

# **Report of the Strategic Director (Service Delivery)**

## **Section 1: Planning Applications**

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.

Reference	Item	Place	Ward	Page
<a href="#">DMPA/2021/0579</a>	<a href="#">1.1</a>	Castle Gresley	Church Gresley	22
<a href="#">DMPA/2021/0756</a>	<a href="#">1.2</a>	Linton	Linton	45
<a href="#">DMPA/2020/0943</a>	<a href="#">1.3</a>	Weston on Trent	Aston	55

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 report of the Strategic Director (Service Delivery) 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.

## Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

**Item No.** 1.1

**Ref. No.** DMPA/2021/0579

**Valid date:** 07/04/2021

**Applicant:** Ruairi Scullin

**Agent:** JVH Town Planning Consultants Ltd

**Proposal:** Proposed engineering operation to form an extension to the existing Keystone storage yard and creation of car parking for existing staff, including bunding fencing and landscaping on Land off Ryder Close, Castle Gresley, Swadlincote, DE11 9EU

**Ward:** Church Gresley

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

A decision is required which is not wholly in accordance with the resolution taken by Members of Planning Committee on 14<sup>th</sup> September 2021.

#### **Executive Summary**

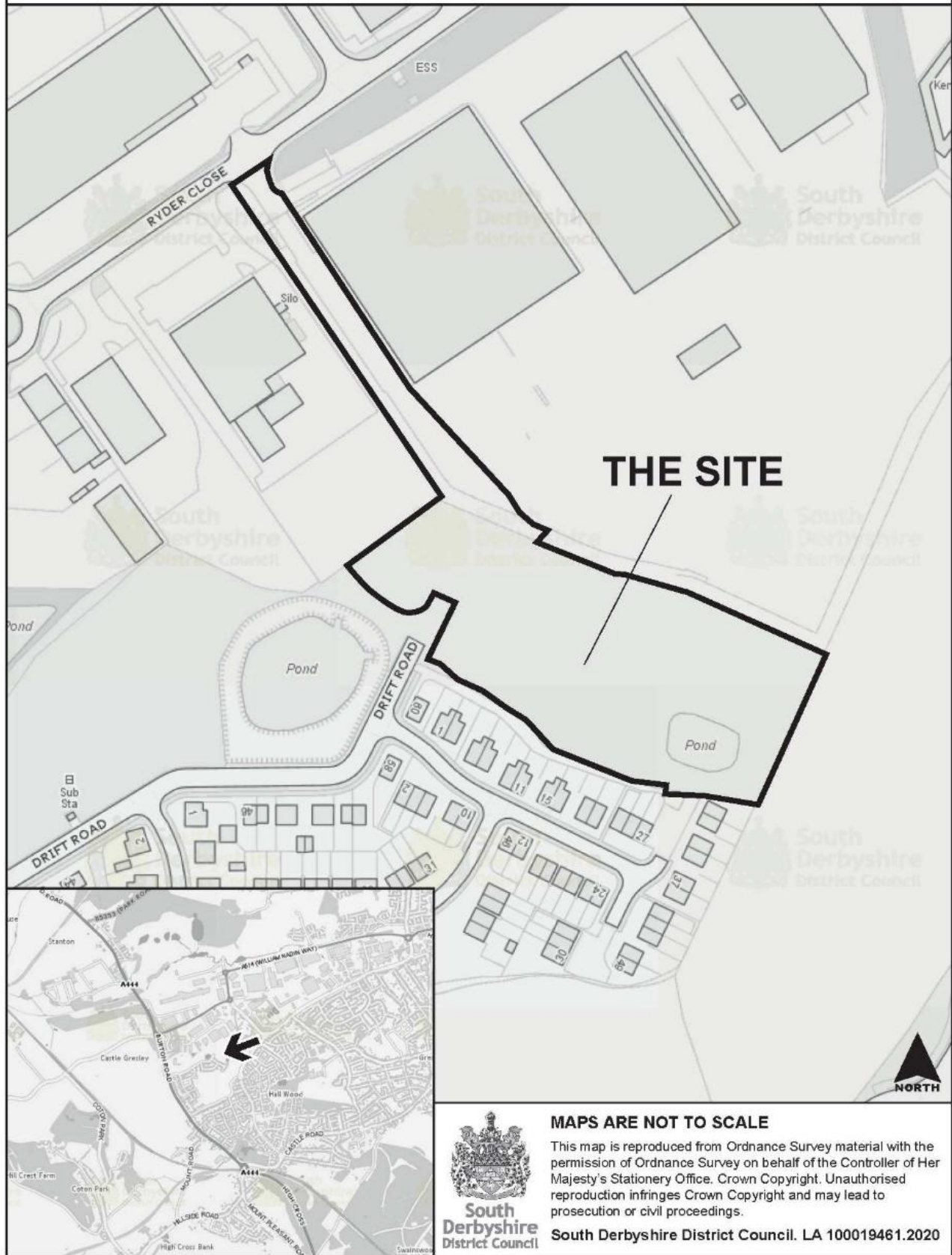
The application was first brought before Planning Committee on 14<sup>th</sup> September 2021. The recommendation was amended verbally on the night due to outstanding matters which were required to be addressed related to biodiversity, including the loss of Open Mosaic Habitat (OMH), which is a Priority Habitat and the impact of the proposals on Great Crested Newts which are a European Protected Species. The resolution taken by members was to 'grant delegated authority to the Head of Planning and Strategic Housing to continue discussions with the applicants and Derbyshire Wildlife Trust (DWT) in an attempt to resolve the outstanding issues relating to Great Crested Newts (GCN) and Open Mosaic Habitat (OMH) and subject to all matters being resolved and the prior signing of an agreement under section 106 of the Town and Country Planning Act 1990 to secure planning obligations relating to a commuted sum towards National Forest Planting and any commuted sums or mitigation measures required as a result of these discussions, grant planning permission subject to any conditions deemed necessary'.

The application is being returned to Planning Committee as despite amended information and plans being received, these do not fully resolve the concerns raised by DWT without the use of conditions relating to compensation, which the applicant is not content with.

The layout as originally presented to committee in September showed a landscaping bund which would be heavily vegetated by a mix of trees and the removal of the existing pond within the site. An amended biodiversity matrix has been submitted which shows an accurate baseline of the site as OMH and shows that there would be a total net change of -1.78 habitat units (-32.94%) and +2.92 hedgerow units (1088.29%). Amended plans have also been received which shows the creation of OMH on the lower levels of the landscaping bund, with the tree bank retained along the upper section. A replacement pond is shown in the western corner of the site, within the area proposed for car parking and this will be surrounded by OMH, resulting in a loss of 4 car parking spaces. A GCN gully is also proposed to connect the two habitats and allows the safe passage of newts from the bund to the OMH and replacement pond.

The Committee is asked to resolve that planning permission be granted subject to the conditions listed at the end of this report.

**DMPA/2021/0579 - Land off Ryder Close, Castle Gresley, Swadlincote  
DE11 9EU**



## **Details of the Application**

The proposed development is for the change of use of land and associated engineering operations to form an extension to the existing Keystone Lintels storage yard together with the creation of 71 car parking spaces. The proposals include:

- The use of the existing access from Ryder Close only
- An area to the west to accommodate a further 71 car parking spaces, marked out and hard surfaced
- Removal of spoil heaps and levelling of the site
- Erection of 3m high bund and 3m high acoustic fence (combined height of 6m)
- Landscaping of the bund and areas to the eastern and south-western boundary, including some OMH creation.
- A short stretch of cycle path along the southern boundary of the site.
- Creation of replacement pond to the west of the site, surrounded by OMG and a GCN gully to provide a safe passage from the bund to this area.

## **Relevant Policies and Guidance**

The relevant policies have previously been set out in the original committee report, attached as an appendix.

## **Further consultation responses**

Two further neighbour responses have been received which raise the following objections:

- a) Noise through the night
- b) Use of car park/increased vehicles using Drift Road to access site
- c) Tree being planted are too small and will take time to grow
- d) Previous condition controlling noise appealed and won so nothing to stop this one
- e) Bund and fencing not enough to protect privacy and amenity
- f) Not in best interests of wildlife; bird and bat boxing will need replacing
- g) Removing old pond and replacing with one in the car park not acceptable for existing wildlife
- h) Cycle path makes no sense and leads to no where will create anti-social behaviour issues

## **Assessment**

Policy BNE3 states that the Local Planning Authority will support development which contributes to the protection, management and enhancement of biodiversity and delivers net gains. Proposals that affect a priority habitat should be supported by appropriate assessments to demonstrate likely impacts and mitigation. Where mitigation cannot off-set the significant harm resulting from the development, or cannot be located on an alternative site planning permission should be refused.

The NPPF states that in determining applications, the Local Planning Authority should follow the principles of avoidance, mitigation and as a last resort compensation. The site is an allocated employment site, next to existing industrial units and as such avoidance of development would not necessarily be appropriate in this instance. In considering its development, it is clear that some mitigation will be required and where this will not achieve a satisfactory outcome, such that significant harm is caused to biodiversity, compensation should be considered.

The applicant has submitted amended plans which show a replacement pond to the west of the site and this has been accompanied by a GCN Mitigation Strategy which details how the works will take place within the site so as to minimise the impact on GCN and includes information about translocation. It is an offence to deliberately capture, injure, kill or disturb European protected species. It is also an offence to deliberately take or destroy the eggs of a European protected species or to damage or

destroy a breeding site or a resting place of one of these species under regulation 43 of the Conservation of Habitats and Species legislation. The GCN is a European protected species. As a Local Planning Authority, the Council needs to comply and be satisfied that the proposal meets the three tests set out in the legislation:

1. That the proposal is for the purposes of preserving public health or safety, or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment
2. That there is no satisfactory alternative
3. That the action will not be detrimental to the maintenance of the population of the species – i.e. there is appropriate mitigation.

The amended proposals provide a replacement pond and suitable terrestrial habitat. They also provide for safe access between the different habitats within the site by way of a gully within the tarmacked surface at the narrowest point. The proposals are also supported by a mitigation strategy which sets out how the works will proceed such that there would be no detrimental impact to the species.

It is considered that the proposals meet test 1 in that by allowing the developer to extend into the area, this would secure the presence of a key employer in the Swadlincote area which has clear economic benefits in terms of job retention. In relation to point 2, the site is adjacent the current service yard and is an allocated employment site. The current site is too small for the expanding business and therefore it could be considered that there are no alternative sites which would serve the purpose of allowing the commercial enterprise to stay in its location and expand. Based on the amended plans showing both a replacement pond and habitat and the accompanying mitigation strategy, it is considered that the third point could be satisfied, subject to conditions to secure these mitigation measures.

DWT raise no objections to this approach and whilst they haven't commented on points 1 and 2, consider that point 3 could be met subject to controls by way of condition.

Irrespective of the grant or otherwise of planning permission, the works would require a licence from Natural England, which they may grant under regulation 55 and 58 of these regulations and the developer will need to apply separately for this. Planning permission does not override the decision of Natural England and if they are not content to issue the licence, any grant of planning permission could not be implemented.

The amended biodiversity metric demonstrates that there will be a net loss of OMH on site of 1.78 units. Amendments have been made to the proposals, including a redesign of the landscape bund to provide some OMH at the lower levels and some habitat around the replacement pond in attempts to reduce this loss. However, due to the quantum of development required on site to satisfy the needs of the applicant and the fact that almost the entire site is OMH, there is inevitably some loss within the site.

OMH can be extremely diverse, supporting a wide range of terrestrial habitats. They are able to support an ecological network of invertebrates as well as lichens, plants, birds, reptiles and amphibians and as such they are now considered to be a Priority Habitat.

DWT have raised concern with the loss of this habitat, considering the loss to be significant, it being over 30%. Having regard to Policy BNE3 and the relevant parts of the NPPF, they have recommended a condition to require an off-site compensation scheme whereby the applicants would be required to acquire a parcel of land within the South Derbyshire District and create and manage compensatory habitat for a period of 30 years.

The applicants have expressed an inability to deliver on this condition due to the costs associated with both the acquisition of the application site, together with the purchase of the compensation site and the habitat creation and management costs. They have advised that this would be unviable for the business and the use of such a condition would likely result in the development not being implemented and the business looking for alternative premises to accommodate their expanding operation.

It is clear that there will be a significant loss of Priority Habitat (over 30%) and therefore the proposals are not wholly in accordance with Policy BNE3 of the Local Plan or the advice contained within the NPPF. However, this should be weighed against the economic and social benefits of enabling a key

local employer to expand and stay within the area, providing local jobs. The site is an allocated employment site in the Local Plan (Policy E1 (E1A)) and as such its development for such purposes would be consistent with the council's policy of economic development.

In respect of the changes to the landscaping on the bund, whilst the proposals remove some of the taller screening at the lower level, trees would be planted higher up the bank, which would provide some height and screen the higher level fencing. It is noted that the lower levels of the bank will be largely screened by existing boundary fencing and the Environmental Health Officer has confirmed that tree planting does not act as noise attenuation. The landscape officer has no objections to the amendments subject to conditions. In this regard, it is considered that the proposed amendments are acceptable.

### **Conclusion**

The proposal is for an industrial development on an allocated employment site and in this regard, it is consistent with the local plan. It will enable a key local employer to expand their business and enable a section of a wider cycle/footpath network to be implemented. The site will be landscaped and the habitat created will be managed. It is considered that there will be no significant detriment to the occupants of the neighbouring residential properties through noise nuisance with the use of conditions to control operations and hours of use and the creation of a bund with an attenuated fence. The requirement to provide National Forest planting is to be dealt with off-site through a monetary contribution due to the expanse of planting needed, but the site will still retain important existing trees and provide additional trees through a landscape scheme. These are all clear benefits which should be considered in the determination of the application. However, the proposals will result in over 30% net loss of a Priority Habitat. Whilst some OMH will be created and managed on site, which will ensure it is retained as such, there is still a significant loss. The applicants have advised a condition requiring compensation habitat will not be acceptable and question its validity. However, no viability information has been provided which supports this and as such it is considered that a condition could be used to secure that the development achieves no net loss in biodiversity. There is a risk that should such a condition be attached to any permission, the developers will not implement this and will instead look for alternative employment sites, which may not be within South Derbyshire. However, on balance there is a lack of evidence to support the issue of viability, and whilst the development of the site in future will likely raise similar issues, there are ways to address the net loss of biodiversity and in accordance with policy, where this is not possible, planning permission should be refused.

