

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

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9/2013/0675	1.1	Church Gresley	Church Gresley	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

Item 1.1

Reg. No. 9/2013/0675/RSD

Applicant:
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Ibstock
LE67 6HU

Agent:
Mrs Marissa Sudar
Worcester Architects
33 Glebe Rise
Littleover
Derbyshire
DE23 6GX

Proposal: CONVERSION OF EXISTING RESIDENTIAL NURSING HOME AND ASSOCIATED ACCOMMODATION INTO RESIDENTIAL APARTMENTS AT HILLTOP LODGE NURSING HOME COLLIERY ROAD CHURCH GRESLEY SWADLINCOTE

Ward: CHURCH GRESLEY

Valid Date: 30/01/2014

Reason for committee determination

This is a major application that has attracted more than two objections.

Site Description

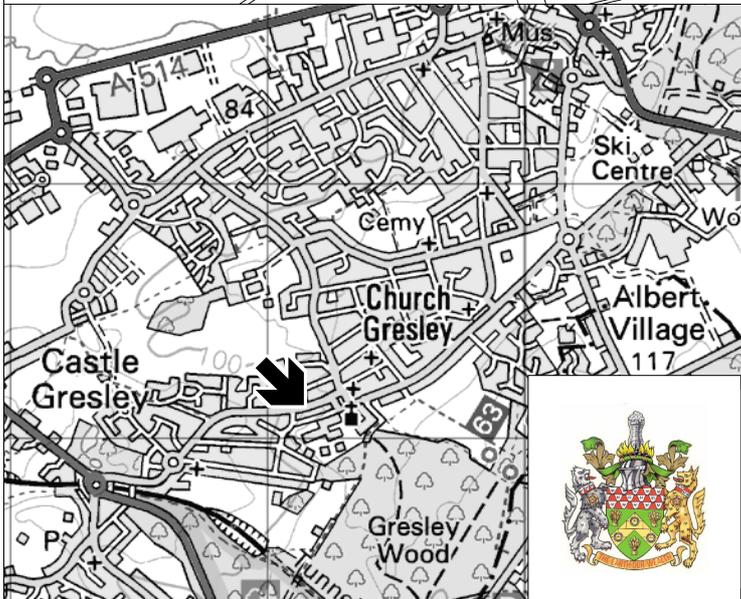
This former nursing home is a part single storey/part two storey, U-shaped building located between two terraces of existing residential properties at the eastern end of Castle Road and occupies a sloping site. To the south is an industrial estate, together with its associated buildings. The site is accessed via Colliery Road, which is a narrow lane with an unmade surface that also provides vehicular access to Nos. 1 to 9 Colliery Row to the west of the site. The site is within the built-up area of Church Gresley.

Proposal

This application proposes the conversion of the building to form a total of 15 apartments, which is a net increase of 14 residential units, as there is currently an existing manager's flat that served the former nursing home. Amended plans indicate the proposal would provide 1 x 1- bedroom apartment, 13 x 2-bedroom apartments and 1 x 3-bedroom apartment. Car parking would be provided at a ratio of one space per apartment. Bin stores and cycle storage would also be provided.

Applicants' supporting information

**9/2013/0675 - Hilltop Lodge Nursing Home, Colliery Road, Church Gresley
DE11 9LU**



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South Derbyshire District Council. LA 100019461. 2014

No supporting information has been submitted.

Planning History

9/1990/0575 – Formation of office and laundry in basement and erection of 2m high gate at entrance - approved

Responses to Consultations

The County Highway Authority states that the proposal is not ideal in highway terms and expresses concern with regard the likely increase in traffic generated by the site and the fact that only one parking space per dwelling unit is proposed. However, in view of the location of the site and the existing use, it considers that an objection on highway grounds could be not be sustained. In order to minimise the impact on the surrounding highway network, two conditions are requested in respect of road surfacing and the provision of parking and manoeuvring space prior to first occupation.

Derbyshire County Council has requested developer contributions towards:

- The provision of a new Household Waste Recycling Centre (£400.54);
- Three primary school places (£34,197.03)
- Two secondary school places (£34,352.34)
- One Post-16 education place (£18,627.90)
- New homes designed to Lifetime Homes standards.

Severn Trent Water has no objections subject to a condition with regard to details of the disposal of foul and surface water drainage.

The local County Council Member (Councillor Trevor Southerd) has commented that the retaining wall onto Castle Road requires monitoring and remedial work undertaken where necessary to prevent its collapse onto the highway.

Commenting on the original plans Councillor Stuart raised the following points:

- Would like a condition that the owner/developer should ensure that the retaining wall onto Castle Road is monitored and/or repaired as it looks to be in poor condition in places.
- A similar condition is required to control the vegetation overhanging Castle Road.
- Concerned about the lack of cycle provision.
- Physical state of the road
- Insufficient parking

Responses to Publicity

Four emails have been received, all of which express concern about the poor state of the road surface of Colliery Road. They make the following points:

- a. The proposed resurfacing of the road should extend to the part that serves the 9 houses to the rear of the application site.
- b. The road should not be blocked when construction works commences on the building.
- c. Inadequate parking to serve 15 flats.

One further email has been received in response to the amended plans. This reiterates earlier comments with regard to the resurfacing of the access road, pointing out that as there is likely to be disruption during the conversion works it is only fair that the entire road is re-surfaced. The Council should strongly consider adopting the road on completion of the conversion works and display a road sign to inform people that it is Colliery Road.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Housing Policies 4, 7, 11; Transport Policy 6
Housing Design and Layout SPG

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 14, 17, 49, 51, 186, 187

NPPG

Planning Considerations

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

- The principle of development
- Design and Layout
- Highway matters
- Section 106 contributions

Planning Assessment

Principle of development

Hilltop Nursing Home is located within the built-up area of Church Gresley and is close to shops and a range of other facilities, including a bus service and a school. As such the site is considered to be sustainable. The building has been vacant for some time and the site is becoming overgrown and untidy. The application proposes the conversion of the building to provide a total of 15 apartments, together with associated parking, cycle storage and bin stores. External alterations include replacement doors and windows, the formation of a new window opening and some bricking up of existing door openings to form windows. A raised platform with timber/metal railings is proposed along part of the west facing elevation. There is an existing vehicular access into the site, via Colliery Road.

The building is within an area where residential development is usually supported by Local Plan Saved Housing Policy 4, which states: 'Residential development within or on the fringes of the built-up area of (inter alia) Church Gresley will be permitted provided that the site is substantially surrounded by the development and:

- (i) Does not result in a prominent intrusion in the rural landscape outside of the built-up area;
- (ii) Does not involve the loss of the best and most versatile agricultural land;

- (iii) Does not constitute ribbon development other than the infilling of a small gap in a substantially built-up frontage;
- (iv) Does not place excessive demands upon public utility services;
- (v) Does not involve the development of open spaces. Gaps and landscaping features which make a positive contribution to the character or environmental quality of the area;
- (vi) Is of a suitable scale and character; and
- (vii) Does not prejudice the continued viability of adjacent industrial premises or community facilities’.

Saved Housing Policy 7 supports proposals that involve the conversion of existing buildings to residential use provided that it is in keeping with the original building and is not detrimental to the character of the settlement.

It is considered that the proposal is in accord with the above two policies.

Paragraph 51 of the NPPF relates specifically to proposals to convert buildings to residential uses, and states: ‘Local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. They should normally approve planning applications for change to residential use and any associated development from commercial buildings where there is an identified need for additional housing in that area, provided that there are no strong economic reasons why such development would be inappropriate’.

The proposal is also in accord with the above advice and therefore it is considered the principle of development is acceptable.

Design and Layout

The closest residential properties to the application site are Nos. 1-9 Colliery Row to the west, all of which have habitable room windows facing the site. The shortest distance between the existing properties and the application building is 16.5m and the longest distance is 20m. The first floor windows within the converted building would all serve bedrooms, other than apartment 4 which would have a kitchen/living room facing towards No.s 8 and 9 Colliery Row. The minimum standard as stated in the SPG from first floor bedroom to first floor bedroom is 15m which can be met. The prescribed distance from kitchen to first floor bedroom is 12m, which, again, can be met. The minimum distance from kitchen to living room is 18m. This could be achieved for No.s 1 to 7 but not for No.s 8 and 9 (approximately 1.5m short). However, bearing in mind the previous (residential) use of the building, and, the fact that there is a vehicular access and parking area between the two buildings, it is considered that the minimum standards could be relaxed in this instance, in line with the advice within the SPG, which states: ‘Where there are opposing elevations, separated by public areas, such as a highway, and having regard to the surrounding area, the guidelines may be relaxed’.

