trees and hedgerow as an act to negate any prospect of a TPO here. Many of those trees had greater amenity than this 'hedgerow' and their removal was purely wanton vandalism;
- The supporting arboricultural report is weighted in favour for whom it is written. Even then however it admits the feature is barely suitable as regards public visibility. "Having studied the method of assessment used for TPO's (TEMPO) I find the approach weak and open to subjective views";
- The reasons for the order mentions 'threat from development'. As there is no threat to the hawthorn from the applicant, we assume the Planning Department considers the present maintenance of this boundary as a

problem and the TPO placed to prevent maintenance in order to protect the screen for the pending planning resubmission whereas the previous application suggested the hedge be reduced and brought back into management;

- Comments in the applicants tree report contradict with SDDCs reasons for the TPO, in terms of age of the trees (mature vs continue to grow);
- The management of the hedge should be left to the owner (understood to be another) and the Council by way of a Hedgerow notification;
- Hawthorn is probably our most common shrub having been extensively used as a hedgerow plant. Its common name is derived from the Anglo Saxon 'haga thorn' which literally means 'hedge thorn';
- The history of a hedge or boundary can be traced back by way of historic maps.
- Simply we do not believe anyone would plant 140 common hawthorns at such short distance apart if they intended to plant a line of trees:
- Usually a TPO is requested by a person(s) concerned that the developer may cut down trees, not by a developer trying to preserve them. We object to the morals behind such a request.

3.4 In answer to the comments made, officers have the following response:

- The Council is duty bound to consider a request for a TPO. In this case the request was accompanied by a report from arboricultural consultants who supported the making of the order. After internal discussion it was concluded that the request was legitimate and that a provisional order made;
- The feature has also been assessed by the Council's Tree Officer where he believes a large number of the hawthorns within the group have evolved from hedgerow type specimens into trees;
- It is believed given the evolution of the feature here, it cannot be protected by way of Hedgerow Legislation, it not meeting the necessary criteria to warrant its lawful retention.
- There is contrary evidence to support that a more natural feature than a regimentally cut hedge has greater benefits for local wildlife;
- The land on which the trees sit is not a reason not to confirm the order. The feature is, as originally described felt to be under threat from development of the land to which it abuts.
- The feature is not felt to be so high or so large as to impinge on the ability of the adjacent land in terms of growing crops;
- DCLG TPO Guidance mentions where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors such as importance to nature conservation.
- Protecting trees of value accords with the Corporate Plan theme of Sustainable Development having environmental/ecological/wildlife benefits.

#### **4.0 Planning Assessment**

4.1 It is expedient in the interests of amenity to make the trees the subject of a TPO.

## **5.0 Conclusions**

5.1 It is expedient in the interests of amenity to preserve.

## **6.0 Financial Implications**

6.1 The Council would only be open to a claim for compensation in relation to any future planning application if an application to refuse works to the TPO was made and subsequently refused, and liability for a particular event or occurrence could be demonstrated.

## **7.0 Corporate Implications**

7.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

## **8.0 Community Implications**

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

## **9.0 Background Information**

- a. 24 August 2017 – Provisional Tree Preservation Order
- b. Various letter and emails from local residents

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>16<sup>th</sup> JANUARY 2018</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>STRATEGIC DIRECTOR (SERVICE DELIVERY)</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>RICHARD RODGERS (01283) 595744 <a href="mailto:richard.rodgers@south-derbys.gov.uk">richard.rodgers@south-derbys.gov.uk</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>PROPOSED TREE PRESERVATION ORDER 477 – LAND ADJACENT TO 59 MANCHESTER LANE, HARTSHORNE</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>WOODVILLE</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

1.1 That this Tree Preservation Order (TPO) be confirmed without modification.

## **2.0 Purpose of Report**

2.1 To consider confirmation of this TPO.

## **3.0 Detail**

3.1 This tree preservation order was made on 22<sup>nd</sup> September 2017 in respect of a group of 15 hawthorn trees on land adjacent to 59 Manchester Lane, Hartshorne.

3.2 The TPO was made at the request of the Principal Area Planning Officer in order to protect the feature through any adjacent development. The site is currently under consideration – see application 9/2017/1184 for the siting of 4 holidays cabins for holiday accommodation. That proposal was previously considered and refused – see application 9/2017/0342.

3.3 One objection relating to the proposed Order has been received and is summarised as:

- The trees whilst visible from the public carriageway are considered to be of low value (as TEMPO assessed), consisting of outgrown hedgerow forms and such not high value specimens. Their removal would not be significantly detrimental;
- Planning application 2017/0342, whilst refused showed the trees to be retained. It is therefore not accepted that the trees are under threat anyway;
- It should be noted vegetation has removed from the frontages of nearby properties without objection ;

- The trees should be managed by the landowner as a hedgerow without impediment rather than a group of trees, to improve the structure, wildlife contribution and visual amenity.
- Prior to the application our client could have justifiably removed the trees on the frontage but chose to keep them as part of the future use of the site..
- TEMPO score for the trees equals 8. That score does not merit a TPO. It is unlikely a TPO would be upheld if legally challenged;
- No felling or removal of trees as part of any future development is intended without being approved through the planning process;
- Order is in conflict with relevant legislation and guidance and should be withdrawn;

3.4 In answer to the comments made, officers have the following response:

- The group has also been assessed by the Council (in the interim) as being a feature it would prefer to be maintained. Without the Order, the group could be removed without any prior notification;
- The method for assessment is consistent with other assessments made in the locality – see TPO472 for comparison. This group is equally visible in the public realm;
- Protection of the group should ensure proper protection through any construction phase;
- There is contrary evidence to support that a more natural feature than a regimentally cut hedge has greater benefits for local wildlife;
- Reference is made to removal of vegetation to the fronts of residential properties nearby. There has been no breach of legislation in terms of vegetation removed there however.
- Protecting trees of value accords with the Corporate Plan theme of Sustainable Development having environmental/ecological/wildlife benefits.

#### **4.0 Planning Assessment**

4.1 It is expedient in the interests of amenity to make the trees the subject of a TPO.

#### **5.0 Conclusions**

5.1 It is expedient in the interests of amenity to preserve.

#### **6.0 Financial Implications**

6.1 The Council would only be open to a claim for compensation in relation to any future planning application. If an application to refuse works to the TPO was made and subsequently refused, and liability for a particular event or occurrence could be demonstrated.

#### **7.0 Corporate Implications**

7.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

## **8.0 Community Implications**

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

## **9.0 Background Information**

- a. 22 September 2017 - Tree Preservation Order
- b. 11 October 2017 – Letter from landscape consultant