### **Recommendation**

A. Grant delegated authority to the Head of Planning and Strategic Housing to complete an agreement under section 106 of the Town and Country Planning Act 1990 so as to secure the planning obligations outlined in this report relating to a commuted sum towards National Forest Planting; and

B. Subject to A, Approve the application subject to the following condition(s):

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 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 ref: Proposed Site Plan Whole Site 221-04-08f, General Arrangement Visibility Splay 190702 Rev P0, Typical Retaining Wall Fence Details 221-04.07, Typical Cross Sections 221-04.06 and 221-04.05, Site Local Plan 221-04.01, Proposed Site Plan Whole Site 221-04-09f, Topographical Survey 221-04.02 and Great Crested Newt Mitigation Strategy April-June 2021, unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.



3. No development shall commence until:
- a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and:
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.
- The intrusive site investigation and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

4. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site.

5. The proposed 3.0m retaining wall and 3.0m acoustic fence shall be constructed as shown on the approved drawing prior to the first use of the site as a storage yard or car park. The noise mitigation scheme shall be maintained for the life of the approved development and shall not be altered without the prior written approval of the local planning authority.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies SD1 and BNE1 of the Local Plan Part 1.

6. Prior to the commencement of the use hereby approved a stockyard noise mitigation plan shall be submitted to and approved in writing by the local planning authority detailing measures that will be implemented to provide best practicable means of minimising noise from the development. The stockyard noise mitigation plan shall thereafter be implemented for the lifetime of the approved development.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies SD1 and BNE1 of the Local Plan Part 1.

7. The use of the land hereby permitted shall not be for loading and unloading of vehicles (other than cars for private use) and/or stacking/unstacking of products outside the following times, or at any time on Sunday, Bank or Public Holidays: 07:00 to 21:00hours Monday - Friday and 08:00 to 16:00hours on Saturday.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies E7, SD1 and BNE1 of the Local Plan.

8. Prior to the commencement of the use hereby approved recharge points for electric vehicles shall be provided at a ratio of 1 charging point per 10 spaces (or part thereof). To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the approved details prior to the first use of the site and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In order to safeguard the amenities of the occupiers of the proposed development in respect of atmospheric pollution in compliance with the South Derbyshire Design SPD & policy BNE1 of the Local Plan.

9. Prior to the commencement of the use hereby approved a written scheme shall be submitted to and agreed in writing by the local planning authority that specifies the provisions to be made for the level of illumination of the site and to control light pollution. The scheme shall be implemented and maintained for the lifetime of the approved development and shall not be altered without the prior written approval of the local planning authority. The scheme shall be designed to ensure that light intrusion into neighbouring residential windows from the development shall not exceed 2 Ev (lux) measured as vertical luminance.

The lighting scheme floodlighting shall be designed and operated to have full horizontal cut-off such that the Upward Waste Light Ratio does not exceed 5%.

Reason: In order to protect the amenity of the area and the occupants of adjoining residential properties in accordance with policy BNE1 of the Local Plan.

10. Prior to the car park first coming into use the area shall be hard surfaced and laid out in accordance with the details shown on the approved site plan and maintained in that form for the life of the development.

Reason: To ensure satisfactory car parking and safe manoeuvrability within the site is maintained in the interests of highway safety.

11. Prior to the first use of the development a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All planting, seeding or turving comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first use of the development or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

12. There shall be no changes in ground levels within 2m of the north bank of the existing ditch which runs along the southern boundary of the site, unless further details are first submitted to and approved in writing by the local planning authority prior to any works in these areas being undertaken. Thereafter the root protection areas for the trees along the southern and eastern boundaries as set out on pages 15 and 16 of the Arboricultural Impact Assessment shall be adhered to. The protective fencing shown on Proposed Site Plan Whole Site 221-04-08c shall be erected around all trees and hedgerows shown to be retained prior to the commencement of any works on site. The fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

13. Prior to the development first coming into use, the section of the cycle path shown on the approved plan and identified within the site by red markers shall be constructed in accordance with details to be first submitted and approved in writing by the local planning authority. The path shall thereafter be maintained and available for use by members of the public.

Reason: In the interests of encouraging sustainable modes of transport and to provide a safe and suitable path for all users in the interests of highway safety.

14. Within one year of the development being commenced, a scheme for the offsetting of biodiversity impacts at the site shall be submitted to and approved in writing by the Local Planning Authority. The proposed offsetting scheme, as detailed in document shall provide for the creation and/or improvement of habitat/s of a value no less than 1.78 Biodiversity Units & shall include:
- i) Details of the offset requirements of the development, in accordance with a recognised biodiversity offsetting metric,
  - ii) The identification of a receptor site or sites which generates a minimum of 1.78 Biodiversity Units;
  - iii) The provision of arrangements to secure the delivery of offsetting measures, including a timetable for delivery;
  - iv) A management and monitoring plan, to include for the provision and maintenance of the offsetting measures for a period of no less than 30 years from the commencement of the development. The management and monitoring plan is to include:
  - v) Description of all habitats to be created/enhanced with the scheme including expected management condition and total area;
  - vi) Review of the ecological constraints;
  - vii) Detailed designs and/or working methods (management prescriptions) to achieve proposed habitats and management conditions, including extent and location of proposed works;
  - viii) Type and source of materials to be used, including species list for all proposed planting and abundance of species within any seed mix/planting scheme;
  - ix) Identification of the persons responsible for implementing the works;
  - x) A timetable of ecological monitoring to assess the success of all habitat creation/enhancement.
  - xi) A timetable of future ecological monitoring to ensure that all habitats achieve their proposed management condition as well as description of a feed-back mechanism by which the management prescriptions can be amended should the monitoring deem it necessary.

All ecological monitoring and all recommendations for the maintenance/amendment of future management shall be submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall thereafter be completed in accordance with the approved details.

Reason: In order to ensure that the development results in no net loss of a Priority Habitat in accordance with Policy BNE3 of the Local Plan Part 1.

15. No development, including preparatory works, shall commence until a walkover badger survey has been undertaken by a suitably qualified ecologist to ensure that there have been no setts created within the site since the date of the badger survey provided in support of the application. The results of this survey work and the scope and timing of any necessary mitigation measures shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing, with the mitigation measures implemented and retained in accordance with the approved timetable.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts.

16. A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the first use of the development. The content of the LEMP shall include the following.
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a thirty-year period).
  - g) Details of the body or organization responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

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

Reason: In order to safeguard and enhance habitat on or adjacent to the site in accordance with Policy BNE3 of the Local Plan Part 1.

Informatives:

- a. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.
- b. The applicant/developer is reminded that it is an offence to damage or destroy species protected under separate legislation, which includes, but is not limited to, nesting birds which may be present in hedgerows, trees or ground habitats on the site. Planning permission for a development does not provide a defence against prosecution under wildlife protection legislation. You are advised that it may be necessary, shortly before development commences, to commission an ecological survey from suitably qualified and experienced professionals to determine the presence or otherwise of such protected species. If protected species are found to be present, reference should be made to Natural England's standing advice and/or the Derbyshire Wildlife Trust should be consulted for advice.

**Ref. No.** DMPA/2021/0579

**Valid date:** 07/04/2021

**Applicant:** Ruairi Scullin

**Agent:** JVH Town Planning Consultants Ltd

**Proposal:** Proposed engineering operation to form an extension to the existing Keystone storage yard and creation of car parking for existing staff, including bunding fencing and landscaping on Land off Ryder Close, Castle Gresley, Swadlincote, DE11 9EU

**Ward:** Church Gresley

**Reason for committee determination**

This item is presented to the Committee at the discretion of the Head of Planning and Strategic Housing due to the number of objections received in respect of the application.

**Site Description**

The site is approximately 1.4 hectares and lies within the Swadlincote urban area, with existing industrial premises to the north and north-west. The site forms part of a larger allocated employment site ( Policy E1A of the Part 1 Local Plan). There is a more recent residential development to the south and further residential to the east. The land is currently vacant and appears to have been used for the storage of materials in association with the residential development to the south. There is a ditch running along the southern boundary in part and a number of mature trees along the eastern boundary. The land levels currently fall from east to west with a difference of approximately 3 - 3.5m, with the highest part being the north-eastern corner. The existing boundaries are made up of a mixture of vegetation, timber close boarded fencing to the new residential properties to the south and palisade fencing to the existing yard. There is a pond towards the south east of the site.

**The proposal**

The proposed development is for the change of use of land and associated engineering operations to form an extension to the existing Keystone Lintels storage yard together with the creation of 75 car parking spaces. The proposals include:

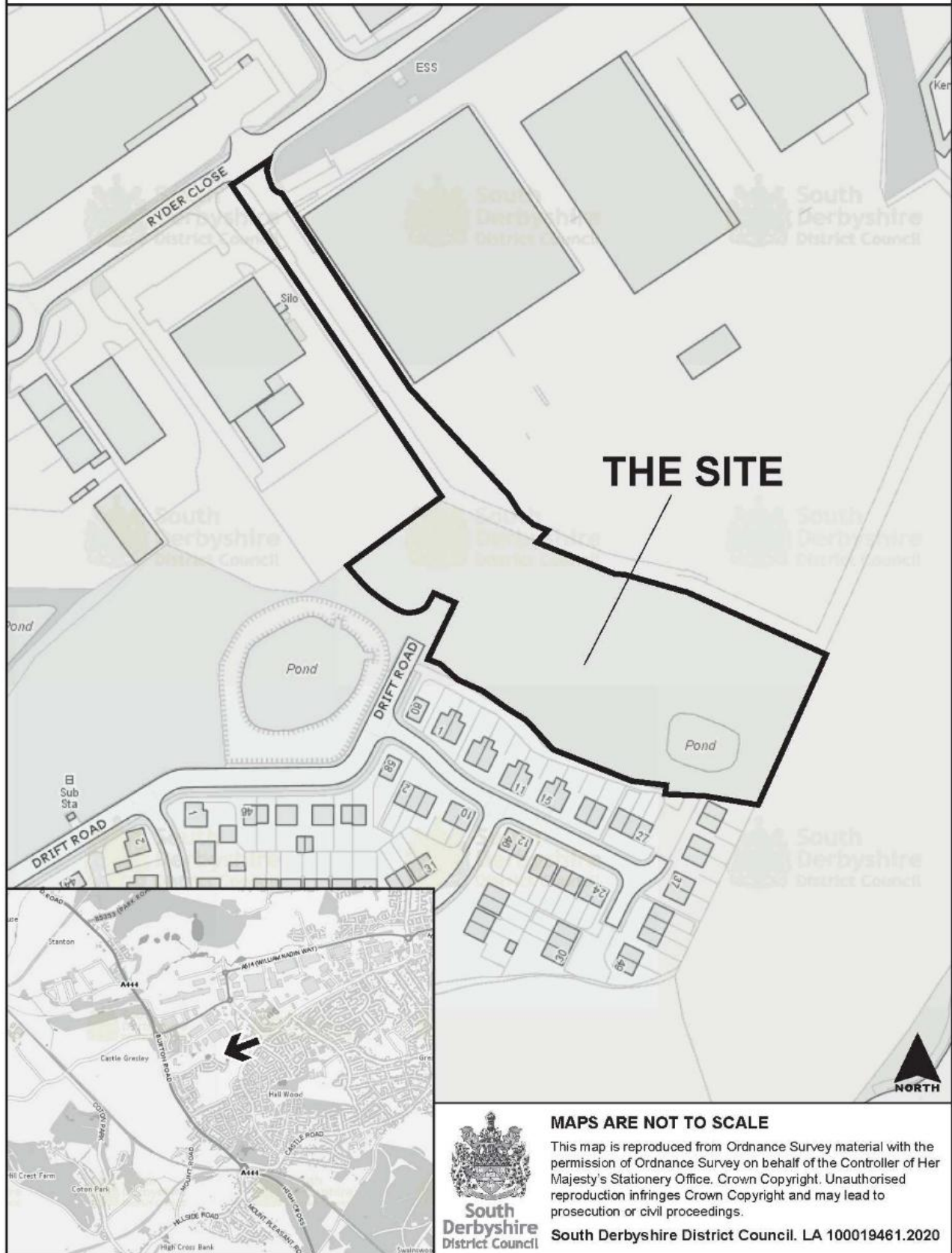
- The use of the existing access from Ryder Close only
- An area to the west to accommodate a further 75 car parking spaces, marked out and hard surfaced
- Removal of spoil heaps and leveling of the site
- erection of 3m high bund and 3m high acoustic fence (combined height of 6m)
- landscaping of the bund and areas to the eastern and south-western boundary
- A short stretch of cycle path along the southern boundary of the site.

**Applicant's supporting information**

Planning, Design and Access Statement - The applicants state that the site is well-established manufacturing facility and that the proposal is needed to increase the storage area, provide more staff parking and create a suitable relationship to existing residential properties to the south through bunding and landscaping. The applicants consider the development to be in compliance with local and national planning policies, specifically those relating to employment and that the proposal will not result in harm to amenity.

Preliminary Ecological Appraisal - In this document the applicants undertook a PEA which comprised an extended Phase 1 Habitat Survey. This appraisal identified a range of habitats, including: Short ephemeral vegetation, ditch, defunct hedge, trees, scrub, tall ruderal, bare ground and standing water. The appraisal notes that these habitats could support a number of species including reptiles, foraging

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bats, hedgehogs and GRN. In light of which the appraisal recommends that further surveys are carried out for reptiles, the standing water areas are surveyed for GCN and the undertaking of an open mosaic habitat assessment. The appraisal also recommends that tree lines are maintained where possible and where removed replaced with native species. Vegetation clearance should also be outside of the bird nesting season where possible and suitable hibernation areas should only be cleared outside of the hibernation period. Additional opportunities for enhancement are also identified and include: wildlife friendly lighting, bat and bird boxes, habitat piles and the planting of native species.

Noise Assessment - The report presents details of previous noise surveys to determine the existing noise climate and an assessment of the noise impact from the proposed operations against the relevant standards and criteria (BS4142:2014). It identifies noise sources as being from forklift manoeuvring and loading. The report predicts the daytime and night-time noise levels at the three closest noise sensitive locations and identifies that according to the relevant standards the context of the noise must be taken into consideration and in this instance existing consents could result in higher noise levels from increased traffic along Furnace Lane than the proposed development.

Flood Risk Assessment - The assessment considers that the development would be a 'Less Vulnerable' development in appraising it against Table 2 of the PPG. The EA Flood Map for Planning shows the site to be located entirely in Flood Zone 1 and therefore a sequential test is not required. The assessment identifies the site as being at low to medium risk of surface water flooding, with an existing pond currently collecting surface water to be removed. Whilst the pond to the south west corner of the site was designed to accommodate surface water from this site into this feature at a rate of 10l/s controlled by a flow control chamber with a vortex flow control the drainage strategy for the site is to discharge directly into an existing surface water sewer.