The distances between the habitable room windows of Apartment 4 and No.s 8 and 9 Colliery Row are not considered to be so far from the minimum distances set out in the SPG as to warrant a refusal on this ground. Whilst there are some habitable room windows serving kitchen/living areas within the ground floor of the building, these would be screened by an existing brick wall which provides adequate protection from overlooking.

Owing to the lack of ground area associated with the site, the proposed scheme does not include any form of amenity space for the apartments. Whilst this is regrettable, the Council has set no minimum level of required provision within the SPG. However, the SPG does acknowledge that some level of amenity area for blocks of flats should be provided in order to facilitate, for example, the storage of refuse bins and for the drying of washing. Two bin storage areas would be provided – one adjacent to the cycle storage area and the second adjacent to the car park. No clothes drying facilities are shown on the submitted drawings. Whilst not ideal it is highly doubtful that a refusal could be sustained on this basis and prospective occupiers are likely to be aware of the situation at the time of purchase.

Environmental Health has also been asked to undertake an assessment of the proposal against the regulations relating to 'Crowding and Space in Residential Premises'. As a result, amended plans have been received which show that apartment 4 would now become a two-bedroom apartment, rather than three-bedroom as originally proposed, as the bedroom sizes were below standard. A new window opening to serve a bathroom would also be created. Other than this the scheme is considered to be acceptable in terms of these standards.

Highway matters

The poor state of the road surface has been addressed and an amended plan received to show that the length of road from its junction with Church Street down as far as the western end of the building would be resurfaced with tarmac on completion of the construction works and prior to first occupation. The amended plans now show the inclusion of the access within the red line and therefore its resurfacing can be controlled by condition. The points raised by the adjacent neighbours with regard to the surfacing of Colliery Road have been noted. However, this area lies outside the application site and the applicant has no legal control over it. It would be unreasonable, therefore, to require the applicant to undertake these works. Adoption of Colliery Road would be a matter for the County Council.

The proposed scheme includes the provision of 15 car parking spaces, which equates to one space per apartment. Whilst this is considered to be minimal provision, it should be borne in mind that the site is in an urban location where on-street parking is commonplace, although, admittedly, not plentiful. Whilst the County Highway Authority (CHA) has raised the issue within its consultation response, given the location and the previous use of the building, which generated a certain level of traffic and parking, it is noted that the CHA does not consider that a refusal on these grounds could be sustained at appeal.

In response to Councillor Stuart's comments, it has now been agreed that cycle storage would be provided between the western elevation of the building and the site's existing retaining wall.

Section 106 contributions

The scheme is for the provision of 15 residential units, a net increase overall of 14 and therefore Section 106 contributions are required if permission is granted. These would be for the following:

- Education £87,177.27

- Healthcare £7,714.00
- Recreation open space £10,416.00
- Recreation outdoor facilities £6,160.00
- Recreation built facilities £3,416.00
- Waste contribution £400.54

It is considered that the above contributions are in accord with the Developer Contributions Protocol and are compliant with guidance within the Community Infrastructure Levy. A draft Section 106 Agreement has been drawn up to include the above contributions and the applicant is aware of the above requirements. There is no requirement for the applicant to provide any affordable housing as part of this development as the number of units proposed does not trigger the need for such provision.

Summary

In conclusion, therefore, it is considered that the principle of the development is acceptable and in accord with local and national policies and advice. The layout of the apartments is acceptable in terms of living standards and the site layout is acceptable with regard to car parking, bin storage and cycle storage. There are no highway objections and the resurfacing of Colliery Road can now be controlled by condition. Whilst the ratio of car parking spaces to apartments is low, it is considered that, given the site's location and previous use, it would be difficult to make a case against this at an appeal. Taking account of all of the above, and subject to the applicant entering into a legal agreement, a recommendation for permission follows.

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

Subject to the applicant entering into a Section 106 Agreement as set out in the S106 contributions section above, **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. This permission shall relate to the amended drawings, no.s 105 2013 003 Revision D, 105 2013 004 Revision C and 105 2013 005 Revision B showing in particular the inclusion of bin stores and cycle storage, revisions to apartment 4 and the inclusion of the access road within the red outline.
Reason: For the avoidance of doubt and in the interests of the completed development.
3. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

4. Prior to the first occupation of any of the apartments hereby approved the car parking and manoeuvring space shall be laid out in accordance with the application drawing 105 2013 003 Revision D and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

5. Prior to the first occupation of any of the apartments hereby approved the access as shown on the attached drawing 675/cond5 shall be resurfaced in a solid bound material in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

6. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

7. Unless otherwise agreed in writing by the Local Planning Authority, the structural condition of the retaining wall along Castle Road shall be the subject of a condition and remediation report by an appropriately qualified person to be submitted to the local planning authority. Any remedial works recommended in the report shall be fully implemented prior to the first occupation of the apartments hereby permitted.

Reason: In the interests of public safety

Informatives:

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

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

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

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

The works will require approval under the Building Regulations.

Item 1.2

Reg. No. 9/2014/0493/SRF

Applicant:
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Nadee Indian Cuisine
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Derby
DE65 6AR

Agent:
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Peter Diffey & Associates Ltd
Cotesbach Villa
54 Woods Lane
Stapenhill
Burton On Trent
DE15 9DB