Drainage Technical Note (dated July 2021) - This note is provided in response to comments received from the LLFA and advises that due to the levels being significantly altered (by up to 3m) the existing swales are 'cut off', that the proposed discharge rates were agreed as part of the St Modwens Homes development, that they consider the site to be brownfield and the discharge rate should be on this basis and that due to the engineering works proposed infiltration is not possible due to the material being too consolidated at these depths.

Drainage Technical Note (dated 31 August 2021) - This note is provided in response to comments received from the LLFA and provides assumed calculations for the sewer capacity which demonstrate sufficient capacity. The note provides calculations for greenfield run-off rates which significantly increases the required attenuation. The note comments that a more favourable discharge rate should be agreed based on the additional capacity available in the sewer. The notes author considers that final discharge and attenuation calculations can be reached within a detailed design which can be agreed.

Highways Technical Note - This note describes the proposed development the existing traffic conditions, anticipated impact from the development and existing access to different modes of transport available. It confirms that access will be from Ryder Close which is an adopted single carriageway and that no changes to the existing site access is proposed. The note identifies risks and notes that no fatal accidents have taken place at the intersection between Ryder Close and Cadley Hill Road. The note identifies that there are no expected changes to traffic generation, times of operation or staffing levels as a result of the proposals and as such the proposal would have no unacceptable impacts on highway safety and is in accordance with the relevant national policy.

A further Technical Note dated 23.7.21 confirms that there is currently an under provision of parking on the site (currently 105 spaces, up to date guidance suggests this should be 135), details of floorspace of the existing units are provided and the note confirms that there will be no expected increase in HGV movements.

Coal Mining Risk Assessment - The assessment identifies recorded workings in 8 seams within the site at a depth of between 36m and 281m and a probable presence of shallow unrecorded workings and it is these which are considered to present the highest risk. No known coal mining entries are within 100m of the site, however mine gassing emissions have been recorded within 500m of the site. The

assessment makes a number of assumptions relating to the ground strata, geology and depths based on previous findings, works and information contained by the Coal Authority. A number of mitigation measures are proposed including: Rotary probe drilling and drilling and grouting stabilisation if the probe drilling confirms shallow workings.

Arboricultural report - This report identifies that the significant trees at the site grow around the perimeter only and include an Oak Tree covered by a TPO. It notes that those to the southern boundary (which includes the Oak) can be protected/retained by ensuring that there is no development (including changes to ground levels) within 2m of the existing ditch/bank. To the east of the site the trees and hedges require no disturbance within the full extent of their root protection areas. It identifies that some trees are suffering from ash die-back but that it difficult to predict their life expectancy and that new tree planting around the sites perimeter will result in betterment to screening whilst retaining a landscaping corridor. Tree species are recommended as containing English Oak, Field Maple, Wild Cherry and Rowan.

GCN Pressence Report - This report is informed by a Habitat Suitability Index Assessment of all ponds within 500m of the site, followed by 4 survey visits to the suitable ponds to establish presence or likely-absence. GCN were discovered to be present and so the survey was extended to estimate the relative size of the population. The highest count was found to be five which is classified as 'low'. Suitable terrestrial habitat was also found to be present on site. The report identifies that a European Protected Species Mitigation Liscence is required from Natural England and any planning permission should be conditional upon this. The granting of this would be subject to the detailed design of a suitable avoidance/mitigation/compensation strategy.

Open Mosaic Habitat Report - The report notes that the site meets all 5 criteria required for it to be considered as a OMH and is therefore a habitat of Principle Importance, containing rare plants, mosses, lichen, rare invertebrates, including bees, wasps and beetles. It advises that a mitigation plan will be required and this should be incorporated into an Construction Ecological Mitigation Plan (CEMP) for the site as a whole and controlled by condition.

Reptile Presence/Absence Survey - The report seeks to demonstrate the absence/presence of reptiles on the site by undertaking survey work in accordance with current standards. Seven visits to site were undertaken within a 6 week period to inform the survey. No reptile species were seen on site during the site surveys which suggests a likely absence and as such no implications as a result of the development. Suggestions are made in the recommendations section of the report for enhancement measures including a part-buried hibernacula.

Biodiversity Impact Assessment Calculator Tool - This tool demonstrates the baseline data for the site specific to biodiversity and assesses the on-site post development data to provide an indication of the change the development will have on the site to understand whether there will be any net gain or loss to biodiversity as a result of the development. The habitats are split into three areas: habitat, hedgerow and river. The calculator demonstrates a loss in habitat units and a significant gain in hedgerow units with no change to river habitats.

### **Relevant planning history**

9/2005/0341 - The erection of a distribution warehouse and marshallng yard and access - Approved June 2005

9/2011/0685 - Change of use of approx 2.5 hectares of grassland into hard standing for use as a stock yard - Approved Nov 2011

9/2013/0370 - The erection of 3 buildings to form additional fabrication unit, spray shop, storage and distribution unit and additional parking - Approved Aug 2013

9/2014/0411- Revised scheme to previously approved application 9/2013/0370 for the erection of 3 buildings to form additional fabrication unit, spray shop, storage and distribution unit and additional



parking - Approved Aug 2014

9/2015/0605 - Variation of condition 15 of planning permission 9/2014/0411 relating to the hours of use of external areas - Approved Oct 2015

9/2017/0103 - Variation of condition 14 of planning permission 9/2015/0605 relating to the hours of use of external areas - Approved Aug 2017

9/2018/0871 - The erection of a new packaging area canopy - Approved Oct 2018

9/2019/0421 - The variation of condition 3 & 4 of planning permission ref: 9/2018/0871 relating to the erection of a new packaging area canopy - Approved June 2019

DMPA/2020/0201 - Infill extension to existing industrial buildings - Approved June 2020

### **Responses to consultations and publicity**

Environmental Health – No objections subject to conditions relating to the submission, implementation and maintenance of the noise mitigation scheme, hours restrictions on use, Electric Vehicle Charging points and the submission and implementation of a lighting scheme.

Landscape Officer - Makes a number of observations about the application and requests additional information including:

- A detail drawing of the Acoustic fencing.
- A detail drawing of the boundary fencing.
- A detail drawing of the car park layout with tree planting, and native species hedgerow to the south west boundaries.
- Further detail regarding the cycle path.
- A drawing showing the proposed tree protection for the onsite TPO trees.
- A landscape planting plan, with plant schedule and planting specification
- A plan showing the position of the proposed bird and bat boxes.

#### Comments on plans received on 03.08.2021:

- The plant schedule to give the tree size in a girth measurement where possible, these should be of various sizes from 14cm.
- Increase the tree planting to form a tree belt to the south west edge of the car park, as the site is within the National Forest.
- Suggested changes to species of tree proposed

#### Comments on plan received 18.8.2021:

- Tree planting to the car park to be 2/3 mixed native species.
- Tree size in a girth measurement where possible, these should be of various sizes from 14cm.
- Suggested changes to species of tree proposed

Policy Officer - Need to secure a 3m wide cycle and pedestrian access connecting the Castleton Park at Swadlincote Lane with Ryder Close, to the north of the application site. The link is identified in the South Derbyshire Cycling Strategy, 2001, and this piece of infrastructure should not be compromised by the current proposal. The plans make reference to the path but there is no indication of how the link will be secured or the alignment of the path, specifically toward Drift Road.

Trees protected by TPO within the application site.

Derbyshire Wildlife Trust – Agrees with the need for further surveys as recommended by the PEA and that these should be provided prior to determination.

#### Comments on additional information received 03.08.2021:

- Open Mosaic Habitat is a Habitat of Principal Importance (priority habitat). The loss of this habitat from the site, in the absence of mitigation and/or compensation, represents a significant net loss of biodiversity.

- A Biodiversity Impact Assessment is required, using a recognised Metric Calculator to identify the level of biodiversity impact resulting from the proposed development so that appropriate mitigation and compensation can be provided.
- We are also aware that no further information has been submitted to confirm the presence/absence of protected species at the site, namely reptiles and great crested newt as advised in our previous consultation response.

County Highways Authority – Raises a number of points of clarification in respect of the increase in parking, the implementation of sustainable measures, net and gross floor areas for the existing site, whether there will be any increase in HGV movements, information regarding visibility at the existing junction.

Comments on additional information received 03.08.2021:

No objections, subject to conditions

LLFA – Raises a number of points of clarification in respect of the drainage strategy and plan to discharge into the surface water sewer, the run-off rate proposed and the consideration of SuDS measures in the design.

Comments on additional information received 03.08.2021:

Request for additional information including:

- Evidence that the existing S104 surface water sewer has the capacity to accept this additional flow.
- Justification as to why it is not possible to discharge at, or closer to, to the greenfield runoff rate and evidence of the existing runoff rate of the site

Designing Out Crime Officer – No objections.

The National Forest Company - 20% of the site area (0.28ha) should be provided as dedicated National Forest planting. Insufficient details of tree size, species and density of planting. The recommendations of the PEA at Section 4.3 should be conditioned. The existing trees should be retained and protected during construction.

Comments on additional information received 03.08.2021:

- 0.28ha of the site should be provided dedicated woodland planting.
- Alternatively, the applicant could provide a commuted sum towards off site planting which would be of the order of £9800 (£35k x 0.28).
- The applicant has not identified the planting towards the southern boundary on the gradient as National Forest planting. Question whether the 1:2 slope is an appropriate location for woodland creation and long term management.
- Unclear how bird boxes would be provide in areas of new planting.

The Coal Authority - Objects. The site falls within the Development High Risk Area and a Coal Mining Risk Assessment is therefore required to support the application.

Comments on additional information received 03.08.2021:

Removes objection to application subject to conditions relating to site investigations, remedial works and declarations by a competent person related to the works undertaken.

11 no. letters of objections have been received from the public during the original consultation period raising the following comments:

- a) increased pollution, from cars and machinery
- b) noise, existing noise levels already poor, expansion will make this worse
- c) privacy issues - being able to look directly into properties;
- d) removal of existing wildlife from the area, including a number of birds and ducks
- e) The plan states the expansion will be used 24 hours a day. This is not acceptable to have it operating all day and night this close to a residential housing area
- f) Additional stress and health issues as it will effect people's rest and relaxation times
- g) Light Pollution from flood lighting
- h) No consideration of disruption to pets in noise and use of land

- i) the proposed fence and walls are going to be an eyesore
- j) 3 meter wide cycle path is not going to have any sort of benefit to anyone the field to the right is not a public pathway
- k) The noise level measured along Swadlincote Lane is abysmal . The street is 0.5 miles from the keystone factory and our house is only 200 yards away.
- l) Loss of property value
- m) Outside there is ubiquitous dust; if the facility will be next to our fence there will be more dust.
- n) the fencing and supposed trees will be enough to stop the noise, My house is a 3 story house and the noise is even more noticeable on the top floor.
- o) Due to my line of work I work shifts and can be very disturbing
- p) If access to the car park is going to be via Drift Road I feel this also puts my childrens safety in question as the traffic will increase at the quiet end of the residential estate.
- q) Understood the land was going to be a nature area for the estate.
- r) Concern for the existing wildlife and habitats as these will be more than likely destroyed and disrupted by the development.
- s) car park will create additional noise when workers are coming and going from the factory
- t) impact on the traffic.
- u) unpleasant view of 3 foot walls along with a 2.4metre mesh wall.
- v) Work has already commenced on site with worker starting before 7am
- w) Photos submitted of a newt within the rear garden of a property on Furnace Lane.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S5 (Employment Land Need), S6 (Sustainable Access), E1 (Strategic Employment Land Allocation), E2 (Other Industrial and Business Development), E3 (Existing Employment Areas), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF7 (Green Infrastructure), INF8 (The National Forest)

Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows)

The relevant local guidance is:

Trees and Development SPD  
 South Derbyshire Design Guide SPD  
 SDDC Cycling Strategy 2001

The relevant national policy and guidance is:

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

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- The principle of the development
- The impact of the development on biodiversity and trees
- The impact of the development on highways safety
- The impact of the development on residential amenity
- The impact of the development on flood risk and water management

## **Planning assessment**

### Principle of Development

The site is located within the Swadlincote Urban Area, adjacent to a number of existing industrial buildings and uses, together with residential properties and is allocated within employment policy allocation E1A of the Local Plan. Policy E1A of the Local Plan supports the creation and retention of industrial and business uses to support local employment needs and reduce the level of out-commuting within the area for employment.

The proposed development seeks consent to form an extension to the service yard of the adjacent business and create an additional car park for employees. This would comply with the requirements of policy E1A, allowing an existing business to expand, which would cater for the identified needs of the business and enable them to continue to operate from the site. The development would therefore be acceptable in principle.

### Biodiversity, Trees and Landscaping

The application was supported by a Preliminary Ecological Appraisal, which identified a number of additional surveys which were required. As a result of this and the initial comments of DWT the applicants have since submitted additional surveys and information to support the application, including an Open Mosaic Habitat report and a GCN Presence report. DWT have raised concerns relating to the loss of the site as Open Mosaic Habitat, which is a Habitat of Principle Importance and have requested a Biodiversity Metric Calculator be undertaken to identify the level of biodiversity impact resulting from the proposed development so that appropriate mitigation and compensation can be provided. This should demonstrate that the proposal would not result in significant harm through biodiversity loss, in accordance with the NPPF and Policy BNE3 of the Local Plan. The Biodiversity Metric Calculator has since been provided and DWT have been consulted on this. The calculator demonstrates a loss of habitat units but a significant increase (net gain) in hedgerow units. It is noted that this does not offer like for like mitigation however and comments from the DWT will provide additional clarity on this point, its acceptability and the need for conditions to secure any mitigation/enhancements necessary.

GCN have also been discovered on the site and the survey work was able to estimate the relative size of the population as 'low' (5 in total). Suitable terrestrial habitat was also found to be present on site. The presence of GCN on site does not necessarily mean that the proposal should be refused, however having regard to their presence suitable mitigation and/or compensation measures should be identified and implemented relative to the population and impact. It is considered that a condition should be attached to any planning permission which requires the detailed design of a suitable avoidance/mitigation/compensation strategy to be submitted, approved and implemented. A European Protected Species Mitigation License would also be required from Natural England, which whilst outside of the planning process would also afford a further level of scrutiny to the proposals in respect of these species.

The site is located within The National Forest and accordingly the Local Plan requires the incorporation of woodland planting of approximately 0.28ha within the site. In addition there are a number of existing trees along the perimeter of the site, specifically to the south and east. The Arboricultural Impact Assessment submitted during the course of the application sets out how the proposals would impact on this existing vegetation and measures which would need to be put in place during construction and occupation of the site. It is considered that suitable measures could be secured by condition to ensure that the proposal did not have any significantly detrimental impact on the health and well-being of the most important of the existing vegetation, specifically that along the southern boundary, where a single TPO is located and along the eastern boundary where there are a number of mature trees.