Proposal: **THE ERECTION OF A BANQUETING SUITE AT NADEE
INDIAN CUISINE 130 HEATH LANE FINDERN DERBY**

Ward: **WILLINGTON & FINDERN**

Valid Date: **05/06/2014**

Reason for committee determination

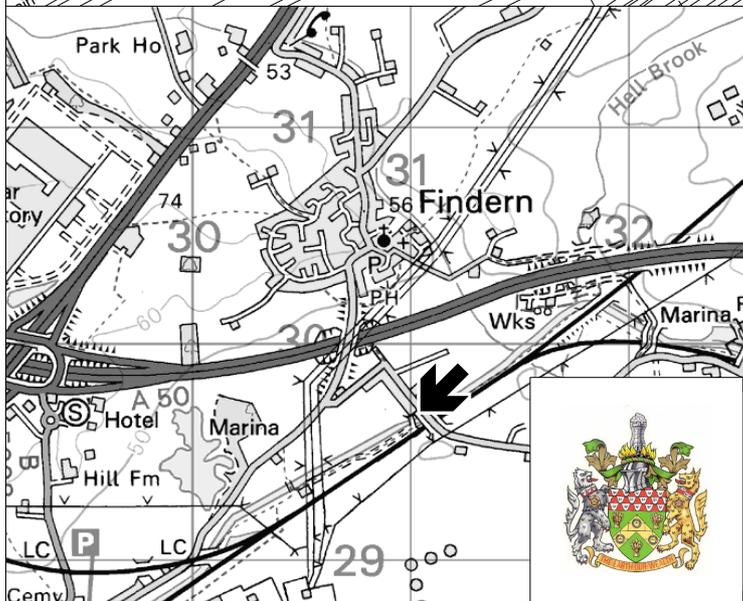
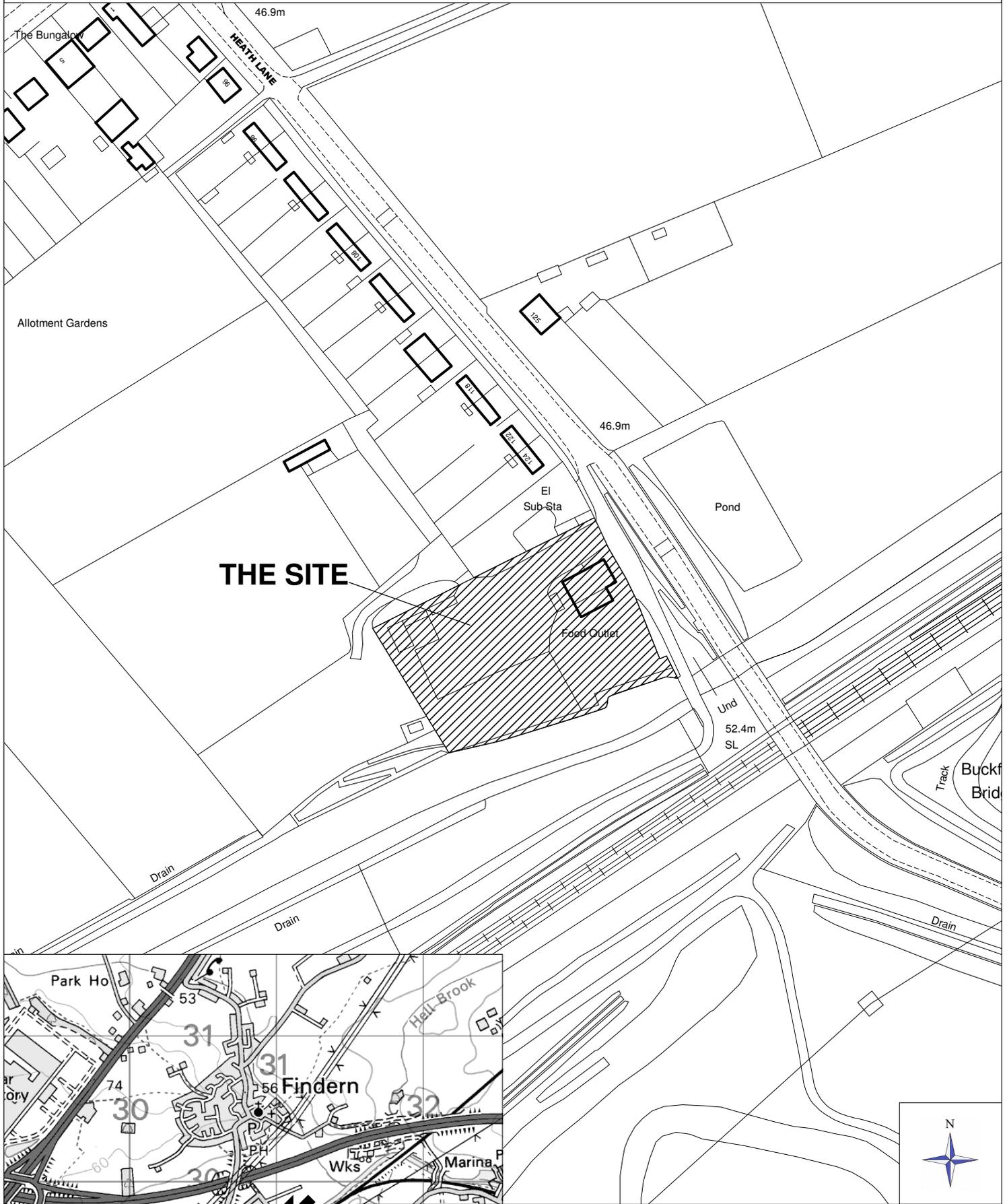
The item is brought to committee because an objection is raised by a statutory consultee but a grant of permission is recommended.

Site Description

The application is located within open countryside at the end of ribbon residential development fronting onto Heath Lane to the south of Findern. The site also lies within the Trent and Mersey Canal Conservation Area and is generally open fronted to the canal which lies to the south. The site comprises of the Nadee restaurant and bar, formerly used as a public house, an outside seating area, car park and a marquee and permanent buildings. To the west of the marquee is an area of grassland enclosed by hedgerow on three sides with post and rail fence to the adjacent paddock to the north-west. This is also used by adjacent canal moorings. To the north are residential properties which front onto Heath Lane with gardens extending south-west towards a paddock beyond which is agricultural land. The site is bounded to the east by a canal side access road that provides access to the Nadee and a bridge joining the public footpath which follows the towpath of the Trent and Mersey Canal. The access road joins Heath Lane at an acute angle where the road begins to rise over the canal and adjacent railway.

The marquee already exists through the benefit of previous temporary permissions given in 2010 and earlier in 2014. It measures 20m x 21m and is an open double-pitched marquee with a maximum height of 4.25m. The permanent buildings are set

9/2014/0493 - Nadee, 130 Heath Lane, Findern DE65 6AR



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behind the marquee to the north and west and are flat roofed structures measuring less than 3m in height and constructed in dark painted block work.

Proposal

The application follows earlier approval for the retention of the marquee and its use (along with adjacent buildings and ancillary facilities such as the car park) to provide for events associated with the adjacent restaurant/bar business. The approval was however given on a temporary basis, until end of October 2016, following which the marquee and adjacent buildings should be removed and the land reinstated. This was to ensure that the harm arising on the Trent and Mersey Canal Conservation Area was limited and in the long term a more appropriate solution was identified and secured. This application looks to achieve that goal.

It is proposed to replace the marquee and associated structures with a permanent building, to be generally brick faced and the roof to be covered with slate. It is designed to reflect the character of the existing restaurant building in an attempt to ensure the building appears appropriate when assessed from the Conservation Area. The proposed building is mainly single storey however a section to the north-west corner is two storeys. The proposed ground floor is to be occupied by the banqueting area, the bar and kitchens, whilst the first floor provides toilets, changing facilities, an office and a prayer room. Disabled toilet facilities are provided on the ground floor.

Applicants' supporting information

A Design & Heritage Statement and Access & Transport Report is provided with the application, with the overall aim of the proposal stated to obtain a form and design of building which will improve the appearance of the area, overcome perceived local issues (such as noise and highway safety concerns), ensure the development is appropriate within a conservation area and provide improved facilities for the restaurant.

An assessment of traffic volumes and peak anticipated flows is provided. Conditions are proposed to ensure adequate car parking is provided on site. With the proposed customer floor area similar in size to the existing and the temporary structure having operated as a banqueting suite for more than 4 years; the proposed development is considered to generate similar levels of traffic. The site is also accessible by foot along a lit pedestrian footway, connecting at around 700 metres distant to a regular bus service operating 7 days a week and into the evenings between Willington and Findern. In addition many customers use taxis and share transport. Furthermore the site has operated as a public house and/or food outlet for many years and throughout that time the junction onto Heath Lane, although not meeting normal standards, has operated in a safe and adequate manner. As the proposal is not considered to result in a material increase in traffic volumes it is concluded the proposals would not result in highway safety problems.

It is acknowledged the nearest neighbours might be aware of traffic activity at the access but they are considered unlikely to be adversely affected by the movement of vehicles in the car park or by activity in the building due to distance or because the new building would provide better noise attenuation. The Nadee is a long established licensed premises where use of the junction late in the evening is a normal occurrence and the banqueting facility has been in existence for between 4 and 5 years. It is concluded that traffic activity should not be significantly different from the established

activity so to cause measurable loss of amenity, and the replacement building should reduce noticeable activity associated with (and within) the building.

The aim of proposed design is to provide a structure which recognises the importance of the canal and does not create an overly dominant feature when seen in relation to the existing restaurant and the surrounding area. The architecture is designed to appear appropriate when seen in relation to the existing building and its form has been drafted in close liaison with the Conservation Officer ensuring it preserves and enhances the overall character of this important position adjacent to the canal. The two storey part of the building is set back to ensure it does not dominate. Main windows and door openings face towards the canal and the car park, with the latter elevation providing the main entrance to the banqueting suite. The entrance area is gabled with an entrance canopy and sash windows are included so to reflect the appearance of windows in the restaurant, and the roof is in the majority hipped to again reflect the restaurant. The existing hedge and tree line along the western boundary is to be retained and additional planting is to be added.

The overall scheme is considered to result in a substantial and positive addition to the business whilst positively improving the character and appearance of the locality.

Planning History

9/2013/1052: Variation of condition 1 of 9/2010/0464 to extend the period of temporary consent – Approved March 2014

9/2010/0464: The regularisation of use of temporary marquee as restaurant/events facility, retention of buildings used as reception area, bar, kitchens, toilets and outside store, plus use of a container for storage and use of land for car parking together with enlargement of the existing car park – Approved August 2010

9/2007/0109: The retention of two breeze houses (gazebos) and a lamp/camera standard – Approved March 2007

9/2004/1373: The erection of two garages, a gazebo, external alterations and new access – Approved March 2005

9/2004/1008: The erection of two garages, a gazebo, external alterations and new access – Withdrawn

9/2003/0727: The display of illuminated signage – Approved August 2003

Responses to Consultations

The Canal and River Trust notes there are a number of existing long-term moorings located close to the site, a short distance west of the proposed new building. It is important that the development takes account of these moorings and that noise disturbance to users is appropriately minimised. It is suggested therefore that it would be appropriate to restrict the hours of use of the banqueting suite to those proposed by the applicant and also to require details of noise mitigation measures to be incorporated into the design of the building. They also consider it is also important to ensure that the development is appropriately integrated into its surroundings, suggesting that details of

the proposed materials, boundary treatments and landscaping are secured by planning condition. Furthermore they note that, although not included in the application site, the submitted statement refers to the field west of the site being in the Applicant's control and used as an overspill car park. The Trust notes that no agreement exists for it to be used as an overspill car park by the Applicant and it should not be relied upon to provide additional parking space.

The County Archaeologist raises no objection.

The County Highway Authority raises objection on the grounds that the original proposals led to intensification in the use of a substandard access onto Heath Lane in terms of severely restricted visibility. It is considered this leads to a danger and inconvenience to other road users and interferes with the safe and efficient movement of traffic on the public highway. As the access remains unaltered from the original proposal, and this proposal would now make such use permanent, it considers the concerns raised remain valid. In responding further to the Canal & River Trust's comments in respect of overspill parking, they consider that if on-street parking was to occur it would be difficult to demonstrate a highway safety issue which could sustain a reason to object and, if dangerous parking or obstruction to private accesses were to occur, it would be a matter for the Police.

The Environmental Health Officer raises no objection subject to a condition to ensure a sound limiter is installed. They note that the internal layout arrangements between the bar and a WC do not comply with food hygiene legislation such that an informative sign should be added. They also initially sought the continuation of the existing hours of operation condition, but following concerns raised by the applicant as to the cost of the development and the acoustic improvements offered by a permanent structure, a suggested revision to these hours raises no objection.

The Environmental Protection Officer (Contaminated Land) makes no objection or comments.

The Police Crime Prevention Design Advisor comments that their licensing section had spent some time at the premises recently regarding nuisance complaints concerning noise and late operating, and that their visits have been in tandem with the Council's Environmental Health Officer. They are satisfied that the permanent structure proposed should have a positive effect upon the cause of these complaints with the Environmental Health Officer to take the lead on conditions to mitigate against future problems.

Responses to Publicity

Councillor Ford supports this application on the grounds of noise reduction and a much improved visual aspect along the canal side corridor.

A single objection has been received from a neighbour to the premises claiming they have been subject to continuous disturbance from the use of the marquee since 2010, and that appeals to the Applicant to reduce noise levels and use a limiter have been ignored. The number of vehicles and customers associated with the use are also claimed to add to this disturbance. A permanent building would mean the problem would be permanent and jeopardise their right to enjoy their home and garden in peace and quiet. They also allege that controls on noise and licensing hours have been broken

many times in the past 4 years and they cannot imagine the new building will prevent or improve this. They are also concerned for pedestrian safety as the entrance is crossed by a well-used public footpath and there has been an increased volume of traffic over the past 4 years, including coaches, speeding cars and motorbikes. Furthermore they are concerned that this is a quiet residential area, rural and within a Conservation Area which should be conserved as a natural place of beauty, not the site of what is similar to a nightclub environment. It is suggested the vacant Wheel Inn premises in Findern would be a better site for a banqueting suite.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Employment Policy 1 (E1), Environment Policies 1, 12 and 14 (EV1, EV12 and EV14), and Transport Policy (T6).

Emerging Development Plan Policies

The relevant policies are:

- Pre-Submission Local Plan 2014: Policies S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

National Guidance

- National Planning Policy Framework (NPPF): with particular reference to paragraphs 6, 7, 8, 11, 12, 14, 17, 19, 28, 32, 39, 58, 61, 70, 120, 122, 123, 129, 131, 132, 134, 139, 186, 187, 196, 197, 203, 206, 215 and 216.
- National Planning Practice Guidance (NPPG).

Planning Considerations

The principle of development here has been established by way of the 2010 permission and the subsequent renewal earlier in 2014 raised no fundamental concerns as to the use remaining in principle. It is therefore not intended to discuss matters relating to expansion of the existing business and employment opportunities, nor the expansion and sustaining of existing services and facilities. Attention is instead focussed towards the outward effects of the application, namely:

- The visual impact of the proposal on the appearance and character of the area, including the Conservation Area;
- The impact on neighbouring amenity; and
- The impact on highway safety.

Planning Assessment

Visual impact and the effect on the Conservation Area

The temporary period of consent was given *“in the interests of the appearance of the Trent and Mersey Canal Conservation Area and to ensure the quality of the temporary structures do not significantly deteriorate to the detriment of the appearance of the area”*. The NPPG makes allowance for “trial runs” so to enable proper assessment of the effect of the development on the area, but also states a second temporary permission should not *normally* be granted, suggesting a single trial period should be sufficient so that by its expiry it is clear whether permanent permission or a refusal is the right answer.

The position as to the visual impact of the marquee and associated buildings on the Conservation Area remains unaltered – a permanent utilitarian structure in this location is not considered to be acceptable. The further temporary permission was only granted in recognition of the applicant’s need for a degree of business security to plan ahead in terms of bookings and to allow further time to agree on a more suitable permanent solution for the site.

The proposed building is the result of some 9 months of pre-application discussions involving the Conservation Officer. The single storey element has been designed to provide an active frontage to the car park and, more importantly, to the canal. The pitched roof arrangement around a flat roof provides an appropriate appearance in the public realm whilst achieving the Applicant’s desire for a generally unobstructed open space internally (i.e. few supporting columns compared with the present marquee). The two storey element draws on the architecture of the existing restaurant, with roof profile, ridge and eaves designed to harmonise. Across the proposal the fenestration and detailing is considered suitable, subject to conditions, and landscaping would further help assimilate the building into its surroundings.

The overall impact on the Conservation Area is considered to be one which either preserves the rural nature and traditional appearance of it, with a degree of enhancement arising through the enclosure of an otherwise open hard surface on the canal side as well as providing activity down to the water’s edge – even when considering the situation on site prior to the marquee being first erected.

Neighbouring amenity

The existing permission carries a condition specifying the hours of use of the marquee and the number of functions which can occur each week. It was acknowledged in 2010 there is a likelihood that noise will emanate from the marquee by the very nature of the structure. The nearest residential property remains as 124 Heath Lane, the dwelling of which is situated approximately 22 metres from the edge of the application site and approximately 54 metres from the nearest edge of the marquee with the rear garden extending up to the northern corner of the site. The distance to the new banqueting suite (i.e. where most noise would be generated) remains relatively consistent under the proposals, although it must be acknowledged that the construction of the suite and more enclosed nature of the ancillary elements are such to provide a considerably greater degree of noise attenuation. It would likely transpire that the more noticeable disturbance would change to vehicles associated with the use, which would be transitory in nature.

Environmental Health officers continue to raise no objection to the proposal subject to conditions to limit the hours and extent of operation and to require the use of a sound limiter for events not caught by licencing controls. The existing conditions read:

2. *The marquee shall only be open to customers Monday to Sunday between 0800 hours and 1700 hours, but with an allowance for no more than 2 functions per week after 1700 hours for which the following restrictions apply: Sunday to Thursday functions to finish no later than 1030 hours (including dispersal of customers), and Friday and Saturday functions to finish no later than 2400 hours (including dispersal of customers).*
3. *For events which are not covered under the Premises Licence number SDDC/002710, a noise limiting device, set to the same limits as agreed under the Premises Licence, shall be used to control all sources of amplified music within the marquee.*

The applicant raises no objection to condition 3 continuing forward under any permission granted here. They do however raise objection to continued restriction in the hours and frequency of use given the acoustic improvements offered by the building and the capital cost of providing this permanent building. They seek the condition is varied to read:

2. *The banqueting suite shall only be open to customers Monday to Sunday between 0800 hours and 1900 hours, but with an allowance for no more than 4 functions per week after 1900 hours for which the following restrictions apply: Sunday to Thursday functions to finish no later than 1100 hours (including dispersal of customers), and Friday and Saturday functions to finish no later than 2400 hours (including dispersal of customers).*

The main changes are to allow a 7pm finish in general throughout the week, but with an increase in the number of functions occurring after 7pm from 2 to 4 per week. An additional 30 minutes is also sought for events held after 7pm Sunday to Thursday. The applicant considers it unlikely that 4 evening bookings will occur every week but it such a revision to the condition would allow flexibility for busy periods in addition to more flexibility in the early evening for daytime bookings.