Whilst the NFC welcome the inclusion of a number of hibernacula/refuge areas they question whether the planting at gradient, as shown on the submitted plan, would offer effective long term delivery of National Forest Planting, acknowledging the benefits this may provide for amenity and ecological mitigation. Whilst it is considered to be a substantial benefit to accommodate National Forest Planting

required by new developments within the site Policy INF8 of the Local Plan does allow in exceptional circumstances for a commuted sum to be paid towards tree planting, purchasing land for planting and maintaining these areas. The sum in this instance would amount to £9,800. In light of the industrial nature of the site and adjacent units, the constraints of the site, its employment land allocation and, whilst not acceptable in securing a 'distinctive National Forest character', the significant amount of planting within the site, it is considered that in this instance an off-site contribution would be acceptable.

Subject to a number of minor amendments to the tree species proposed, the planting mix and size of species being confirmed the Council's Landscape Officer considers the proposals to provide appropriate landscaping of the site and secure biodiversity enhancements and mitigation with the use of native species and the provision of bird and bat boxes distributed throughout the scheme. A condition should be used to secure this detail, its implementation and maintenance for the required periods.

#### Highway Safety

The site is currently serviced from Ryder Close and this will remain the sole access into the site, with no additional access points proposed. A car park providing spaces for 75 additional vehicles will be created and accessed through the existing site. This will be hard-surfaced and laid out to accommodate these spaces and allow for the safe manoeuvring of vehicles, with some soft landscaping proposed throughout. The additional car parking will provide for the short fall in existing car parking within the site and alleviate some of the on-street parking on roads surrounding the site. Whilst the proposal would result in a surplus of parking it is not considered that this would be any justification to refuse the application. The Highways Authority raise no objections on highway safety grounds and consider the existing access and associated visibility acceptable to accommodate the proposed development subject to conditions.

#### Residential Amenity

A number of comments have been received from local residents raising concerns relating to residential amenity including; increased pollution, from cars and machinery; increased noise; loss of privacy; health concerns due to increased noise; light pollution; overbearing impacts of fencing; and increased dust.

In regard to increases in noise, the applicants have submitted a noise assessment in support of the proposals which has been reviewed by the Council's Head of Environmental Services. The proposals involve engineering works to level the site, removing any spoil mounds and the erection of a 3m high concrete retaining wall, which will be hidden from the view of adjacent residential properties on Furnace Lane by the vegetated bank. On top of this retaining wall a 3m high close boarded timber acoustic fence will be attached. As the planted vegetation grows this will also become less visible to residents along Furnace Lane. The Head of Environmental Services considers the report in detail, he also draws on evidence regarding existing noise complaints, 'Best Standard' information and planning conditions attached to previous permissions. He is of the view that whilst there have been complaints relating to noise that the existing situation provides a reasonable balance between the needs of the business and the amenity of the local community. It is identified that the potential adverse noise impacts of the proposed development are that it will bring existing noisy stockyard activities much closer to the existing residential receptors at Furnace Lane and it will also increase the footprint of the existing stockyard and thus increase movements of materials and frequency of noise events. Whilst the potential noise implications of developments can only be predicted due to the current absence of the source, it is considered that appropriate data has been used and the Head of Environmental Services is of the view that with mitigation the development is capable of reducing the magnitude of exposure to individual peak noise events at Furnace Lane compared to the current conditions. However due to the increase in stockyard area, the frequency of these peak events is likely to increase. Nonetheless based on the information submitted he has no objections to the proposals subject to conditions to control the detailed design of the mitigation and operating hours.

In regard to air quality and additional traffic to the site. The proposal would not result in a significant increase of employment figure but is to allow for sufficient parking within the site and improve the manoeuvrability and capacity of the existing service yard. In this regard there is considered to be no

significant implications for air quality and a condition is recommended in relation to EVCP.

The security fencing proposed to the boundary is a open mesh design and provides a largely open aspect onto the landscaped bund from Furnace Lane. It is considered that this is of an appropriate design and would not be overbearing. Whilst the retaining wall and acoustic fence create a much taller structure this is a distance away from the rear of the properties on Furnace Lane and the vegetation proposed will provide some screening and a green backdrop. It is not considered that this would be overbearing on the occupants of the adjacent residential properties. Furthermore it is considered that this would provide screening for these neighbours so that the proposal would not result in any loss of privacy.

It is considered that any new lighting proposed can be designed so as to not have any significantly detrimental effect on the occupants of adjoining properties and this can be secured by way of a condition.

Accordingly whilst the proposal will bring the existing industrial activities closer to existing residential properties, it is not considered that it would result in any significant adverse impacts on the amenity of existing residents and is in accordance with Policy SD1 of the Local Plan.

#### Flood Risk

A FRA has been submitted in support of the application and to support this an additional Drainage Technical Note. The site is located in Flood Zone 1 and is classified as 'Less Vulnerable' development. Whilst the pond to the south west corner of the site was designed to accommodate surface water from this site into this feature at a rate of 10l/s controlled by a flow control chamber with a vortex flow control the drainage strategy for the site is to discharge directly into an existing surface water sewer. This is due to the fact that the levels on site are being significantly altered (by up to 3m), which has the effect of cutting off the existing swales. The LLFA have no objections to the proposal subject to the provision of evidence which demonstrates that the existing S104 surface water sewer has the capacity to accept this additional flow and the provision of justification as to why it is not possible to discharge at, or closer to, to the greenfield runoff rate and evidence of the existing runoff rate of the site, as set out in best practice technical guidance. The applicants have since submitted additional information to address these comments which based on assumed capacity demonstrates in excess of sufficient capacity of the sewer. They have also provided greenfield run off calculations for the site. These demonstrate a greater need to attenuate than had been proposed but suggest that based on the additional capacity within the sewer there would be the ability to increase the run-off rates more akin to greenfield and the detailed design of this can be secured by condition. The LLFA have been consulted on this latest information.

#### Other

The Coal Mining Authority initially objected to the proposals due to the location of the site within a Development High Risk Area and the lack of a suitable assessment being submitted with the application. Further works were undertaken by the applicant which identifies and provides an assessment of the site specific risks, which includes recorded workings and shallow unrecorded workings. Based on the findings and assessments of risk the applicants propose mitigation measures to include rotary probe drilling and subject to the findings of this drilling and grouting stabilization and a precautionary approach to footings. Subject to conditions to secure appropriate mitigation undertaken by a competent person the Coal Authority has no objections to the proposals and it is considered therefore that the proposal is in accordance with Policy SD4 of the Local Plan and the risk to human health from the proposed development can be appropriately mitigated.

The South Derbyshire Cycling Strategy 2001 identifies a link connecting the Castleton Park at Swadlincote Lane with Ryder Close, to the north of the application site. The applicants have identified the link on their site plan where it runs adjacent to and through the site. They would be willing to construct this within their site but that where it runs adjacent to this would be on land beyond their control (owned by St Modwen). It is considered that the detailed design of the cycle path within the site could be secured by condition and that whilst the proposal would not secure the whole length of the path in this area the development does not necessary prejudice the extension of the path through 3rd

party land in the future should additional funding become available.

Loss of property value is not a planning matter and as such cannot be taken into consideration in the determination of the application.

### Conclusion

The site is allocated as an employment site within the Local Plan. Whilst the proposed use would bring industrial activities closer to existing residential properties than is the case currently it is considered that in light of the findings of the noise report and the mitigation proposed to address the noise issues, including by condition that the proposal would not result in significant detriment to residential amenity. Whilst there would be some impact on specific wildlife species it is considered that these can be mitigated for and in all other matters it is considered that appropriate conditions can be used to ensure that the proposals accord with the relevant policies of the Local Plan.

It is therefore, recommended that the application is approved subject to planning conditions and a Section 106 Agreement to secure off-site contributions towards National Forest planting.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

### **Recommendation**

A. Grant delegated authority to the Head of Planning and Strategic Housing to complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations outlined in this report relating to a commuted sum towards National Forest Planting; and

B. Subject to A, Approve the application subject to the following condition(s):

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 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 ref: Proposed Site Plan Whole Site 221-04-04c, General Arrangement Visibility Splay 190702 Rev P0, Typical Retaining Wall Fence Details 221-04.07, Typical Cross Sections 221-04.06 and 221-04.05, Site Local Plan 221-04.01, Proposed Site Plan Whole Site 221-04-08c and Topographical Survey 221-04.02 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. No development shall commence until:
  - a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.The intrusive site investigation and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

4. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site.

5. The proposed 3.0m retaining wall and 3.0m acoustic fence shall be constructed as shown on the approved drawing prior to the first use of the site as a storage yard or car park. The noise mitigation scheme shall be maintained for the life of the approved development and shall not be altered without the prior written approval of the local planning authority.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies SD1 and BNE1 of the Local Plan Part 1.

6. Prior to the commencement of the use hereby approved a stockyard noise mitigation plan shall be submitted to and approved in writing by the local planning authority detailing measures that will be implemented to provide best practicable means of minimising noise from the development. The stockyard noise mitigation plan shall thereafter be implemented for the lifetime of the approved development.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies SD1 and BNE1 of the Local Plan Part 1.

7. The use of the land hereby permitted shall not be for loading and unloading of vehicles (other than cars for private use) and/or stacking/unstacking of products outside the following times, or at any time on Sunday, Bank or Public Holidays: 07:00 to 21:00hours Monday - Friday and 08:00 to 16:00hours on Saturday.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers in accordance with policies E7, SD1 and BNE1 of the Local Plan.

8. Prior to the commencement of the use hereby approved recharge points for electric vehicles shall be provided at a ratio of 1 charging point per 10 spaces (or part thereof). To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the approved details prior to the first use of the site and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In order to safeguard the amenities of the occupiers of the proposed development in respect of atmospheric pollution in compliance with the South Derbyshire Design SPD & policy BNE1 of the Local Plan.

9. Prior to the commencement of the use hereby approved a written scheme shall be submitted to and agreed in writing by the local planning authority that specifies the provisions to be made for the level of illumination of the site and to control light pollution. The scheme shall be implemented and maintained for the lifetime of the approved development and shall not be altered without the prior written approval of the local planning authority. The scheme shall be designed to ensure that light intrusion into neighbouring residential windows from the development shall not exceed 2 Ev (lux) measured as vertical luminance.



The lighting scheme floodlighting shall be designed and operated to have full horizontal cut-off such that the Upward Waste Light Ratio does not exceed 5%.

Reason: In order to protect the amenity of the area and the occupants of adjoining residential properties in accordance with policy BNE1 of the Local Plan.

10. Prior to the car park first coming into use the area shall be hard surfaced and laid out in accordance with the details shown on the approved site plan and maintained in that form for the life of the development.

Reason: To ensure satisfactory car parking and safe manoeuvrability within the site is maintained in the interests of highway safety.

11. All planting, seeding or turfing comprised in the submitted plans hereby approved shall be carried out in the first planting and seeding seasons following the first use of the site or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

12. There shall be no changes in ground levels within 2m of the north bank of the existing ditch which runs along the southern boundary of the site, unless further details are first submitted to and approved in writing by the local planning authority prior to any works in these areas being undertaken. Thereafter the root protection areas for the trees along the southern and eastern boundaries as set out on pages 15 and 16 of the Arboricultural Impact Assessment shall be adhered to. The protective fencing shown on Proposed Site Plan Whole Site 221-04-08c shall be erected around all trees and hedgerows shown to be retained prior to the commencement of any works on site. The fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

13. Prior to the development first coming into use, the section of the cycle path shown on the approved plan and identified within the site by red markers shall be constructed in accordance with details to be first submitted and approved in writing by the local planning authority. The path shall thereafter be maintained and available for use by members of the public.

Reason: In the interests of encouraging sustainable modes of transport and to provide a safe and suitable path for all users in the interests of highway safety.

14. No development, including preparatory works, shall commence until a suitable avoidance/mitigation/compensation strategy, which is likely to include suitable habitat opportunities within the site to support the existing Great Vested Newt population, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

Reason: In order to safeguard protected species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

Informatives:

- c. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.
- d. The applicant/developer is reminded that it is an offence to damage or destroy species protected under separate legislation, which includes, but is not limited to, nesting birds which may be present in hedgerows, trees or ground habitats on the site. Planning permission for a development does not provide a defence against prosecution under wildlife protection legislation. You are advised that it may be necessary, shortly before development commences, to commission an ecological survey from suitably qualified and experienced professionals to determine the presence or otherwise of such protected species. If protected species are found to be present, reference should be made to Natural England's standing advice and/or the Derbyshire Wildlife Trust should be consulted for advice.

**Item No.** 1.2

**Ref. No.** [DMPA/2021/0756](#)

**Valid date:** 15/06/2021

**Applicant:** M Berwick

**Agent:** Turner & Co. Consulting Ltd

**Proposal:** The erection of 3 no. detached dwellings, extensions and alterations to the existing bungalow and the erection of a detached double garage at 53 Cauldwell Road, Linton, Swadlincote, DE12 6RX

**Ward:** Linton

### **Reason for committee determination**

This item is presented to the Committee at the request of Councillor Dan Pegg as local concern has been expressed about a particular issue.

### **Site Description**

The application site is within the village of Linton and comprises an area of land of approximately 2200 square metres. It is located on the southern side of Cauldwell Road, 45m west of the junction with Warren Drive and is the first property on Cauldwell Road when travelling in an easterly direction. The application site is roughly triangular in shape, with a 40m wide frontage to Cauldwell Road and a depth of 70m at the longest point, which is along the western boundary of the site. The site appears flat, with no obvious change in land levels across the site or when compared to that of the neighbouring land and properties that surround the site. The site currently comprises a large detached bungalow, which is sited in the south west corner of the site and is set back 26m from the highway edge, it has a fenced rear garden and also benefits from a large detached garage. It is constructed from red brick with a tiled gable roof, there is off street parking at the front and side of the dwelling, with access off Cauldwell Road via a large set of entrance gates. As well as having a good sized rear garden, there are also large areas of undeveloped land to the front and side of the dwelling, which are mostly covered by grass and low level vegetation. The site is bound by residential properties to the eastern side and to the rear, the land to the west and the northern side of Cauldwell Road, is arable/grazing land. There is a public right of way (Footpath No.14 - Linton Parish) which runs along the entire eastern boundary of the site and along part of the southern boundary and provides pedestrian access from Cauldwell Road to the newly built housing site at the rear of the site. It is noted though that the correct alignment of the footpath passes through the site, although based on historic satellite images it would appear that it has not passed through the site for many years.