The Environmental Health Officer raises no objection to this proposed variation to the condition. Notwithstanding this the existing use of the premises is evidently causing some disturbance as outlined above such that further consideration is given to the appropriateness of this varied condition and condition 3. The combination of the premises licence, the noise limiter and the acoustic qualities of the replacement building are considered to likely improve the existing situation as to noise breakout from within the building. As to the increase in operating hours to 7pm in general, this is not considered to significantly erode periods of rest-bite from noise associated with the use (i.e. vehicles, etc), nor is the additional 30 minutes for events after 7pm. The focus is therefore on whether the number of events increasing from 2 to 4 per week would cause a significant in disturbance.

In having regard to the NPPG, only when noise is perceived to be noticeable and disruption, with a significant observed adverse effect, should the development be avoided. The objection might lead to such a conclusion but regard must be had to the fact that, despite the assertions made, no statutory nuisance has been substantiated. It is not unreasonable to place a statutory nuisance on par with a significant observed adverse effect (i.e. the effect must have been observed, be significant and lead to adverse impacts). It is important to note that some of the noise breakout already

emanates from the use of the outside areas and the access in association with the restaurant alone – a use which has long existed at this site. Any condition would not address this noise breakout. It is also important to remember the objection is framed around noise from both inside and outside the building, whereas this consideration focusses on the latter only. In drawing all the above points together it must therefore be concluded that, at worst, noise arising from external uses is perceived to be noticeable and intrusive – not disruptive, and the NPPG advises the aim should be to mitigate and reduce the effect to a minimum. The revised condition is therefore not considered to be unreasonable and excessive noise can still be controlled under Environmental Health legislation.

Highway safety

On emerging from the access onto Heath Lane vehicles would be required to do a U-turn in order to turn right over the bridge. The highway verge to the right of the junction is marked by post and wire fencing with a lamppost at the corner of the junction. The road rises to the south-east towards the bridge over the railway and canal. The Highway Authority commented on the 2004 approval that any extension to the facility would be unlikely to receive a favourable response due to the substandard visibility available to emerging drivers; their response to the 2010 formally set out this view and their continued objection since sustains this concern. Their concern is now supplemented by the fact that permission here would establish permanent associated impacts on the public highway.

The existing marquee is licensed for 400 people but has seating for 350. The average booking is for approximately 150 attracting an average of 50 vehicles given the nature of such bookings tend to see people sharing cars and taxis. It is anticipated the proposed building would provide seating for a maximum of 350 people with the average booking size expected to remain around 150. The Applicant also employs staff to act as parking attendants when groups arrive, assisting in movements at the junction with Heath Lane and within the car park to maximise its use.

The banqueting suite has been operating since 2010 and the seating capacity has changed little since that date such that associated vehicular movements have remained similar. Although certain movements require the use of both carriageways on Heath Lane, as traffic volumes are relatively low and visibility is good (although the driver is required to check from a difficult angle that the road is clear before manoeuvring), and most traffic either enters or leaves at the same time; conflict is likely to be minimal. In addition most movements take place outside rush hours and school start and finish times. Most importantly no accidents are known to have resulted from vehicles entering or leaving the site over the last 4 years. It also remains significant that Members granted permission for the proposal in 2010 and earlier in 2014, contrary to the advice of the Highway Authority, and that the temporary periods of consent were not based on highway safety grounds.

Turning to parking considerations the car park provides capacity for between 45 and 50 cars. It is noted the Applicant states the adjacent field is occasionally used as an overspill car park, and this can take in excess of 100 cars, but the Canal & River Trust disputes this right to use the land. However it is material that the Highway Authority does not consider an objection could be sustained on the basis of parking capacity at the premises. Whether the field is available or not is therefore not a crucial point. In this

light a refusal could not turn on this point and in any case it is still open for the Applicant to now formally agree a use of the field as and when the need arises.

Consequently, despite the highway objection, it seems doubtful that a refusal could be sustained on highway safety grounds – especially when the access has continued to provide safe egress for some 4 years.

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 plans/drawings 2014/PP/NR/05 Rev E, 2014/PP/NR/06 Rev F, 2014/PP/NR/07 Rev F, 2014/PP/NR/08 Rev E and 2014/PP/NR/09 Rev F; unless as otherwise required by condition attached to this permission.

Reason: For the avoidance of doubt.

3. The banqueting suite shall only be open to customers Monday to Sunday between 0800 hours and 1900 hours, but with an allowance for no more than 4 functions per week after 1900 hours for which the following restrictions apply: Sunday to Thursday functions to finish no later than 1100 hours (including dispersal of customers), and Friday and Saturday functions to finish no later than 2400 hours (including dispersal of customers).

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

4. For events which are not covered under the Premises Licence number SDDC/002710, a noise limiting device, set to the same limits as agreed under the Premises Licence, shall be used to control all sources of amplified music within the banqueting suite.

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

5. The parking and turning areas as shown on the approved layout plan (ref: 2014/PP/NR/05 Rev E, labelled as 'tarmac road') shall be laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use for the parking and turning of vehicles.

Reason: In the interests of discouraging parking of the public highway in the best interests of highway safety.

6. No development shall take place until a scheme of noise mitigation measures to be incorporated into the design, construction and use of the banqueting suite has

first been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the agreed scheme and the banqueting suite subsequently used in accordance with the agreed scheme.

Reason: To minimise adverse impacts on occupiers of nearby residential property and users of the adjacent canal moorings.

7. No development shall commence until large scale drawings, to a minimum scale of 1:10, of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details have been submitted to and approved in writing by the Local Planning Authority. The external joinery and cill and lintels shall be constructed in accordance with the approved drawings.

Reason: In the interests of the appearance of the building and the Conservation Area.

8. No development shall commence until large scale drawings, to a minimum scale of 1:10, of eaves, verges and the interface between the flat roof and the surrounding pitched roof has been submitted to and approved in writing by the Local Planning Authority. The eaves, verges and interface between the flat roof and surrounding pitched roof shall be constructed in accordance with the approved drawings.

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

9. No development shall commence until large scale drawings, to a minimum scale of 1:20, and details of the supporting columns to the colonnade and porch have been submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details.

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

10. No development shall take place until full details of all external facing materials to be used in the construction of the banqueting suite hereby permitted (including provision of samples/sample panels for inspection by the Local Planning Authority where so requested) have first been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.

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

11. No development shall commence until precise details of the position, intensity, angling and shielding, and the area of spread of external lighting has been submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve amenity of neighbouring occupiers and in the interests of reducing light glow in this rural location.

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

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

13. No development shall take place until a landscaping and boundary treatments scheme for the southern and western boundaries of the application site has first been submitted to and agreed in writing by the Local Planning Authority. The scheme shall indicate the size, species and spacing of all new planting, the areas to be grassed, and the treatment of any hardsurfaced areas, and also details of the landscape management plan. Any such planting which within a period of 5 years of implementation of the landscaping dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of a similar size or species, unless the Local Planning Authority gives written consent to the variation. The approved scheme shall be fully implemented prior to the banqueting suite first being brought into use and the landscape management plan shall be implemented as approved.

Reason: In the interests of the appearance of the site and the Conservation Area.

14. Prior to first incorporation of external joinery into the building, details of the paint colour to be applied shall be submitted to and approved in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development and thereafter maintained as such.

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

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

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

Informatives:

The applicant or any subsequent owner of the site should ensure that reasonable endeavours are made to ensure that the vegetation on the highway verge at the access to the application site from Heath Lane is maintained such that maximum achievable visibility is maintained at all times in the interests of highway safety.