### **The proposal**

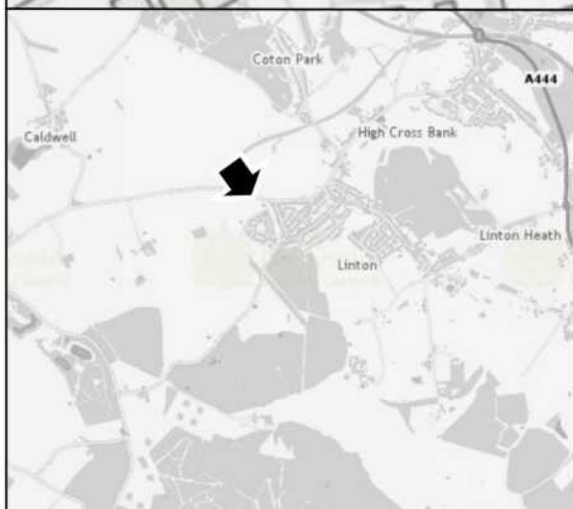
The proposal is for full planning permission for the erection of three detached two storey dwellings, the erection of two-storey extensions and alterations to the existing bungalow on site (No.53 Cauldwell Road) and the erection of a detached double garage to serve the existing property. The proposal utilises the existing vehicular access for No.53 which is to be modified in order to accommodate three further dwellings.

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

The [Bat Emergence Surveys](#) found there is no evidence of bats using the site as a place of shelter and no evidence of birds nesting in the building. There are also considered to be no roosting opportunities for bats in the dwelling or the garage.

The [Design and Access Statement](#) seeks to demonstrate the design principles and concepts that underpin the development proposals indicating how the scheme will contribute towards the creation of a high-quality sustainable development that will enhance the existing properties.

**DMPA/2021/0756 - 53 Cauldwell Road, Linton, Swadlincote DE12 6RX**



**South  
Derbyshire**  
District Council

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**South Derbyshire District Council. LA 100019461.2020**

## Relevant planning history

9/2018/0468 Outline application (all matters except for access to be reserved) for the residential development of two dwellings, altered access, parking and turning for the new dwellings and the formation of a new access for the existing dwelling - Approved July 2018

## Responses to consultations and publicity

The County Highway Authority consider that the issues raised in the Highway Authority's previous response dated 19 July 2021 have now been addressed and there are now no objections to the proposal from the highway point of view subject to conditions being included in any consent in the interests of highway safety.

Derbyshire Wildlife Trust advise that the report submitted presents the results of an inspection and assessment of the existing buildings on-site carried out on 4th October 2021. No evidence of roosting bats or nesting birds was found during the inspection and the buildings were concluded to have no suitable access or roosting features for bats. Advise that sufficient information in respect of protected species has now been submitted to enable the Authority to determine the application in the knowledge that the proposed development is unlikely to impact on protected species and no further surveys are considered necessary. They fully support the recommendation in the report for the incorporation of bat enhancement measures within the development to enhance the local bat population. Such measures will enable the development to achieve a net gain for biodiversity in line with the objectives of the National Planning Policy Framework and policy BNE3 of the South Derbyshire Local Plan.

The Environment Agency note that the site is located fully within flood zone 1 and therefore have no fluvial flood risk concerns associated with the site. Considered that there are no other environmental constraints associated with the site and therefore have no further comment to make.

Environmental Health advise that there are no concerns or comments about the implications of this proposed development.

The Peak and Northern Footpaths Society object to the application as there is no mention in any of the documents of the fact that a public footpath, FP14 Linton, crosses the application site. The working definitive map on the county council's web site shows this FP passing across Plot 3 of the development. It is essential that the applicant and the planning officers consult DCC to ascertain if this is the correct definitive line of the FP. Since the dwelling on plot 3 would obstruct the FP, if planning permission were granted, the path must be legally diverted before it is obstructed. Provided that a suitable diverted route can be found, they would not object to the development.

Natural England has no comments to make on this application.

The County Rights of Way Officer notes that the alignment of Linton Public Footpath 14 passes through the proposed development as per the attached plan. In order for the development to proceed, the path will need to be diverted.

Linton Parish Council have no objection to this application.

Derby and South Derbyshire Ramblers object to the proposal as no consideration has been given to the diversion of Linton Footpath 14. The application must show how and where Footpath 14 had been diverted, alternatively the layout is re-designed to accommodate Footpath 14 on its existing line.

One objection has been received, raising the following comments:

- a) Privacy and quiet enjoyment of neighbouring home and garden are being further threatened.
- b) Concerns of overlooking into neighbouring garden.
- c) When considering the additional conversion of the existing bungalow into a two storey house, in effect this would become another mini housing estate.
- d) Concern raised over the scale of development as it will be an intrusion into the countryside by

changing the nature of a housing plot right on the edge of the village.

e) Concerns over the impact the proposed development would have on any future housing development proposals on the edge of the village.

f) Concerned that approval would add weight to any future proposals to intrude further into the countryside, and make it more difficult for the Council to reject such proposals.

g) Question whether it should be acceptable and appropriate for the site of a single bungalow, albeit with a reasonably-sized garden, but right on the edge of the village (and which currently very clearly identifies the transition from the built-up village to the countryside), to be developed to the scale proposed?

h) Important to preserve the green spaces which residential gardens provide within a community - the open aspect of the neighbourhood? The National Planning Policy Framework 2012 (paragraph 53) certainly emphasises this point when it said that LPA's should consider the case for setting out policies to resist inappropriate development of residential gardens.

i) Objections over loss of privacy and degree of overlooking which this development will bring about for neighbouring property. Two of these houses will be built a few metres from the boundary and the rear elevation of these houses will look directly into the neighbouring garden, particularly at first-floor level.

j) Understood that there is a right to quiet and private enjoyment of garden - this will most certainly be compromised should this development be permitted.

k) SDDC's Design Guidance (Nov 17 BNE1) says that 'new development should not have an undue adverse effect on the privacy and amenity of existing nearby residents or occupiers'.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).

Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and BNE7 (Trees, Woodland and Hedgerows)

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of Development;
- Design and Visual Impact;
- Neighbouring Amenity;
- Highway Safety;
- Biodiversity; and
- Other Issues.

## **Planning assessment**

### **Principle of Development**

The site is located within Linton's defined settlement boundary, which is a 'Key Service Village' as identified by Policies H1 and SDT1. Within key service villages, development of all sizes within the settlement boundary will be considered appropriate. The site is within a built up residential area, with neighbouring dwellings on one side and to the rear and the three proposed dwellings are all within the grounds of an existing dwelling. The principle of the proposed development for the erection of three new dwellings on the site is considered to be acceptable, appropriate development as it is compliant with Policies H1 and SDT1 (which sets the settlement boundary) i.e. new development within the settlement boundary.

### **Design and Visual Impact**

Policy BNE1 expects all new development to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles and enhance people's quality of life; the Council's Design SPD supports this policy with further detail. The proposal looks to erect three detached two-storey dwellings in the grounds of an existing bungalow. The garden of the bungalow is unusually large in size for the size of the host dwelling and its location on the edge of the village, especially when considering the size of the neighbouring plots and their gardens. The site also features a number of mature trees and vegetation along its boundaries.

There is a previous outline planning permission for the site which proposed the retention of the existing bungalow and the construction of two new dwellings within the front garden of the plot (9/2018/0468). The proposed dwellings are to be sited where the previously approved new dwellings would have been located, although an additional dwelling has now been added which replaces an existing garage which is to be demolished.

In relation to impacts on the street scene, the site is clearly visible from the public realm, with clear views into the front of the site available along Cauldwell Road. The proposed layout shows that the development would form a curved line of four dwellings all fronting the highway and utilising the same access off Cauldwell Road, with vehicle parking provided at the front of each dwelling. The dwellings are to be set back into the site from the highway edge, with plot 3 being the closest dwelling to the highway with a separation distance of 10m. The building line and separation from the highway is in accordance with the existing built form along Cauldwell Road to the east. The surrounding dwellings along Cauldwell Road to the east are similar in character and design, being mostly two storey dwellings which sit centrally on good sized plots with off street parking provision at the front, with roof types being grey tiled box gables and built from red bricks.

The three new dwellings and the existing bungalow which is to be extended and converted would all be two storey and are similar in size and character. It is therefore considered that they would suitably fit within the existing street scene along Cauldwell Road. It is also considered that the proposed use of two storey dwellings would be most appropriate in character terms as proposed, as it would relate to the existing dwellings along Cauldwell Road to the east and the newly built dwellings to the rear of the site which are visible when travelling along Cauldwell Road and therefore relate to the site. The proposed dwellings and the alterations to the existing dwelling would appear similar in appearance, scale and massing to the existing dwellings. The proposed orientation of the dwellings fronting Cauldwell Road provides good integration with the neighbouring dwellings. The proposed elevations detail the proposed facing materials for all of the dwellings, with two dwellings proposed in render and the other being a red multi brick, Forticrete Gemini dark grey roof tiles are proposed throughout. This proposed use of facing materials is reflective of other properties within Linton and can be found throughout South Derbyshire and would provide a high quality appearance that also integrates well with the street scene. The proposal is therefore considered to comply with Policy BNE1 and the SPD in relation to its design and impact on the street scene.

## Neighbouring Amenity

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. Policy BNE1 requires development to not cause demonstrable harm to neighbouring amenity. In relation to the impacts of the proposed development on the residential amenities of neighbouring occupiers that surround the site, there are dwellings to the eastern side of the application site and at the rear. In relation to the impact on the neighbouring dwelling, no. 51 Cauldwell Road to the east of the site, when measuring the 45 degree sector view from the closest ground floor primary window on both front and rear elevations of no.51, the closest proposed dwelling of plot 3 would not fall within either sector, therefore there are no concerns in regards to the amenity of their living space being demonstrably impacted as a result of the development in terms of overshadowing or overlooking. In regard to the impact on the amenity of their rear garden, in accordance with the SPD, outdoor space is assessed on the merits of each case. In built up residential areas such as this, most houses overlook neighbouring rear gardens to some extent, areas closest to main windows are where occupants most value privacy. The area directly at the rear of No.51, due to how the proposed dwellings would be sited, would not be directly overlooked from the first floor windows. In terms of the potential for their being an overbearance on the rear garden from the closest two storey dwelling of plot 3, there would be a separation distance of 7.5m from the rear elevation to the neighbouring boundary at the closest point, as such it is considered that this distance is sufficient to not be considered an overbearance on the garden.

In relation to the impact on neighbouring dwellings at the rear of the site to the south, No.1 Medham Avenue and No.40 Maitland Road are both orientated so that their side elevation would face the rear of the proposed dwellings and the existing dwelling which is to be extended, therefore there are no concerns in regards to their amenity being demonstrably impacted as a result of the development. In addition, there is a separation distance in excess of 23m which would also comply with the minimum distance requirements even if the rear of the property faced the rear of the proposed two-storey dwellings. When considering the impact each dwelling within the site would have on each other, all dwellings would comply with the requirements of the SPD, with no other dwelling falling within the 45 degree sector view when measured from ground floor windows.

The proposal would therefore comply with the minimum distance requirements as set out in the SPD when measured against all of the neighbouring dwellings that surround the site as detailed above. As such, it is considered that the proposed dwellings would not demonstrably impact the residential amenities of neighbouring properties that surround the site and future occupiers within the site and therefore the proposal is considered to be compliant with Policies SD1, BNE1 and the minimum distances as set out in the SPD.

## Highway Safety

Vehicular access for the three proposed dwellings and the existing dwelling is proposed via the existing access point off Cauldwell Road, this access would be modified to make it slightly wider in order to safely accommodate all four dwellings and to achieve the necessary visibility splay lines, as assessed by the County Highway Authority. All four dwellings would be accessed off a small access road which turns into the centre of the site.

The proposal includes off street parking provision for each of the three new dwellings, with two spaces provided at the front of each dwelling and an additional space in the form of integral garages. Whilst the proposal includes the demolition of an existing double garage at the front of the existing bungalow, which is to be retained and extended, a new double garage is proposed at the front of this dwelling. The proposed layout shows that sufficient space can be provided within the site to ensure adequate parking and manoeuvring for at least two vehicles for all of the proposed dwellings and the existing dwelling which is therefore compliant with the parking guidance as set out in the Design Guide SPD, thereby minimising the risk that residents would park on Cauldwell Road. Vehicle movements generated by the proposal are unlikely to have a noticeably negative impact on the capacity of the wider highway network, with the proposal being within the settlement boundary and within an existing



built up residential area. It is noted that the County Highway Authority have assessed the proposal from a highway safety perspective and have raised no objections to the proposal, subject to conditions. As such the access and parking proposed is considered suitable to facilitate three new dwellings on the site and would not adversely impact on highway safety to a point where it would reasonably justify refusal of the application. As such, the proposal complies with the requirements of Policy INF2 and the provisions of the NPPF.

### Biodiversity

A preliminary bat roost assessment has been carried out on the site as a result of the existing dwelling being extended and the existing garage being demolished. The surveys found that there was no evidence of bats using the dwelling or any outbuildings as a place of shelter. These findings have been assessed by Derbyshire Wildlife Trust, who have raised no objections based on this information being submitted, subject to the proposed bat mitigation and compensation as detailed within the report being secured via a suitable planning condition. On the basis of this, it is considered that the duty under the requirements of The Conservation of Habitats and Species Regulations 2017 has been discharged in order for an informed decision to be made and the proposal would therefore comply with Policy BNE3.

In regards to the impact the development would have on trees within the site, there are several mature trees on the site, all located on the site boundaries, predominantly at the front of the site. The only tree which has the potential to be impacted by the development is a sycamore tree within the north east corner of the site which would be 7m away from plot 3 at the closest point. Whilst it is unlikely that this tree would require removal in order to accommodate the new dwelling, if it did require removal, it is not considered that a tree preservation order could be justified in this case as the stem splits into three and therefore has a reduced life expectancy. In any case, a landscaping condition would be attached to any consent granted to ensure that additional tree planting on site is secured.