The Applicant's attention is drawn to the fact that landscaping scheme as required under 9/2010/0464 and 9/2013/1052 has not been carried out. The landscaping scheme required by condition attached to this permission should look to make good this shortcoming.

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

Item 1.3

Reg. No. 9/2014/0512/FH

Applicant:
Mr Andrew Ellis
57 Merlin Way
Mickleover
Derby
DE3 5SL

Agent:
Mr Andrew Ellis
57 Merlin Way
Mickleover
Derby
DE3 0SL

Proposal: **PROPOSED BRICK WALL TO FRONT BOUNDARY AT
57 MERLIN WAY MICKLEOVER DERBY**

Ward: **ETWALL**

Valid Date: **05/06/2014**

Reason for committee determination

Councillor Ford has requested that the Planning Committee determine this application as local concern has been expressed about a particular issue and unusual site circumstances should be considered.

Site Description

This residential plot sits immediately adjacent the main arterial 'estate road' but is actually accessed (in regards vehicular and pedestrian access) off a narrow private driveway to the side. A small privet hedge, some 14m in length separates the plot from the public highway and there a number of small trees in this front garden/parking area.

Proposal

The proposal is to remove the roadside privet hedgerow and replace it in part with a brick wall. The wall is proposed to be 7m in length and between 1m and 1.6m tall. It is shown to feature 4 pillars.

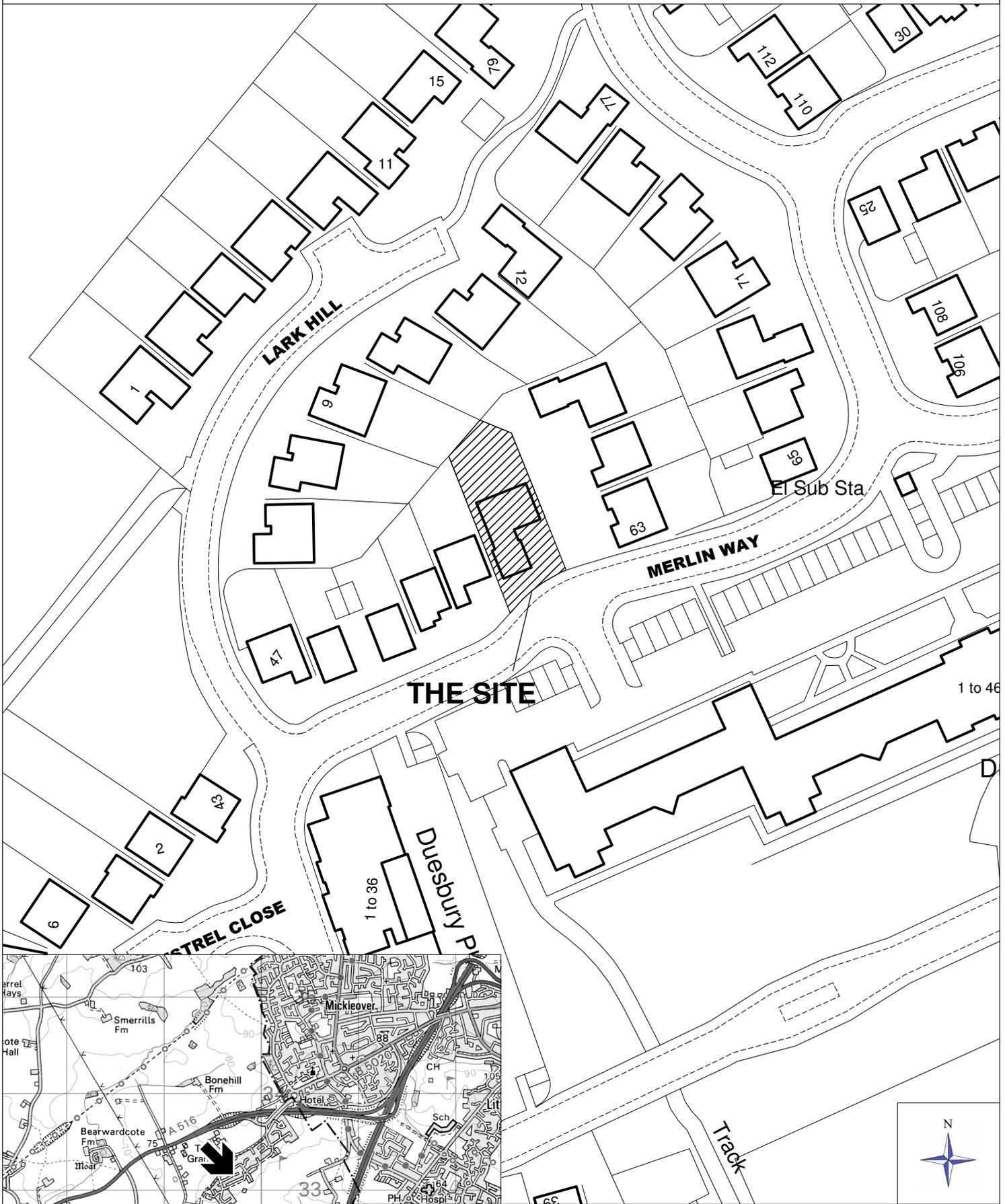
Applicants' supporting information

The applicant states the hedge is failing after a number of harsh winters. Materials (in regards bricks) are detailed to match those of the host dwelling with the decorative stone pier caps (spherical) similar to those used in the locality.

Planning History

No relevant history.

9/2014/0512 - 57 Merlin Way, Mickleover DE3 0SL



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Responses to Consultations

Burnaston Parish Council objects to the proposal on the grounds that the wall would be out of character with the rest of the estate (no other brick walls demarking the front boundaries here etc.). The loss of the hedge would also cause an unsightly 'mismatch' as presently it works as a 'pair of hedges' demarking a vehicular access. They also dispute the hedgerow is beyond retention.

The County Highway Authority has no objection citing no alteration to existing highway conditions.

Responses to Publicity

A neighbour has raised a number of concerns. These are summarised as:

- The wall would be out of keeping with no other property having a wall to the front.
- There is nothing wrong with the hedge, it having substantially recovered from the effects of a severe winter, also adding it is similar to a hedge on their boundary – i.e. the pair work together as a landscape feature.
- The proposed wall will make space for an enlarged hardstanding (car parking area) and whilst it would reduce the need to park on the highway collectively the wall, parked cars and an enlarged hardstanding would reduce the 'aesthetic appeal' of the area.

Development Plan Policies

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

Planning Considerations

The main issue central to the determination of this application is the impact on the character and appearance of the locality

Planning Assessment

The hedge here is likely to have been part of the original development landscaping and whilst it does contribute to the streetscape, there is other mature planting in the locality which would reduce the impact of its loss. Estate landscaping (part of an approved scheme) has some protection for a period of approximately 5 years, after which the home owner can remove it without reprisal. The hedge has no statutory form of protection and nor can it.

The wall has been reduced in length from that first proposed and would now sit solely alongside the flank of the garage (the garage therefore provides a built 'backdrop'). If kept to no more than 1m in height, it would not require planning permission – as such the 'principle' is legally achievable. There are other walls (of greater height) in the immediate locality. Indeed the rear garden at No 63 Merlin Road (a house that sits perpendicular to the highway) is screened by a 2m high wall (on its southern boundary). Similarly the garage court opposite is screened from the highway by a 2m high wall. Admittedly this situation is subtly different but the impact on the character of the area

caused by the wall would not be unduly detrimental, replacing one boundary marker with another and appearing in complimentary context with other brick walls in the vicinity. As such a refusal of the proposal would be difficult to sustain.

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. All facing bricks used in the development to which this permission relates shall match those used in the host dwelling in colour, coursing and texture.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. This permission shall relate to the amended drawing received 18th June 2014 showing in particular a reduction in the length of the wall (from 14m to 7m).
Reason: For the avoidance of doubt.
4. The finished height of the wall, in particular the end columns shall be no taller than 1.6 metres.
Reason: For the avoidance of doubt.

Informatives: You are advised:

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

You must ensure that no part of the development extends onto, over or under the pavement. In the event that this development is seen to undermine the integrity of the adjacent footway, such that it is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0570	Acresford	Seales	Allowed	Committee
9/2013/0949	Church Gresley	Church Gresley	Dismissed	Delegated



Appeal Decision

Site visit made on 19 March 2014

by C L Sherratt DipURP MRTPI

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

Decision date: 17 July 2014

Appeal Ref: APP/F1040/A/13/2201414

**Opposite the Cricketts Inn, Acresford Road, Acresford, Swadlincote
DE12 8AP**

- 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 R Winson against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0570, dated 29 June 2012, was refused by notice dated 26 June 2013.
 - The development proposed is change of use from equestrian land to residential gypsy caravan site with one pitch.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from equestrian land to residential gypsy caravan site with one pitch on land opposite the Cricketts Inn, Acresford Road, Acresford, Swadlincote in accordance with the terms of the application, Ref 9/2012/0570, dated 29 June 2012, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is the effect of the development on the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest, having particular regard to whether a connection to the main sewer can be achieved.

Background

3. An enforcement notice against the alleged breach of planning control described as the 'use of the land as a Gypsy site, removal of the caravan, portable toilet, hardcore materials and reduction in height of the timber close-boarded fence at the access where adjacent to the highway' was issued in July 2011. A subsequent appeal was dismissed and the notice upheld subject to a number of corrections and variations.
4. In that appeal, dated 24 January 2012, the Inspector found the site to be in a reasonably sustainable location; to have no material harm to highway safety from its limited usage; and that the development would not cause any harm to the rural landscape in visual terms subject to the imposition of conditions. Although he found no evidence of general unmet need for gypsy sites in the area, the personal circumstances of the appellant and his family and the seeming lack of a suitable pitch on a family site could be attributed some

weight. However, in the absence of evidence to show that the development would not adversely affect the integrity of the River Mease Special Area of Conservation (SAC) and given the legislative framework that applies to European sites of nature conservation importance, planning permission was not forthcoming.

5. In short, the Inspector was not provided with sufficient detail about how foul drainage would be dealt with. There was also an issue of surface water run off potentially entering the ground water and possibly Hooborough Brook, a tributary of the River Mease, from the hard surfaced areas. The origin of the base material was unknown and its contents had not been analysed to show that it was inert and would not harm nature conservation interests of the SAC.
6. Whilst upholding the notice, the Inspector varied the period for compliance specified in the notice from 3 months to 6 months to allow time for the impact of the development on the SAC to be investigated and sufficient opportunity for a further planning application to be submitted and determined should the results of the investigation prove favourable to the appellant.
7. A subsequent planning application was made to the local planning authority that was supported by additional information submitted to address the Inspector's concerns. This appeal concerns the Council's refusal of this planning application. The Council remains of the view that "insufficient detailed information has been submitted to demonstrate that connection to the mains sewer under the A444 is achievable."
8. Since the previous appeal decision was determined the National Planning Policy Framework ('the Framework') and Planning policy for traveller sites (PPTS) have been published. These are material considerations in the determination of this appeal. More recently, the Planning Practice Guidance has been issued. I shall have regard to it in reaching my decision. I have not however, in light of the issues in this appeal, considered it necessary to refer back to the parties and invite comments.

Reasons

9. The appeal site is bounded by Acresford Road along its western boundary. It lies about 30 metres west of Hooborough Brook, some 500 metres from where it joins the River Mease. The land between the site and Hooborough Brook is a grass paddock that is in the appellant's ownership.
10. It is the role of the relevant authorities under the Habitats Regulations to carry out an appropriate assessment of plans, projects and permissions to demonstrate that there would be no adverse effect on site integrity. Water quality is a key issue in relation to the River Mease SAC. Sources of potential pollution arise from discharges to the catchment from sewage treatment works, septic tanks and package treatment plants, misconnections from developments, road run-off, drainage from fields, pollution incidents and the like. The Water Quality Management Plan notes that foul effluent has been identified as a major source of phosphate into the River Mease SAC and thus the appropriate management of foul effluent from both existing and new built development is a key mechanism which will deliver water quality improvements.
11. A ground contamination investigation assessment has been carried out which included hand dug trial pits, sampling, contamination analysis and

contamination assessment. The investigations confirmed some potential for contamination from the existing hard surfacing material. The application includes proposals to remove the material and replace it with material from an agreed source.

12. The application also confirms that connection will be made to the mains sewer. Supporting information explains that the necessary falls between the site and an inspection chamber close to the junction with Acresford Road and Burton Road can be achieved. However, the Council remain of the opinion that insufficient detailed information has been submitted to demonstrate a connection can be achieved and no details for alternative solutions have been submitted. The Council's Drainage Engineer found the information unsatisfactory and lacking in detail.
13. Whilst no topographical survey was submitted, a company was commissioned to establish the feasibility of connection. Based on the information submitted, Severn Trent Water, The Environment Agency and Natural England raised no objections in principle. All the necessary land to make a connection is within the appellant's ownership. Since the planning application was refused, the appellant has made an application to Severn Trent Water for consent to make a foul water connection to a public sewer. This application was successful and a Notice of Approval has now been issued by Severn Trent Water. It seems to me that the appellant had submitted sufficient information to demonstrate, with a reasonable degree of certainty, that a sewer connection is feasible with the application. Now that consent has been granted for a connection there can be no doubt.
14. Overall, I am satisfied that a connection to the main sewer is feasible. Such a connection would ensure the appropriate management of foul effluent from the development in accordance with the Water Quality Management Plan. These measures, together with the removal of contaminated material and its replacement with clean inert material, would ensure no adverse impact of the River Mease SAC and Site of Special Scientific Interest. The appellant has also made a financial contribution towards water quality management in accordance with the Water Quality Management Plan 'Developer Contributions' document. I find no conflict with Local Plan Saved Environment Policy 11.

Other Matters

15. Interested parties suggest that all the issues considered at the previous appeal and found by the Inspector to be acceptable need to be revisited in light of the publication of the framework and PPTS. The previous appeal decision is a material consideration. I acknowledge that the 3 month period for compliance with the notice was extended to six months with the clear intention of giving the appellant time to address matters of contamination and foul drainage disposal. There can be some reasonable expectation therefore that this was the only matter that the appellant was required to address in his submission to overcome the Inspectors concerns. I have nevertheless, in light of the more recent publications, had regard to the other matters raised.
16. There were no caravans on the site at the time of my visit. However, I agree with my colleague that the development would not have any adverse impact on the character and appearance of the surrounding countryside. It is well screened from Acresford Road by existing vegetation and I observed only long distance views from elsewhere. Against the backdrop of the hedge a one pitch

- caravan site would not appear intrusive and further hedge and tree planting is proposed.
17. In terms of sustainability, like my colleague, I consider the site is in a relatively sustainable location for a site outside a settlement. The PPTS requires local planning authorities to strictly limit new traveller site development in open countryside that is away from existing settlements. The appeal site is not remote from day-to-day services or 'away' from existing settlements, being less than one mile from the centre of the village of Netherseal which contains a range of services including a shop / post office, pubs and a primary school. The framework confirms that there are three dimensions to sustainable development: economic, social and environmental. Other sustainable benefits are derived from a settled base including continuity in relation to education and health care generally.
 18. There has been no material change in circumstances that would result in the use of the access prejudicing highway safety. In any event the access has planning permission and there is no requirement in the enforcement notice for its removal or its use to cease.
 19. Since the previous appeal decision the East Midlands Regional Plan has been revoked. In 2012, the Council had provided 22 pitches to meet the RS requirement for 19 pitches between 2007 and 2012. It is not clear what the identified need for permanent pitches beyond 2012 is or whether it has been met and whether the Council can demonstrate a five year supply of gypsy and traveller sites in accordance with PPTS. The provision of additional pitches is not in itself contrary to development plan policies. Nevertheless, like my colleague, in the absence of any evidence of general need, it is not a matter than I afford any weight in favour of permitting the development.
 20. Some interested parties challenge whether the appellant is a gypsy or traveller if he is seeking a settled base. The Council do not dispute that the appellant meets the definition of a gypsy or traveller as set out in the PPTS. A settled base does not prevent the occupier travelling for economic purposes, it simply provides a settled base to which he and his family can return whilst not travelling. There is a duty to facilitate the gypsy way of life as set out in PPTS. The local planning authority are required to identify land that is suitable to accommodate pitches for gypsy and travellers in the same way as it identifies land for housing for the settled population. To not do so or to insist that gypsy and travellers should live in bricks and mortar housing would be an unequal approach.
 21. I note comments from some that the weight of opposition is reason to justify planning permission being refused. Planning law requires that applications for planning permission (and appeals) must be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework provides the structure within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities. These are the vehicles through which local communities can shape how and where development should occur locally. I have carefully considered the relevant development against local development plan policies.
 22. I acknowledge concerns that the wider field could, in terms of its physical size, accommodate additional pitches and caravans. However, the proposal is for

one pitch and must be assessed on this basis. A condition would be necessary to restrict any permission to one pitch and no more than two caravans. Additional pitches and caravans would therefore require planning permission and the Council could consider taking enforcement action against any unauthorised expansion of the site.

23. No other matters raised would outweigh my findings in relation to the suitability of the site, having regard to the development plan and all other material considerations.

Conditions

24. The Council has suggested a number of conditions. I agree that conditions would be necessary to ensure that a connection to the mains sewer is made and surface water disposed of appropriately and the existing contaminated material removed in a timely fashion. In addition, to help mitigate the visual impact of the development conditions restricting the site to one pitch accommodating no more than two caravans, requiring landscaping to be carried out, details of boundary treatments to be submitted and restricting the number and size of commercial vehicles on the site would be necessary. The application plans clearly show two caravans, one of which is depicted as a static caravan. It would not therefore be appropriate to impose a condition requiring the caravans to be capable of being towed on the highway as suggested by the Council.
25. In both the interests of visual amenity and the protection of the environment, conditions preventing any commercial use would be reasonable and necessary. Any permission should be restricted to the occupation of persons meeting the definition of a gypsy or traveller. The site is considered to be acceptable in principle and so a personal permission restricted to the appellant is not necessary.

Overall Conclusions

26. For the reasons given above I conclude that the appeal should be allowed.

Claire Sherratt

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the amended plan received on 23 July 2012.
- 2) Within one month of the date of this permission the existing unauthorised hardcore material on the site shall be removed and deposited to a waste transfer site, the details of which shall have first been submitted to and approved in writing by the Local Planning Authority. Not less than 48 hours written notification shall be given to the local planning authority of the date when the material is to be removed from site so that a representative of the local planning authority can be present. Evidence or certification of deposition to the agreed site shall also be submitted to the local planning authority within one week of the material being removed.
- 3) Within one month of the removal of the material referred to in condition 2 above, and prior to any replacement material being deposited on the site, further validation sampling shall be carried out in order to ensure that all contaminated materials have been removed from the land. In the event that contamination remains present, further remediation works shall take place in accordance with a scheme that shall have previously been submitted to and approved in writing by the local planning authority.
- 4) No replacement hardcore materials shall be deposited on the site prior to details of the materials, including details of the source and a chemical analysis, being first submitted to and approved in writing by the local planning authority.
- 5) There shall be no more than 1 pitch on the site within which no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 6) The site shall not be occupied by any persons other than gypsies and travellers as defined in the annex to the Planning policy for traveller sites (March 2012).
- 7) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 8) No commercial activities shall take place on the land, including the storage or burning of materials.
- 9) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (v) below:
 - i) within 1 month of the date of this decision a detailed scheme for the construction of the foul sewer to run from the site to a public sewerage connection in the A444 shall have been submitted for the written approval of the local planning authority and the said scheme shall be implemented in full and a connection made within 6 months of the date of its approval. All foul drainage shall be disposed of via this connection.
 - ii) within 2 months of the date of this decision a scheme for: tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; all boundary treatments; a

sustainable drainage system for the disposal of surface water and a riparian Buffer Zone (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

- iii) within 11 months of the date of this decision the scheme for connection to the foul sewer and site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iv) if an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - v) the approved schemes shall have been carried out and completed in accordance with the approved timetable.
- 10) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.



Appeal Decision

Site visit made on 29 April 2014

by **Mick Boddy F Arbor A FICFor CEnv**

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

Decision date: 14/07/2014

Appeal Ref: APP/TPO/F1040/3742

26 Albert Road, Church Gresley, Swadlincote, Derbyshire, DE11 9QS

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent for the felling of a lime tree protected by a Tree Preservation Order.
 - The appeal is made by Mrs T Blood-Holland, against the decision of South Derbyshire District Council.
 - The application, Reg. No. 9/2013/0949/TP, dated 15 November 2013, was refused by notice dated 8 January 2014.
 - The relevant Tree Preservation Order (TPO) is the South Derbyshire District (Albert Road, Church Gresley) Tree Preservation Order No. 35 (1985), which was confirmed on 28 August 1985. The lime tree is scheduled as T3 of the order, which predates the construction of the appellant's house.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider that the main issues in this case are:
 - (i) The impact of the proposed removal of the lime tree.
 - (ii) Whether the reasons put forward are sufficient to justify this course of action.

Reasons

Impact of the proposed removal of the lime tree

3. The lime is one of a row of eight similar mature trees flanking the northern side of Albert Road, seven of which are scheduled in the tree preservation order. The eighth and western-most tree is growing adjacent to the southern boundary of the rear garden of 93 George Street.
4. The lime trees are a visually prominent feature of the local landscape and I consider them to be of significant individual and very high collective amenity value.

5. In relation to this first issue, I found the tree to be an attractive specimen that affords a significant degree of public visual amenity and is an integral part of the larger linear group. I consider that the proposed removal of the tree would substantially diminish the collective visual amenity afforded by the trees, to the detriment of the character of the local landscape. Accordingly, I am of the opinion that the tree should only be removed if an overriding justification has been demonstrated for this course of action.

Reasons put forward for the removal of the lime tree

Safety

6. The appellant suggests that the tree is a danger to traffic and pedestrians, as it is too large for a residential street.
7. The lime is around 14 metres tall, with a trunk diameter of approximately 650 millimetres at a height of 1.5 metres. It is growing in a small open section of the tarmac driveway to the right side of the entrance off the road, at a distance of around 2 metres from the edge of the carriageway.
8. The tree's crown has previously been lifted and I estimated the clearance over the road to be around 4.5 metres, which should be adequate for the average double decker bus and the majority of other vehicles likely to use such a residential street but could be increased if required.
9. The tree appeared to be in good physiological condition and there were no significant structural defects evident or indications that it is potentially unstable. Accordingly, in the absence of any evidence to the contrary, I do not consider that the tree constitutes a hazard such that its removal is required.

Proposed installation of solar panels

10. The tree is situated to the south-southeast of the house at a distance of approximately 7.5 metres from the front elevation. It will therefore inevitably cast a significant degree of shade over the front of the house for a proportion of the day, which would impact on the efficiency of any solar photovoltaic panels installed on the southern face of the roof. However, no evidence has been submitted which quantifies this impact and demonstrates that the continued presence of the tree would either totally preclude the installation of the panels or reduce their efficiency to the extent that they would be financially unviable.
11. Although there is a need to increase the percentage of our energy produced from renewable sources, the negative impacts of this proposal need to be balanced against the positive aspects. Trees are fundamental to our well-being and quality of life, and large-canopied trees such as the limes on Albert Road provide the greatest environmental benefits. In this instance, the tree is of considerable visual amenity value and, on balance, I have concluded that the negative impact of the tree's removal would outweigh any potential environmental benefits or financial advantage.

Third Party Representations

12. An objection to the application was submitted by e-mail by Mr R Johnson, of number 24 Albert Road, which suggests that to allow the felling of the tree would set a precedent. Whilst every application should be considered on its individual merits, I agree that granting consent to remove the lime could make it more difficult for the Council to refuse a future similar application for the removal of one or more of the other protected limes, and I have taken this point into account when arriving at my decision.

Conclusions

13. In view of my decisions on the main issues, I have concluded that insufficient justification has been demonstrated to warrant the removal of the lime tree and therefore dismiss the appeal.

Mick Boddy

Arboricultural Inspector