### Other Issues

As referenced in the site description, there is a public right of way (Footpath No.14 - Linton Parish) which runs along the entire eastern boundary of the site and along part of the southern boundary and provides pedestrian access from Cauldwell Road to the newly built housing site at the rear of the site. The impact the development would have on this footpath has been raised in a number of the consultation responses. The correct alignment of the footpath (according to the county mapping system), passes through the site, although based on historic satellite images, it would appear that the footpath has not passed through the site for many years, if ever. Both the County Rights of Way Officer and the Highway Authority have raised no objections in regards to the impact on the footpath, but do require that the footpath is formally realigned so that it does not pass through the site. In order to ensure this is carried out, a condition would be attached to any consent granted.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

### **Recommendation**

**Approve** subject to the following conditions:

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91 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 E001, P001 Rev A, P002 Rev A, P003 Rev A, P004 Rev A, P005, P006, P007 and P008 Rev A; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. Before any other operations are commenced, the Public Right of Way (Footpath 14 – Linton, as shown on the Derbyshire Definitive Map) which crosses the site and is affected by Plot 3 shall be diverted in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the public right of way remains in place and is formally diverted.

4. No development, including preparatory works, shall commence until the existing access to Cauldwell Road has been modified in accordance with Drawing No. P001 Rev A, having a minimum width of 5m and provided with visibility sightlines of 2.4m x 81m in the easterly direction and 2.4m x 160m to the west. The area forward of the sightlines shall be cleared and maintained throughout the lifetime of the development clear of any obstruction exceeding 1m in height (0.6m in the case of vegetation) relative to the nearside carriageway edge.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

5. Prior to the first occupation of any new dwelling hereby permitted, three car parking spaces for each of the existing and proposed new dwellings plus manoeuvring space shall be provided within the site curtilage, laid out in accordance with Drawing No. P001 Rev A, surfaced in a solid bound material (i.e. not loose chippings) and maintained throughout the lifetime of the development free from any impediment to their designated use. Each of the car parking spaces shall measure at least 2.4m x 5.5m and the internal dimensions of each garage shall be 3m x 6m for a single and 6m x 6m for a double garage.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

6. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

7. Prior to the first occupation of any new dwelling hereby permitted, a bin collection point shall be provided on private land sufficient to accommodate two bins per dwelling for use on collection day. The bin collection point shall be maintained throughout the lifetime of the development free from any impediment to its designated use.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety, and to ensure appropriate waste/refuse facilities are provided for the occupiers of the development.

8. The development shall be carried out in accordance with the bat and bird enhancement measures recommended and detailed in the Preliminary Bat Roost Assessment and Bird Survey report prepared by S. Christopher Smith dated 6th October 2021. The recommended enhancement measures shall be implemented as construction proceeds and completed prior to the first occupation of the development and retained as such thereafter.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

9. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments

shall be completed in accordance with the approved details before the respective dwelling to which they serve is 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 and to ensure that all dwellings have a private outdoor amenity area.

10. Prior to the occupation of any new dwelling, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. Details of soft landscaping should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All hard landscaping shall be carried out in accordance with the approved details prior to first occupation of the respective new dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of any new dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

11. Prior to the incorporation in to the dwellings and extensions hereby approved, details of the external appearance of eaves, verges, cills and headers shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and headers shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the building(s) and local distinctiveness.

12. Prior to the first occupation of any new dwelling, a recharge point for electric vehicles shall be provided at a ratio of 1 charging point per dwelling with dedicated on plot parking. Individual charging points shall be provided with an IP65 rated domestic socket 13amp socket directly wired to the consumer unit with 32 amp cable to an appropriate RCD, located where it can later be changed to a 32amp EVCP. Shared charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. Alternative provision to the above specification must be first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging point(s) shall be provided in accordance with the stated criteria and approved details prior to the first occupation of the respective dwelling and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

13. Except in an emergency, no demolition, site clearance, construction, site works or fitting out shall take place other than between 08:00 hours and 18:00 hours Mondays to Fridays, and between 08:00 hours and 13:00 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

14. Each new dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations

(2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

Informatives:

- e. Planning permission does not give you approval to work on the public highway. To carry out works associated with this planning permission, separate approval must first be obtained from Derbyshire County Council as Highway Authority - this will take the form of a section 184 licence (Highways Act 1980). It is recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) telephone 01629 533190.
- f. The site is affected by a Public Right of Way (Footpath 14 in Parish of Linton as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. The location for building on Plot 3 obstructs the legal alignment of the footpath. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. The Footpath will need a permanent diversion in which case the Authority which determines the planning application (South Derbyshire District Council) has the powers to make the Diversion Order.

**Item No.** 1.3

**Ref. No.** [DMPA/2020/0943](#)

**Valid date:** 08/10/2020

**Applicant:** Mr and Mrs Lacey

**Proposal:** Proposed change of use of the site to a mixed use wedding ceremony/ function venue with overnight tourism and leisure. The erection of new single storey raised buildings, the conversion of existing buildings to provide accommodation and facilities, the creation of a camping area with car parking, access and associated works at 1 Tower Farm, Swarkestone Road, Weston on Trent, Derby DE72 2BU

**Ward:** Aston

### **Reason for committee determination**

The application is returned to committee following a deferral at the meeting on 22<sup>nd</sup> June 2021.

### **Executive Summary**

When this item was debated in June, it was recommended to committee that the proposal was not compliant with planning policy, primarily due to the scale of new build in the open countryside in relation to a business that was not yet in operation. Members were supportive of the business proposed and the item was deferred to look at the possibility of phasing the development.

### **Details of the Application**

#### **The proposal**

Consent is sought to change the use of the site to create a tourist facility that would provide a year round wedding venue, venue for wakes, social gatherings and corporate events. The application also seeks consent for the erection of two new buildings, the conversion of existing buildings on the site and the creation of a camping area to support the proposed use.

#### **Main venue building – new building**

A single storey building and elevated on stilts with a mono-pitched roof. The building is 6.11m in height at the highest point and 4.36m in height at the lowest point. The building will house the main functions and wedding parties.

#### **Glass House – new building**

The proposed glass house would be 4.34m in height with an area of 48.26sqm. The building would be single storey and would be used for wedding ceremonies.

#### **Stable block and Bridal Building – conversion.**

### **Relevant Policies and Guidance**

The relevant policies have previously been set out in the original committee report, attached as an appendix.

### **Assessment**

Officers has worked with the applicant prior the application being submitted and during the course of the application to ascertain if it is possible to achieve a phased development whereby temporary buildings would be used initially, and then more permanent structures would be erected following the business becoming established.

The options to secure a scheme that in the view of officers would be fully policy compliant is summarised in the three options below.

1 – Remove the erection of the two permanent structures from the proposal, leaving the change of use of the land and the conversion of the existing buildings on site as part of the proposed application. There would also be the potential to re-apply for planning permission for the permanent structures later when there is the potential to demonstrate that the business has been started up and that there is a consistent stream of business and weddings being booked and evidence that the business would remain profitable to support the extent of the proposed new floorspace.

2 - Replace the new permanent structures with structures that would be of a temporary, reversible nature. Tipis are used a lot in this sector and have always proven to be a very successful way of starting up the business as a wedding venue in the countryside. There may also be ways to construct the wedding venue building in a way that could be reversible or of a temporary nature. Provided that the proposed building would be of a construction that would be able to be removed from the site at a later date, then this could be suitable as it would achieve the same end as a tipi building.

3 – Attach a phasing condition to support the erection of the new permanent structures; this would need to show a clear business projection (as in the applicant's business plan) detailing how many weddings would be carried out and met over the years going forward and detailing when the proposed building works would be coming forward in accordance with this i.e. the conversion of the buildings and the layout of the camping area. With a continuous 12 weddings a year held over a few years, that would provide the justification for the permanent buildings to be erected. The phasing condition could provide the chronology for how the building works would be carried out over a three to five year period and would underpin how the business would support the works as they are carried out and as the business expands.

The applicants have been consistent in their view that their business model requires the new wedding venue building to be complete at the point the business is open and therefore none of the options above would meet their approval and in the event of conditions being attached in line with one of these three options, this would likely lead to an appeal and a delay in the business opening.

Given that the camping area, changes of use of buildings and provision of the necessary parking and access arrangements would be necessary at the outset or compliant with policy, the one remaining item of new build that the applicants do include as taking place later is the additional building of the accommodation block. In line with the applicants wishes, it will still be possible to condition the building of the accommodation block subject to a minimum of 12 weddings being held each year the business has been in operation.

## **Conclusion**

Whilst the officer view remains the approval of new build to support a new business carries an inherent risk that the business will not succeed and the building will then be left to be converted to an alternative use, the position of the applicants is noted that this is not in line with their business model.

The options are:

- Refuse permission in line with the original resolution.
- Grant permission for one of options 1 to 3 on the understanding that this does not have the support of the applicant.
- Grant permission in line with the applicants wishes (new venue building erected at the start) with a phasing condition still possible for the accommodation block which is not needed at the point the business with be open.

**Members are therefore requested to consider the alternatives and resolve accordingly.**

In the event the committee resolve to grant permission, it will be necessary to delegate approval of the conditions to the Head of Planning and Strategic Housing, in consultation with the chair of the committee, to attach conditions in line with the committee's resolution.

22/06/2021

**Item No.** 1.6  
**Ref. No.** [DMPA/2020/0943](#)  
**Valid date:** 08/10/2020  
**Applicant:** Lacey  
**Proposal:** Change of use of the site to a mixed use wedding ceremony/function venue with overnight tourism and leisure. The erection of new single storey raised buildings, the conversion of existing buildings to provide accommodation and facilities, the creation of a camping area with car parking, access and associated works at 1 Tower Farm, Swarkestone Road, Weston On Trent, Derby, DE72 2BU  
**Ward:** Aston

**Reason for committee determination**

The application has been called to Planning Committee at the discretion of the Head of Planning and Strategic Housing.

**Site Description**

The site is located outside of the village of Weston on Trent and is fairly flat with a cluster of sprawled outbuildings and positioned adjacent to residential properties; Tower Farm and number 2 Tower Farm with more residential properties located to the east and fishing ponds to the north. The site is characterised by dense tree planting to the front and east of the site, with lesser tree coverage to the west and north. There is a designated public footpath (PROW 5) which is located to the west of the site.

**The proposal**

Consent is sought to change the use of the site to create a tourist facility that would provide a year round wedding venue, venue for wakes, social gatherings and corporate events. The application also seeks consent for the erection of two new buildings, the conversion of an existing buildings on the site and the creation of a camping area to support the proposed use.

***Main venue building – new building***

A single storey building and elevated on stilts with a mono-pitched roof. The building is 6.11m in height at the highest point and 4.36m in height at the lowest point. The building will house the main functions and wedding parties.

***Glass House – new building***

The proposed glass house would be 4.34m in height with an area of 48.26sqm. The building would be single storey and would be used for wedding ceremonies.

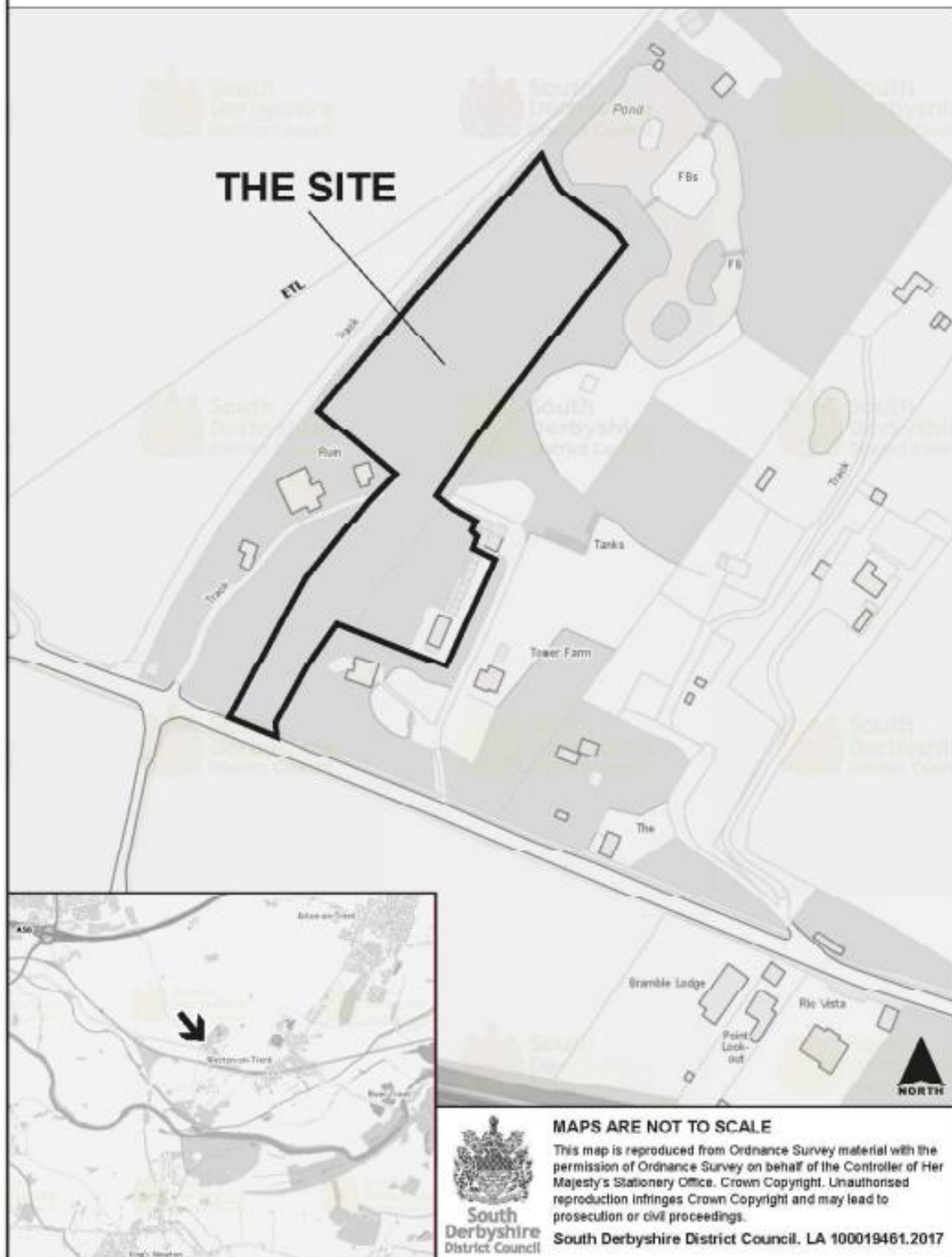
***Stable block and Bridal Building– conversion***

There is an existing outbuilding at the site referred to as the “stable block” that will be converted to provide overnight accommodation and a further building will be converted to create bridal accommodation. From the submitted plans, there would be a canopy and a single storey extension added to the existing stable block building, with windows and doors inserted into both buildings. The proposed floor plans show alterations to the internal wall systems and the incorporation of structural elements to facilitate the conversion on both buildings. Given the extent of excessive alterations that would be required in order to convert the existing buildings, these buildings would be considered as new structures on this basis.

A camping area will be created to the east of the site for people to stay overnight.



**DMPA/2020/0943 - 1 Tower Farm, Swarkestone Road, Weston on Trent, Derby DE72 2BU**



## **Applicant's supporting information**

### Planning Statement

The application proposes the creation of an events venue which would contribute positively towards the rural economy, and which would meet the needs of the local community as well as a general unmet need for this type of facility in the wider area. The proposals would serve the social and economic needs of villages within their rural hinterland, by providing employment opportunities to meet the needs of their growing populations. They would also provide a meeting space for local groups. The proposals have been extensively researched by the applicants and are supported by a robust business plan. The rural location and natural surroundings are key to the business model and the proposed development would simply not be possible in a built-up area. A countryside location is therefore essential in this instance.

### Business Plan

The vision; considering how biodiversity can be enhanced at the site and whilst there will be some managed areas there will also be more wilder natural areas too, planning to use bioswales to manage drainage across the site. We have plans for a cutting flower garden and have another 200 eucalyptus trees being delivered summer 2020. A large kitchen garden is planned in front of the residential house that will provide local organic food for the events. The site looks great in the spring and summer months without the need for any additional planting and therefore it will be the priority to plant for the winter months, to promote winter weddings and all year round tourism.

Proposed services include: weddings, weekend weddings, wakes, accommodation, overnight well being retreats, corporate away times with overnight and other business strands Workshops, supper clubs, stand alone hiring of the accommodation options. The bridal suite would make a luxury unique winter stay and the site could be used for wedding fairs. This is a starting point and would need to be viewed with the timeframe for building works.

Details will continue to be explored as to how the business will work with a chef and catering team, (either employing own team, or inviting a chef to run their own business from here and hiring out the space and taking a percentage per head cost ) as well as the venue and site having their own unique fresh style we would like the food to have its own style as well and will seek to work with a chef, who will use local organic seasonal produce where possible and perhaps introduce immersive outdoor dining experiences.

How the business will work with an experienced events manager, if we will employ a person or if they will work in a freelance way as well the employment of an 'on the day wedding planner'.

A market research event was held at the Village Hall and was attended by 30 people. Those that attended completed questionnaires and the key findings were:

- There is need and a demand for this type of venue space in this location, there is nothing like our vision around this area.
- overall enthusiastic and positive response to the business idea and concept.
- most people were impressed with and kudos placed on the green credentials and environmental/sustainability aspects.
- People felt that we would be able to offer employment opportunities, and people who lived in the village were positive about this.
- Positive response to the location of the main venue on the site.
- Some concerns raised about the entrance (Please refer to appendix 22, discussion with Sue Highly, highways dept.)
- Willingness for the venue to be used for a variety of events and for it to be a part of the community.
- After reading the results we felt motivated to review our accommodation on offer and reduce the room numbers so that we are able to offer more ensuite rooms.

To concentrate on weddings and the takings from the bar alone, it would be calculated that each year, the business would need to host 12 weddings and in 5 years we would be able to recoup the initial investment. Once the venue is up and running we are able to start the repurposing of the existing



buildings to create the accommodation side of the business, we would hope to have this available for year 2 onwards, and we have calculated that we would need to host 12 weddings (again over a 5 year period) a year including accommodation, and we would be able to recoup the additional investment used to build the accommodation. We are confident following our desk and field research that the price of our wedding offer will be achievable. To review our venue comparisons, we have applied a market pricing, value pricing and a cost-plus pricing strategy.

#### Environmental Noise Report

It is recommended that the client formulate a Noise Management Plan (NMP) to include responsibilities of the management of noise produced from the proposed venue in order to maintain a low impact on neighbouring dwellings.

A Noise Management Plan (NMP) may include:

- I. Organisational responsibility for noise control
- II. Maintaining and reviewing operational hours
- III. Music noise level controls including music noise limiter settings and any external noise limits
- IV. Persons responsible for review of NMP
- V. Details of community liaison

As part of controlling noise levels due to activities relating to the event noise at the venue, any external seating area and smoking activity should be contained to the north side of the venue in order to create a natural noise barrier provided by the structure of the venue building.

A noise limiter should be installed in the venue so that sound levels are not raised enough to exceed background levels at the nearest noise sensitive dwellings. As the calculations have been carried out at a typical disco/event of 94dB(A). As a guide we have tried to ensure that noise levels from the events do not breach the measured background levels for minimal noise impact, this doesn't not ensure inaudibility however and is not achieved in every instance.

To allow for margin of error of the calculations, we would recommend the noise limiter is set with a live music level once installed, to set a more precise limit. As open windows and doors result in noise levels that exceed the background levels by up to 37dB, an alternative method of ventilation should be used. We would suggest mechanical fixed plant located on the north side of the building with noise levels not exceeding 10dB below the lowest measured background levels at the nearest noise sensitive receptors.

Due to the possibility of fixed plant being required soundtesting.co.uk suggest that a noise impact assessment of any proposed mechanical fixed plant should be undertaken in order to ensure a low noise impact. Locating the plant on the north side of the proposed venue would provide attenuation as in the case of smoking and areas. It is recommended to install signs in the car park requesting users to maintain a level of 'quietness' when using the car park. The sign may request users not to use car horns and keep voice levels to a minimum.

In the opinion of the consultant, taking the numerical guidance information into consideration, there will be a low noise impact resulting from the wedding venue operations including disco music, patron noise and related vehicle noise when taking the recommendations into account.

#### Ecology Statement

On the evidence above, it is the conclusion of this report and the considered opinion of Wildlife Consultants Limited, the proposed redevelopment of the site will have no adverse effect on the favourable conservation status of any bat or protected species including barn owls. The presence of bats within the immediate area is noted and it is considered if these bats do use the site for any purpose and there will be no loss of potential roosting sites, foraging sites or foraging corridors as a result of the proposed redevelopment. The Biodiversity Enhancement as per this report is implemented to provide Biodiversity Enhancement and no licences would be required from Natural England



(Licensing Authority). Incorporation of Bat Bricks, Bird Boxes and standard tree planting should be incorporated.

### **Relevant planning history**

9/2016/0842 - The demolition of the existing single storey dwelling and outbuildings and the construction of a new two storey dwelling with associated external works - Approved with conditions - 24/11/2016

9/2018/0493 - The erection of a replacement dwelling - Approved with conditions

9/2019/0358 - The erection of a replacement dwelling with detached garage and associated works at - Approved with conditions - 17/07/2019

### **Responses to consultations and publicity**

County Highway Authority - The amended plans now show the amendments which includes the access relocated to the east so that visibility splays for the vehicular access off Swarkestone Road are contained within the curtilage of the boundary of the applicant's ownership as outlined in red boundary as subject of the application. In the applicant's statement they refer to promoting sustainable modes of transport in terms of encouraging car sharing, use of mini-buses/coaches and also staggering arrival/departure times of the venues in order to reduce single-occupancy car use. In order for this to be actioned, it would be necessary for a Travel Plan to be submitted by way of a condition which will ensure these measures as well as for the proposed works to be carried out in accordance with the access and parking arrangements as shown on the submitted plans.

Environmental Health Officer - Initially raised concerns regarding the potential for noise pollution and the impact on the amenity of neighbouring dwellings, an amended floor plan has been submitted which shows a noise breakout area in the lobby of the main building. However, subject to the inclusion of conditions to secure an acoustic barrier down the western side of the site, as well as the submission of a Noise Management Plan, which shall include; sound limiting devices, a scheme of mechanical ventilation and details of a Warden to be present to manage events and camping at all times, there would be no objections to the application.

Derbyshire Wildlife Trust - The submitted Ecological Impact Assessment has been assessed. The assessment is based upon the findings of a daytime building inspection and walkover survey of the site carried out on 7th February 2020. On the basis of the submitted information there are unlikely to be any ecological impacts arising from the proposed development and the biodiversity enhancement measures outlined should be secured by way of a condition.

Development Control Archaeologist - The site is within the former Weston Camp (Camp 634), Derbyshire HER MDR14463, a World War 2 (WW2) prisoner of war camp extending both north and south of Swarkestone Road and thought to have been in use until 1948. The information that has been supplied in relation to previous planning applications on the site suggests that no original buildings survive north of the road (on the current application site) but that there are some WW2 buildings surviving south of the road and there are no objections to the proposal.

Severn Trent - No objections subject to the inclusion of conditions for drainage plans to be submitted prior to works commencing on site.

There have been six letters/emails of objection received and letter of support received raising the following points:

- a) Unhappy about the many different usages stated in the application e.g. wedding venue and campsite. There is already the Ukrainian Centre used for camping and caravanning, expanding this in the small residential village of Weston-on-Trent is entirely inappropriate.
- b) Concerned about late night noise levels and significant increase in traffic.



- c) Large numbers of people will inevitably bring a huge amount of traffic into the area, causing an already busy junction with the A514 to be vastly increased.
- d) The plan does state the traffic entrance will be widened but if there is a potential for up to 70 cars arriving traffic noise as well as queues on the Swarkestone Road will result.
- e) Swarkestone Road at the site of Tower farm has a 60 mph speed restriction and cars drive at great speed towards the village of Weston on Trent, a further distance of approximately 300 yards. This may result in more accidents on this road. A yellow no parking on the road/ roadside would be necessary. It is naive to think the traffic will avoid the villages of Weston on Trent and Aston on Trent which are already congested especially at the Aston on Trent post office area.
- f) The building is supposed to be sound proofed against noise levels but it is likely, especially in summer months, that guests will want to be outside with doors open with loud music and large numbers of people making considerable noise. The proposed time for this venue's operations is 12.00 midday to 01.00 hours. The applicants have submitted a report which states they must take mitigation against noise levels in this situation.
- g) The noise engineer states that this doesn't ensure inaudibility and is not achieved in every instance. The noise assessments have been performed taking into consideration the two closest dwellings currently being erected which we believe belong to applicants. There are no assessments of the noise affecting the other two dwellings adjoining Tower farm or the other three properties on the other side of the road.
- h) The proposed curfew time of 01.00 hours is excessive and is likely to go beyond this time as cars and people leave the premises. Local residents being next to general social function related/traffic noise until the early hours of the morning across numerous whole weekends of the year is concerning.
- i) There is no mention of how often the use of the wedding venue/ function room is intended for use. The traffic and noise levels up to 7 days a week will inevitably cause disturbance to the closest nearby residences.
- j) The plan talks of increasing opportunities for local businesses and hotels but these are not available in the immediate local villages.
- k) There is no detail of the type of camping proposed and how many facilities are contained within the proposed campground. The campground appears to be an addition without detail and will be an unnecessary facility for weddings which it is intended will have most use of the venue.
- l) The noise survey takes no account of whether the doors are open or not and that social functions will only take place within the building with doors and windows closed. The building appears to have balconies outside so in summer these will be full of people.
- m) Given the scenic country location of the venue and the outdoor space being provided it is highly likely that wedding guests would wish to enjoy the outdoor space that has been designed into the building concept and noise from inside the venue - disco music/social noise - would be clearly heard in the surrounding area.
- n) Implausible in suggesting that noise output is expected to be lower when music is being played than when it is not.
- o) Concerned about the adequacy of the parking provision and feel that overspill parking onto Swarkestone Road is likely to result from inadequate parking provision being made at the site; this raises road safety concerns.
- p) Very concerned about the noise levels and the security.
- q) What leisure facilities are they actually going to have there?
- r) This will encourage extra traffic and noise to the area. There is noise from the train line, airport and the race track at Donnington. The road is very busy now, if permission is granted it will cause more traffic congestion for village residents.
- s) This would be a lovely addition to the village and fix up a big space that is currently wasted.

Weston on Trent Parish Council - The planning statement says that 'the venue will allow events to be held in an outdoor setting year-round' However, the Environmental Noise Statement only covers indoor events but does state that the sound level from a Music Bar/ Nightclub can be as high as 101dBA. The noise assessment also covers both evening and night time noise, implying that events could go on into the small hours of the morning. Given that outdoor events could be held on most weekends over the summer months, as well as weekdays and other times of the year, there is a potential for serious noise



pollution in Weston Village which is only 0.6km away. The planning statement and supporting documents do not cover light pollution which could be significant from this type of venue, this needs to be addressed in the planning application.

The site is going to have parking space for "off-street parking provision for 50 vehicles with overflow facilities for an additional 20. Furthermore, sufficient space has been provided for a coach to turn around on site so that all vehicles can enter and leave the site in forward gear. Disabled parking provision will be available next to the main venue, together with cycle racks promoting more sustainable travel modes. A designated pick up/drop off point for taxis off the main road has also been incorporated within the proposals" This represents potentially significant vehicle movements with, for a large event, anything up to 70 cars, coaches, taxis and bikes arriving on site on roads that are already under pressure is probably not sustainable.

The development would bring all the traffic into and out of the village via Cuttlebridge which is not a suitable junction. From Trent Valley Crematorium there is no option for vehicles from here to come through both Aston & Weston villages via the Post Office junction in Aston unless they take them the long way round via the A50 and Cuttlebridge.

Given the nature of the site, it is likely that the majority of vehicles leaving site will be doing so at the end of an evening's entertainment/function which may be around or after 1am Increased vehicle noise will be inevitable from this especially if they chose to come through Weston and Aston, which is equally as likely as them turning towards Cuttlebridge. Also, this increases the risk of people driving whilst intoxicated through the village on a night, with the consequent increased risk of accidents. There are very few nearby guesthouses and hotels which then suggests the people will need to drive to the venue.

However, there are currently The Coopers, The Malt, The White Hart, the Methodist Church, the village halls in both Aston & Weston as well as the Recreation Centre in Aston which currently provide places for social gatherings.

The access is 6m wide but with large mature hedges on either side which will limit sightlines along the section of road where cars are starting to accelerate to the national speed limit having just left the Weston 30mph zone. Although this road isn't massively busy, there is increased risk of collision with cars on the road and ever increasing number of cyclists who use the road from Cuttlebridge through Weston.

The Environmental Noise Report mentions concerts and states the noise limits for a facility used less than 30 times a year, then states it is going to be used more than that figure. An external wedding site will inevitably have music associated with it, the Noise Assessment only considers this with the windows and doors closed.

The Parish Council therefore objects to the proposal on the grounds of its lack of sustainable transport options, poor access visuals, light pollution, potential sound pollution from venue and vehicles and adverse effects on roads; especially the Post Office junction in Aston and Cuttlebridge. The development would be close to the listed St Mary's church and Coopers and the Council feels that the design of the buildings will adversely affect the open and rural aspect of this part of the village. The large scale of this development is unsuitable for Weston Parish.

#### **Relevant policy, guidance and/or legislation**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), E7 (Rural Development), 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), INF6 (Community Facilities) and INF10 (Tourism Development).



- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) BNE5 (Development in Rural Areas), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

National Guidance:

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

Local Guidance:

- Design Guide Supplementary Planning Document (SPD)

## **Planning considerations**

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue(s) central to the determination of this application is/are:

- Principle of Development;
- Impact on Amenity;
- Visual Impact;
- Highway Safety; and
- Trees

## **Planning assessment**

### Principle of Development

The site is located outside of a designated settlement boundary and would constitute development within the open countryside. There is scope within policies INF10 and BNE5 of the Local Plan for the creation of tourism based facilities within the open countryside provided that they are supported by a sound business case, that the proposed operational development would be of a temporary or reversible nature, or sustainable well designed new buildings and that the proposed works would not give rise to undue impacts on the local amenity by way of noise or disturbances.

In addition, policy E7 of the Local Plan supports development that seeks to diversify the range of sustainable rural employment activities which would support the social and economic needs of the rural community. Both policies E7 and INF10 seek to do this through the re-use and conversion of existing buildings in order to retain disused agricultural buildings and their heritage, by using temporary structures that are of a reversible nature to allow business to operate in their infancy and through the erection of sustainable, well designed new buildings. In all cases, the change of use of land outside of a designated settlement boundary to a tourism use or a form of rural diversification would need to be substantiated by a robust business plan that demonstrates the financial sustainability of the business and its longevity, in order to justify and underpin the proposed use or operational development in a rural area.

When assessing the Local Plans part 1 and 2 as a whole, there is a continuous thread that runs through both plans that the erection of new buildings in the open countryside is not broadly suitable and that development should be directed to the most sustainable locations throughout the district. However, policies E7 and INF10 of the Local Plan recognise, and do account for new development to support a rural business or rural tourism accommodation. However, consistent with the wider plan policies, in these circumstances, both policies E7 and INF10 specify the requirement for a robust business plan to underpin the need for the new development and how this would meet and support the social and economic needs of the rural community.

In this instance, the proposed business would need to underpin the proposed change of use of the land and the need for the proposed new buildings and the submitted Business Plan would need to demonstrate sufficient longevity to the business - if the rural based business were to fail, this would result in a vacant, isolated buildings within the countryside. In these circumstances, the onus is on the



applicant to demonstrate that the business would be viable and that the new building would be essential to the continued success of the business. This is a finely balanced issue that rests on demonstrating the success of the existing rural business/tourist accommodation and that it will remain so in order to support the long term use of the proposed new, permanent buildings.

#### *Business Case and Justification*

A thorough and well executed Business Plan has been provided as part of the application demonstrating a broad demand for weddings to be held in countryside locations, with projections that the business would hold a minimum of 12 weddings a year at the site, covering the costs of the investments over 5 years. However, the wedding business is not currently in operation or been started up and the submitted Business Plan is based on projections, therefore, the proposed building works would not be funded by the income of the business, but outside investment. The projections within the Business Plan state that the costs of the building works could be re-couped within a five year period subject to a minimum of 12 weddings taking place a year. This sets a significant expectation of the business from the beginning in that for the first five years, the business will be covering the costs of the start up and the proposed building works.

There are two aspects to this application, in terms of the change of use of the site for weddings to be held and for the erection of the new buildings, or operational development. The change of use of the site to a rural tourism and wedding venue could be considered suitable in principle as, whilst the submitted Business Case cannot demonstrate income from the business or growth of the business over a period of time, it does show a strong intention to start up a business and if temporary buildings of a reversible nature were sought, this would provide a good opportunity for the business to start up and provide an opportunity to demonstrate a successful start up, where the site could be returned to its previous use and condition if the projections of the business were not reached.

However, the proposed application seeks consent for the erection of two new buildings as part of the change of use and the substantial alteration of two other buildings, constituting new works and the application must be assessed in its entirety. The application seeks consent for two new buildings to the rear of the site, of which the combined floor area of both proposed buildings would be in excess of 665sqm. This is a significant amount of new, permanent, operational development and would be located within the open countryside. The business that would underpin the need for both of the new buildings has not been started up to date and the need for both new buildings has been argued through the potential future projections of the proposed business as opposed to demonstrated growth and economic sustainability.

From the information that has been submitted as part of the application, this has highlighted that there are a number of existing businesses in the locality that offer wedding packages with various outdoor wedding facilities; with seven outdoor venues within a 20 mile radius of the site and a further 10 indoor venues within 20 miles of the site. However, the existing outdoor sites in the locality predominantly rely on temporary buildings such as tipi's and marquees as opposed to new, permanent buildings. Whilst the tipi's and marquees were set up permanently, they are of a reversible, temporary construction that means that the site could always be returned to its original condition. This has allowed the businesses to start up and build a positive reputation and are able to host weddings with very little start-up costs, owing to the erection of temporary buildings being a fraction of the cost of permanent buildings and build the business up from there.

The creation of two new, sizable buildings of a permanent nature would mean that the site could not be returned to its previous condition if the business were not successful and would create two new buildings that could become vacant and require alternative uses. Given the infancy of the business, the lack of demonstrable growth and financial sustainability of the business it is not considered that the submitted Business Case is robust enough or provides the certainty to warrant the erection of two new buildings within the countryside, as well as the extensive alteration of two existing buildings and would fail to meet the tests of policy E7 and INF10. This would fail to accord with the requirements of policies E7, INF10 and BNE5 of the Local Plan.



The submitted Business Plan states that the incorporation of temporary structures to start up the business would not be feasible as they intend to use the site for weddings all year round with tipi's and marquees not being feasible in the winter months. The need for permanent buildings is underpinned in the submitted Business Plan by needing to host weddings during the winter months, where it could be cold with guests preferring to stay inside the building where it is warmer. Hence why a lot of outdoor, rural wedding venues only operate in the summer months as there is little demand for outdoor weddings in the winter months. Whilst the Business Plan states that there will be winter planting to create a suitable outdoor space in the winter months, the reliance on the need for a permanent building to keep the weddings going during winter months demonstrates that the rural location would not be suitable to host weddings all year round and would be reliant on indoor space to allow weddings to continue during these months. Therefore, unlike during summer months, the winter weddings that would take place would not be dependant on an outdoor, rural location, of which, the submitted Business Plan specifies that are currently ten indoor wedding venues within a 10 mile radius of the site. The all year round facility would therefore, not be essential to a rural based activity or constitute development that is unavoidable outside of a settlement boundary and would fail to accord with policies E7, INF10 and BNE5 of the Local Plan.

By operating all year round, the Business Plan states that the use of temporary structures would need to be removed and replaced at a later stage with a permanent building. This would mean that the business would need to close during the construction period which they fear would damage the business. However, it would be possible to phase future construction works, subject to their suitability and as businesses become more established, upkeep works and upgrading would need to be factored into the lifetime of the business and would be commonplace.

Policy E7 stipulates that rural diversification projects should seek to support the social and economic needs of the rural community by way of job creation or strengthening local facilities. The submitted Planning Statement specifies that the proposed development would create jobs such as bar work, on day wedding planners, horticulturalists and caterers and would try to encourage customers to use local pubs in the nearby village. However, there have been no details submitted on the numbers of jobs that would be created or whether this would bring people from outside the local area as opposed to recruiting these positions from nearby settlements. It is therefore, not possible to quantify if any jobs would be created as part of the proposed development and it is therefore, not clear how the proposed development could seek to support the social and economic needs of local people as defined within policy E7 of the Local Plan.

#### Impact on Amenity

Concerns have been raised by local residents with regard to the impact of noise and disturbance from the proposed development and the impacts of late night music as well as noise from the outdoor camping site. The application has been assessed as a wedding venue with ancillary overnight accommodation as well as for hosting corporate events and hosting events for local people.

The Environmental Health Officer initially raised concerns relating to the travel of noise from the facility in terms of overnight camping and music from the building i.e. despite this being a permanent building, the noise could still travel if windows and doors are left open. It is noted that the nearest residential dwellings that abut the site are within the ownership of the applicant but that the nearest, separate residential dwellings are between 80-100m away from the site.

However, subject to the inclusion of conditions to create an acoustic barrier around the proposed campsite as well as a Noise Management Plan which would specify details of wardens to manage events and camping at all times, as well as numbers of tents and sound limiting devices to be installed at all times, and these details being provided prior to the first use of the site, there have been no objections raised by the Councils Environmental Health Officer and depending on suitable details being submitted, would accord with the principles of policy SD1 of the Local Plan.

#### Visual Impact

Policies BNE1 and BNE5 of the Local Plan stipulate that development shall respond positively to the



local character and vernacular of the area and where the principle of development is suitable, shall not have an undue impact on landscape character.

The application site is located on very flat terrain with very dense tree planting to the east of the site which is covered by a Tree Preservation Order (TPO504). This provides dense tree coverage to the east of the site which significantly restricts views into the site from an easterly direction. The site benefits from tree planting around the perimeter of the site with the fishing lakes located to the rear. Unlike the tree coverage to the east of the site, the remaining perimeter trees are not protected by a TPO and whilst some screening is afforded in summer months from the west and north of the site, this is not protected and the western and northern edge of the site could become open in the future, affording views of the proposed development. This is extenuated by the location of a public footpath (PROW 5) which runs in a north westerly to south easterly position to the north and west of the site and affords public views of the north and west of the site.

The proposed development seeks consent for the erection of two buildings and the conversion of two existing buildings through extensive alterations, as well as alterations to the layout of the site to accommodate the camping area and parking. The two new buildings equate to in excess of 665sqm of new floor space which would be overly large and disproportionate in the absence of an established business need for buildings of this size. The proposed development would fail to accord with policies BNE1, E7, INF10 and BNE5 of the Local Plan and would represent unsuitable development in the open countryside in the absence of an established business need. As outlined above, it is acknowledged that the site would not be highly visible from the easterly direction owing to the protection of the existing tree cover but the proposed buildings would be visible from the western and northern views into the site, of which landscaping conditions could not overcome this. The proposed buildings would have a permanent presence at the site and would compromise the current open and rural surroundings of the site and would fail to accord with policies BNE1, BNE4 and BNE5 of the Local Plan.

#### Highways Safety

Concerns have been raised by local residents with regard to numbers of cars that would be using the access and coming out onto Swarkestone Road, which has a national speed limit. Amended plans have been received which have moved the access so that the proposed visibility splays would be entirely contained within the applicant's ownership and would be within their control in order to accommodate 2.4m x 203m visibility splay and the required pedestrian visibility splay. On the basis of this, the proposed development could accommodate a safe and suitable access and would accord with the principles of policy INF2.

The submitted Planning Statement shows that the development would be operated in order to reduce travel and ensure sustainable modes of transport are made to and from the site using car shares and minibuses to reduce the number of car journeys and comings and goings to the site. This would help to alleviate noise and disturbance to local residents but as noted by the County Highway Authority, it would be necessary to ensure that a condition would be attached to provide a Travel Plan; to outline the methods for reducing car usage and as a workable document to ensure compliance with these methods.

By providing an access with the correct visibility splays and to ensure that sustainable modes of transport are carried out to reduce the number of vehicles using the access, it is considered that the proposed development would comply with the principles of policies S2 and INF2 of the Local Plan.

#### Trees

The site is covered by a Tree Preservation Order (TPO) to the east of the site under TPO504. A Tree Survey and Arboricultural Method Statement have been submitted which outline and survey the trees at the site and their condition. The root protection areas have been outlined with a methodology for protective fencing to be erected to protect the trees whilst works would be carried out at the site. The proposed works would fall outside of the root protection areas of the trees as well as the access to the front of the site, where the visibility splays would fall outside of the trees protected by TPO504. Subject to conditions securing works to be carried out in accordance with the submitted Tree Survey and Arboricultural Method Statement, the proposed works would accord with the principles of policy BNE7



of the Local Plan.

### Conclusion

Whilst both policies E7 and INF10 recognise and support the erection of well designed, new buildings to support rural employment and rural tourism, this is only when the development is substantiated by a robust business case to offer as surety for the long term sustainability and longevity of the rural business/tourism facility and that the rural business could support the long term use of the proposed new buildings as well as supporting the social and economic needs of the local rural community. When assessing the Local Plan Part 1 and 2 as a whole, the plan policies seek caution against the erection of new buildings within the open countryside and this further substantiates the need for a strong business case to underpin the proposed development and offset the harm of the proposed permanent buildings. The business has not been started yet and the submitted Business Plan is based on projections, rather than demonstrated income and growth from the rural business. The proposed Business Plan and accompanying details are therefore, not considered robust enough to warrant the erection of up to 665sqm of new development in the open countryside as well as the extensive alterations to the existing buildings. There are no confirmed details on the number of jobs that could be created and the potential benefits to support to economic needs of the rural community cannot be quantified and relied upon at this time. The proposed development would introduce two new, large, permanent buildings into the open countryside which would be visually harmful and would therefore, fail to accord with policies E7, INF10, BNE1 and BNE5 of the Local Plan.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

### **Recommendation:**

#### **Refuse**

1. The development is considered to be contrary to policies S1, S2, E7, BNE1 and INF10 of the South Derbyshire Local Plan Part 1 and policy BNE5 of the South Derbyshire Local Plan Part 2 as the development encompasses a new rural tourism and leisure business with associated permanent substantial new build accommodations and facilities in a rural area of open countryside, outside of and not adjoining a settlement boundary which is not supported by a robust business plan that clearly demonstrates the development to either be sited in a sustainable location or otherwise justified to be in an appropriate location where identified needs are not being met by existing facilities. The argument presented that 2no. of the 4no. total buildings proposed are conversions is also not accepted due to the level of structural alterations required, thus constituting new build and as such is not considered to add weight in favour of the development in respect of policy INF10 C.i of the Local Plan Part 1. The development is therefore considered to represent unwarranted intrusion into a rural area and unsustainable development.
2. The development is considered to be contrary to policies S1, E7, BNE1, BNE4 and INF10 of the South Derbyshire Local Plan Part 1, policy BNE5 of the South Derbyshire Local Plan Part 2 and the South Derbyshire Design Supplementary Planning Document as it proposes new permanent substantial buildings which are overly large and disproportionate when considered in the wider rural context and nearest neighbouring buildings, which also due to their proposed siting in combination would cause visual intrusion detrimental to the rural and open character of the area where views of the site are possible from several points in the public domain and from a public footpath (PROW5) to the west of the site. This includes the 2no. buildings argued to be conversions, which are considered to constitute new build due to the volume of new structural works required. It is considered that the use of planning conditions for landscaping details would

not overcome the visual harm as landscaping mitigation in itself would not adequately screen the development or be in character with the rural area and its landscape character.

Informatives: