

# **REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES**

## **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 1995 (as amended) and responses to County Matters.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2009/0341	1.1	Drakelow	Linton	1
9/2011/0139	1.2	Midway	Midway	22
9/2011/0174	1.3	Newhall	Newhall	29
9/2011/0214	1.4	Castle Gresley	Linton/Church Gresley	36
9/2011/0236	1.5	Melbourne	Melbourne	44
9/2011/0028	1.6	Mickleover	Etwall	48
9/2011/0276	1.7	Mickleover	Etwall	52
9/2011/0290	1.8	Church Gresley	Church Gresley	55
CW9/2011/0002	1.9	Foston	Hilton	57
9/2011/0128	1.10	Church Gresley	Swadlincote	81

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

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

**Item** 1.1

**Reg. No.** 9/2009/0341/MAO

**Applicant:**

Roger Bullivant Ltd & E.ON UK Plc  
c/o Roger Bullivant Ltd  
Walton Road  
Drakelow

**Agent:**

Mrs H Pugh  
David Lock Associates  
50 North Thirteenth Street  
Milton Keynes

**Proposal:** A hybrid planning application with all matters reserved for up to 2,239 dwellings, including a retirement village: an employment park; two local centres comprising retail, services, leisure, employment and community uses; public open spaces; a new primary school, associated landscape and infrastructure including car parking, road and drainage measures; and the refurbishment of the listed stables and cottages (with full details - comprising change of use and repair of the building) Drakelow Park Walton Road Drakelow Burton-on-Trent

**Ward:** Linton

**Valid Date:** 08/05/2009

**Background**

This report is designed as an update to the report attached which was originally submitted to the committee last July. Since that time, two main events have occurred in this case. Firstly, members will be aware that the Secretary of State had his 'order' to revoke regional spatial strategies quashed in the High Court when challenged by Cala Homes (*Cala Homes (South) Ltd v Secretary of State for Communities and Local Government [2010] EWHC 2866 (Admin)*). Following this judgement, the Government's Chief Planner wrote to all Local Planning Authorities and stated (inter alia): *'The effect of this decision is to re-establish Regional Strategies as part of the development plan. However the Secretary of State wrote to Local Planning Authorities and to the Planning Inspectorate on 27 May 2010 informing them of the Government's intention to abolish Regional Strategies in the Localism Bill and that he expected them to have regard to this as a material consideration in planning decisions.'* As such the development plan once again now includes the Regional Plan and applications must be determined in accordance therewith (Section 38(6) of the Planning & Compulsory Purchase Act 2004, which states, *'If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'*). However, the comments of the Government's Chief Planner must also be considered as a

material consideration. More recently in a statement on 23 March 2011 the Decentralisation Minister set out steps which the Government expects local planning authorities to take with immediate effect in order to ensure that the planning system does everything it can to help secure a swift return to economic growth. The statement explains that when deciding whether to grant planning permission local planning authorities should (inter alia) consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession and also ensure that they do not impose unnecessary burdens on development.

In determining planning applications [local planning authorities] should ensure they give appropriate weight to the need to support economic recovery, that applications that secure sustainable growth are treated favourably (consistent with policy in PPS4), and that they can give clear reasons for their decisions.

On 31<sup>st</sup> March 2011 the Chief Planner confirmed that the Minister's Statement is capable of being regarded as a material consideration. He draws attention to the weight that the Secretary of State intends to give to the statement in cases before him (the Minister's statement confirms that the Secretary of State will attach significant weight to the need to secure economic growth and employment).

When this case was last considered by the committee members will recall that all references to the plan were omitted because the report pre-dated the Cala Homes judgement. This report supplements that previously put before the Committee to test the application against the prevailing regional policy.

Secondly, very extensive negotiations have been conducted with the applicant companies regarding the detail of the Section 106 agreement which has proved to be extremely complex. All of the public bodies set to benefit from the scheme have taken an active part in these negotiations. It was the resolution of the committee in July that the case be brought back to the committee at the discretion of the Head of Planning Services if required. Inevitably, the phasing illustration as set out in the Design and Access statement has been affected but is covered by a conditional requirement to agree phasing prior to commencement to enable sufficient flexibility. However, the area of the most extensive negotiation has been around the level of affordable housing that the scheme should generate. The principles of provision were set out previously but since that time the applicant companies have stated that, at least in the first few years of development, the level would be prohibitive given the vast capital sums required for reclamation and infrastructure (see applicants' supporting information below). On this point, discussions have been held with the District Valuer in order that a 'reasonable' level of provision may be found that would enable the development to commence. At the time of writing these discussions had not been completed and therefore an update in this regard will be presented at the meeting.

Lastly, the proposed conditions to be attached to the permission are also set out which have evolved from the original report through research and negotiation.

### **Applicants' supporting information**

The following statement has been submitted by Roger Bullivant's solicitors to describe the link between the development and the Bullivant business:

*“The UK construction Industry has experienced over the last 3 years a period of rapid decline affecting almost every element of the industry. As a main sub contractor within the Housing and Commercial market Roger Bullivant Ltd has seen the extent to which their core business has been hit. Their current turnover now reflects some 50% of the pre 2008 turnover. This linked with reduced margins has created a market place which has been very difficult to compete in. The business had to make the difficult decision of releasing some 300 staff over this period reducing the work force in the UK to some 850 people, 400 of which currently work at or from the South Derbyshire Head Quarters.*

*The industry has not seen a dramatic increase in sales during 2011 and there is currently little prospect of a better 2012.*

*Whilst looking to cut costs within the core business to survive this period, Roger Bullivant himself has been keen to continue with both the Walton Bypass and Drakelow Park Developments. Costs to date for both of these projects are some £6.38 million coupled with the losses incurred by liquidated Clients to the Roger Bullivant Group, which since 2008 amount to some £4 million. This level of exposure has created a major problem to the core business and without the passion and backing of its founding Chairman the company could have also become the victim of the worldwide recession.*

*It is imperative that the Drakelow Park Project attracts the level of funding required to cover the costs of the major infrastructure for this iconic development in the early years. The core business can no longer afford to subsidise the ongoing project and it must stand on its own merits as the security of the 400 jobs in South Derbyshire rely upon this happening. It is therefore necessary to make this scheme as attractive as possible to outside investment for the benefit of South Derbyshire.*

*Hopefully in future years the core business will return to its former size and stature however the immediate job in hand is to secure the position of the business in the short to medium term.”*

## **Planning Assessment update**

### The Principle of Development

The key policy issues to be assessed are the extent to which the proposal accords with the Development Plan i.e. the saved policies from the *Adopted South Derbyshire Local Plan 1998* and the *East Midlands Regional Spatial Strategy* (or East Midlands Regional Plan: “RSS” or “EMRP”) and national planning policies, in terms of its location, sustainability and scale. This includes issues around housing, previously developed land, employment and transport.

The site is not allocated for any proposed use in the adopted Local Plan.

#### **1. Location of Development**

The overall strategy for development in South Derbyshire is set out in the EMRP. EMRP Policy 3 establishes that development and economic activity should be concentrated primarily in and adjoining Derby, with appropriate development of a lesser scale in the Sub-Regional Centre of Swadlincote. The development needs of other settlements are also required to be provided for.

In line with the above, EMRP Policy 13a sets a numerical District housing requirement of 12,000 dwellings between 2006-2026 (600 dwellings per annum). Policy Three Cities SRS3 further stipulates that at least 6,400 (320 dpa) of these should be within or adjoining the Derby Principal Urban Area (PUA) with the remaining 5,600 (280 dpa) “mainly at Swadlincote, including sustainable urban extensions as necessary”.

The proposed development does not therefore lie in a location prioritised for development in the EMRP. Nevertheless, the prospect of development on brownfield land in the Drakelow area is acknowledged in both the EMRP and in the Panel Report to the West Midlands RSS. Paragraph 4.2.26 of the East Midlands EMRP advises consideration to be given to the functional relationship between Burton upon Trent and Swadlincote. This is in the context of Burton upon Trent having strong growth needs and having been identified as a New Growth Point. In this regard, the EMRP anticipates a joint study by respective East and West Midlands regional partners to investigate the development potential identified on each side of the regional boundary, including transport improvements. The EMRP further states that as a result of co-operative working, including on Core Strategies, additional provision may be made in South Derbyshire for housing levels above those set out in Policy 13a and Three Cities SRS Policy 3.

Similarly, the Panel Report of the *West Midlands Regional Spatial Strategy Phase Two Revision: September 2009* concludes that the housing market areas of the two towns clearly overlap and that development on the Drakelow site would clearly serve both towns.

It is clear therefore that the proposed development does not accord with the overall locational requirement set out in the EMRP. Nevertheless, it is in a location which has been viewed as being potentially appropriate in regional planning documents by virtue of its previously developed status and other sustainability characteristics. This is material to the assessment of this application.

## 2. The sustainability of the location

The above assessment indicates that the proposal has the potential to provide benefits for both the Swadlincote and Burton areas by virtue of its geographic location. The applicant also correctly points out that the majority of the site is “previously developed land” (i.e. brownfield). In this respect it supports national objectives for urban regeneration and also assists in meeting the need to achieve a target of 60% of new homes on brownfield land as is set out in Policy 3 of the EMRP. In doing this it may reduce the amount of greenfield land released to meet future housing needs.

The EMRP also sets out, in Policy 1 part (f), a Core Objective of improving accessibility to jobs, homes and services through the promotion of walking, cycling and public transport and encouraging patterns of development that reduce the need to travel especially by car. Whilst these aspects are dealt with elsewhere (see previous report attached) the site is capable of meeting this important objective.

In summary, the development proposal would involve the re-use of a significant area of brownfield land, offer potential benefits to both the towns of Burton and Swadlincote and could therefore represent a major sustainable development.

### 3. Scale of development

The above paragraphs explain the requirement for the development of 5,600 additional dwellings in the 'non-PUA' part of South Derbyshire – to be located “mainly” at Swadlincote, including sustainable urban extensions as necessary.

However, when actual completions since April 2006 are taken into account, together with sites which already benefit from planning permission, the outstanding 'balance' of additional housing needed amounts to around 1,900 dwellings. In summary, therefore, taking into account the distribution of previous completions and permissions, out of a total remaining non-PUA requirement of 1,900 dwellings, a minimum of around 600 are required to be as urban extensions to Swadlincote to remain in conformity with the EMRP.

At 2,239 dwellings, the proposal would clearly exceed the amount of housing development needed to meet the entire non-PUA area although probably only 1,750 dwellings would be completed before 31 March 2026. Nevertheless, it would, still exceed the non-PUA need away from Swadlincote – even under an approach which allocates the minimum amount possible as urban extensions to the town. Therefore, in order to accord with the overall Regional Plan strategy, this proposal would need to be viewed as additional to the minimum East Midlands Regional Plan numerical requirement (at least in part) and/or for longer term needs (beyond 2026).

In this regard, the previous paragraph has already noted the EMRP acknowledgement of the potential for development at Drakelow as additional development to general housing requirements. Whilst no formal joint cross boundary study has been undertaken, the planning and infrastructure impacts of the development have been assessed in detail through this application, including consultation with East Staffordshire Borough Council and Staffordshire and Derbyshire County Councils.

Moreover, the EMRP indicates that local authorities can plan for higher housing numbers where development would accord with sustainability consideration.

In this regard, consultation on the South Derbyshire Local Development Framework Core Strategy: Issues and Alternative Options (January 2010) identified the option of Drakelow as a strategic development location which would need to be additional, at least in part, to the EMRP housing requirement.

It is also material that the Secretary of State has signalled his intention to abolish regional strategies and any conflict on the basis of the relationship to numerical regional housing targets should therefore be seen in that light.

### 4. Five year land supply

National planning policies set out in Planning Policy Statement (PPS) 3 require local planning authorities to maintain a rolling 'five year supply' of housing land at all times. The guidance further advises that where a local authority cannot show an up to date five year supply of deliverable sites, they should consider favourably planning applications for housing having regard to matters such as the suitability of the site for housing in terms of environmental sustainability.

The latest figures for South Derbyshire are April 2010-based and indicate that, at 6.26 years, such a 'five-year' supply exists. There is therefore no immediate need to release further land for housing.

However, PPS 3 also advises that local authorities may exceed the five-year supply and there will be a need to maintain a rolling 5-year supply into the future. Whilst a consent on this site would to some extent pre-judge development options being considered in the Core Strategy process, PPS 3 is clear that "prematurity" is not in itself a reason to refuse planning permission on sustainable sites.

Clearly, an important issue is the extent to which the development of this proposal would put at risk the implementation of development aspirations for Swadlincote set out in the EMRP and the emerging LDF Core Strategy. In this respect, the applicant contends that the nature and scale of the proposal is distinct from urban extension development options around Swadlincote. It is argued that, as a much larger development well located between two overlapping housing markets, it has the potential to increase locational choice for those seeking to purchase a home. Accordingly, the applicant concludes that the delivery of new housing at Drakelow Park would complement rather than compete with new housing in Swadlincote. No evidence exists to suggest that this would not be the case and the West Midlands Phase 2 Panel report conclusions noted above would tend to support this. Again, the Secretary of State's stated intention to abolish regional strategies is material in assessing the weight to be accorded to the numerical and spatial location requirements of the EMRP.

## 5. Employment

EMRP Policy 1, part (e) sets as a core objective the improvement of economic prosperity, employment opportunities and regional competitiveness through:

- The improvement of access to labour and markets; and
- Ensuring that sufficient good quality land and premises are available to support economic activity in sectors targeted for growth by the Regional Economic Strategy (among these is the construction industry).

Policy 12 indicates that outside Derby employment and housing development should be located within and adjoining settlements.

Policy 20 indicates that local authorities should work with other organisations to undertake employment land reviews. The Derby HMA Employment Land Review has duly been prepared and indicates that there is an 80 ha shortfall in available employment land within South Derbyshire to 2026.

The established Roger Bullivant Ltd premises, measuring some 16 ha (excluding wooded areas on the periphery), would be lost as a result of the proposed development, but new B1 and B2 business accommodation is proposed as part of the scheme, measuring some 12 ha.

Roger Bullivant Ltd has expressed the intention to relocate its premises to the site of the former Drakelow C power station, owned by E. ON plc. However, the Interaction Statement indicates that the "existing manufacturing plant owned by Roger Bullivant Ltd would be relocated off site" during Phase 1 of the proposed construction schedule, but does not say to where. It is not known how much land these new premises, would



occupy, but if permission is granted for the current application and Roger Bullivant does indeed relocate to the E.ON site to the east, it can be anticipated that there would be unlikely to be a significant net loss of employment land.

## 6. Strategic Distribution

Planning Policy Guidance Note 13 indicates that in determining planning applications, local authorities should identify and, where appropriate, protect sites and routes, which could be critical in developing infrastructure for the movement of freight. EMRP Policy 21 indicates that local authorities and other organisations should work together to bring forward strategic distribution sites and identifies the Derby HMA as one of the preferred broad locations for such development. EMRP Policy 55 calls for the implementation of the Regional Freight Strategy, which includes the identification of new strategic distribution sites as a key priority. Accordingly, this general location was identified in a recent consultation document on the LDF Core Strategy as being an option for accommodating such development. However whilst the site was put forward for consideration the "Strategic Distribution Site Assessment Study for the Three Cities Sub-Area of the East Midlands", commissioned by the East Midlands Development Agency, published in May 2010 concludes that the site has very good rail connectivity, but is otherwise significantly constrained in terms of deliverability."

There would appear, therefore, to be insufficient grounds for seeking a refusal of this planning application on the basis that the land should be protected to meet a freight distribution need.

### Conclusions on the principle of development

The above indicates that development at this location could be sustainable in a range of respects. Whilst there is no current shortfall in housing land supply in this part of the District, and the site is therefore not immediately "needed" in terms of housing supply, it is in other respects sustainable. Whilst it does not accord with RSS policies, it does not raise any serious conflict, which would require the refusal of permission. National planning policy in PPS 3 is clear that applications should not be refused solely on grounds of prematurity. It is therefore considered, given the general acknowledgement for the principle of development at Drakelow in Regional Planning documents, that a refusal on grounds of prematurity would not be appropriate even though a five year housing land supply can be demonstrated. The Secretary of State's announcement of his intention to abolish Regional Strategies and return decision-making powers on housing and planning to local councils also tends to weigh against the refusal of permission in this case. The proposal is therefore acceptable in terms of the principles of planning policy.

### Conclusions on the level of provision of affordable housing

Notwithstanding the comments of the Minister set out above, the onus is on the applicants to demonstrate that the viability of the development dictates that there should be some reduction in the normal affordable housing requirement. The Council's normal method of testing this is for the District Valuer to evaluate any such claims. All through the process the applicants have been 'at odds' with the District Valuer's opinion regarding viability (see previous report). This has continued to the extent now that according to the applicants, a reduction in the requirement in the first (circa) 5 years of the project is necessary to engender interest from a joint venture partner. It is the

advice of the District Valuer that members should only entertain any reduction if they consider that it is merited in the circumstances and that some special consideration should be given to this particular company as current landowner (and its current financial position) rather than to consider the site from a neutral viewpoint in the market. Otherwise it would appear at this moment in time that the development should be able to proceed notwithstanding.

Recommendation:

- A. Confirm that the application of policy as set out in the EMRP has no material effect on the resolution of the committee as agreed on 27 July 2010;
- B. This part or the recommendation regarding the level of affordable housing will be the subject of a supplementary report to be circulated at the meeting.
- C. That subject to A and B, the committee agree the following conditions:

Valid period of permission & submission of reserved matters

1. The development hereby permitted within the land edged red, on Plan ref. RBL001-018/Rev N April 2009 shall be begun either before the expiration of 5 years from the date of this permission, or before the expiration of 3 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To conform with Section 91 (1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. Application for approval of the reserved matters; namely siting, design, external appearances, means of access and landscaping shall be made to the Local Planning Authority before the expiration of 20 years from the date of this permission. Such development shall be begun no later than 3 years from the approval of the last such matter to be approved.

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

3. The reserved matters submitted in accordance with condition 2 and details submitted in accordance with any other condition of this planning permission shall accord with the Land Use Framework Plan (Plan ref:RBL001-102 rev K (August 2008) and the design principles outlined in the illustrative master plan (Plan ref:RBL001-018 Rev N (April 2009)).

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

Phasing

4. No development shall commence until a phasing plan and programme in respect of the phased delivery of the development has been submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in

accordance with the phasing plan and programme unless otherwise varied with the written agreement of the Local Planning Authority.

Reason: For the avoidance of doubt.

5. For the purposes of this planning permission all references to a 'phase' shall be interpreted as being a reference to a 'phase' as defined on the phasing plan and programme approved pursuant to Condition 4 unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt.

6. Plans and particulars of the details of the layout, scale and appearance of any buildings, the means of access to and within the site and landscaping of the site (hereinafter called "the reserved matters") for each phase of the development shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced in that phase. Development of each phase shall be carried out as approved.

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

#### Landscaping

7. No development of any phase shall take place until full details of both hard and soft landscape works in that phase have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved in accordance with the agreed phasing plan. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration.

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

8. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

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

9. All hard and soft landscape works shall be carried out in accordance with the approved phasing plan and details and finished not later than the first planting season following completion of the relevant phase of the development to which they relate.

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

10. A landscape management plan, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 6. The landscape management plan shall be implemented as approved.

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

11. Any tree or shrub within a phase which forms part of the approved landscaping scheme for that phase which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

12. None of the existing trees or hedgerows indicated as existing on the master plan drawing number E6484-103-GR-PPW-Existing March 2010 (as referred to in the more detailed ES plans 2155/11a (June 2008) and 2155/10b (June 2008)) shall be cut down, uprooted or destroyed, nor shall be topped or lopped without the prior written approval of the Local Planning Authority. If any of the existing trees or hedgerows to be retained are removed or, uprooted or destroyed or dies, a replacement shall be planted in the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area

13. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.

Reason: In the interest of the health and safety of the trees.

14. No site clearance works or development of any phase shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
  - (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created;

without the prior written consent of the Local Planning Authority.

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

#### Boundary Treatments

15. No development of any phase shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

16. Unless otherwise agreed in writing by the Local planning authority, prior to the commencement of development, details of a 1.8 metre high boundary fence to be provided adjacent to the existing railway boundary to a standard to mitigate the noise from the railway, shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be provided in accordance with the approved details prior to the development of the site and subsequently maintained thereafter.

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

#### Materials

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

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

#### Sustainability

18. No development within any phase shall take place until there has been submitted to, and approved in writing by the Local Planning Authority, an initial design stage assessment by an accredited assessor for The Code for Sustainable Homes and an accompanying interim certificate stating that the dwellings within the submitted phase achieve either Code Level 3 or the then-required Code Level rating, whichever is the higher. The development shall be carried out in accordance with the certificated design.

Reason: To comply with the guidance set out in PPS1, the Council's design guidance and in the interests of sustainability.

#### Levels

19. No development of a particular phase shall commence before details of the finished floor levels of each building has first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase shall be constructed in accordance with the approved details.

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

Disturbance (noise, vibration, odour, light – during construction & when occupied)

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

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

- 21 During the period of construction of any phase of the development which abuts any occupied dwelling within the site, no construction work shall take place outside the following times: 0730 – 1900 hours Monday to Friday and 0730 – 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

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

22. Before use of the non-residential uses commence, a scheme designed to protect the living conditions of occupants of nearby buildings from noise, vibration and odours from the air ventilation and extraction system, including the methods of treatment of the emissions and the external ducting, shall be submitted to and approved in writing by the Local Planning Authority. Before the uses hereby commence, the measures approved under the scheme shall be installed and brought into use. Thereafter the approved measures shall be retained, operated and maintained in accordance with the manufacturer's specifications.

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

23. No deliveries shall be taken in or dispatched from the proposed local centre outside the following times: 0700 hours to 1900 hours Monday to Saturday and at any time on Sundays, Bank and Public Holidays unless as otherwise agreed in writing with the Local Planning Authority.

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

24. Before use commences of any building for retail or commercial use (within Use Class A1-A5) or of the proposed community centre, details of all external lighting equipment associated with the proposed use of that building shall be submitted to and approved in writing by the Local Planning Authority and the development implemented in accordance with the approved details. No other external lighting equipment may then be used on that building except with the approval in writing of the Local Planning Authority.

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

25. Prior to the commencement of any phase or sub-phase of the development the developer shall submit a scheme highlighting details of the likely resultant noise levels from activities during the construction phase of that phase or sub-phase at the nearest noise sensitive premises. The investigation shall address the impact that the activities will have, in terms of noise, on nearby residential properties. This assessment and mitigation measures shall be submitted for the approval of the Local Planning Authority prior to commencement of the development of that phase

or sub-phase. Once agreed, all identified noise control measures shall be implemented and thereafter retained.

26. Prior to the commencement of any building works on site, the applicant shall submit for written approval an assessment of noise likely to affect the application site. This assessment should follow PPG24 guidelines towards assessing the noise from the surrounding road network, and any other local noise sources that are deemed significant on the site. The assessment shall identify all noise attenuation measures that may be determined appropriate to reduce the impact of noise on the residential properties on the site and achieve the requirements of BS8233 for internal noise levels. Consideration shall also be given to achieving adequate summer cooling. If deemed necessary, alternative ventilation measures shall be identified and incorporated into the noise assessment report. This assessment and mitigation measures shall be submitted for the approval of Development Services prior to commencement of the development. Once agreed, all identified noise control measures shall be implemented and thereafter retained.

#### Flood Risk & Drainage

27. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision D, dated 9 November 2009, undertaken by THDA and the following mitigation measures detailed within the FRA:
- a. (Paragraph 9.6) Limiting the surface water run-off generated by all events up to the 100 year plus 20 % commercial (for climate change), 30% residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and 30% less than the existing Brownfield site, and not increase the risk of flooding off-site.
  - b. (Paragraph 9.1) Improvement/protection and maintenance of the existing Darklands Brook.
  - c. (Paragraph 8.5) Finished floor levels are set no lower than 600mm above the 100 year plus 20% for climate change flood level, or 150mm above proposed external ground levels or the adjacent highway (whichever is the greater) applicable to each phase of the site.
  - d. (Paragraph 9.11) no raising of ground levels within the 100 year flood plain of the Darklands Brook.
  - e. (Paragraph 7.14.4) Provision of suitable security/trash screens to both ends of the existing culverts.
  - f. (Paragraph 7.14.5) Provision of Structural repairs to Culvert 2, in accordance with the time scales detailed within the supplementary culvert report.

Reason: In the interests of flood protection.

28. Development shall not begin until a surface water drainage scheme for that phase of the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, including roof drainage, sealed at ground level has been submitted to and approved in writing by the Local Planning Authority. Each phase of development shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:

- a. Limiting the surface water run-off generated by all events up to the 100 year plus 20 % commercial (for climate change), 30% residential (for climate change) critical rain storm in accordance with paragraph 7.4 and tables 7.4, 7.7 and 7.9 of the approved FRA.
- b. Provision of a minimum of surface water run-off attenuation storage on the site in accordance with paragraphs 7.8 and 7.9 and tables 7.7 and 7.9 of the approved FRA.
- c. Details of how the scheme shall be maintained and managed after completion

Reason: In the interests of flood protection.

29. The development hereby permitted shall not be commenced until such time as a detailed design of the Culvert 1 Replacement Scheme as outlined on Drawing No. 110 Revision B, has been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Environment Agency. Implementation of the Culvert 1 Replacement Scheme shall be undertaken during the ground works phase of the development, and be fully operational prior to the first occupation of new dwellings across the site.

Reason: In the interests of flood protection.

30. Prior to the commencement of development, a working method statement to cover all works involved in the construction of the Culvert 1 Replacement Scheme shall be submitted to and agreed in writing by the Local Planning Authority in consultation with the Environment Agency. Thereafter the development shall be carried out in accordance with the approved designs and method statement for the Culvert 1 Replacement Scheme and any subsequent amendments shall be agreed in writing with the local planning authority in consultation with the Environment Agency.

The working method statement shall include details on the following:

- a. Time programme for the works
- b. Methods used for all channel and bank-side/water margin works
- c. Machinery to be used
- d. Location and storage of plant, materials and fuel
- e. Access routes to the works, access to the banks of the watercourses
- f. Method of protection of areas of ecological sensitivity and importance
- g. Site supervision
- h. Location of site office, compounds and welfare facilities

Reason: In the interests of flood protection.

31. The development of any phase or sub-phase shall not be commenced until a scheme has been submitted to and approved in writing by the local planning authority for disposal of foul water from that phase, The development of each phase shall be carried out in accordance with the approved details for that phase unless otherwise agreed in writing by the Local Planning Authority.

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

32. The development of any phase or sub-phase shall not be commenced until a scheme has been submitted to and approved in writing by the local planning authority to install oil and petrol separators



Reason: In the interests of pollution control.

### Archaeology

33. a) No demolition/development shall commence in each phase until a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and
1. The programme and methodology of site investigation and recording
  2. The programme for post investigation assessment
  3. Provision to be made for analysis of the site investigation and recording
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  5. Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"
- b) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition (a).
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
- d) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the Local Planning Authority in writing within two working days. Works shall be halted in the area/part of the building affected until provision has been made for the retention and/or recording in accordance with details submitted to and approved in writing by the Local Planning Authority"

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

### Crime Prevention

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

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

## Contamination

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

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

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

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3, 1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

36. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

## Ecology

37. Prior to the commencement of development in each phase details of a programme of further survey work relating to great crested newts, bats, breeding birds, slow worm, common lizard and grass snakes shall first be submitted to and approved in writing by the Local Planning Authority. Details of any required conservation measures and proposed habitats, including implementation, management and

maintenance proposals shall be included in the report and the development of that phase implemented in accordance with the approved details.

Reason: To ensure compliance with PPS9.

38. The Bat Mitigation Strategy shall be implemented in accordance with a programme to be submitted to and agreed in writing by the Local Planning Authority.

Reason: To safeguard the European protected species.

39. As much as possible of the railway ballast habitat within the central area of open space shown on the Green Infrastructure Plan shall be retained and where this is not possible, the habitat loss shall be compensated through the creation of brown roofs and/or wildlife garden, as described in the Ecological Management Plan.

Reason: To ensure that as much of the biodiversity of the site as possible is retained.

40. All measures set out in the Ecological management Plan shall be implemented in accordance with a programme submitted to and agreed in writing by the Local planning Authority.

Reason: To comply with the provisions of PPS9.

### Highways

41. Before any other operations are commenced in each phase, a scheme shall be submitted to the Local Planning Authority for written approval indicating the proposed temporary means of construction access, site accommodation, storage of plant and materials, and areas for parking and manoeuvring of site operatives and visitors vehicles and loading, unloading and manoeuvring of goods vehicles.

Reason: In the interests of highway safety.

42. Before any other operations are commenced, excluding demolition and site clearance, the access and on-site facilities the subject of condition 42 above shall be laid out and constructed in accordance with the approved scheme and retained throughout the construction period free from any impediment to their designated use.

Reason: In the interests of highway safety.

43. Prior to the submission of full or reserved matters applications for each phase the developer shall submit a development masterplan for that phase for the written approval of the Local Planning Authority. The masterplan shall include –
- Detailed design concept for the site
  - Details of phasing and construction of accesses to the existing highway network
  - Details of road hierarchy
  - Connections through the site and to the surrounding area
  - Street layout and dimensions together with service vehicle access information
  - Details of Public Transport Route Strategy together with infrastructure to be provided, including real time information, and timeframe for implementation
  - Details of footpaths, cycleways and landscaping

- Details of locations of the school, retail centres and employment areas
- Details of parking strategies, including low parking areas and secure cycle storage facilities
- Details of means of disposal of surface water from proposed highway areas
- Details of land to be protected for future provision of rail halt

Applications for full permission or approval of reserved matters within that phase shall be in accordance with the approved masterplan for that phase unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

44. Notwithstanding the submitted information no development shall be commenced until details of the accesses to Walton Road have been submitted to and approved by the Local Planning Authority in consultation with Derbyshire County Council as Local Highway Authority. The accesses shall be implemented in accordance with the approved design and with the phasing detail required as part of Condition 46 below.

Reason: In the interests of highway safety.

45. Prior to the first occupation of any development on the site the following highway improvement schemes shall be implemented –

a) The realignment of Walton Road and the change of priority at the junction of Walton Road and Rosliston Road South generally in accordance with drawing nos. 06-0297 111 and IPD-09-104-SK001 but more specifically in accordance with detailed designs submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority.

b) The widening of the Walton Road carriageway to 6.75m minimum between the site and the proposed Walton on Trent Bypass generally in accordance with drawing no. 07-0297 100 but more specifically in accordance with detailed designs submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority.

Reason: In the interests of highway safety and to ensure that sufficient mitigation is in place to assimilate the development in to the adjoining highway network.

46. Throughout the period of the development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.
47. No development or combination of development shall be occupied that would result in trip generation exceeding 426 vehicle trips in the AM peak or 380 vehicle trips in the PM peak (based on the trip rates set out below) unless and until road schemes broadly in accordance with Infrastructure Planning and Design Limited layout drawings IPaD - 09- 104-P-110 Revision D, IPaD - 09-104-P-111 Revision D, and IPaD - 09-104-P-112 Revision D have been implemented in full, open to traffic and

approved by the Local Planning Authority in consultation with the Highways Agency. The vehicular trip rates to be applied are as follows:

Residential (per dwelling)	AM Peak 0.37, PM Peak 0.335
Employment (per 100sqm)	AM Peak 0.87, PM Peak 0.76

Reason: In the interests of highway safety and to ensure that sufficient mitigation is in place to assimilate the development into the adjoining highway network.

### **Informatives:**

1. Method statements are required to be submitted to Network Rail's Territory Outside Parties Engineer for approval prior to works commencing on site. Where appropriate an asset protection agreement will have to be entered into. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. "possession" which must be booked via Network Rail's Territory Outside Parties Engineer and are subject to a minimum prior notice period for booking of 20 weeks. Generally if excavations/piling/buildings are to be located within 10m of the railway boundary a method statement should be submitted for NR approval.

2. Consideration should be given to ensure that the construction and subsequent maintenance can be carried out to any proposed buildings or structures without adversely affecting the safety of, or encroaching upon Network Rail's adjacent land, and therefore all/any building should be situated at least 2 metres from Network Rail's boundary. This will allow construction and future maintenance to be carried out from the applicant's land, thus avoiding provision and costs of railway look-out protection, supervision and other facilities necessary when working from or on railway land. The Developer should be aware that any development for residential use adjacent to an operational railway may result in neighbour issues arising. Consequently every endeavour should be made by the developer to provide adequate soundproofing for each dwelling. Please note that in a worst-case scenario there could be trains running 24 hours a day and the soundproofing should take this into account.

3. Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Network Rail would wish to be involved in the approval of any landscaping scheme adjacent to the railway.

4. Where new lighting is to be erected adjacent to the operational railway the potential for train drivers to be dazzled must be eliminated. In addition the location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway. Detail of any external lighting should be provided as a condition if not already indicated on the application.

5. Under the terms of the Water Resources Act 1991, and the Land Drainage Byelaws, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within 8 metres of the top of the bank, or the flood plain of the River Trent, and the Darklands Brook, both designated a 'main river'.

6. The Environment Agency recommends that developers should:

- a). Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.
- b). Refer to the Environment Agency Guidance on Requirements for Land Contamination Reports for the type of information that we require in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, e.g. human health.
- c). Refer to their website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) for more information.

7. The EA actively encourage the use of SUDs at new developments. However it should be noted that the preliminary risk assessment indicates the potential for contamination to be present on the site. Drainage of surface or roof water through any contamination could act to mobilise it therefore posing a risk to 'Controlled Waters' receptors. Consequently proposals for the drainage of surface or roof water into the ground will need to be taken into account if contamination is found during the site investigation as the subsequent risk assessment will need to consider the additional infiltration from the surface and roof water system(s).

8. The Design and Access Statement notes the environmental performance of the buildings will be controlled by the Building Regulations. The applicant may be aware that amendments to Part G (sanitation, hot water safety and water efficiency) of the Building Regulations have recently been laid before Parliament.

9. From October 2009 all new build homes need to meet a new minimum standard of 125 litres of water per person per day to improve water efficiency. The Regulations also set out where grey water and harvested rainwater can be safely used. The Water Efficiency Calculator for New Dwellings that will be used to estimate water usage for the purposes of both Part G of the Building Regulations and for the Code for Sustainable Homes has also been published.

10. The standard of 125 litres of water per person per day is broadly equivalent to Code Levels 1 and 2 of the Code for Sustainable Homes. Over and above that, as a condition of financing housing associations, all new homes built with public money are required by The Homes and Communities Agency to meet at least Code Level 3 from May 2008, Level 4 from 2012 and Level 6 from 2015.

To achieve Code Level 5/6 it is generally accepted that some form of water recycling (rainwater or grey water recycling) is required. To keep the cost per dwelling down the developers should consider communal systems.

11. We note that there may be a requirement for water to be used for dust/dirt control measures such as damping down, water sprays and wheel washes. If water is abstracted from a watercourse or well or borehole for these purposes and more than 20 cubic metres per day is abstracted, an abstraction licence will be required.

12. The Environment Agency has a river flow gauging station at SK 2391 2039. This site is an important part of their flood-forecasting network and vehicular access is required 24 hours a day 7 days a week.

13. The proposal shows high density housing adjacent to the employment area (which includes B2 usage). The potential for noise disturbance to future residents is high and the applicant should contact the Environmental Protection Section to discuss this issue prior to submission of any reserved matters application.

14. All archaeological work should be undertaken by a suitably qualified and experienced archaeological contractor. The Development Control Archaeologist at Derbyshire County Council should be contacted in the first instance for a written brief from which the WSI may be developed.

15. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of Derbyshire County Council. Prior to any Agreement being entered into the Council will require engineering designs of all proposed highway works which will be subject to a construction approval process. Advice regarding the technical, legal, financial and administrative processes connected with Section 278 Agreements may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 538582 and ask for Mr Chris Allwood). The applicant is advised to allow at least 12 weeks in any programme of works to obtain Section 278 approval.

16. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 6 weeks prior notification should be given to the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 537656) before works commence on the temporary construction access.

17. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must ensure that mud or other extraneous material is not carried from the site and deposited on the highway. If this does occur the applicant must take all reasonable steps to ensure that the surrounding streets are cleaned. The Highway Authority reserves the right to undertake street cleansing on the applicant's behalf should this be deemed necessary and recharge the applicant for the work.

18. A Public Right of Way (Footpath No 1) lies within the application site. The applicant must ensure that the route permits safe pedestrian passage, remains unobstructed and on its legal alignment at all times both during and after construction works take place. Advice regarding the diversion of Public Footpaths may be obtained from the Rights of Way Section in the Environmental Services Department, Derbyshire County Council.

19. The applicant is advised that where development related highway works engender the re-routing or other changes to bus services, the developer will be expected to meet all of the costs involved in modifying the public transport routes / services for the duration of the works.

20. The supporting document identifies Derbyshire County Council's Landscape Character Types in the baseline information but fails to make the link to the use of landscape character type key characteristics to landscape mitigation proposals. This should be addressed fully in the landscape scheme in particular species selected should reflect local landscape character, especially the new woodland planting. The scheme should recognise the local landscape character of the surrounding countryside and identify how the development will be incorporated into it. Further advice can be obtained from [www.Derbyshire.gov.uk/Environment/Conservation/Landscape](http://www.Derbyshire.gov.uk/Environment/Conservation/Landscape).

31/05/2011

**Item**            **1.2**

**Reg. No.**        **9/2011/0139/FM**

**Applicant:**

Mr Adrian Thornton  
699 BURTON ROAD  
MIDWAY  
SWADLINCOTE

**Agent:**

Mr Adrian Thornton  
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MIDWAY  
SWADLINCOTE

**Proposal:**        **THE DEMOLITION OF EXISTING DWELLING AND THE  
ERECTION OF THREE DWELLINGS AT 699 BURTON ROAD  
MIDWAY SWADLINCOTE**

**Ward:**            **MIDWAY**

**Valid Date:**      **17/03/2011**

**Reason for committee determination**

This application is brought before this committee following a request by Councillor Wilkins advising that local concern has been raised about a particular issue and there are unusual circumstances, which need to be considered by the committee.

**Site Description**

The application site is located at 699 Burton Road and also the rear garden area of 699 Burton Road, which would be accessed by the existing driveway, which serves 699 Burton Road, and down the side of 681 Burton Road. Currently the site houses an existing two storey detached dwelling with a modest porch and car parking to the front. An area to the side of the property is currently tarmacked leading to the rear of the property which then opens up to a large lawned area. Dense hedging or wire mesh fencing to a height of approximately 2m encloses the rear garden.

**Proposal**

The proposal is for the demolition of the existing property at 699 Burton Road and replacement with a larger dwelling (the existing property being 10m x 10m, the proposed being 11.5m x 12.1m) and a detached double garage to the rear of the existing dwelling behind its proposed private garden area. A further part of the application is the proposal to erect two 1½ storey detached dwellings at the rear. The dwellings would be sited approximately 1.5m from the boundaries of 701 and 681 Burton Road and 1m from each other with rear garden sizes of 11.5m for plot 2 and 8m for plot 3. Two car parking spaces are shown for each dwelling with the existing conifer





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**South Derbyshire District Council. LA 100019461. 2010**

hedging forming a boundary with 9 Cloverdale. The proposed dwellings at the rear would have two bedrooms located in the 1<sup>st</sup> floor with rooflights serving bedroom 2 and a first floor window and rooflights serving bedroom 1.

### **Applicants' supporting information**

In support of the application are the following related documents:

- Design and access statement
- Coal Mining and Stability Risk Assessment Report

### **Responses to Consultations**

The Coal Authority initially objected to the application but on receipt of further information removed their objection to the proposal advising that further more detailed considerations of ground conditions and /or foundation design may be required as part of any subsequent building regulations approved.

The Contaminated Land Officer does not raise any objections to the application submitted but advises that the development may be at risk from ground gas migration and ingress into buildings and a condition to this effect is required should permission be granted.

Severn Trent Water does not raise any objections to the application as submitted subject to a condition regarding details of the disposal of surface water and foul sewage.

The County Highway Authority does not raise any objections to the application as submitted subject to conditions as shown in application 9/2010/0810 being applied (i.e. access, parking and manoeuvring and no gates within 5m of the nearside highway boundary).

### **Responses to Publicity**

Six letters of objection were received from neighbours, who are concerned that:

- a. Garden development is inappropriate where the local community believe it is damaging to an area through its impact on amenity or impact on its character. The current government support this approach and this development is inappropriate
- b. There will be a dramatic change in the character of the existing garden area which will have a significant impact on the amenities of 701 and 681 Burton Road, through parking of six vehicles, building of three properties, vehicle movement associated with three properties, increase in pedestrian movements, disturbance from refuse collections and visitors to the new dwellings
- c. The proposed velux windows are only 2m off the floor level therefore they will be entirely usable windows to look out of rather than let light through, impacting on the amenity of 701 and 681 Burton Road
- d. 681 Burton Road will have vehicle movements for their dwellings going past their property through noise, vibration, and glare from headlights including refuse vehicles and there will be an associated increase in pedestrian movement next to their property

- e. The high density proposed is out of keeping with the character of the area of Burton Road and backland development will increase this density and destroy the character of the area
- f. Development does not compliment neighbouring buildings in terms of scale, density, layout and access
- g. No justification for unwanted and poorly located development that will destroy the urban character of the area. The proposed 1½ storey dwellings are out of context with the surrounding area
- h. Overdevelopment of the site resulting in lack of privacy to the neighbouring properties caused by the access being required for three properties as opposed to one
- i. Overlooking of 9 Cloverdale due to the proposed site being higher than properties at Cloverdale
- j. Set a precedent and open floodgates for similar developments to proceed in the area
- k. Use of soakaways-will these cope with the large areas of driveways and off road parking proposed?
- l. Will the existing sewerage system be able to cope with the additional dwellings proposed?
- m. Access is on a busy road which dips away and is on a bend increasing the likelihood of an accident occurring
- n. Conifer hedge is not in the applicants ownership and should be retained
- o. Proposed planting of trees on boundary of Cloverdale will result in overshadowing and roots of proposed trees may cause problems with No 9 Cloverdale's foundations
- p. Affect on wildlife in the area and the national forest through loss of existing hedgerows and vegetation
- q. The two proposed properties are to be built too close to each other and would suffer with poor levels of light
- r. The two proposed dwellings would be overlooked by the existing properties

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan (2009): Policies 2 and 3

Saved Policies from the Local Plan: Housing Policies 4 and 11, Transport Policy 6

### **Other Supplementary Planning Guidance**

Housing Design and Layout

### **National Guidance**

PPS1 and 3.

### **Planning Considerations**

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

- Development plan policy and national guidance and advice
- The impact of the proposal on neighbours and highway safety.

## Planning Assessment

With regards to whether the development proposed is in line with national guidance and development plan policy, Planning Policy Statement 3 and saved Housing Policy 4 is the relevant guidance on which a decision should be based. The Government revised Planning Policy Statement 3 in 2010 abolishing housing targets and advising that there was no longer a presumption that development of rear gardens was acceptable. The statement was announced in the context of *'.....a simple step that will dramatically transform councils' ability to prevent unwanted development on gardens where local people object and protect the character of their neighbourhoods.'* (DCLG website). The application under consideration has generated a large amount of neighbour objection with several neighbours advising that they are concerned that the application is not in keeping with the area, that their privacy will be adversely affected and that 'garden grabbing and backland development' should not be granted. The proposals are finely balanced in the proposal and there is a great deal of concern about the development. The main concerns being the loss of amenity by the passing by of the existing property of 681 Burton Road (a single storey bungalow) whose bedrooms are located on the elevation that will be mostly affected. Further concerns are the proposed first floor windows in the proposed dwellings at the rear, which will overlook the rear garden areas 681 and 701 Burton Road.

Whilst the proposed dwellings to the rear of the site are not considered in keeping with the linear form of development of Burton Road the proposed demolition of the existing property and its rebuilding with a detached garage at the rear is considered acceptable. There will be a potential for overlooking of the neighbouring gardens of 681 and 701 Burton Road but this is not considered to be a sufficient reason for refusal. The application is therefore considered to be a marginal decision in favour of the proposals and accordingly a recommendation to approve the application as submitted is recommended.

On the advice of the County Highways Authority, highway safety is not considered to be a reason to refuse the application.

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

## Recommendation

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

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. Before any other operations are commenced, the access shall be laid out and constructed in accordance with the application drawings and maintained throughout the life of the development free from any impediments to its designated use.

Reason: in the interest of highway safety.

3. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents' vehicles, on the basis of two spaces per dwelling, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.  
Reason: in the interest of highway safety.
4. No gates or other barriers shall be erected within 5m. of the nearside highway boundary and any gates shall open inwards only.  
Reason: In the interests of highway safety.
5. No development shall take place until details of a scheme for the disposal of surface water and sewage have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details, which have been agreed before the development is first brought into use.  
Reason: In the interests of flood protecting and pollution control.
6. No development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.  
OR a suitable scheme for the prevention of ground gas ingress is submitted to the LPA and approved in writing.  
Upon completion verification of the correct installation of gas prevention measures (if any) shall be forwarded to the LPA for approval.  
Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
8. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.  
Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, none of the dwellings hereby permitted shall be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

10. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

11. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

#### Informatives:

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

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

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com). The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

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

**Item**            **1.3**

**Reg. No.**        **9/2011/0174/FO**

**Applicant:**  
MR & MRS D BACON  
45 ALMA ROAD  
NEWHALL  
SWADLINCOTE

**Agent:**  
MR N ASTLE  
24 THE CITY  
WOODVILLE  
SWADLINCOTE

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR  
ACCESS AND LAYOUT RESERVED) FOR THE  
ERECTION OF FOUR DWELLINGS AND ASSOCIATED  
CAR PARKING AND TURNING AREA AT 45 ALMA  
ROAD NEWHALL SWADLINCOTE**

**Ward:**            **Stanton and Newhall**

**Valid Date:**     **23/03/2011**

**Reason for committee determination**

This application is brought before this committee following a request by Councillor Bambrick advising that local concern has been raised about a particular issue and there are unusual circumstances, which need to be considered by the committee.

**Site Description**

The application site is located to the rear of 45 Alma Road, accessed through a shared driveway serving 43 and 45 Alma Road. Currently the site houses a large outbuilding, which is used for storage purposes and is underused. There are some trees on the boundary of the site, which screen the area from residential properties on Bramblewood and Cecil Road. The area is a mixture of development with Alma Road being predominantly two storey terraced properties with long rear gardens and no off-street parking. Bramblewood is a development of detached bungalows with off-street parking and relatively small, modest rear gardens.

**Proposal**

The proposal is submitted in outline form with approval for access and layout to be considered now. The illustrative proposal is to erect four dwellings, being a block of terraced properties, and being 2 storeys, with a room in the roof at second floor level. The scale is indicative only at this stage. Two off-street parking spaces per dwelling have been shown together at the front of the development with an additional parking space for 43 Alma Road together with its garage retained. No 45 will have an area designated for car parking too. Whilst there are trees on site the applicant has indicated





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South Derbyshire District Council. LA 100019461. 2010

that these will not be affected by the proposals and a landscaping scheme would be submitted at reserved matters stage including the existing trees on the site.

### **Applicants' supporting information**

In support of the application are the following related documents:

- Design and access statement
- Coal Mining and Stability Risk Assessment Report

### **Responses to Consultations**

The Coal Authority has commented that they do not wish to raise any objections to the application subject to a condition requiring an intrusive site investigation to be undertaken prior to the commencement of the development.

Severn Trent Water does not raise any objections to the application as submitted subject to a condition regarding the disposal of surface water and foul sewage.

The County Highway Authority does not raise any objections to the application as submitted subject to conditions regarding visibility sightlines, access way, parking and manoeuvring, gates being set back at least 5m and a bin store being provided being applied.

### **Responses to Publicity**

Two letters of objection were received from neighbours on Bramblewood who are concerned that:

- a. They will lose natural light and security as their boundary to the rear will be exposed to an open road
- b. They are concerned that the boundary wall at the rear of their properties may be affected
- c. Loss of trees will result affecting wildlife and nesting birds
- d. Sewage and storm drains are already oversubscribed
- e. Access is too close to Bramblewood and extending the access will result in a loss of car parking on Alma Road
- f. Extra noise from passing cars at the rear and pollution
- g. The proposed 2½ storey dwellings are out of context with the surrounding area
- h. Overlooking of rear garden by the proposed properties
- i. Believe that the trees may have tree preservation orders on them
- j. Access is limited and this will cause problems for emergency vehicles and delivery and refuse collection lorries
- k. Another case of back garden development and it should be refused.

### **National Guidance**

PPS1 and 3.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan (2009): Policies 2, 3 and 12

## **Other Supplementary Planning Guidance**

### **Housing Design and Layout**

#### **Planning Considerations**

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

- Development plan policy and national guidance and advice
- The impact of the proposal on neighbours and highway safety.

#### **Planning Assessment**

With regards to whether the development proposed is in line with national guidance and development plan policy the development itself of housing in Newhall does comply with Planning Policy Statement 3 and saved Housing Policy 4 as it is within the defined built up area of Newhall and is substantially surrounded by development. The site is sustainable being located within Newhall, with easy access to public transport and local services are within walking distance of the site.

The application is submitted in outline form only with access and layout for consideration. The access proposed has been assessed by the County Highways and they have not raised any objections to the application subject to conditions being applied therefore highway safety is acceptable. Due to the rather ad-hoc pattern of development in the vicinity it would be difficult to demonstrate that the development would be out of keeping with the area.

The agent has accepted a condition to control the front elevation as non-habitable rooms (this elevation being close to the ends of rear gardens to the west). The properties proposed would not be visible from Alma Road, being set to the rear of 45 It would provide suitable garden amenity areas at the rear and off-street parking areas.

It is therefore considered that the application as submitted conforms to both local and national policies.

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

#### **Recommendation**

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

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

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

2. Approval of the details of the, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

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

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

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

4. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

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

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

6. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.  
Reason: To safeguard the appearance of the existing building and the locality generally.
7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, none of the dwellings hereby permitted shall be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.  
Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.
9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.  
Reason: In the interests of the appearance of the area.
10. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.  
Reason: In the interests of highway safety.
11. The existing boundary wall to the rear of the properties on Bramblewood shall be retained.  
Reason: To protect the privacy and provide security for the residents at Bramblewood.
12. The rooms at first floor level in the front elevation of the properties, facing Bramblewood shall be non-habitable rooms and the windows shall be permanently glazed in obscure glass.  
Reason: To avoid overlooking of adjoining properties on Bramblewood in the interest of protecting privacy.

13. An intrusive site investigation shall be undertaken prior to the commencement of the development, the details of which shall be approved by the Local Planning Authority. If site investigations confirm the need to treat any areas of shallow mine workings or to adopt any other mitigation measures for stability and safety purposes, these would shall be undertaken prior to the commencement of development.  
Reason: to ensure the stability of the ground levels.
14. Prior to any other works commencing (excluding demolition and site clearance), the access shall be widened to 5m, surfaced in a solid bound material for the first 5m, provided with 2.4m x 33m visibility sightlines and 2m x 2m x 45° pedestrian intervisibility splays on each side, the area forward of which shall be cleared, and maintained thereafter clear, of any obstruction exceeding 1m in height (600mm in the case of vegetation), relative to the nearside carriageway edge.  
Reason: in the interest of highway safety.
15. Prior to the occupation of the first dwelling, the access driveway and turning space shall be laid out in accordance with the application drawing and maintained thereafter free of any obstruction to its designated use.  
Reason: in the interest of highway safety.
16. Prior to the occupation of the first new dwelling, space for the parking of vehicles shall be provided within the site curtilage on the basis of two spaces for each of the existing and proposed dwellings, each space shall measure at least 2.4m x 4.8m with 6m clear behind for manoeuvring and be maintained throughout the life of the development free of any impediment to their designated use.  
Reason: in the interest of highway safety.
17. Prior to the occupation of the first dwelling, the bin store shall be provided in accordance with the application drawing and be maintained throughout the life of the development.  
Reason: in the interest of highway safety.
18. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).  
Reason: To protect the amenities of adjoining properties and the locality generally.

Informatives:

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

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal

Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: [www.coal.gov.uk/services/permissions/index.cfm](http://www.coal.gov.uk/services/permissions/index.cfm).

**Item**            **1.4**

**Reg. No.**        **9/2011/0214/SMD**

**Applicant:**

David Wilson Homes  
Forest Business Park  
Cartwright Way  
Bardon Hill

**Agent:**

Mr Liam Edwards  
David Wilson Homes  
Forest Business Park  
Cartwright Way  
Bardon Hill

**Proposal:**        **Proposed substitution of house types to plots 43-61, 64-104, 113-117, 140-159, 165-167, 190-219 and 288-295 inc. (plots 296-305 omitted) at Phase 5 Land To The South East Of Swadlincote Lane Castle Gresley Swadlincote**

**Ward:**            **Linton and Church Gresley**

**Valid Date:**     **01/04/2011**

**Reason for committee determination**

The application is brought before the Committee, as it is a major application with more than two objections.

**Site Description**

Existing housing bounds the site on Swadlincote Lane and Burton Road. The land slopes up from Burton Road albeit with undulations. The existing residential properties adjacent to the north western and south western boundaries on Swadlincote Lane and Burton Road are a mix of large detached dwellings and bungalows. The Burton Road frontage is punctuated by four detached properties and there is a former builder's yard further along the road to the south east, which has outline permission for a dwelling.

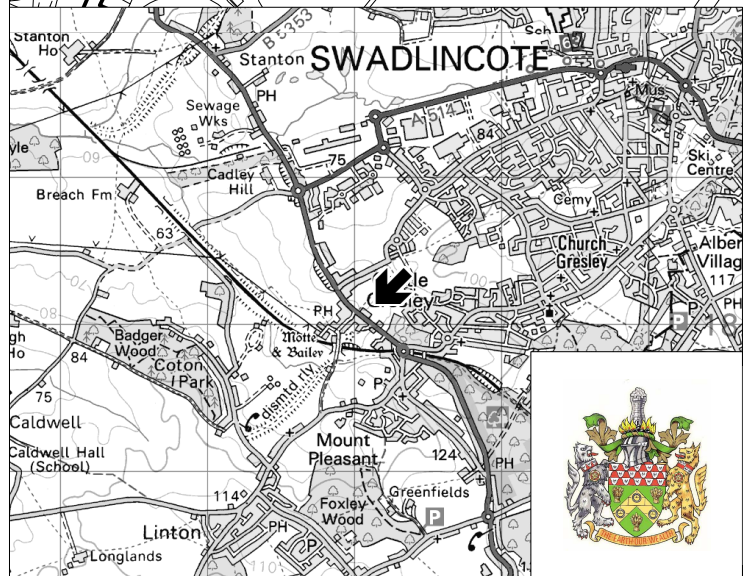
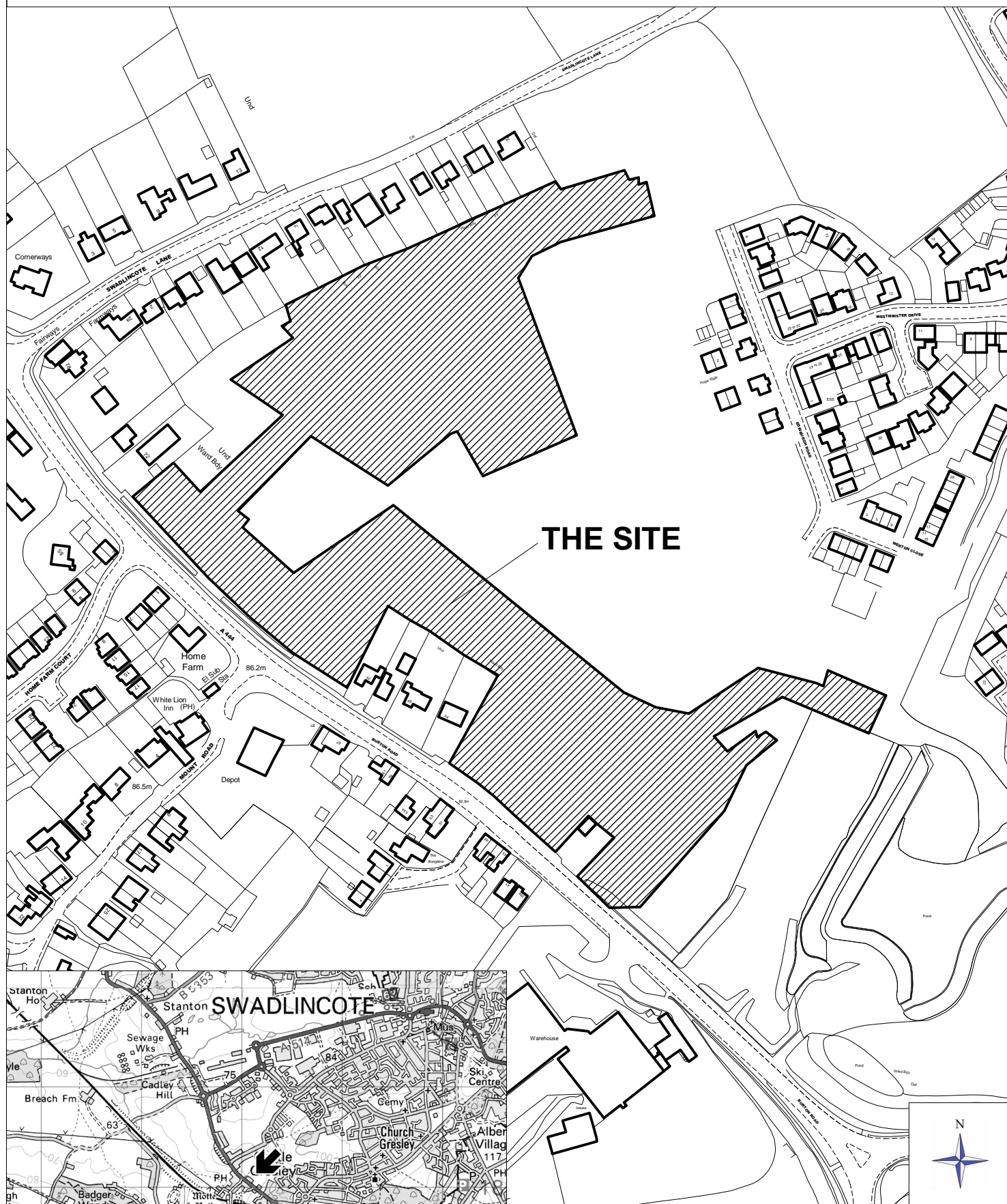
The previous phases of the Castleton Park development are ongoing.

**Proposal**

This full application proposes the erection of 125 dwellings as a re-working of part of the Phase 5 Castleton Park development, in substitution for part of the existing permitted scheme, which has 135 dwellings on the same land (i.e. a reduction of 10 dwellings). The proposed buildings are a mix of two, two and a half and three-storey detached semi-detached and detached dwellings.



**9/2011/0214 - Phase 5, Land to the South East of Swadlincote Lane, Castle  
Gresley, Swadlincote (DE11 9EG)**



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The basic road layout is unchanged and the permitted footpath/cycleway runs through the centre of the site, linking from the main development on Brunel Way through to Burton Road is retained in the proposal.

The majority of the parking is to the side of dwellings or in rear parking courtyards, which is a design feature of the overall development to reduce the visual impact and dominance of cars in the streetscape. Along Burton Road the development would not have a direct relationship with the road, as no vehicle access is proposed, and the existing hedging along the frontage would be retained.

### **Applicants' supporting information**

The Design and Access Statement concludes that the proposed re-plan would be an improvement over the permitted scheme.

### **Planning History**

9/0890/515 – Outline - Residential Development of approximately 58.3 hectares of land to the south east of Swadlincote Lane, Approved March 2000

9/2006/1280 – Phase 5 - Approval of reserved matters of application for the construction of 119 dwellings.

9/2007/0415 – Amendment of scheme approved under 9/2006/1280, Approved June 2007

9/2009/0240 -Approval of reserved matters of application 9/0890/0515 for the erection of 305 dwellings – Approved August 2009.

### **Responses to Consultations**

The Highway Authority has no objection subject to conditions.

### **Responses to Publicity**

Three objections have been lodged in the following terms:

- There would be overlooking and loss of privacy and light, in particular from the proposed 2.5 storey dwellings.
- The level of the site is higher than Swadlincote Lane, which would emphasise the overlooking and over-dominance issues.
- There should be greater distances between existing and proposed dwellings.
- Existing property values would be adversely affected.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: Policies 2, 3, 12, 14, 26 and 48.

Local Plan: Housing Policy 2, Housing Policy 11, Environment Policy 10,

Transport Policy 6, Transport Policy 8, Recreation and Tourism Policies 4 and 8.

## **National Guidance**

PPS 1, PPS3, PPG13, PPG17.

## **Planning Considerations**

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

- The principle of the development
- Residential amenity
- Appearance.
- Highways issues

## **Planning Assessment**

### The Principle

The principle of development is established and there is an extant permission on the site, for 10 more houses than now proposed.

### Residential Amenity

The revised scheme has fewer 2.5 storey dwellings facing the opposing existing houses in Swadlincote Lane and the density of development along this boundary has reduced (from 18 to 12). The distances between the existing and proposed dwellings are well in excess of the minimum 21 metres standard set out in supplementary planning guidance, even when ground levels and buildings heights are taken into account. Therefore there would be no demonstrable harm to the living conditions of neighbours in Swadlincote Lane. With regard to existing properties in Burton Road the proposed amendments would not materially worsen the situation for residents and the relevant guidelines are met. Similarly the relationship of proposed dwellings to the former builders' site on Burton Road is no worse than as already approved.

### Appearance

The appearance of the dwellings in terms of their design and relationship to the street follows the established then in this locality and the development would therefore be acceptable in this regard.

### Highway Safety

The road network would remain as already approved, with the exception of some minor changes to the geometry of minor cul-de-sacs and the requirements of the Highway Authority are met.

### Conclusion

The application constitutes a slightly less dense alternative to the approved scheme, which does not lead to any increased impact in respect of the relevant planning issues.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Before any other operations are commenced (excluding site clearance), space shall be provided within the site curtilage for storage of plant and materials/ site accommodation/ loading and unloading of goods vehicles/ parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.  
  
Reason: To ensure the free flow of traffic on the adjoining highway.
3. Before any of the operations hereby approved are commenced, facilities shall be provided as agreed in writing with the Local Planning Authority to prevent the deposition of extraneous material on the public highway and shall be maintained throughout the construction period of the development.  
  
Reason: In the interests of highway safety.
4. No dwelling shall be occupied until the estate road serving the dwelling has been constructed to base level in accordance with the County Council's specification for new housing development roads.  
  
Reason: To ensure that each dwelling is afforded access.
5. The proposed private vehicular access driveways shall be surfaced with a solid, bound material (i.e. not loose chippings) prior to the occupation of the dwelling to which they relate.  
  
Reason: To prevent the deposition of extraneous material on the public highway in the interests of highway safety.
6. Dwellings shall not be occupied until space has been provided in accordance with the approved application drawings for the parking for residents and visitors, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use. Garages & parking spaces shall be kept available for the parking of motor vehicles at all times, and shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter, unless otherwise agreed in writing with the Local Planning Authority.  
  
Reason: To ensure that adequate parking/garaging provision is available.

7. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority.  
Reason: To safeguard the appearance of the existing building and the locality generally.
8. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land and details of any to be retained (including the retention of the hedge on the frontage of Burton Road), together with measures for their protection in the course of development.  
Reason: In the interests of the appearance of the area.
9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
11. Prior to the commencement of the development hereby approved full details of the proposed bin stores and the materials for surfacing the bin collection areas shall be submitted to and approved in writing by the local planning authority. The bin stores and collection areas shall be provided in accordance with the agreed details prior to occupation of the relevant dwellings.  
Reason: In the interests of the amenity of the area.
12. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.  
Reason: In the interests of flood protecting and pollution control.
13. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.  
Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

14. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
15. The Footpath/Cycleway/Greenway/public open space shall be landscaped, hard surfaced and opened for public access prior to the occupation of the 50th dwelling on this phase unless otherwise agreed in writing by the Local Planning Authority.
- Reason: In the interests of permeable public access across the site.
16. The footpath/cycleway link where it meets Burton Road shall have a gradient of 1:20.
- Reason : In the interest of cycling and highway safety.
17. Prior to the commencement of the development, a scheme for the phasing, completion and use of all public footpaths/cycleways and public open spaces shall be submitted to and agreed in writing by the Local Planning Authority and the areas shall be completed and made available for use in accordance with the agreed phasing.
- Reason: In the interests of the appearance of the area and amenity of future residents of the area.
18. No part of the south-west facing roof windows to Plots 69 & 70 shall be lower than 1.7 metres above the floor of the room in which the windows will be installed.
- Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

19. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. S2170\_100\_01 Rev X and amended 'Amber' house type drawing.

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

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

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

#### Informatives:

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

Further to the comments above relating to rights of way the County Highways Authority advise that the layout affects the route of definitive public right of way footpath no. 40, as shown on the definitive plan. The Footpath will need to be diverted prior to works commencing.

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

For the discharge of the site investigation, as a minimum, the report should include:

- a) Details of an overview of the initial walkover survey to including the identification of contaminants from other sources e.g. gases emitted from natural organic deposits such as coal, or structures such as disused drains.
- b) Detailed on site sampling to identify any contamination.
- c) The locations of any contaminated zones within the site including details of more extensive and geographically wider investigation of these zones. This will provide a more reliable picture of the distribution of contamination on the site and reduce the risk of failing to discover a hot spot of contamination.
- d) An assessment of any off site impacts such as the effect on watercourses etc.
- e) A thorough explanation of the chosen remedial measures including depth, breadth of excavation and details of soil replacement.
- f) Plan of action if further contamination is identified during remediation.
- g) Details of the measures to verify that the contaminant has been removed to an acceptable level.
- h) The identification as to whether a long-term monitoring and maintenance programme is required, if so, details of the plans.

- i) Details of the long and short term risk to human health including the construction phase and post-development.
- j) Details of the British Standards or other guidelines used in both the assessment and remediation measures proposed.

Further guidance can be obtained from the following:

- I. Model Procedures for the Management of Land Contamination CLR 11
- II. CLR Guidance notes on Soil Guideline Values, DEFRA and EA
- III. Sampling Strategies for Contaminated Land, CLR4 1994, DoE.
- IV. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- V. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- VI. Guidance for the Safe Development of Housing on Land Affected by Contamination' Environment Agency. ISBN 0113101775.

C:\Scp\Planning\Gis\DNPD66.DOC Soil contamination or the potential for it is a material planning consideration and must be taken into account by a local planning authority in the determination of a planning application. This site is suspected to be contaminated with chemicals associated with farming. The responsibilities for providing information on whether and how a site is contaminated rests with the developer, as does the subsequent safe development and secure occupancy of the site. Under these circumstances, you should undertake a site investigation and submit the results and remediation proposals as part of the planning application.

If a reclamation strategy is submitted and agreed by the planning authority compliance with it will be condition of any subsequent approval. The developer will also be required to sign a completion certificate confirming that the works of reclamation have been carried out in accordance with the agreed strategy.

This permission is subject to conditions on the outline planning permission approved under the Council's reference 9/0890/0515/O and to the agreement under Section 106 of the Town and Country Planning Act 1990 that accompanied that permission.

The Water Industry Act requires that there shall be no building over any public sewer crossing the site without the express consent of the Regional Water Company. You are asked to contact Severn Trent Water with regard to ensuring adequate protection/room for maintenance of the sewer.



**Item**            **1.5**

**Reg. No.**        **9/2011/0236/B**

**Applicant:**

Mr Dewan Reza  
30 King Edward Road  
Loughborough

**Agent:**

Mr Dewan Reza  
30 King Edward Road  
Loughborough

**Proposal:**        **THE VARIATION OF CONDITION 4 ATTACHED TO PLANNING  
PERMISSION 9/2010/0785 TO OPEN 17.30-23.00 HRS FRIDAY,  
SATURDAY AND BANK HOLIDAYS AT 61 DERBY ROAD  
MELBOURNE**

**Ward:**            **MELBOURNE**

**Valid Date:**      **29/03/2011**

**Reason for committee determination**

The application is reported to Committee at the discretion of the Head of Community and Planning Services because the planning permission to which the condition relates, was only recently granted by members at the meeting held on 12 October 2010 and an application to vary Condition 4 was refused by Committee at the meeting of 23 November 2010.

**Site Description**

The property is situated at the corner of Derby Road and South Street. The ground floor is now in use as a restaurant. Whilst the immediate area is predominantly residential in land use, the adjoining property is the Alma public house and the former Liberal Club is situated opposite. However Derby Road, from the town centre to Victoria Street, contains a wide mix of land uses, reflecting Melbourne's size and historic pattern of development.

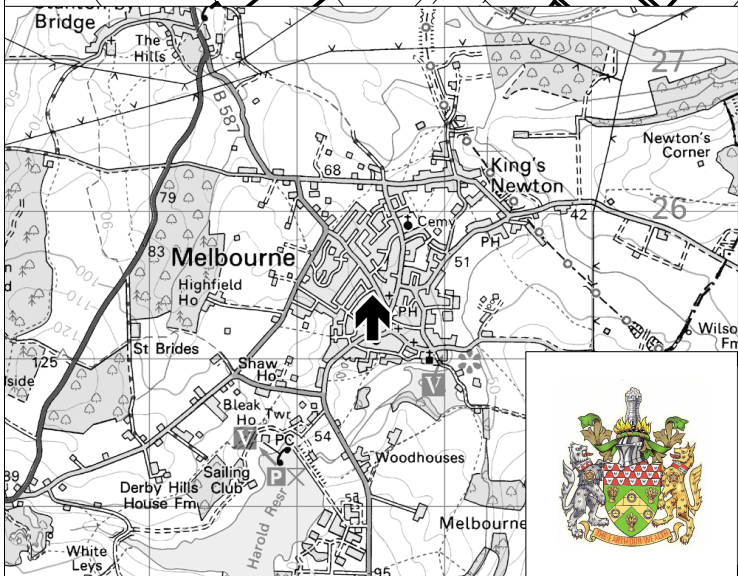
**Proposal**

The applicant wishes to extend the permitted opening hours to enable the restaurant to serve food between 1730 hrs - 2300 hrs on Friday Saturday and Bank Holidays. On other days the restaurant would still close at 2230 hrs and would not be open at all on Sundays.

**Applicants Supporting Information**

The applicant has taken into consideration noise that might be created during weekdays and would maintain 2230 hrs closing then. However customers have requested longer

9/2011/0236 - 61 Derby Road, Melbourne, Derby DE73 8FE



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**South Derbyshire District Council. LA 100019461. 2010**

opening hours and many local residents have signed a petition in support of the application (two petitions of support accompany the application, with a total of 180 signatures).

### **Planning History**

9/1997/0916 - The use as a wine bar of the retail premises – permitted

9/2001/0058 - outline application for the erection of a single dwelling – refused

9/2002/0071 - The use as a computer training centre (D1) and wine bar (A3) – permitted

9/2005/0014 - The use of the premises as a call centre for drain clearance company and the retention of gate – permitted

9/2010/0574 - Flue – permitted

9/2010/0785 – Use as a restaurant – permitted. A condition was imposed restricting hours of opening to those specified in the application;

“The use hereby permitted shall not be open to customers and no customers shall remain on the premises outside the following times: Monday to Saturday 1730 hrs - 2230 hrs.

The premises shall not be open for business on Sundays and Bank Holidays”

9/2010/0966 – the variation of condition 4 of planning permission 9/2010/0785 to permit opening between the hours of 17:30-23:00 Monday to Sunday including bank holidays – refused;

“The extension of opening hours will result in cumulative noise and disturbance that will adversely affect the amenities of neighbouring residential properties contrary to Saved Local Plan Shopping Policy 3.”

9/2011/0079 - The variation of condition 2 of planning permission 9/2010/0785 to allow delivery of hot food for consumption off the premises - permitted.

### **Responses to Consultations**

Melbourne Civic Society considers that the existing condition is unnecessary, unreasonable and a restriction on trade that has not been applied to other premises in Melbourne. The Society therefore supports the application.

The Pollution Control Officer has no objection and comments that 11 pm closing time is not unreasonable for this type of activity in such a location. He notes that the Bay Tree (corner of Market Place and Potter Street) also closes at 11 pm.

The Highway Authority has no objection, subject to no sales of hot food to visitors to the premises for consumption off the premises.

### **Responses to Publicity**

A petition of 30 signatories objects on the grounds of cumulative noise and disturbance.

6 letters of objection have been received raising the following concerns:

- a) There would be cumulative noise and disturbance to the detriment of residential amenity.
- b) The previous condition was imposed to protect the amenities of neighbours. To vary the condition would be inconsistent.
- c) In accordance with government advice the condition would not have been imposed were it not necessary to avoid a refusal of permission for the restaurant.
- d) Most customers and supporters do not live locally.
- e) It is likely that customers would remain on the premises after 2300 hrs.
- f) It would become difficult to resist further applications for extended hours.
- g) Bank Holiday opening would conflict with festivals.
- h) There would be increased traffic and congestion to the detriment of highway safety.

8 letters of support raise the following points:

- a) 2300 hrs is a reasonable closing time.
- b) Small businesses should be encouraged.
- c) The restaurant is well run, clean and there are no odours associated with it.

### **Development Plan Policies**

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 12, Transport Policy 6 and Shopping Policy 1.

### **National Guidance**

PPS1 PPS4 PPG13

### **Planning Considerations**

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

- Impact on the character of the conservation area.
- Residential amenity.

### **Planning Assessment**

The proposed extended opening hours would not give rise to a change in the character of the conservation area.

On the advice of the Pollution Control Officer, and having regard to the immediate proximity of the Alma Inn, the proposed use would not result in demonstrable harm to the living conditions of residential neighbours. The existing condition reflects the hours of opening proposed by the applicant before the restaurant was up and running. The applicant has now opened the business and has reported that the condition has an adverse impact on the business and the service it provides to customers. The advice of the Pollution Control Officer is given in the context of an area that already contains a number of town centre uses. Furthermore the proposed extended hours would only

affect Fridays, Saturdays and Bank Holidays whereas the previous application for extended hours, refused by Committee, related to extended hours for every day.

There is no evidence that traffic would increase as a result of the extended hours.

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

## **Recommendation**

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

1. The premises shall be used solely for a purpose falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) or for delivering food direct to customers' premises. In particular there shall be no sales of hot food to visitors to the premises for consumption off the premises.

Reason: In the interests of highway safety and the amenity of the occupiers of nearby dwellinghouses.

2. The fume extraction system and maintenance arrangements as set out in Mick Hawkes technical drawing nos. MEL001/2010, MEL003/2010, Baffle Filter Drawing and e-mail dated 18 April 2011 shall be retained in place for the duration of the permitted use unless as may otherwise be agreed in writing with the Local Planning Authority.

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

3. The use hereby permitted shall not be open to customers and no customers shall remain on the premises outside the following times: Monday to Thursday 1730 hrs - 2230 hrs; Friday, Saturday and Bank Holidays 1730 hrs - 2300 hrs. The premises shall not be open for business on Sundays.

Reason: For the avoidance of doubt, these being the hours specified in the application and to ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

**Item**            **1.6**

**Reg. No.**        **9/2011/0028/FH**

**Applicant:**

Mr A P Lochrie  
The Church House  
Merlin Way  
Mickleover

**Agent:**

Mr A P Lochrie  
The Church House  
Merlin Way  
Mickleover

**Proposal:**        **THE ERECTION OF A GARDEN SHED AND PARKLAND  
FENCING ON THE NORTH EAST SIDE OF THE CHURCH HOUSE  
MERLIN WAY MICKLEOVER DERBY**

**Ward:**            **ETWALL**

**Valid Date:**     **11/04/2011**

**Reason for committee determination**

This application is brought to Committee at the request of Councillor Lemmon, as the Committee should consider unusual site circumstances.

There is a concurrent application 9/2011/0276 on this agenda affecting the same site for the felling of Pine trees covered by South Derbyshire District Council's Tree Preservation Order 132.

**Site Description**

The application site forms part of the Grade II listed former Church at The Pastures Hospital site. The application site also includes the Grade II listed Winter Garden, a freestanding conservatory type structure located to the south west of the church.

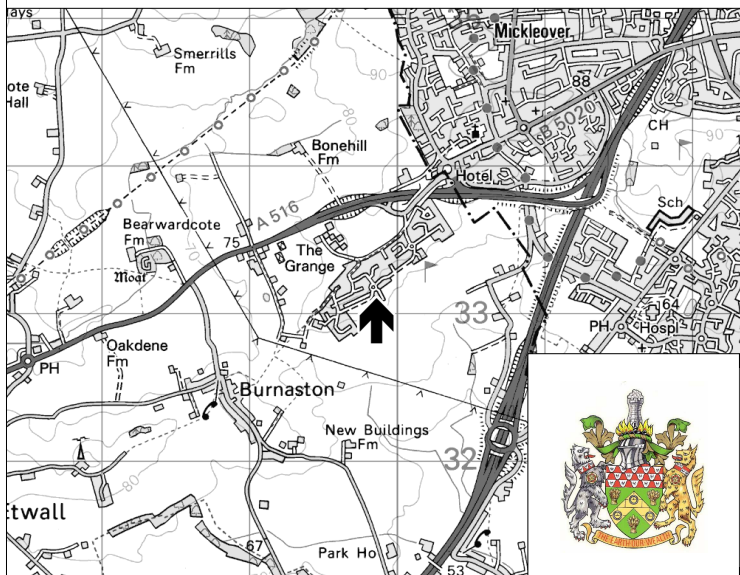
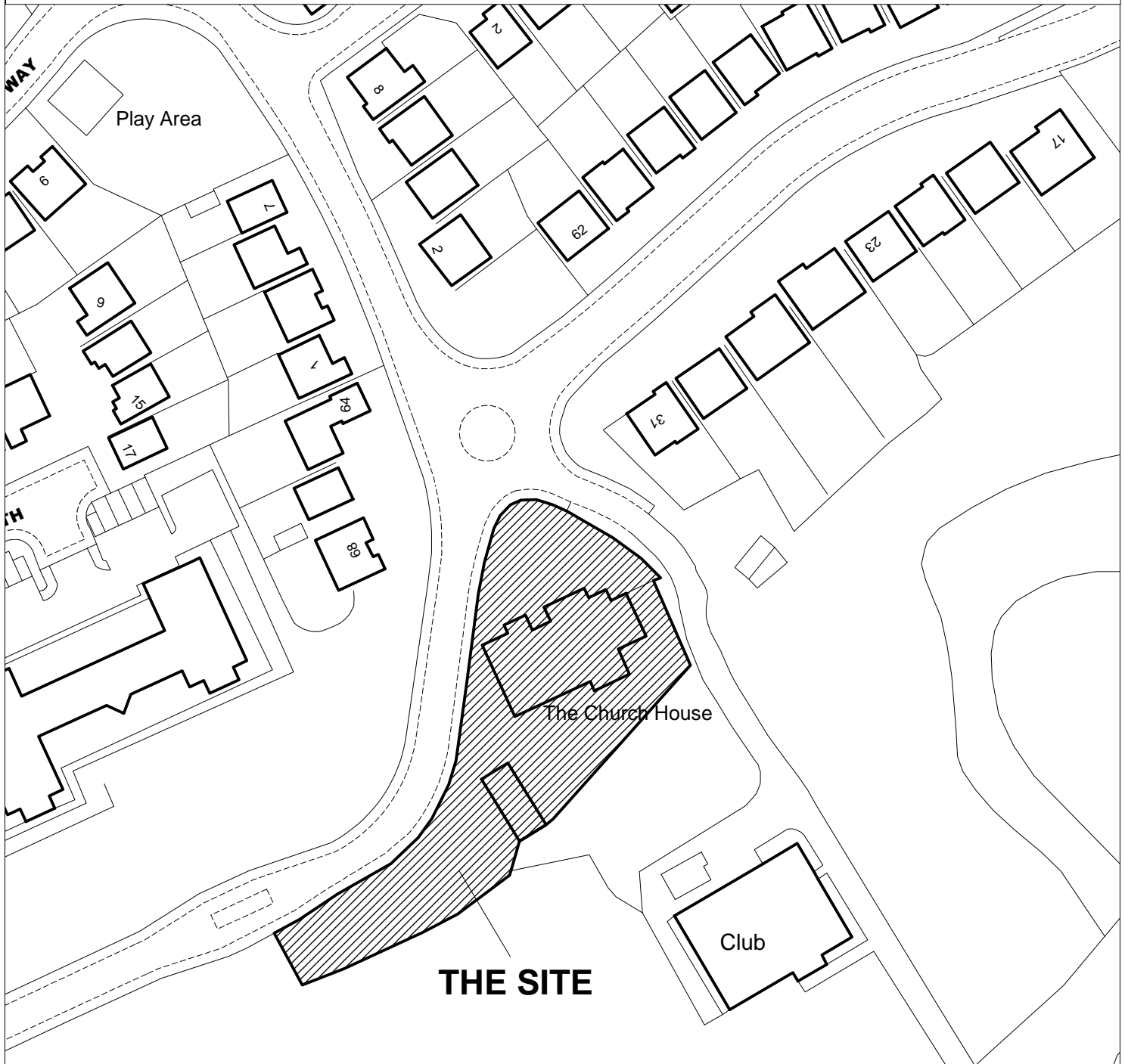
**Proposal**

The proposal is for the erection of a garden shed in the rear garden and parkland fencing to the northeast boundary of the 'front' garden of the former Church site.

**Applicants' supporting information**

The applicant has submitted a 'Listed Building Statement' covering the following:

The proposed shed is to be constructed in the grounds of the Grade II listed former Church, which has been converted into a private residence. The shed will be a freestanding building to the rear of the property and will be used for the storage of a ride-on lawn mower, ladders and garden equipment. The structure will not interfere with



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the existing listed buildings and its appearance will be in keeping with buildings of a similar period, i.e. the old type of signal boxes.

The shed's roof will be constructed in reclaimed slates and blue ridge tiles, with scalloped wooden fascia boards with wooden finials at each end, and will overhang the building by 400mm. Guttering will be of an ogee pattern in cast iron, downpipes will also be cast iron. The sides of the shed will be constructed in horizontal planed boarding, with 2 small windows comprising 4 panes of single glazing facing the church and a pair of wooden tongue and groove doors in the gable end. The shed is to be painted in the same colour as the church doors with cream fascias, soffits and guttering, however the applicant is open to advice on the colour scheme.

Parkland fencing, consisting of 5 steel bars decreasing in widths and painted black to match the existing, is to be erected on the northeast side of the front grounds of the Grade II listed former Church. Parkland fencing exists to the west boundary of the site adjacent to Merlin Way. The fencing is required to prevent people using a short cut through the property's front lawned area to get to the neighbouring golf course.

### **Planning History**

Planning permission for the residential development of the former Pastures hospital site was granted in the mid 1990s.

Planning permission and listed building consent were also given in the mid 1990s to convert the Grade II listed Church into a family home and the conversion works are ongoing. There has been one further application since for minor internal works to remove a chimney breast, which was given listed building consent in December 2005.

The Winter Garden was originally a curtilage building associated with the former hospital and was listed as a structure in its own right in November 1997 following the redevelopment of the hospital site. Repairs to the Winter Garden were undertaken prior to the conversion works commencing on the Church.

### **Responses to Consultations**

Burnaston Parish Council has no objection.

The Development Control Archaeologist has commented as follows:

- Church House is a former chapel (Grade II Listed), built in 1870 to serve the former County Lunatic Asylum which occupied the wider site from 1851-2 and closed in 1993.
- There is no potential for buried archaeology in the location of the proposed shed and fencing, therefore there is no need to place any archaeological requirement upon the applicant.
- The proposal site is, however, immediately adjacent to two Grade II Listed buildings, and the proposals may therefore impact indirectly (visually) upon the significance of these designated heritage assets. The Council's Conservation Officers should comment upon the acceptability of the proposals in relation to these indirect impacts.



The Council's Design and Conservation Officer has recommended that the application be approved with conditions and has commented as follows:

- The applicant has converted the former Chapel very sensitively with excellent results.
- A similar boundary treatment has already been erected on the west side of the Chapel and no objection is raised to the current fencing proposal.
- The shed is tucked away to the rear of the Chapel and is of a bespoke design that will sit comfortably at the back of the plot. The applicant has agreed to adopt a plainer bargeboard detail and this can be conditioned.

### **Responses to Publicity**

There has been one response to publicity from the Mickleover Country Park Social Club Committee who has no objection to the proposal.

### **Development Plan Policies**

The relevant policies are:

Adopted Local Plan: Environment Policy 13.

### **National Guidance**

PPS5

### **Planning Considerations**

The main issue central to the determination of this application is the impact of the proposal on the setting of the Grade II listed former Church and the Grade II listed Winter Garden (orangery).

### **Planning Assessment**

Conforms to the above-mentioned policy.

The proposal was subject to pre-application advice from the Council's Design and Conservation Officer and the details are all as discussed. The proposed shed is of a sympathetic bespoke design that will sit comfortably within the application site and the proposed fencing will match the existing parkland fencing to the west side of the former Church.

The proposed works are considered acceptable and would not adversely affect the setting of the Grade II listed former Church or the setting of the Grade II listed Winter Garden.

The proposal would therefore comply with the above policy and advice.

The proposal complies with the overarching ethos of PPS 1, in particular maintaining the character and amenity value of the urban area as a whole. The development has been judged not to unacceptably affect the amenities of neighbours or the area generally.

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the particulars of the application, revised details of barge boards to the shed shall be submitted for approval in writing by the Local Planning Authority prior to commencement of building operations.  
Reason: The submitted details are considered unsatisfactory.
3. The timber shed shall be painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The shed shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In the interests of the appearance of the building(s) and the character of the area.

**Item**            **1.7**

**Reg. No.**        **9/2011/0276/TP**

**Applicant:**

Mr A P Lochrie  
The Church House  
Merlin Way  
Mickleover

**Agent:**

Mr A P Lochrie  
The Church House  
Merlin Way  
Mickleover

**Proposal:**        **THE FELLING OF PINE TREES COVERED BY SOUTH  
DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION  
ORDER NUMBER 132 AT THE CHURCH HOUSE MERLIN WAY  
MICKLEOVER DERBY**

**Ward:**            **ETWALL**

**Valid Date:**     **05/04/2011**

**Reason for committee determination**

This application is brought to Committee at the request of Councillor Lemmon, as the Committee should consider unusual site circumstances.

There is a concurrent application 9/2011/0028 on this agenda affecting the same site for fencing and the erection of a garden shed.

**Site Description**

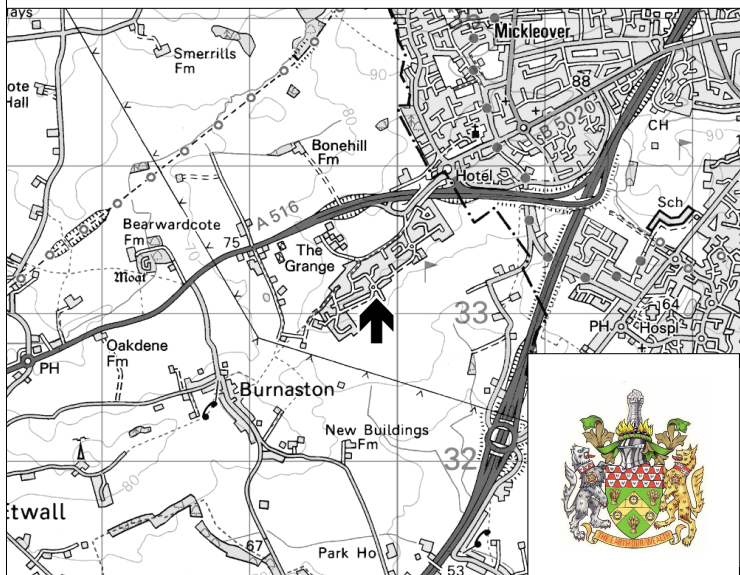
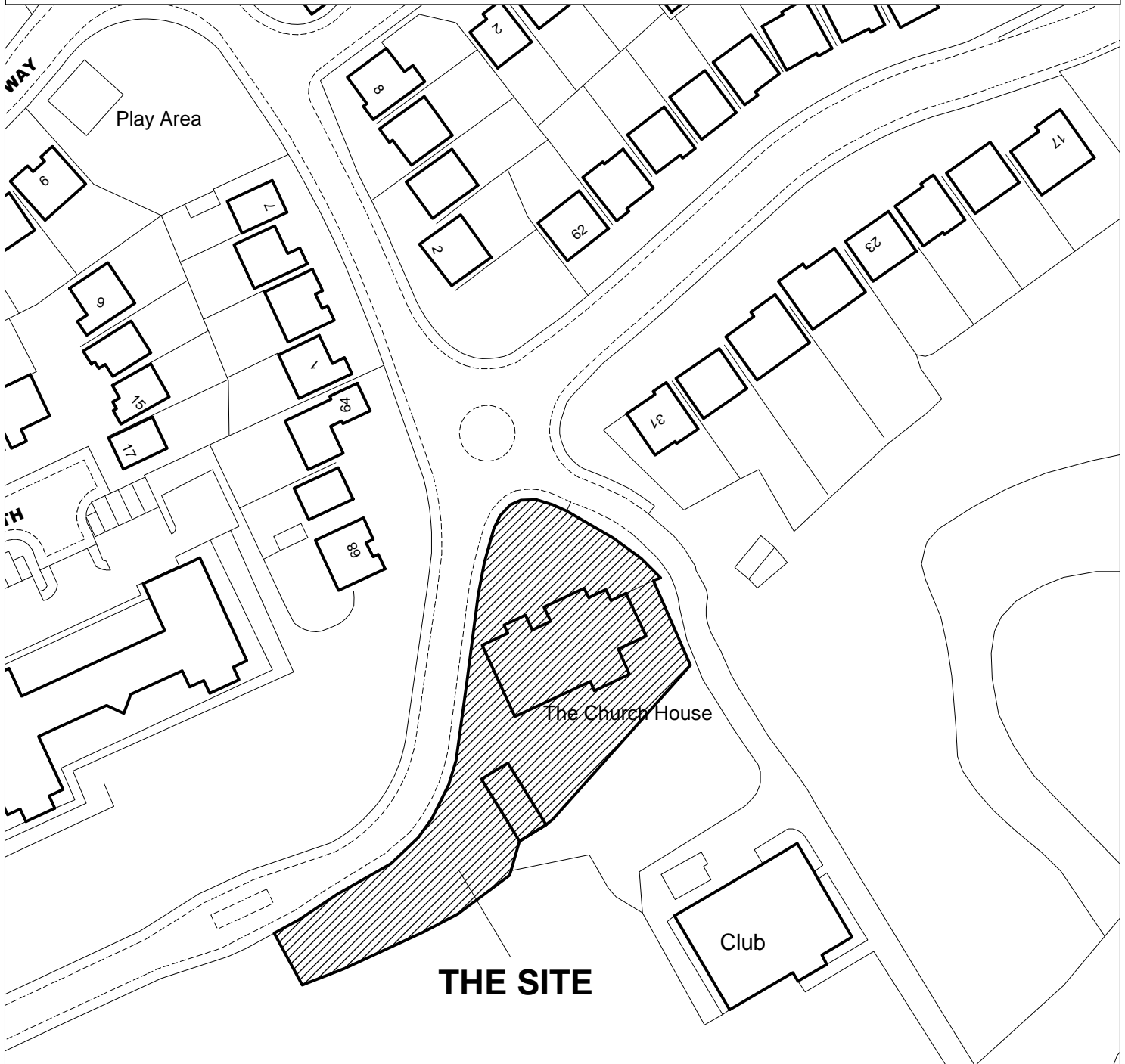
The site forms a part of the former church at The Pastures Hospital site and there is also a large Winter Garden (orangerie) within the site curtilage. Both structures are Grade II listed. The trees lie to the rear of the site between the church and the Winter Garden.

**Proposal**

This application seeks consent to fell two pine trees. The applicant states that he would prefer to keep the trees but there is excessive needle drop has caused gutters to be blocked and subsequent water damage to both listed buildings but in particular the Winter Garden.

**Planning History**

Planning permission for the conversion of the church to a dwelling was granted in the late 1990s and the conversion works are on going. The owner first undertook repairs to the Winter Garden before commencing work on the church. Planning permission for the



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redevelopment of the former hospital site for residential development was granted in the mid 1990's.

### **Responses to Consultations**

Burnaston Parish Council object to the removal of the trees, in one part of the form it is stated that the trees are causing damage to the property but the applicant has answered 'no' to the question that is about trees causing damage. Mature trees are important to the character of the country park and the Parish Council suspects that the trees are being felled to make way for the shed that is the subject of the separate application. If consent were granted the Parish Council would like to see the trees replaced with native species.

### **Responses to Publicity**

None

### **Development Plan Policies**

The relevant policies are:

Local Plan: Environment Policies 9 & 13.

### **National Guidance**

PPS 5

### **Planning Considerations**

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

- Impact on the listed building in terms of potential damage
- The long-term health of the trees
- The need for replacement trees.

### **Planning Assessment**

When the current owner bought these buildings they were in a state of considerable disrepair. The Winter Garden was subject to considerable repair at that time and in the past few weeks the owner has undertaken more repairs.

The trees have been carefully inspected and in both cases the trees are reaching a state of over maturity with a life expectancy of less than 25 years and in the case of the tree nearest the Winter Garden is a very poor specimen. At the time of the inspection, it was noted that the gutters of the church were full of pine needles; the owner advising that the gutters had been fully cleaned 2-weeks previously. The tree officer has recommended that the trees be removed because of their proximity to the listed buildings and the potential for damage to the buildings. The tree officer suggests that the pine trees be replaced with 2 specimen deciduous trees such as snake barked maple and/or a tulip tree; a condition requiring replacement trees is recommended. It should be noted that in the opinion of the tree officer the trees to be removed would not be otherwise affected by the shed and fence proposal.

## **Recommendation**

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

1. The works hereby granted consent shall be carried out within two years from the date of this permission.

Reason: To enable the Local Planning Authority to retain control over the works.

2. Replacement trees of a species and in a position to be first agreed with the Local Planning Authority shall be planted in the same or immediately following planting season (November to March).

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

3. If either of the trees required in Condition 2 above, which within a period of five years from their planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

**Item**            **1.8**

**Reg. No.**        **9/2011/0290/TP**

**Applicant:**

MR BILL KING  
SOUTH DERBYSHIRE DISTRICT  
COUNCIL- HOUSING  
CIVIC OFFICES  
CIVIC WAY  
SWADLINCOTE

**Agent:**

MR MARTIN BUCKLEY  
SOUTH DERBYSHIRE DISTRICT  
COUNCIL  
CIVIC WAY  
SWADLINCOTE

**Proposal:**        **PROPOSED TREE WORKS ON COUNCIL LAND AT YORK ROAD  
CHURCH GRESLEY SWADLINCOTE**

**Ward:**            **CHURCH GRESLEY**

**Valid Date:**     **08/04/2011**

**Reason for committee determination**

The application is reported to Committee because the Council is the applicant.

**Site Description**

The site is a wooded area in the built up area, set behind properties in Charles Street, New Street, John Street and York Road.

**Proposal**

The application proposes the removal of dangerous trees and routine pruning and pollarding to others

**Responses to Consultations**

None received.

**Responses to Publicity**

None received.

**Development Plan Policies**

There are no relevant policies for TPO applications.



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## **National Guidance**

Tree Preservation Orders – A Guide to the Law and Practice

## **Planning Considerations**

The main issue central to the determination of this application is whether the proposed works constitute good arboricultural practice having regard to the high amenity value of the trees.

## **Planning Assessment**

The proposed works are considered to be beneficial to the long-term survival of the trees and their amenity value into the future and to ensure that they do not constitute a danger to humans.

## **Recommendation**

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

1. The work hereby approved shall be carried out within two years of the date of this consent.  
Reason: To ensure that the works hereby approved are carried out within a specified time period.
2. The work shall be carried out in accordance with BS3998: 1989 - Tree Work.  
Reason: To safeguard the health of the trees.

**Item**            1.9

**Reg. No.**        CW9/2011/0002/CW

**Applicant:**  
MIDLAND PIG PRODUCERS LTD

**Agent:**  
NAOMI LIGHT  
FISHER GERMAN LLP  
80 TAMWORTH ROAD  
ASHBY DE LA ZOUCH

**Proposal:**        **PROPOSED ERECTION OF A 2,500 BREEDING SOW PIG REARING UNIT WITH GRAIN STORE, FEED MILL, FEED HOPPERS, MESS BLOCK, WATER TREATMENT BUILDINGS TOGETHER WITH STORAGE BUILDINGS FEEDING AN ASSOCIATED ANAEROBIC DIGESTION FACILITY, SERVICE BUILDING, DIGESTATE AND METHANE GAS STORAGE TANKS SUPPLYING AN ELECTRICITY GENERATION FACILITY AND INCORPORATING A VISITOR CENTRE, 4 AGRICULTURE WORKERS DWELLINGS AND GARAGING, STRATEGIC LANDSCAPING, INCLUDING THE FORMATION OF BUNDS, A SURFACE WATER ATTENUATION POND, AND RAINWATER RETENTION AREA WITH SITE PARKING FACILITIES, WEIGHBRIDGES, SECURITY FENCING AND ASSOCIATED INFRASTRUCTURE UNDER DCC CW9/0311/174 AT LAND OFF UTTOXETER ROAD FOSTON**

**Ward:**            HILTON

**Valid Date:**     08/04/2011

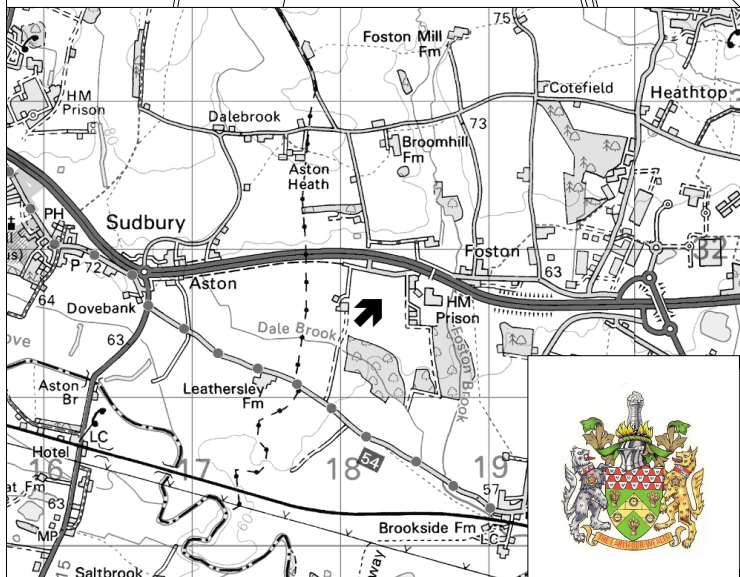
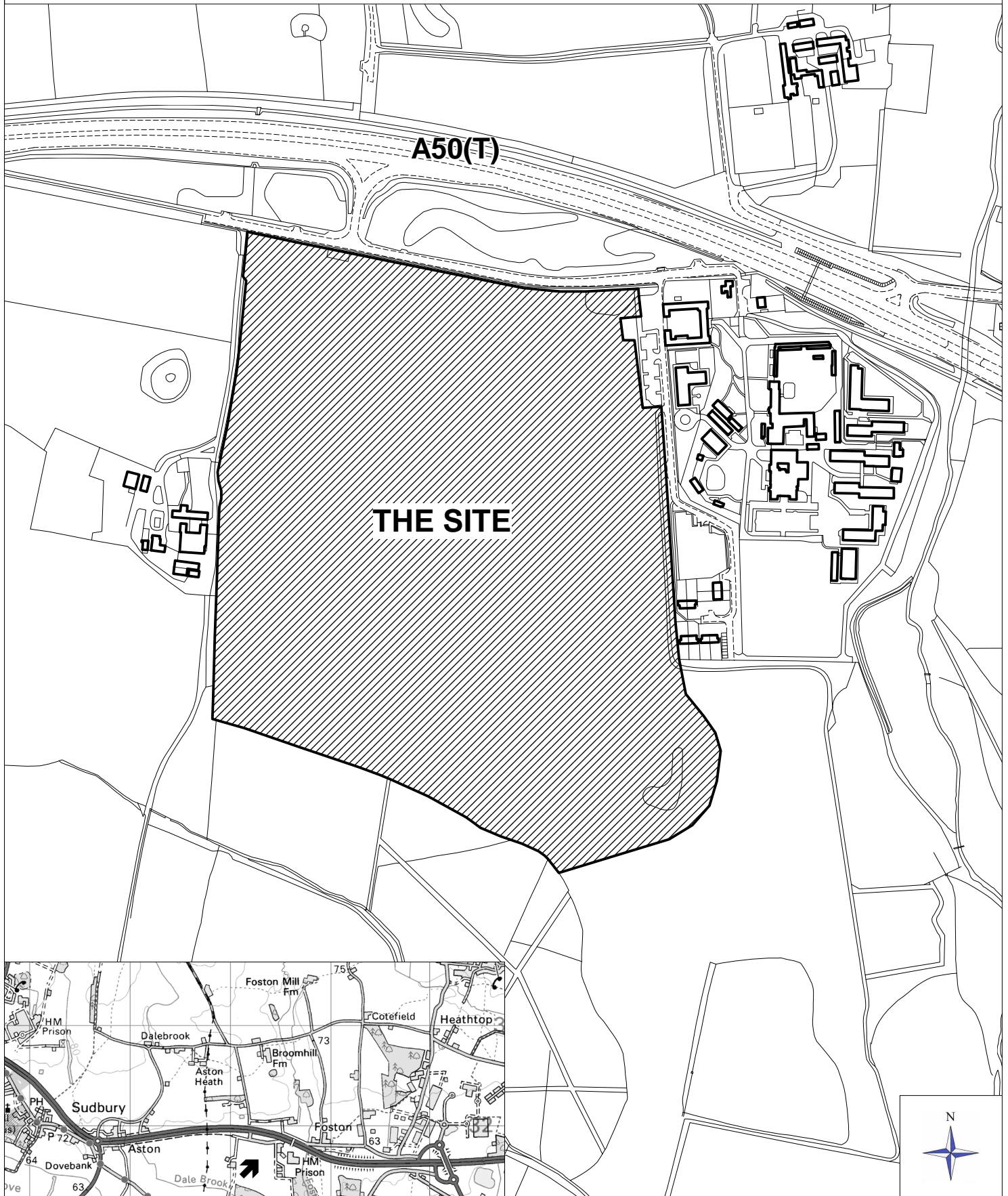
**Reason for committee determination**

Members may be aware that this application was first submitted to this Council but that application was withdrawn following intervention by the County Council in relation to the importation of waste to mix with pig waste to produce bio gas. As such the proposed development is now deemed to be an application with a significant waste element and therefore must be determined by the County Council as Waste Planning Authority. The County Council has now requested this Council's comments on the application.

This is a major development falling within Schedule 1 Development for the purposes of the 1999 Environmental Assessment Regulations. An Environmental Statement (ES) accompanies the application as required by law. The scheme was subject to Screening and Scoping opinions by the County Council.

**Site Description**

**CW9/0311/174 - Land off Uttoxeter Road, Foston, Derby (DE65 5DL)**



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The site occupies approximately 28ha (70 acres) in arable land with a strip of 'set aside' land around the edge of fields. There are no buildings or structures on the land. It is located approximately 1.6km north-west of Scropton Village, 0.6km south-west of Foston Village and 2km east of Sudbury. Foston Hall Prison (a Grade II listed building) abuts the east boundary. The prison is secured with high-level security and chain link fencing. Staff and visitor parking would be located on a car park on the site's east boundary and a further car park off Woodland Drive is proposed. Eight semi-detached, two storey houses are located on the southwestern perimeter of the prison. It is understood that the Prison Service has sold these houses as private dwellings. The topography is relatively flat across much of the site, although there is a slight gradient towards the southeast corner of the site from Uttoxeter Road.

To the north of the site lies Uttoxeter Road (A50). Roadside landscaping that was provided at the time the A50 was constructed measuring 70m x 740m separates and screens the site from the A50. The junction currently provides access to Foston Hall Prison, Maidensley Farm and the houses on Woodland Drive and Foston Close. It would also be the main access to the application site. A second agricultural access to the site is located to the east of the site off Woodland Drive.

Woodland planting occupies the south and southeast boundaries of the site. This land is not within the applicant's ownership and the woodland is used for private game shooting. Dale Brook lies south of the woodland.

Maidensley Farm is located on the west boundary of the site and is set in both arable and pasture land. Some of the traditional farm buildings have been converted for residential use. A native hedgerow and field drain forms the common boundary to the application site to Maidensley Farm. Maidensley Farm has been split into three separate dwellings, which includes dwellings not related to farming use.

Wider views of the site are available from Hanbury village and photographs of the view from the churchyard will be displayed at the Meeting.

## **Proposal**

The anaerobic digester is used to process the pig slurry and remove 97% of the odour; it also takes green waste redirected from landfill that is mixed with the slurry to produce methane, which is used to generate electricity and hot water. The electricity and hot water would be used to run the pig units with the potential for other local buildings such as Foston Prison to make use of any surplus hot water. A visitor centre, mess block, service building, processing plant and feed mill are proposed on the site. The green waste (45,000 tonnes per annum, imported to the site) would be mixed with pig slurry (35,000 tonnes), dewatered to assist with the anaerobic digestion of the 'smoothie' mix that would be fed into the digesters.

The application can be broken down into three elements:

### **The Pig Farm**

The pig farm would operate a 2500-sow pig unit producing approximately 1000 bacon pigs per week (25,000 pigs on the farm when fully operational). The farm comprises 4 dry sow units 28m(w) x 100m(l) x 8m(h), 2 farrowing units 24m(w) x 110m(l) x 6m(h), 2 grower units 24m(w) x 140m(l) x 6m(h) and 6 finishing units - 24m(w) x 158m(l) x 6m(h)

(4.1m to the eaves). These would be clad in a green side cladding under a grey metal profile roof.

Also associated with the pig application is a Grain Store 54m long, 18m wide and 8m to the ridge; a Processing and Storage Plant, including a repair workshop 60m long, 10m wide and 8m to the ridge together with a water treatment building that is 10m long, 6m wide and 4m to the ridge. A two-storey Visitor Centre would be constructed in brick and timber boarding under a tiled roof sited towards the entrance of the site and would include office facilities for the site. A mess block would be located on the northern perimeter of the pig unit fencing. It would provide clean and dirty changing areas, toilet facilities, a small kitchen and dining facilities for staff members. These facilities are required on the boundary for bio security and prevent cross contamination for both workers and visitors to the site. The building will be of brick and tile construction with upvc windows and doors to comply with current building regulation standards. Waste and foul water would be processed using a package treatment plant.

In addition to the above, a rainwater retention area is proposed to the southwest corner of the field, it would measure 75m x 25m and store roof water. A surface water/wetland area is proposed in the southeast part of the site.

#### The Anaerobic Digester, Service Building and associated Plant and storage facilities

Ten underground storage tanks are proposed. The digesters are a variation on the norm, being a canal type rather than having the traditional round tank. The proposed canal system, known as 'Plug-Flow', it is based on a higher dry matter input and is controllable to a much higher degree than a round tank. The canal is effectively a U shape to allow the "plug" (the daily input of separated slurry mixed with green waste) to travel day by day round the canal and come out at the same elevation as it went in. In order to improve the efficiency of the process the applicants proposed to introduce compostable materials into the digester at 37° in order that the process starts almost immediately rather than waiting for the slurry to heat within the tanks as is usual in the more familiar round tank system.

In order to mix the pig slurry and the imported green waste, a service building is proposed this is 50m long x 56m wide with an eaves height of 8m with a ridge height of 11 m. This is the tallest building proposed on the site and contains the 3 exhaust stacks from the electricity generating plant that lie within this building – these stacks are 25 metres high, the tallest structures proposed on the site.

To the north of the digester tanks is an emergency flare that would be activated should the gas pressure in the digester tank exceed 0.05% of the external air pressure. The 'burn' would take place within the flare stack so there should be no external manifestation of the flame. This flare stack would be 3.0m high.

Other buildings and tanks including three methane storage tanks are located in a secure compound to the east of the Service building. The larger of these tanks will hold the pig slurry prior to it entering the service building for composting. The water is stored here prior to recycling through the pig buildings or being further treated for drinking by the pigs.

#### Agricultural Workers' Dwellings

Four dwellings are proposed and the application documents includes an agricultural justification for these houses, which is set out in the applicant's supporting information below. Two detached and two semi-detached dwellings are proposed on land adjacent to the houses on Woodland Drive. The net gain of agricultural workers' housing is 2, because it is proposed to remove the 2 existing houses on the pig farm on Woodyard Lane.

### **Applicants' supporting information**

In summary the applicant's state that they have developed a new concept in energy production to complement pig production, that they consider would lead the industry into the next generation of pig farms. This consists of a "Green Circle Production System", with an odourless pig unit producing odourless fertiliser through an anaerobic digestion facility (AD) for local third party farmers to grow crops, which would then be used to feed the pigs. The applicants are now seeking to utilise these new sustainable methods of production to create an exemplary farm, which the applicants state would alter the standards for future British pig farming.

### Animal Welfare Statement

Mindful of the objections to the withdrawn planning application, the applicants have prepared an Animal Welfare Statement. It states that the applicants work closely with Government and other agencies on animal welfare issues. Its site in Staffordshire is used by the agencies as a base to improve animal welfare. In particular the aims of this application in terms of animal welfare are as follows:

- A fully free farrowing system with no confinement, even in the early days, to meet Freedom Food requirements. We reserve, however the right to protect the stockperson, who may in the normal course of animal husbandry, restrain individual sows for treatment or help with the birthing process;
- Availability of fresh straw to avoid risk of tail-biting, sufficient in quantity also to provide comfort;
- Temperature controlled solid bedded lying areas with minimum space allowances in line with Freedom Food requirements for all pigs including dry sows, farrowing sows, boars, weaners, growing and fattening pigs;
- Generous total space allowances, beyond statutory requirements (which would be enhanced further if necessary) to enable tails to be kept on pigs without tail-biting;
- No mutilations, including tail-docking, tooth reduction and castration, in so far as is compatible with statutory requirements (slap marking);
- Ammonia reduction inside buildings via a water flushing systems;
- No need for slurry lagoon;
- Provision of natural light for the pigs; and
- Locally grown feed raw materials, including wheat barley and beans.

This is information included in a letter to Compassion in World Farming; it is not know what response if any has been made by this organisation.

### Pig Buildings

The buildings themselves have been designed using latest welfare standards, ensuring strong growth of piglets with the aim of eliminating the need for the removal of teeth and nails. The actual floor level is approximately 1m above ground level and incorporates an innovative concrete and plastic slatted floor, which allows all pig waste to pass through into the water tanks below. Each pen would be split into 3 areas incorporating a concrete area for lying and foraging, a loafing area incorporating plastic slats and a soiling area with concrete slats. The pig race and areas for pig transportation would also adopt the slatted floor system. Waste materials fall continuously into the below floor tanks which would be 'flushed' every 48-hours with the waste materials being piped directly to the AD plant. Centrifugal fans, situated on the outside of each building section, would give the required air change these have a blade diameter of 1.2m in and run slowly to reduce noise but have the capacity to run at higher speeds should the air temperature outside the buildings exceed 32° they would run at full speed.

A ventilation shaft would run the length of each building. At the end of each shaft, fans would operate to ensure continual airflow. Air would enter the unit through the wall fans, enter the ventilation shaft and pass through a water curtain to remove any odorous dust particles. Water for the curtain is the cleaned and processed water from the AD plant. The used water would be recycled into the flushing system and return for cleaning within the AD plant. Carbon or organic filters (using materials such as wood and moss) would be constructed behind the air extractor fans at the end of the ventilation shafts, these are modular to allow ready replacement. The three phase odour removal systems would ensure the air leaving the buildings is approximately 97% odour free.

#### The Anaerobic Digester and Service Building

Ten underground anaerobic storage tanks are proposed. The digesters are a variation on the norm, being a canal type rather than having the traditional round tank more often found in this country as described above. It is an American system that the applicants assert is well proven.

Another innovation in the proposed design relates to the amount of heat required to prime the system. The proposed system is innovative, in trying to maintain the temperature of the slurry as it leaves the pig and passes through to the AD process the aim is to reduce the risk of 'temperature jolt' (damage to biogas generation) that may occur if the microbes suffer a change in temperature – it should also help to ensure that methane production is not held up whilst the mixture raises to the required temperature.

The service building has HGV vehicular access via 4 automatic roller shutter doors together with 8 separate pedestrian access points. It contains a waste reception area, office, 3 x CHP generator units [contained within sound proof containers on the west side of the building] and an associated control room. A workshop/spare parts area, a meeting room, male and female changing facilities, separator, a pre-digester mixing tank, pasteurisation tanks and an air washing unit of the same type that are proposed on the pig buildings.

The waste reception area in the service building would be sufficient to house four lorries at any one time. Lorries tip waste into open containers, which would feed into the pre digester mixing tanks and the separator. In order to reduce noise and odour impacts from the deliveries and tipping activities, operations would be carried out in the building

with all the doors closed. The sealed area would in the opinion of the applicants also reduce the visual impact of the waste and lorries tipping.

Within this service building the dewatered pig slurry is mixed with imported green waste prior to being fed into one of the 10 anaerobic digesters for composting and it is during this process that methane gas is produced. The methane gas would be collected from the digesters and fed directly to the generators also housed within the service building. The generators produce electricity and heat. The electricity would be used to power the site and any surplus would be fed into the national grid. The heated water is fed back into the pig buildings to facilitate the removal of the slurry. The applicants also propose that provision would be made to supply any surplus hot water to the boundary of the site to enable service to the adjacent Foston Hall Prison.

The control room, which constantly monitors and maintains optimum operating conditions in the building. In the event of malfunction, alarm messages are communicated to the plant operator by mobile phone. The site provider would also monitor throughput and are available on a 24hr basis for technical assistance. All equipment is designed to be 'fail safe' to maintain plant safety and environmental protection with manual resets required on all safety-critical machinery.

The changing area is provided to keep the dirty and clean areas of the building separate and also contain shower facilities for both male and female staff.

#### Storage tanks

The tanks are constructed on-site using prefabricated concrete panels set on an outer reinforced concrete ring and tensioned with corrosion proofed wires prior to pouring the tank bottom, which effectively concretes the panels in place. The commissioning process will involve leak testing of all the tanks and an additional pressure test on the digester after installation of the gas membrane. The water used for this operation will be supplied from the borehole and will be returned to the environment at a controlled rate; to be agreed with the Environment Agency. The tanks are constructed with a minimum design life of twenty years and in full accordance with relevant standards.

The whole AD plant area would be contained by a bunded containment system that is designed to retain any materials in the area in the event of a failure and is 110% of the largest of the tanks on the site, in this case the anaerobic digester tank.

#### Agricultural Workers' Dwellings

The applicants state that there is a functional need for the workers' dwellings. An assessment of the man-hours for the site equates to 31 man-years. However given the up-to-date systems the calculation by the applicants is that the farm would require 18 staff and have 4 full-time staff permanently on site in the form of a farm manager and 3 assistant managers to operate efficiently.

There would be two on-site staff to cover shifts at any one time. Duties on the site would be 24hr monitoring of sows and new piglets, monitoring of technological equipment including straw delivery systems, feed, water, temperature controls, administration of medicines, monitoring and security, managing herd movement between rooms and final transportation by vehicle.



Whilst this is a new enterprise, the applicants have a long experience of pig management and the need for the specialist staff will be essential from day one of the operation. The applicants consider that there is a clear functional need for permanent workers on the site. There are no other dwellings available in sight and sound of the site that would meet the requirements of the business and as the financial and functional test required under the provisions of PPS 7 have been met planning permission is requested to be granted for the four dwellings at the outset of the development.

The applicants propose that the existing dwellings at their existing Woodyard Lane site would be demolished should planning permission be granted. The proposal if accepted would add a net two dwellings to the stock of agricultural workers houses in the area.

*[The following part of the report details the applicant's assertions about the following material considerations. Only those that are relevant to this Councils response to the application are reported here, as there is no access to the comments from consultees, these cover, air quality/odours, visual impact and landscape setting and noise issues]*

#### Air Quality/Odours

An odour assessment has been undertaken to consider the likely significant effects odour from the development will have on nearby residences and local amenity. The report firstly collected data on existing levels of particulates in the locality that may give rise to odour. The pig unit buildings would be fitted with a flushing system, which removes ammonia build up within the buildings, which normally occurs about 48 hours after defecation, the water being pumped directly into the anaerobic digester in a sealed system. This would, it is asserted, mean that the liquid is not exposed to the air at any time prior to being processed in the anaerobic digesters.

An air cleaning system is also incorporated where air from within the unit is passed through a liquid filter to remove particulates and then through a secondary organic filter. The dispelled air would be 97% odour free. A similar system of air extraction is employed within the main service building of the anaerobic digester. Modelling has been undertaken to assess the worst-case scenario for odour at identified locations surrounding the site. The applicant's assessment concludes that the impact on air quality of emissions to atmosphere from road traffic generated during the construction and operation of the proposed facility would be negligible. Emissions to atmosphere from the three gas engines would not significantly affect air quality at ground level it is claimed. The odours from the bio filters would be 'damp wood' in character and impact would be negligible at locations off site. The bio filters would remove all raw gas/pig odour smells in the opinion of the applicants and its consultants consider that this air cleaning system to be state of the art that is not capable of being improved upon.

#### Landscape and Visual Impact

A landscape and visual assessment has been undertaken and presents the results of a specialist assessment of the potential landscape, townscape and the likely significant visual effects of the proposed development.

Consideration is given to relevant policies and guidelines at national, county and local level. A baseline description of the site highlighting important characteristics of the existing landscape and how these may change over time is also provided.

The assessment considers the impacts, which the proposals are likely to have, in both the short and long terms, and describes the landscape mitigation measures, which form an integral part of the scheme proposals. Seasonal variations between winter and summer and effects both during the day and at night are all considered.

It concludes the types of buildings proposed are not unusual in rural locations and as such they would not appear discordant or out of character with the local area. The landscaping proposed would largely screen the site over time and as such the applicants have assessed the effects on the surrounding landscape as negligible.

### Noise

A noise impact assessment has been undertaken to identify typical day and nighttime background noise levels adjacent to the closest residential properties. The assessment then goes on to consider the likely significant effects of noise from the pig units, the AD plant and vehicle movements at these locations.

Currently the dominant noise source at all these locations was the road traffic on the A50. The assessment concluded that noise generated as a result of the operation of the pig farm and AD plant, including the electricity generators would fall below that of the existing monitored noise levels at the site. The noise generation was considered insignificant and unlikely to cause complaints.

During construction, noise levels were classed as having moderate significance, however the effects would be temporary. As highlighted within Annex 1 to PPS24: Planning and Noise, background level readings and estimated plant noise levels are significantly less than 55db and as such it is stated noise from construction activities need not be considered as a determining factor in granting planning permission.

The document accompanying this application also considers the potential for noise associated with the transportation of pigs from the site prior to slaughter. It concludes that with the limited hours that the pigs would be loaded and the provision of a suitably designed and constructed 4.0m high noise attenuation fence, the noise from loading pigs should not cause undue disturbance to the occupiers of nearby dwellings.

### Construction

A methodology for construction and mitigation measures is contained within Appendix 7 of the ES. All current building regulations, EA guidance and safety at work legislation would be adhered to throughout the design and build process. Construction of the plant is expected to take 18 months.

### Contamination

A contamination survey has been undertaken to assess any form of existing contaminants on the land and the likely significant effects of contamination as a result of the development. The assessment concludes that contamination as a result of historical uses on the site is low. During construction and operation of the proposed development, new sources of potential contamination would be introduced to the site. Disturbance of the ground may also cause the mobilisation of any existing ground contamination. However, the applicants propose that measures would be implemented

during the construction phase to control and minimise any risk posed to humans, groundwater and local rivers. If the proposed development is permitted and completed, site activities would be carried out in accordance with permit conditions set by and under the jurisdiction of Environment Agency, which would minimise the risk of polluting groundwater and local rivers.

### Cultural Heritage

Assessments have been undertaken to determine and likely significant effects the proposed development would have on cultural assets such as historic and listed buildings, ancient monuments and subterranean remains. The County Council's specialist officers would report on these elements of the development.

### Ecology

The applicants have undertaken an ecological survey to assess the existing flora and fauna on site including all individual and groups of trees, the impact the development may have on flora and fauna and requirements that may be necessary to mitigate any significant adverse impacts. Derbyshire Wildlife Trust and Natural England will provide the County Planning Authority with comments on this aspect of the development.

### Flood Risk

The development area is categorised Zone 1 at low risk of flooding accordingly it is located outside Flood Zones 2 and 3 identified by the Environment Agency's flood maps where there is an increased risk of flooding in the Flood Risk Assessment that accompanies the planning application. The Environment Agency will report direct to the County Planning Authority on this aspect of the development.

### Transport

A Transport Assessment (TA) has been submitted and considers accessibility to the proposed development by all modes of transport and assesses the likely significant effects of the proposal on the transport network in the locality of the site. The Highways Agency and County Highways Authority will report direct to the County Planning Authority on these issues. However, if the County Planning Authority has received consultation responses, they will be reported at the meeting.

### **Planning History**

There is no relevant planning history of development on this site.

### **Responses to Consultations**

The Environmental Health Enforcement Manager has a number of comments in relation to odour and noise from the proposed development. His overall opinion is that, with such a state of the art facility, it is difficult to make a case against the development, although he remains concerned given the proximity to neighbouring properties. He therefore proposes a number of conditions to ensure that the applicant's claims on odours come to fruition and that where the reality falls short of what is claimed, the ultimate sanction is that the site is temporarily closed on an agreed timescale whilst investigation and remediation takes place.

*[The County Council is responsible for carrying out consultation in respect of this application and interpreting consultation responses. However, when this Council was considering the application, consultation responses were received and these are listed below for the information of the Committee when it determines this Council's response to this planning application. It should be remembered that these comments are now a year old and as such the responses to the current application sent to the County Council by consultees may be different to these particularly in respect of the odours, ecology and archaeology as this application is accompanied by updated information.]*

*Foston and Scropton Parish Council objects to the development for the following reasons:*

- The risk of air pollution by way of smells and other such pollution.*
- The increased traffic that would result, in particular concerns over the exit/entrance slip roads from the A50 and slower moving vehicles.*
- The large/tall buildings are alien to the environment on a Greenfield site. The PC believes the landscaping would not screen this.*

*East Staffordshire Borough Council has no objection.*

*East Midlands Councils (formerly EMRA) confirms that the Planning Statement provides a useful summary of policy as expressed in the Regional Plan. East Midlands Councils accept that the planning statement correctly identifies Policy 24 as encouraging diversification of the rural economy where that is consistent with a sustainable pattern of development and the environmentally sound management of the countryside. Policy 39 of the Regional Plan is also identified as being relevant in terms of energy reduction and efficiency and that the Three Cities Sub Area has opportunities for generating energy from waste through a variety of different technologies. The conclusion is that the development is broadly in accordance with the above policies in principle but very careful consideration of the implications of the development in terms of the environmentally sound management of the countryside at a local level is required. The East Midlands Councils organisation would be guided by the views of other key stakeholders such as the Environment Agency in relation to the assessment of the potential environmental impacts.*

*EMDA supports the planning application as it provides an opportunity to reinforce the rural economy and provide an opportunity to showcase sustainable agriculture on an industrial scale that could in future positively modernise the sector in the region.*

*The Highways Agency has no objection subject to conditions requiring wheel washing during construction operations and measure to prevent the transfer of debris onto the A50. The Highways Agency also requires a contribution towards highway improvements to the A50/A515 junction at Sudbury to the west of the application site that should be secured through the medium of a Section 106.*

*The County Highway Authority has no objection subject to conditions and informatives covering the construction of a temporary access prior to general construction works, the wheel washing of construction traffic vehicles and the formation and laying out of the*

*new access and internal roads and turning areas prior to the occupation of any part of the development.*

*Severn Trent Water has no objection subject to a condition requiring the submission of details of foul and surface water drainage disposal to be agreed prior to the commencement of the development.*

*The Environment Agency has no objection subject to the development being undertaken in accordance with the flood risk assessment that accompanied the planning application and recommends conditions to secure this. The Agency also confirms that the site will be subject to approval under the provisions of a Pollution Prevention Control Permit that covers all aspect of the operation of the site. This Permit will be issued by the Environment Agency and would be enforced by that Agency.*

*The Council's Land Drainage officer has no objection to the development subject to the conditions recommended by the Environment Agency being imposed on any planning permission.*

*The Crime Prevention Design Advisor is satisfied that the full bio security, including enclosure and demarcation of all space within a full and secure boundary of the site provides good levels of security and defensible space and on that basis is content with the proposed development and the measures detailed in the application.*

*The Development Control Archaeologist is content with the study that has been undertaken but takes the view that more work would be necessary during construction to monitor excavations.*

*English Heritage offers no comments on the proposal as the application falls outside its jurisdiction.*

*Natural England has no comment to make on the application, as it does not consider that the proposals are likely to significantly affect the natural environment and welcomes the proposed habitat creation.*

*The Derbyshire Wildlife Trust has some concerns about the initial survey work in that the applicant's consultants have not consulted local nature conservation groups. Additionally the bird nesting assessment was carried out at a time of year when the birds, especially ground nesting species, would have finished breeding. The Derbyshire Wildlife Trust stated that other issues relating to tree retention and the presence of newts have not been properly addressed. [These issues have been addressed in the new application and it will be for the County Council to determine if the appropriate standards have been achieved.]*

*East Midlands Airport has no objection.*

*The Health and Safety Executive advises that it has no comments on the application as the site does not lie within a consultation distance for a major hazard site or major hazard pipeline and the development would not appear to trigger the need for an application for Hazardous Substances Consent. However, it advises the Council that should planning permission be granted the responsibility for the safe operation of the site lies with the operator and the H&SE would be responsible for enforcing any breach of legislation or regulation made under the Act.*

## Responses to Publicity

*[Again the County Council is responsible for carrying out publicity for the application. What follows here is a summary of the objections this Council received in response to publicity at that time is for the information of the Committee. Again the County Council is responsible for assessing any responses prior to reaching its decision on this application.]*

*2 petitions signed by a total of 110 residents of Foston, Scropton, Hatton and other local villages and settlements have been received. The points of objection raised in the petition that are different to the detailed objections set out in the individual letters are as follows:*

- The welfare of animals – they will be bred, fed and slaughtered without seeing sunlight or breathing fresh air.*
- There is a call for the proposal to be determined at a public inquiry.*

*The campaign group 'Vegetarians International Voice for Animals' (VIVA) has submitted a letter of objection and 2700 e-mails have been received that are based on its objections. Three other organisations – The Soil Association, PETA and The Pig Business have also objected to the development. The additional points of objection by these groups to those expressed above and below are summarised here:*

- It is acknowledged that animal welfare is not taken into account when determining applications; this group considers that this is unfair. This size of enterprise is untested in the UK and should be considered as an industrial unit. Most of the supporting e-mails are making reference to health and animal welfare issues.*
- There is a strong possibility that the development could assist in the spread of pathogens and carcinogens that could be harmful to human health.*
- The use of antibiotics in the pig industry could result in resistance being built up in the human population that could reduce the effectiveness of antibiotics in the human population*
- Flatulence and breath will significantly increase CO<sup>2</sup> by more than the levels currently generated by the village. Calculations are included that VIVA claims confirm this point. In the light of this the proposal is not considered as a 'green' development.*
- The anaerobic digester would pose a risk to occupiers of nearby houses and should not be allowed to go ahead a minimum separation of 250 metres is recommended in a document produced by Northampton County Council; the separation of the plant from Maidensley farm is only 150 metres.*
- There is a residual odour following digestion and this would need to be managed. There is potential for pollution of local watercourse and ground arising from the massive use of water for the digester and the animals.*
- Contrary to the assertions in the application the Prison service has not committed to accepting power or heat from the proposed plant.*
- The prisoners have no right to be heard so their civil rights are infringed because they cannot express an opinion for or against the development.*

- *The Council has previously opposed even small-scale development in the vicinity of the site, Maidensley Farm; if this were permitted it would obliterate the countryside in the locality.*
- *The development would be contrary to the Council's own environmental policy relating to reduction of impact of Council activities on the environment, and permission should not be granted.*

*The Governor of Foston Hall Prison has written on behalf of the Ministry of Justice and has requested assurances that the following issues will be addressed in the planning process:*

- *Potential bio hazards*
- *Noise*
- *Odours*
- *Disruption to the core business of the prison.*

*If these areas were adequately addressed then the Prison Service would not seek to register any formal objection to this development.*

*Some 40 individual letters were received these are mainly from local residents but do include objection from the wider country received as individual objections. The objections to the development are summarised as follows:*

- a) The development would be contrary to numerous policies in the Development Plan relating to preventing unnecessary development in the countryside (PPS 7, Regional Planning Policies and Local Plan Policies). The development represents industrial development in the middle of the countryside. It would be contrary to policies in PPS 5, regional policy and local plan policy relating to the protection of cultural assets such as Foston Hall and Sudbury Hall; the development would introduce significant additional HGV traffic into the locality to the detriment of the rural character of the area. There would be unacceptable noise and smell arising from the development, which is unacceptable under the terms of the above policies. The Committee should take account of more than the cheap electricity and cheap food that would arise from this development, and note the impact on residents adjoining and close to the site, in Foston village that is immediately upwind of the site.*
- b) Increased noise pollution for residents of Woodland Drive and the wider area from lorries manoeuvring. The site should be subject to strict controls and monitoring on these issues to the levels predicted in the application documents. There is concern that as the operation becomes older, maintenance of the suggested standards would become more difficult. The quality of the material entering the system would be difficult to control; there is concern that substandard material will just be spread on adjoining land.*
- c) Prevailing winds would take smells towards Foston and then Church Broughton. Maintenance of the odour control systems is essential and the rigorous enforcement of the site boundary odour limits would be essential. There are no guarantees that the air purification system would work 100% of the time – there is only have the applicant's word for it. There should be compensation payable by the Company for breaches of those standards and it should be shut down if there are breaches of control standards.*
- d) Dust would be a particular problem when animals are being moved and lorries are manoeuvring on concrete yards. People with respiratory problems would be*

*at greatest risk; it is asserted that an occupier of a nearby house has such problems.*

- e) There would be light pollution that affects neighbouring houses and this would disturb restful sleep or make sleep impossible.*
- f) The amount of lorries entering and leaving the site would be intolerable; it would be like a private motorway. The junction to the A50 has been improved but it is still a dangerous junction. The access to the site would be overwhelmed by a huge increase in heavy lorry traffic entering and leaving the site at this minor junction. Existing light traffic has difficulty joining the A50, particularly at peak times. The access from the A50 at Dove Valley Park would be much safer. The A50 junctions either side of the access are poor with Sudbury suffering from an adverse camber, there have been fatal accidents and frequent other accidents.*
- g) If there was a drought or a flood, there is doubt as to how the site would cope.*
- h) There is a risk of explosion from the site as methane is to be produced and stored on the site – what are the contingency plans? Concerns are raised about whom would be responsible if something dangerous occurred on the site.*
- i) There would be a number of vermin and flies due to the nature of the waste treated. There are doubts that electricity generated is going to be negligible and not worth the investment, as such the pig farm would remain without the 'green' generation facility. Much of that waste would be imported from outside the area. The generation is just a carrot to attract Government grants and reduce the costs to the developers at the expense of the local residents who will suffer large financial losses.*
- j) Increased risk of flooding, Scropton already suffers from flooding and the size of the buildings would increase the risks at Woodland Drive. The Foston Brook on Leathersley Lane frequently floods and any increased flood risk would be unacceptable to residents in Scropton and the local area.*
- k) This is green belt/greenfield land, which is not previously developed, and the development is an unwarranted visual intrusion/pollution in a countryside location. Development has been resisted in this area for many years; this should continue. The presence of such a facility would be off-putting to potential investors in South Derbyshire particularly if the smell hangs over the A50, which is a major route into the District*
- l) The development would adversely affect the setting of Foston Hall a Grade II listed building. English Heritage has previously objected to development to the south of the prison on the basis that it would adversely affect the setting of the listed building. This development would have the same impact. The site is part of the former parkland surrounding Foston Hall; its loss beneath concrete would be a pity.*
- m) The new jobs would simply transfer from the Woodyard Lane site; no new jobs would be created.*
- n) The area is already overdeveloped/inundated with factories, travellers and several intensive farming enterprises; the local infrastructure already struggles with the number of large lorries in the vicinity, none of which impacts on councillors or Council Staff.*
- o) The applicants state that they require 4 new houses; however there would be many houses available to them should this development go ahead provided they pay the market price prior to the application being submitted, there would then be no need for these new houses as residents would be willing to sell.*
- p) Water voles, newts, bats, herons and owls have been observed on the application site that adjoins a watercourse – there would be a significant impact on the ecology of the area.*



- q) *The proposed landscaping would take many years to become established and the negative effects of the development would be very apparent for many years. The trees to be planted will eventually block out sunlight to the nearby houses.*
- r) *The applicants already have a site in the area and the proposal would be better sited there or on the under utilised Dove Valley Park where it would not affect local residents in Foston and be far less intrusive.*
- s) *The possibility of an increase in the risk of the spread of diseases, particularly from foot and mouth disease, H1N1 and Pig Influenza, carried by water and transportation. Due to the number of staff and visitors to Foston Hall Prison who could be contaminated when they access the prison to visit, or indeed the prison becoming a no go area in the event of an outbreak of foot and mouth disease, indeed a recent outbreak started at a pig farm. It would have a direct impact on the Prisoners on the Foston Hall site; potentially it would be a breach of their human rights. A resident has submitted the transcript of a BBC radio programme that illustrates the smell problem from pig farms and how they can become a breeding ground for diseases including swine flu.*
- t) *DEFRA is promoting Free Range Hens, this is the complete opposite of that principle. The developer should be encouraged to apply nearer to his own home.*
- u) *There has been inadequate publicity for this application that would have a significant impact on the residents of Foston and Scropton and would make living in South Derbyshire even more unbearable. The applicants say they have extensively consulted the local population but this is simply not true.*
- v) *When there are road accidents on the A50 the traffic is diverted through Scropton Village. The grass verges are eaten away by the large lorries from Cranberry Foods on these occasions and more traffic would be a disaster for the small village. What would happen if the A50 were closed for 2-7 hours due to accidents?*
- w) *The worst thing about the proposal is the miserable, unnatural lives the pigs will have, as they are intelligent animals that deserve better.*
- x) *The traffic generated by the food and abattoir waste would increase the carbon footprint.*
- y) *A Freedom of Information request was made to the Ministry of Justice in relation to the involvement in the proposal by Foston prison. Their reply is as follows:-  
"I should explain that neither NOMS (National Offender Management Service), nor the Governor of HMP Foston Hall has entered into any agreement, either formal or informal, with Leavesley's or Midland Pig Breeding to take part or have any involvement in this proposed project. Nor is there any commitment to receive power, energy, or any other product at this prison that may be produced from this proposed site".  
This statement casts doubt over the viability of the whole scheme and means that MPP's suggestion that they will provide resources to the prison is untrue and is just a means of gaining planning permission.*
- z) *The Ministry of Justice letter also states that they have not yet carried out a risk assessment in relation to the proposal and will rely on the Local Planning Authority to carry out due diligence exercise in relation to potential health and safety or public health issues. It has been confirmed that the LPA is not responsible for disease matters but is impact on public health considered in the planning process?*
- aa) *This proposal is possibly the largest pig farm in the UK with between 26,000 – 30,000 pigs on site at any one time, which is wholly inappropriate to be situated near a populated area on a green field site whilst brownfield sites lie languishing in South Derbyshire.*

bb) *There would be a devaluation of property values arising from persistent smells from composting operation, dust from the site, noise from machinery and pig squealing when being loaded onto lorries. One objector has had their property valued in the light of the proposal and argues that the house would be almost unsaleable even at the much reduced price quoted that is half a previous valuation. The company paid £7,000/acre and the land will become worth £50,000, a good investment for them.*

## **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: Policies 1, 2, 12, 24 & 39.

Saved Local Plan: Environment Policies 1, 5, 9, 11, 13 & 14; Housing Policies 8 & 11; Employment Policies 4, 5 & 8; Transport Policies 6 & 7; Community Facilities Policy 1.

## **National Guidance**

PPS 1 - Delivering Sustainable Development and the 'Planning Policy Statement: Planning and Climate Change - Supplement to Planning Policy Statement 1'

PPS 3 - Housing

PPS 4 - Planning for Sustainable Economic Growth

PPS 5 - Planning for the Historic Environment

PPS 7 - Sustainable Development in Rural Areas (as amended by PPS 4)

PPS 9 - Biodiversity and Geological Conservation

PPS10 - Planning for Sustainable Waste Management

PPG13 - Transport

PPS 22 - Renewable Energy

PPG 24 - Planning and Noise

PPS 25 - Development and Flood Risk

## **Other Guidance**

The Guidelines for Landscape and Visual Impact Assessment (GLVIA) - published by the Landscape Institute and the Institute of Environmental Management and Assessment 2002;

Landscape Character Assessment. Guidance for England and Scotland" (LCA) published by the Countryside Agency and Scottish National Heritage 2002.

East Midlands Regional Landscape Character Assessment (April 2010)

The Landscape Character of Derbyshire (2003)

## **Planning Considerations**

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

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

The Development Plan - the principle of the development, waste disposal (Waste Disposal Local Plan), Impact on the character and appearance of the countryside, agricultural development, (the adopted South Derbyshire Local Plan) East Midlands Regional Plan.

Material Planning Considerations - Government advice as set out in the PPS and PPG documents referred to above. In considering the development in the light of the above, the following matters would be material to this Council's consideration and response to the County Planning Authority: noise, smell, the landscape and visual impacts of the development. The impact of these issues on neighbouring houses, the occupiers of the prison and wider community arising from the development.

If the application is accepted as being in general accord with the provisions of the Development Plan, the determining factor on all these issues would be whether the mitigation measures proposed by the applicant are accepted to a point where enforceable planning conditions could be recommended for inclusion in a decision by the County Planning Authority should it be minded to grant planning permission. If Members are satisfied on these issues then no objections subject to conditions could be the comment made to the County Planning Authority. If not then reasons for objection based on evidence would need to be drawn up in the light of policy considerations and areas where Members consider that the application fails in terms of its impact on the area and residents.

Non-material considerations – animal welfare, spread of disease, health and safety and devaluation of property values. Animal welfare and control of diseases are covered under separate legislation – it would be for the applicants to satisfy the relevant authorities on these issues in terms of the Health and Safety Executive, DEFRA and the Health Protection Agency. Again it will be for the County Council to determine weight that should be applied to the objections prior to determining the planning application.

Members are aware that the devaluation of property cannot form a reason in itself for refusing a planning application if, for other reasons, planning permission ought to be granted. If permission were granted objectors assert that houses around the site would be significantly devalued.

## **Planning Assessment**

### Pre-application discussions.

There were extensive discussions with the applicants prior to the submission of the previous planning application that was withdrawn. Arising from those discussions officers identified that any application would fall under the requirements of Schedule 1 of the Environmental Impact Regulations and given its open countryside location it would be for the applicants to justify that location. The significant issues that were identified related to noise, smell, access and impact on the highways, visual intrusion, flood risk, impact on the setting of the Foston Hall Listed building and the need to assess if there were archaeological remains within the site. The applicants were also advised to consult the local community prior to making an application. The above information formed the basis of this Council's then Scoping Opinion in respect of the requirements of the Environmental Impact Assessment Regulations 1999 and the Screening Opinion

that preceded the Scoping Opinion were both on the Planning Register prior to that application being withdrawn.

Clearly smell was to be a crucial determining factor and the applicants were confident that it could be addressed. This odour reduction system is now proposed in the current planning application and is to be combined with the flushing system described towards the start of this report as the means by which odour reduction would be achieved at the application site.

The applicants have also introduced the flushing system at one of its existing farms in Staffordshire. Environment Health and Planning Officers have visited this site and it can be reported that in that location and with the numbers of pigs at that facility, it appeared that odours were considerably reduced by the flushing system.

### The Development Plan

#### East Midlands Regional Plan

It should also be noted that on 27 May 2010, the Secretary of State for Communities and Local Government, wrote to all council leaders indicating the Government's intention to abolish Regional Strategies. Nevertheless, the EMRP will remain part of the Development Plan until formally revoked through the enactment of the Localism Bill late in 2011. The Secretary of State's intention to abolish Regional Strategies may, however, be a material consideration in the determination of planning applications.

#### The South Derbyshire Local Plan

Environment Policies 1 & 5 – the issue here is whether the development can be justified in this countryside location. There is no doubt that the application will have a material impact on the character and appearance of the countryside. An assessment of the visual and landscape impact along with noise and odour implications are set out below in 'Material Planning Considerations'. The primary use of the site is as an agricultural business where a location in the countryside can be said to be necessary as locating a pig farm immediately adjacent to a town or village may not be acceptable. This site enjoys a reasonably remote location away from settlements but with excellent access to the trunk road network and a farm is a use normally found in the countryside. Whilst acknowledging the serious objections in terms of visual intrusion and landscape impact, the application site is considered to be well located in terms of its surroundings; being well screened from the south by existing plantations and having a well landscaped trunk road on its northern boundary. With the exception of the views set out below in Visual and Landscape Assessment, this existing screening helps to ensure that the farm buildings would not intrude unduly into the landscape. This screening also helps to visually separate the proposed use from the nearby Foston Hall Prison with its Grade II listed buildings. Accordingly the farm is considered acceptable in terms of the above policies. However, the determining factor will be whether the mitigation measures outlined in the planning application are sufficient to warrant a recommendation of No Objection to the County Planning Authority.

Housing Policies 8 & 11 – if the development were permitted then the justification for the housing associated with the development has been confirmed as set out in the information supporting the application. If permitted the dwellings should be subject to an occupation condition similar to the agricultural occupancy condition but designed to reflect the mixed occupation of the proposed dwellings referred to in the supporting

information. In addition the offer to demolish the existing houses on the Woodyard Lane site referred to in the application documents should be secured through either a Section 106 Agreement or a Unilateral Undertaking depending on the requirements for an agreement identified by the County Planning Authority as part of its consideration of the planning application.

Employment Policies 4, 5 & 8 – These policies contain a presumption against new employment development in the countryside except in locations on the edge of established settlements where a need is established. The exception is not applicable to this site. As stated above, the primary use of the site is considered to be large-scale agricultural development where a location in the countryside is acceptable in principle subject to the policy and material planning considerations set out in this report.

The AD part of the application could be accommodated in a business park or industrial estate as a separate entity. However, this application must be judged on its own individual merits and it is the strong assertion of the applicants that the pig farm is reliant on the AD part of the application and vice versa; without one there would be no other part of the development. The AD plant is well related to the trunk road network and where there are proven flows of Green Waste currently using the road. The applicants assert that these sources could easily be diverted onto this site to assist with renewable energy generation. The County Planning Authority will have to assess whether this part of the proposal accords with its policies.

On the basis that the pig farm and AD elements are interlinked it is necessary to assess the visual, noise, traffic and odour impacts of this development before a determination as to the suitability can be made and following that a recommendation to the County Planning Authority on this Council's view on the planning application. These areas are considered in the following section of this report.

## Waste Policies

Derbyshire County Council, as the waste planning authority, is responsible for assessing the application against the policies in the Derby and Derbyshire Joint Waste Disposal Local Plan. However, as stated above many of the criteria in that Plan are similar to those in the South Derbyshire Local Plan relating to the control of development in the countryside and will be a determining factor for the County Planning Authority.

## Material Planning Considerations

### Government Advice on all issues - PPS & PPG

There is a wide presumption against unwarranted development in the countryside – this is more so in areas of green belt or SSSI. However this site has no special protection and it is for the applicant to justify the countryside location. The applicant has submitted a justification for the use to be located in the countryside and refers to various Government policy and advice documents to support that contention. In particular the need for a diverse rural economy that reflects modern farming practices and minimises visual intrusion. The application is accompanied by information that addresses the issues identified in the various areas of Government advice such as PPG 24 – Planning and Noise, PPS 25 – Development and Flood Risk and particular weight is given to PPS 10 and 22, which deal with Sustainable waste disposal and Renewable Energy. The

issue to be considered is if the benefits arising from the recycling of pig waste and other green waste are so strong as to allow for the formation of a new large-scale farming unit in the countryside. However, there may be an overriding factor in terms of other impacts such as visual intrusion that may outweigh that presumption in favour of addressing waste recycling and renewable energy. A detailed review of the Environmental Statement was undertaken to inform the contents of this report and the analysis below.

### Visual impact

This is the most significant potential impact arising from this development. The proposal has been carefully assessed in this regard and three main areas have been identified as locations where the development would be visible in the wider landscape. These are at high ground between Tutbury and Hanbury, from the A50 heading east from Sudbury and on footbridge over the A50 at Foston. Below is a discussion of the impacts on these three areas, followed by an assessment of the more localised visual impacts.

The high ground between Tutbury and Hanbury – Hanbury village lies almost directly south of application site and commands views over the Dove Valley and the development contained within it. Photographs have been taken from the churchyard in the village but there may be other high spots along the ridge from which the site would be visible. From Hanbury there are views of the site but these are seen in the context of other major development in the Dove Valley such as Dove Valley Park and the Cranberry Foods site at Scropton. The site itself is also seen in the context of substantial areas of tree plantation that would assist in mitigating the views of this substantial development from the Church Yard and wider village at Hanbury. These are distant views with the main pig buildings in the foreground and the service buildings and other structures in the background, seen against the background of the landscaping along that part of the A50. The site would be seen as a significant addition in the landscape of the Dove Valley but because of the distance from the ridgeline to the site, the sensitivity of this impact is considered low.

The A50 heading east from Sudbury, including the footpath adjacent to the A50 – the photographs are taken from the lay by on the A50 on its northern side. These illustrate that there would be views from the A50 of the service building with its 3 associated exhaust stacks with some views of the feed mill and other smaller buildings. This is perhaps the most prominent view of the site. The application plans have proposed landscaping in the form of bunds and tree planting in the northwest corner of the site and along the western boundary. In addition the view must be assessed against the Guidelines for Landscape and Visual Impact Assessment (GLVIA) and the other guidance referred to above. The first is a standard methodology that has been used at Appeal Inquiries to assist with assessing landscape impact. In that document, whilst landscape impact can be seen as significant, the viewpoint from the road is seen as having low visual sensitivity because that view is seen from a trunk road. For the purposes of this Planning Assessment the methodology in the Landscape Assessment document is accepted and from the A50 the view is deemed to be significant but its sensitivity is low. When this is combined with the mitigation measures proposed in the form of the landscaped bunds it is considered that the visual impact of the development would be mitigated to a point where refusal of the application on visual impact grounds would not be sustainable at appeal.

The footbridge over the A50 at Foston – photographs have been taken from the footbridge. The main view of the site is from the bridge itself where there is a view of the site along the old Uttoxeter Road. This view would take in the tanks and silos, the service building and the access to the site. As with the above assessment this would be a transient view of the site by users of the footbridge. Whilst the impact is significant from the footbridge the sensitivity of the view is low.

### Local Visual Impact

Visual Impact on Houses; Maidensley Farm and Woodland Drive – These properties are in closest proximity to the site. The houses are referred to and assessed in the application documents. The site would be visible from the upper floors of the Maidensley Farm house; ground floor views and views from habitable room windows on the barn conversions would be screened both by buildings in the case of Maidensley Farm and the existing hedge on the boundary of the application site in the case of the barn conversions. The application plans propose a 30m wide, by 2m high landscape bund along the boundary to the Maidensley Farm complex and this is considered to mitigate any views that may be possible through the existing boundary hedge. The orientation of the houses on Woodland Drive is such that there would be no views into the site from the majority of those houses from main habitable room windows. The application proposes that there be significant tree planting along the eastern boundary of the site, in part to screen the development and in part to mitigate potential noise from the site. Due to the proximity of the houses at Maidensley Farm and Woodland Drive the proposal could have an adverse visual impact, however, for the reasons set out above, the development has sufficient mitigation measures proposed to minimise that impact.

Visual Impact on Foston & Scropton Villages and their hinterland – Due to the presence of substantial areas of trees, hedges and landscaping to the A50, there is no direct visual impact arising from the development at either of these villages. Members will be aware of isolated properties to the North of the A50 but from these houses, the landscaping associated with the A50 provides ample screening of the proposed site. There will probably be views of the 25m high flues and possibly the roof of the services building that is some 11m to the ridge. None of these views are considered significant and would not constitute grounds for refusing planning permission.

Visual Impact on Foston Hall Prison – The proposed landscape master plan would mitigate any visual impact on the setting of the listed building. The prison site has already degraded the immediate setting of the building by the erection of security fences and the provision of additional temporary prison buildings. These are all demountable and it is possible that the setting of the listed hall and stables could be restored should the prison be closed. However there does not appear to be any prospect of this happening and this application should be judged on its merits at the time of the application.

### Overall Conclusion on Visual Impacts

It is considered that the viewpoints and local impacts identified above are not sufficient on their own to warrant refusing planning permission. They represent views of low sensitivity at the closest points to the site or are distant views of the site in the context of a valley landscape that is already degraded by other development. The impact on local houses can be either mitigated or the houses have no direct views to the built

development on the site. Provided the development is subject to conditions requiring the implementation of the Landscape Master Plan, following the approval of the precise details of that plan, then it is considered that the development is in accordance with the requirements of Environment Policies 1 & 5 of the adopted South Derbyshire Local Plan in terms of the agricultural buildings.

### Odour issues

The overall methodology for assessing the odour impacts has been accepted by the Environmental Health Enforcement Manager. The conclusion of the air quality assessment is that the submitted report adequately addresses the odour issues at all the potential receptors identified in the report in principle. None of the houses identified, including those on Woodland Drive and Maidensley Farm, are sufficiently close to be affected by odours once the air from all buildings on the site has been treated by the methods described above in the 'Applicants Supporting Information'. Subject to these being implemented should planning permission being granted, the Environmental Health Enforcement Manager has no objection to the development.

The AD service building would appear as a large agricultural building, similar in size to the composting building Egginton Common. That too has an eaves height that allows lorries to tip and it has sliding doors that seal the building prior to tipping. The building also operates under negative pressure and there is a carbon filter system in operation. There are houses in close proximity to that building as occurs on this application site. According to the Environmental Health Enforcement Manager's records there have been no reports of odour complaints arising from that building.

The proposed filter system at the current application site on the AD Service building is much more up to date in that particulates within the building would be substantially removed prior to discharge to the atmosphere through the carbon filter.

The installation of the odour control system is considered essential if the planning application were granted planning permission.

### Noise Issues

The application is accompanied by a Noise Report that addresses the issue of noise in terms of impact on local dwellings arising from the operation of the site including the loading of pigs prior to transport for slaughter. In terms of the general operation of the site, the buildings and other machinery can be constructed to ensure that noise impacts are minimised and mitigated. In loading pigs, a mitigation measure is proposed in the form of a 4.0m high fence around the loading area to form a solid barrier around it.

The Environmental Health Enforcement Manager advises that the noise generated by the development is unlikely to be greater than that occurring from the A50 and the supporting information accompanying the application supports this point of view.

The Environmental Health Enforcement Manager states that subject to the implementation of the mitigation measures identified in the Noise Report at paragraphs 5.1 to 5.10, it is unlikely that any concerns about noise would be sufficient to warrant objection to the development.



## Conclusions

This is clearly a very contentious planning application. The issues are far reaching in that there has never been a planning application for a pig farm of this scale submitted in this country. If permitted, the development would be a first in terms of intensive farming because of its scale and the associated reuse of waste material to produce energy, heat and crops to serve the whole food manufacturing cycle. Having taken all the submitted information, responses from consultees and examined all the policy considerations as set out above, the conclusion is that whilst this is a substantial development in the countryside, the primary use of the site is agricultural and as such a location in the countryside can be acceptable.

The AD and composting operation, including the containers and silos to produce methane and fertiliser is a use that could potentially be provided at an industrial site rather than in the countryside location. However, if members are minded to accept that the pig farm can reasonably be accepted in this location, then there is such a close synergy between the two uses that the AD operation should be accepted as well. This is as the case for them to be located together has, it is considered, been made. Given the level of proposed odour control for this aspect of the development and the overall appearance as a part of a larger farm complex, the AD complex is considered to conform to Development Plan policies subject to the recommended conditions.

The recommended conditions below together with those identified above are considered sufficient to protect the amenity of occupiers of nearby houses to a point where a response of **No Objection** subject to conditions can be recommended to the Planning Committee for consideration.

## **Recommendation**

That Derbyshire County Planning Authority be advised that subject to the signing of a Section 106 Agreement to secure the demolition of the houses at the existing pig farm on Wood Yard Lane Church Broughton, then South Derbyshire District Council has **NO OBJECTION** to the proposed development subject to the following conditions:

1. The occupation of the dwellings shall be limited to the family and/or dependents of a person employed, or last employed, wholly or mainly in the operation of the pig farm hereby permitted or in forestry.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where there are other overriding reasons justify a departure from that policy. The Local Planning Authority is concerned to ensure that such workers' dwellings are maintained available to meet the needs of the locality and to avoid proliferation of dwellings in the countryside.

2. Before any building is brought into use the odour control measures assessed in the report by the SLR Odour Impact Assessment dated March 2011 shall be installed in accordance with manufacturers instruction.

Reason: To ensure the Odour Control measures set out in the EIA are implemented prior to the occupation of any building on the site.

3. Noise mitigation measures shall be implemented in accordance with the noise control recommendations set out in Paragraphs 5.1 - 5.10 (shown as 5.1 - 5.7 and the 5.1 - 5.3 on pages 9 & 10 of the Hepworths Acoustics report dated March 2011) and stated as being required at Paragraph 7.6 in the same document prior to the first use of any of the buildings hereby permitted.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

4. The site, its plant and equipment shall be operated and maintained strictly in accordance with manufacturers requirements. In the event that there is a breakdown of noise or odour control measures, the site shall be prepared for shutdown in accordance with a timetable that has been submitted to and approved in writing by the County Planning Authority. For the avoidance of doubt the breakdown of the odour control system will have been considered to have occurred if odours at the site boundary exceed 3 ouE/m<sup>3</sup> as a 98th percentile of hourly means at the site boundary being the measure described in Section 3.1 of the Odour Impact Assessment prepared by SLR in its report dated March 2011.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

5. There shall be no loading of animals at any time outside the hours of 0700 and 1000 on any day as set out in paragraph 5.6 of the report prepared by Hepworths Acoustics dated March 2011.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

6. Before any building is brought into use the landscape bunds and noise, security fence shall be formed and constructed in accordance with detailed drawings that shall have received the prior written approval of the County Planning Authority. The planting of the landscape bunds shall be undertaken in accordance with a detailed planting plan submitted to and approved in writing by the County Planning Authority, using the species identified by FCPR in its Landscape and Visual Assessment dated March 2001 at Figure 11 in Appendix 8 to the submitted EIA. The landscaping bunds, planting and fences shall thereafter be maintained in accordance with a Landscape Management Plan that shall be submitted to and approved in writing by the County Planning Authority.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

7. Control of the hours of operation during construction 0730 - 1830 Monday to Friday, 0730 - 1300 on Saturday with no construction activities on Sunday Bank or Public Holidays.

Reason: In the interests of the occupiers of nearby houses.

8. The imposition of such dust and mud on road conditions as deemed necessary by the County Planning Authority in accordance with its standard requirements for waste disposal sites both during construction and during the operation of the site if permitted.

Reason: In the interests of the amenity of the occupiers of nearby houses.

**Item**            **1.10**

**Reg. No.**        **9/2011/0128/FH**

**Applicant:**

Mr Kevin Stackhouse  
14 BRAMLEY DALE  
CHURCH GRESLEY  
SWADLINCOTE

**Agent:**

Mr Nigel Turner  
Redesign Urban Architecture Ltd  
Junction Studios  
87 Old Uttoxeter Road  
Derby

**Proposal:**        **THE ERECTION OF AN EXTENSION AT 14 BRAMLEY  
DALE CHURCH GRESLEY SWADLINCOTE**

**Ward:**            **SWADLINCOTE**

**Valid Date:**      **22/02/2011**

**Reason for committee determination**

The applicant is an employee of the Council.

**Site Description**

The application property is a detached dwelling situated on a small cul-de-sac that forms part of a larger housing estate. The property in question is a two-storey dwelling of a modern design; similarities that are also shared by the six other residential properties located on Bramley Dale.

**Proposal**

The proposal would extend at first floor level above the current garage and result in the property having five bedrooms instead of the four it currently has.

**Applicants' supporting information**

None.

**Planning History**

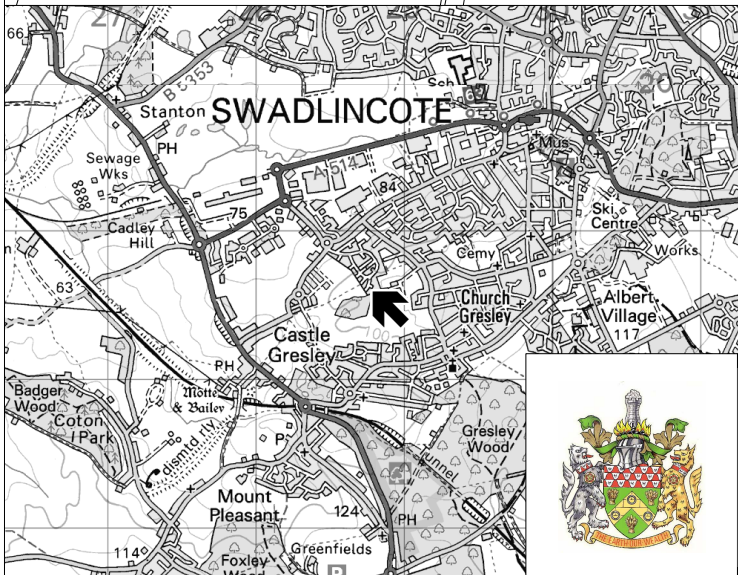
None.

**Responses to Consultations**

None.

**Responses to Publicity**

9/2011/0128 - 14 Bramley Dale, Church Gresley, Swadlincote DE11 9RT



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None.

### **Development Plan Policies**

The relevant policy is Housing Policy 13 of the Local Plan and Supplementary Planning Guidance (SPG) 'Extending your home'.

### **National Guidance**

None.

### **Planning Considerations**

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

- the design of the proposal, and
- the effect it would have upon the amenities of neighbouring properties.

### **Planning Assessment**

The proposal is of a subordinate nature to the host property with fenestration and roof designs similar to those of the existing property, which would therefore appear sympathetic. The proximity of the extension to relevant neighbouring windows is such that no overbearance or overlooking would occur, thus complying with Housing Policy 13 of the Local Plan and the SPG.

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.  
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.  
Reason: To ensure that adequate parking provision is available.

Informatives:

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

27/07/2010

**Item**            **1.2**

**Reg. No.**        **9/2009/0341/MAO**

**Applicant:**

Roger Bullivant Ltd & E.ON UK Plc  
c/o Roger Bullivant Ltd  
Walton Road  
Drakelow

**Agent:**

Ms H Pugh  
David Lock Associates  
50 North Thirteenth Street  
Milton Keynes

**Proposal:**        **A hybrid planning application with all matters reserved for up to 2,239 dwellings, including a retirement village: an employment park; two local centres comprising retail, services, leisure, employment and community uses; public open spaces; a new primary school, associated landscape and infrastructure including car parking, road and drainage measures; and the refurbishment of the listed stables and cottages (with full details- comprising change of use and repair of the building). Drakelow Park Walton Road Drakelow Burton-on-trent**

**Ward:**            **Linton**

**Valid Date:**     **08/05/2009**

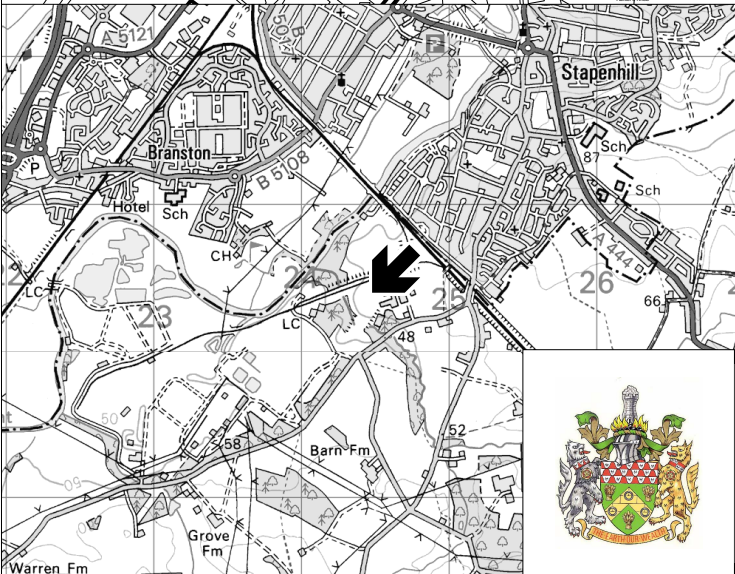
**Reason for committee determination**

The application is a major application that has attracted more than two objections and is not in accord with the development plan.

**Site Description**

The application site (referred to as Drakelow Park) is located approximately 3km to the south of Burton-upon-Trent town centre and 5km to the west of Swadlincote town centre. It sits on the border between the East and West Midlands. The site is bounded by the River Trent to the north-west, with Branston Golf and Country Club and the residential estate of Branston beyond the river. To the southeast is Walton Road, which forms the south-eastern boundary of the application site. Over Walton Road there is little development other than farmsteads scattered across the otherwise agricultural landscape. Several small isolated woodlands (the largest of which is Grove Wood) are also located to the south and east of the site.

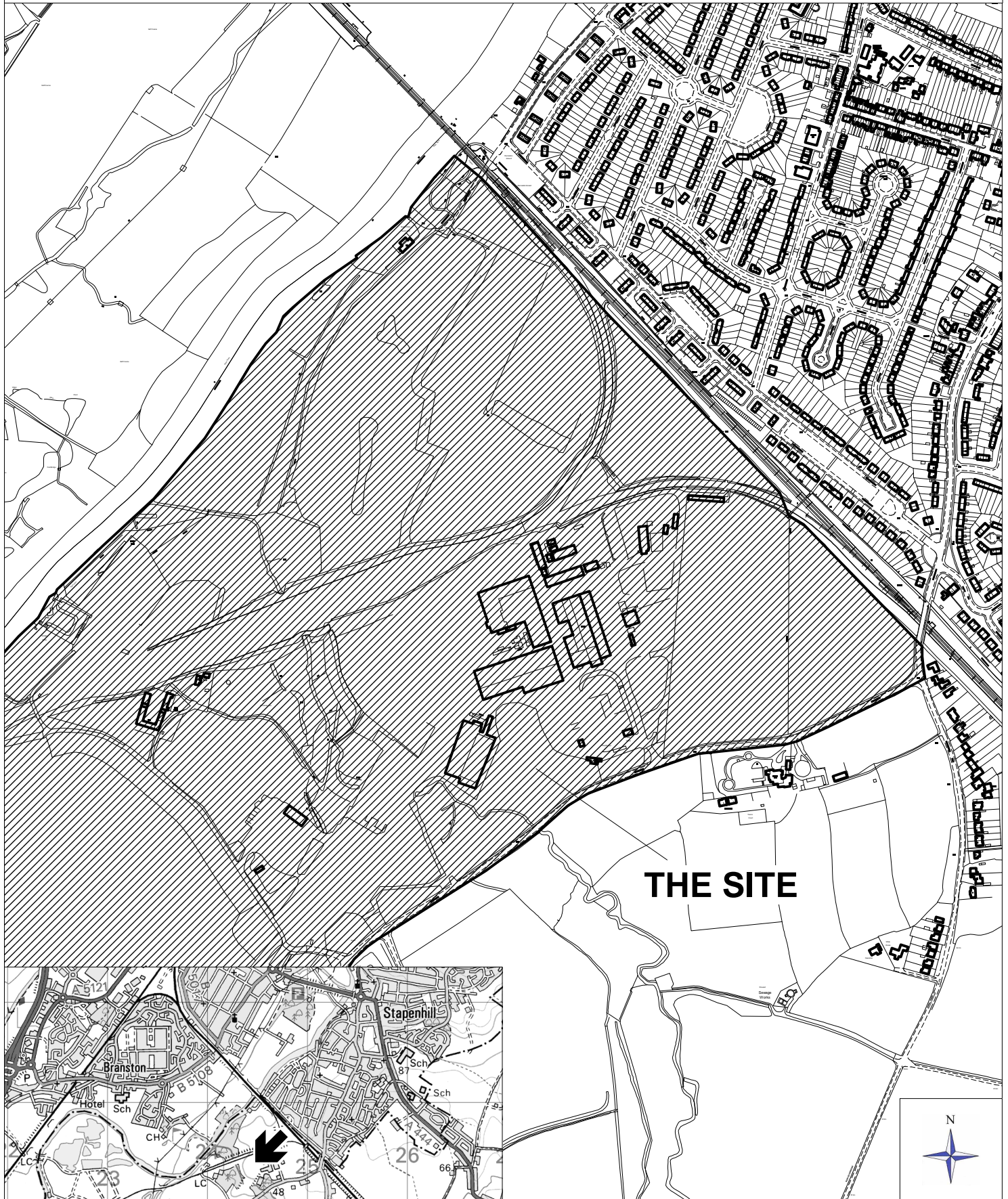
To the north-east is the Burton to Leicester freight railway line (known as the National Forest freight line) and beyond this is the residential estate of Stapenhill (a footbridge crosses over the railway line, linking the application site and the residential estate of



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Stapenhill (at Cumberland Road). To the west of the site is the site of the former Drakelow Power Station. In the north west of the site is agricultural land (presently cultivated) comprising 12 hectares together with mature woodland (most of which is covered by tree preservation orders). A small watercourse (Darklands Brook) flows through the centre of the site towards the River Trent. Areas of woodland currently on the site are covered by woodland tree preservation orders.

There are several Grade II listed structures within the site boundary including a stable block, cottages, sunken garden and garden wall, all remnants of the former Drakelow Hall. There is also an existing dwelling house and a boat house on the site and these would remain unaffected.

The application site is approximately 109.48 hectares in area and is largely on low-lying ground to the south of the River Trent. The part applicant Roger Bullivant Limited (RBL), (a foundation, engineering, and piling company) currently occupies the majority of the site, but a part of the site is owned by E.ON plc (E.ON) who is a joint applicant with RBL. Facilities on the site currently comprise manufacturing units, offices, car parks and product and pile storage areas. The south-western part of the site which was formerly associated with the adjacent power station site is vacant. The site is also crossed by a redundant rail siding.

To the west of the site is a National Grid substation and land owned by E.ON where consent has been granted for a 1,220 MW combined cycle gas turbine power station with ancillary equipment and a further application to extend this is currently awaiting determination by the Secretary of State.

## **Proposal**

This is a hybrid planning application with all matters reserved for up to 2,239 dwellings, including a retirement village; an employment park; two local centres comprising retail, services, leisure, employment and community uses; public open spaces; a new primary school (two-form entry); associated landscaping and infrastructure including car parking, roads and drainage measures; and the refurbishment of the Listed stables and cottages (with full details). A separate application to refurbish the listed buildings was approved under planning permission 9/2009/0342 in July 2009.

The proposal indicates the use of the existing main vehicular access point which currently serves RBL's offices and site from Walton Road and an amended access would be created where a previous permission granted under application 9/2007/0356. In addition, there are two existing pedestrian connection points proposed linking the site to Stapenhill, one comprising a crossing over the railway line which utilises a footbridge joining with Cumberland Road to the north east of the site, and the other linking to an informal track passing beneath the railway viaduct adjoining the River Trent, to the junction of Cumberland Road and Waterside Road to the north of the site.

The application is presented as a three phase development. The first phase would include the construction of the local centre, primary school, a large central swathe of the woodland planting, drainage and recreation areas (up to the northern riverside edge); two main housing areas, the retirement village and the commencement of the first phase of the industrial development in the south western corner. It is stated that RBL would continue operating from its main site during the first phase although the relocation off site would have commenced (according to the interaction statement). Phase two

comprises the remainder of the housing on the east side, the supplementary local centre and the main woodland (existing) and open space areas along the Walton Lane frontage; and the remainder of the industrial phase on the western boundary. It is at this stage that RBL proposes to move its operation to a vacant site owned by E-ON beyond the eastern boundary. Phase three would see the development completed with the remainder of the residential area on the west central area and adjoining recreation areas.

The applicant's planning statement suggests that a Combined Heat and Power (CHP) system (which is the simultaneous generation of thermal and electrical energy from a single stream of fuel) is a possibility given that E.ON has consent for a Gas Fired (CCGT) Power Station adjacent to the development site which could potentially be associated in providing a CHP facility for the Drakelow Park site, thus providing the district heating and electrical energy for the development.

If permission were granted, supplementary works are also proposed which include physical improvements to the Barton Turns and Branston junctions of the A38 and improvement works in Burton. For the Barton Turns junction, (among other things) this involves replacement of the existing roundabouts with signalised layouts. For the Branston Interchange junction, this involves (among other things) signalling the north bound off slip where it meets the circulatory carriageway and widening that slip road to 3 lanes over part of its length.

### **Applicants' supporting information**

In support of the application is a statement submitted by the planning agents stating that:

Permission should be granted at Drakelow Park for the following reasons:

1. It will secure the retention of a highly valued employer in the local area, safeguarding existing jobs and creating new employment opportunities on site;
2. It will bring very large areas of brownfield and derelict site back into productive use, reducing the need to build homes on greenfield sites, or on sites at risk of flooding, elsewhere within the District;
3. It will deliver a balanced community including a wide range of homes by type, tenure and price, encompassing special needs housing such as retirement homes, and giving many more local people the chance to trade up to better quality housing without having to leave the area;
4. It will establish in perpetuity more than 35% of the site as green space – including a riverside park, woodland nature trail, parks and village squares;
5. It will secure the refurbishment of the listed stable block and will open up parts of the historic site to the public for the first time for more than 50 years;
6. It will give people the choice to live and work in the same community, avoiding long journeys to work by car, and will deliver a high quality of life with a new primary school, health, local retail and other community facilities;
7. It will deliver a multi million pound transport package for the local area, including the already approved new bridge connecting the site to the A38 (Walton Bypass), thus ensuring there is adequate capacity on local roads;

It goes on to comment that the current economic climate is very uncertain, and the planning system is about to be changed radically. But demographic pressures keep

going - local people still need good quality housing close to good quality jobs. The opportunity to create such places, through good planning, careful design and careful implementation is rare. It says that the proposals before the Council reflect current best practice, conform to the essence of established planning policy, and will take 10 to 15 years to deliver in partnership with local organisations and institutions. Approval of the application will allow the creation of Drakelow Park to proceed without further delay.

As the application falls under Schedule 2, categories 10a and 10b of the Environmental Impact Assessment (EIA) Regulations (1999 – as amended): ‘industrial development projects’ (Category 10a) and ‘urban development projects’ (Category 10b) an Environmental Statement (ES) has been prepared. An EIA is undertaken to determine the likely significance of potential environmental impacts and the nature of any mitigation measures that may be required. The findings of the EIA are presented in the ES. Also included in support of the application are the following documents prepared by specialist consultants:

- A design and access statement (setting out the design and layout concept for the site and how the development would connect with the wider area)
- A planning statement (setting out the site context, the national, regional and local planning policy contexts, and a general planning assessment at the time of the application)
- A statement of community engagement (outlining the stages of public consultation prior to the submission of the application)
- A transport assessment (setting out the national regional and local transport policy context, the site location in regard to transport networks, the proposals with regard to demand for travel, and the strategy for managing and meeting the demand)
- A sustainability statement (including the approach, policy objectives and framework)
- A flood risk assessment
- A supplementary planning statement (giving the planning policy position in November 2009)
- A viability overview report (November 2009) - updated with letters, the last being July 2010 (this examines the viability of the project taking into account all the costs associated with the development, the income generated, profits and the residual sum that would be available to provide for affordable housing and other infrastructure contributions).
- Draft heads of terms for an agreement under Section 106
- Planning policy update statement (February 2010)
- A Transport Assessment Addendum (November 2009)
- An illustrative master plan
- An ecological appraisal
- A detailed phase 2 ecology survey and assessment
- An Arboricultural appraisal
- A culvert survey and report
- An interaction statement (describing the combined potential impact and interaction between the proposed development and the forthcoming power station on the adjoining site to the west)
- An Agricultural Assessment
- Illustrative master plan and drawings

- Planning policy update statement (May 2010)
- Transport Assessment Summary Report (May 2010)
- Travel Plan (May 2010)
- Briefing note on affordable Housing (May 2010 - produced by the main agent)
- A briefing note on public consultation which indicates that flyers, press releases, statements, public exhibitions, an interactive website, meetings, site-tours and a Liaison Committee Working Group were all set up prior to the application being submitted and the website and Liaison Group is still in operation.

Copies of all these documents are available to be viewed.

## **Planning History**

Other numerous applications were granted on the site (mainly for RBL), which in part notionally established an amount of traffic generation [although not comparable to that envisaged in the current application] as regards the capacity of the local road network.

Notable is one application for the formation of the Walton by-pass including a bridge over the Trent to link to the East Staffordshire side at a point beyond the existing bailey bridge (9/2003/1525) which was granted in May 2005, with a further permission granted under section 73 (variation of condition) subsequently in May 2007.

Further applications include:-

9/2009/0350 - the construction of a pedestrian and cycle bridge across the River Trent between Drakelow Park site and Branston Golf & Country Club - withdrawn 05 August 2009.

9/2009/0342 - to repair and refurbish grade II listed Stable block - granted 15 July 2009.

## **Responses to Consultations**

**English Heritage** do not raise any objections and advise that the application should be determined in accordance with national and local policy guidance and on the basis of the District Council's specialist conservation advice.

**Advantage West Midlands** advises that it welcomes the application as a sustainable urban extension to Burton-upon-Trent as this is in line with the strategic policy context offered by the West Midlands Economic Strategy, the emerging West Midlands Regional Spatial Strategy and the East Midlands Regional Spatial Strategy (as Burton-upon-Trent is a Growth Point) but is concerned with the transport issues that have been identified by Staffordshire County Council Highways. On reconsultation in December 2009 the agency noted the Supplementary Planning Statement and the inclusion of the West Midlands Regional Spatial Strategy (WMRSS) phase Two Panel Report recommendations and the recognition of the Panel's recommendation for similar wordings, on co-operative working on core strategies to that in the East Midlands Regional Plan (EMRP).

**The Council's Contaminated Land Officer** advises that the development requires a phased approach and there is likely to be made ground underlying the site. Standard conditions are requested should the application be approved.

**Derbyshire County Council (DCC) Strategic Planning Committee** considered the application and resolved that it has serious concerns that the application is premature and if approved could, by virtue of its scale, have disproportionate impacts on the area and could prejudice:

- the final outcome of the WMRSS Phase 2 Revision;
- ongoing works between East Staffordshire Borough Council (ESBC) and South Derbyshire District Council (SDDC) regarding the requirements of the Derby Housing Market Assessment (HMA); and
- preparation of SDDC Core Strategy vis the allocation of key strategic housing sites;
- There are no extenuating circumstances to suggest a more urgent release of land for housing given the current 5 year land supply situation.
- A member (DCC) comments that although he has no objection, there would be access problems associated with the main routes to the site.

**The Highways Agency (HA)** in June 2009 initially placed a holding objection on the application as it advised at this time that there was insufficient information supplied to warrant a substantive response and a directed that permission should not be granted until their concerns had been fully addressed. Further information was submitted in the form of a transport assessment addendum on 15 December 2009 and the Highways Agency stated that whilst the note moved things forward it did still not have the necessary information to accurately identify the impact on the trunk road network and therefore the direction remained in force.

Following extensive discussions with the HA, Staffordshire County Council (SCC) Highways, DCC Highways and SDDC in May 2010 the developer submitted a Framework Travel Plan and Summary Transport Assessment together with indicative drawings showing proposed physical improvements to the Branston and Barton Turns junctions of the A38. The developer also confirmed that further improvements of the A38 would be supported as required (to be agreed) and a monetary contribution to the HA will be provided as required in accordance with the Travel Plan submitted. The HA advises that in order for the development to be acceptable it requires the works proposed in the Summary Transport Assessment and the Framework Travel Plan to be carried out and would require full input into the drafting of the relevant parts of the S106 Agreement prior to any planning decision being issued.

The concluding position of the HA is that it now finds the principle of the development acceptable and has issued a direction that if permission were granted then a condition stating: 'No development or combination of development shall be occupied that would result in trip generation exceeding 426 vehicle trips in the AM peak or 380 vehicle trips in the PM peak (based on the trip rates set out below) unless and until road schemes broadly in accordance with Infrastructure Planning and Design Limited layout drawings IPaD - 09- 104-P-110 Revision D, IPaD - 09-104-P-111 Revision D, and IPaD - 09-104-P-112 Revision D have been implemented in full, open to traffic and approved by the Local Planning Authority in consultation with the Highways Agency. The vehicular trip rates to be applied are as follows: Residential (per dwelling) - AM Peak 0.37, PM Peak 0.335; Employment (per 100sqm) -AM Peak 0.87, PM Peak 0.76 would need to be applied'.

Staffordshire County Council Education Authority (SCCEA) advises that it has agreed a cross county approach with DCC due to the close proximity of the proposal to schools in Burton-upon-Trent (within the Staffordshire County boundary).

It advises that a new primary school would need to be built before homes are occupied. Initially, capacity needs to be limited so that primary schools within Burton-on-Trent are not affected adversely, suggesting a gradual increase in the size of the new proposed school.

It also advises that DCC advises that its secondary schools are at capacity and are further from the development site than Burton schools. Adding capacity to the nearest Burton school, Paulet High School by increasing its catchment and Stapenhill 6<sup>th</sup> Form Centre to cover the site appeared logical. However, neither has the capacity to cater for 350 secondary school pupils and 70 post 16 year olds that the development would be likely to generate. As such the development would need to contribute £7,079,590.00 (£5,817,700.00 Secondary (11-16) and £1,261,890.00 Post 16) calculated using the latest DCSF (central government) cost multiplier and in accordance with SCC's own Planning Obligations Policy). They advise that this could be further recalculated subject to detailed applications.

On receipt of the additional information and the viability study, SCCEA advised that the applicant's information submitted with regard to the viability assessment is incorrect and there are not sufficient places for the number of pupils generated from the development. In addition, without the necessary education contributions, there would not be sufficient resources to increase the provision in existing schools.

**Derbyshire County Council Education Authority (DCCEA)** initially advised that a two-form primary school (at a minimum of 3.0 hectares) together with funding to build the school (initially as a one-form room expanding to two forms) is required. The initial phase of the school would need to be built before the homes are occupied, expanding as the development progresses across the development area.

It advised that secondary provision would be in Burton as the nearest school in Derbyshire is William Allit – over three miles away with the Burton school of Paulet being only 2 miles away and on an existing bus route. Again it advised of a cross boundary approach with Staffordshire regarding secondary and sixth form provision and contributions.

On reconsultation following submission of the viability report from the developer, it advised that the development is likely to generate 448 primary school pupils, requiring a staged development of a two-form entry level primary school, initially consisting of a one form entry primary school to be built at the beginning of the development, with a site capable of expanding to two forms of entry level, with funding by the date of the conclusion of the site development. The development would also generate 267 secondary aged pupils (plus 54 post 16) requiring a contribution of £5,422,212 (£4,448,754 Secondary and £973,458 post 16).

The viability study from the developer is refuted by the Local Education Authority and they further advise that failure to fund Staffordshire secondary school places would leave DCCEA with only one conclusion – to build a secondary school on a site yet to be determined at a cost of approximately £20 million. It further advised that the funding

required for the two form entry level primary school as proposed would cost £8-9m and also advised that it required 2 hectares not 3 hectares as originally stated.

**The Environment Agency** initially objected to the application stating that the submitted Flood Risk Assessment (FRA) was unacceptable and did not comply with the requirements in Planning Policy Statement 25. The applicants submitted a revised FRA in December 2009 and EA subsequently removed their initial objections, subject to conditions being applied in relation to the removal of one culvert, a water drainage scheme being provided and agreed and the replacement culvert details being submitted and agreed.

**Derbyshire Wildlife Trust (DWT)** initially advised that the Scoping Opinion had been fulfilled by the applicant; although it was concerned regarding the loss of 1.5ha of the railway ballast which currently supports interesting pioneer vegetation and it suggested that the parking and service areas within the proposed Business Village would provide the best opportunities to create a suitable compensatory habitat for this loss. Following a response from the applicants ecological consultants, further comments were received alleviating the initial concerns raised and advising that Natural England had been adequately consulted with regard to protected species survey methodologies and the bat mitigation strategy. It was noted that a more appropriate evaluation of the Speckled Bush Cricket had been recognised and measures for the presence of the species would be incorporated into the Ecological Management Plan at the detailed design stage. Furthermore it was recognised that the railway ballast would be retained as much as possible and this was welcomed and supported. DWT has requested a fully funded Ecological Management Plan.

**OPUN East Midlands** commented on the proposal before the application was submitted. It concluded that an exploration of precedents in housing and urban design closer to the site was required, connectivity to Burton was an issue (stronger road links should be sought) and the development should meet the Building for Life standards. The master plan and design has not altered since these comments were prepared in May 2009.

**Derbyshire County Council Archaeologist** does not raise any objections to the application subject to conditions relating to a phasing of archaeological evaluation including geophysical surveys, trial trenching taking place and mitigation measures (should the proposed works impact upon identified archaeological remains).

**Severn Trent Water** does not object to the application, subject to a standard condition being applied with regard to the disposal of surface water and foul sewage.

**The Council's Environmental Protection Manager** has no objections to the application subject to conditions relating to a pre commencement condition regarding noise in the construction phase and an assessment of noise in accordance with PPG 24 throughout the life of the development. Major concerns regarding the potential for noise disturbance of future residents from the employment area have been expressed and these should be restricted to B1 usage where they are proposed adjacent to any residential development. Furthermore conditions regarding loading bays, installation of a bund, close boarded fence, no plant or equipment exceeding set noise levels and hours of conditions restrictions are required should the proposal be granted permission.



**East Midlands Development Agency** do not object to the application and state that the redevelopment of the site may also provide wider regeneration benefits to neighbouring communities including Burton and Swadlincote. The inclusion of employment uses in the proposed development is welcomed, but it does raise concerns regarding both the accessibility of the site and the intensification of the proposed uses, which will be likely to cause significant congestion on some of the existing highways infrastructure (should there be no further improvements). The particular area of concern is where the road (Rosliston Road South) passes over the railway line at the eastern edge of the site, which needs addressing should the application be approved. It further advises that there does not appear to be any beneficial improvement of pedestrian links and the safeguard or protection of any route alignment for a Regenerating Route linking the A38 to Swadlincote and beyond; this would be prudent at the current application stage.

**The National Forest Company** advises that the proposal would provide an overall proportion of 36% Green Infrastructure (GI) (the requirement being 30% for developments over 10ha within the forest area). It advises that some GI aspects should be improved (i.e. loss of habitat features including 4.05ha of woodland, 2.69ha of semi improved grassland and 393 metres of hedgerows). It acknowledges that there will be a gain in habitats overall but questions whether more can be done to retain the existing habitats. It recommends a wooded belt of at least 30 metres wide to Walton Road to maintain a strong green interface with the rural landscape to the east. Landscaping on the western edge of the employment area needs to be stronger and also with the adjoining housing area. It suggests a long term funding commitment through an agreed commuted sum should be in place for maintaining and managing the planned GI and commitment should be secured via a S106 to preparing an overall GI management plan.

**Sport England** advises that a development of this size, as calculated using Sport England's Sports Facility Calculator (SFC), would create the need to provide 60sqm of swimming pool provision, 1.7 badminton courts within a sports hall and 0.35 of an indoor bowls rink. This equates to between £1.7m and £1.8m through planning contributions to new or improved indoor facilities. Maintenance for the facilities should be secured for at least 10 years.

**The Crime Prevention Design Advisor** does not object to the application, subject to conditions being applied to ensure compliance with the "Secure by Design" standards to ensure a safe, secure and cohesive community is developed.

**Network Rail** does not object to the proposal but advises that it is concerned with regards to the strength of the pedestrian bridge, which crosses the site into Cumberland Road. It requires a significant contribution from the developer towards strengthening or re-building the bridge. It also suggests conditions be applied regarding fencing, surface water, excavations and earthworks, soundproofing, landscaping and lighting. On further consultation Network Rail advises that the contribution it would be seeking for construction/improvement to the footbridge would be approximately £300,000. This is based on the increase in loading factor from a 4KN/m<sup>2</sup> to 5KN/m<sup>2</sup> due to the likely increase in usage as a result of the proposed development and to make it Disability and Discrimination Act compliant.

**Staffordshire County Council Highways and Transportation** initially recommended refusal of the application as they stated that there was insufficient information contained

within the Transport Assessment (TA) to determine the application. They were unable to fully audit the TA because of fundamental issues with traffic generation and distribution. The area of assessment was not sufficient for the scale of the development and therefore in their opinion, it was not feasible to determine the acceptability of the travel plan or public transport strategy. They further advised what issues required addressing in a revised TA for the application.

On reconsultation in December 2009 after provision of further information by the developer they responded that there was still insufficient information to respond and advised that the area of assessment needed extending and being agreed; full details of the assignment of traffic had not been provided; the TA failed to demonstrate the site as being served by a suitable level of public transport; the TA failed to demonstrate any highway mitigation works; and the travel strategy and Travel Plans were incomplete.

On further reconsultation in June 2010, after the provision of yet more information by the developer, SCC advised that the development would have a significant impact on the County network. However, this would be mitigated to a significant degree by the emerging Burton Transport Strategy, a strong robust travel plan and a sustainable layout. The TA and Travel Plan (TP) rely on a modal shift of 30% away from car use to public and other means of transport. To make this possible SCC are looking for a fund to draw upon to provide additional mitigation measures in the event that the provisions of the TP fail to deliver this modal shift. This along with other provisos and conditions has led to SCC removing its objections subject to contributions being secured through a S106 agreement. These are detailed as:

- £815,000 towards the Burton Urban Area Transport Management Study (BUATMS) with a bonded £443,195 to be secured should the triggers points be exceeded on peak trips, securing of the Framework Travel Plan submitted in May 2010, £511,000 into an ESCROW account for the budget for the management and implementation of the Framework Travel Plan together with an additional £240,000 into an ESCROW account should the traffic levels be exceeded and the provision of a public transport service between 5am-midnight with 15minute frequency between 7am-7pm and twelve months free travel vouchers.
- Occupier Travel plans should be submitted and agreed prior to occupation of a particular unit or collective travel plans for smaller companies should be submitted through the Travel Plan Co-ordinator. The mechanism for monitoring and assessing targets exceeded is not agreed with the developer and nor are trigger points and these need to be the subject of further discussion in the S106.

Furthermore prior to any development commencing a master plan requires submitting for approval and subsequent compliance identifying:

- a detailed design concept for the overall site,
- details of any phasing
- details of any proposed road hierarchy
- the Public Transport Route Strategy, including timeframe for implementation and infrastructure to be implemented including real time information,
- details of the footpaths, cycleway, and landscaping for the overall site,
- details of the location for the proposed school site, retail areas and employment areas,
- identify the low car parking areas within the development as outlined in the Framework Travel Plan

- secure the cycle parking within the development as a whole, including specific areas such as the employment zones within/at the residential dwellings, through either a minimum size for the garage or a secure lock up'
- routing of construction traffic.

SCC Highways would wish to be reconsulted on the application should the developer not comply with these requirements.

**Natural England** does not raise any objections to the application. It advises that the culvert running across the middle of the site should be removed, the Railway Line should be retained in its original state and that a rare species of grassland and Yellow Wort are present and should be protected. Further survey work regarding bats, badgers and birds should be carried out. Additional green corridors should be encouraged linking GI throughout the development, rather than the GI existing in isolation. The Local Planning Authority should be satisfied that the proposal meets the 3 tests required under the Habitats Regulations prior to issuing any planning permission [see Ecology section in the Planning Assessment below].

**South Derbyshire's Housing Strategy Manager** has assessed the need for affordable housing in the area. The South Derbyshire District Strategic Housing Market Area Assessment (SD-SHMA) recognises that there are two significant pulls in the district: towards Derby in the north and Burton/Swadlincote in the southwest. The idea of Swadlincote and Burton as a single housing market area was suggested and supported by research undertaken by the West Midlands Regional Assembly.

The SD-SHMA indicates that a high proportion of people who live in Drakelow travel to work in Burton upon Trent and to a slightly lesser extent to the Swadlincote urban area. Therefore, it would not be unreasonable to assume that this development has the potential to meet a housing need for both Swadlincote and Burton upon Trent as well as a local rural housing need. The SD-SHMA considers the need for affordable housing across four sub-housing market areas operating across South Derbyshire. Drakelow is considered to be in the Swadlincote rural fringe sub-market.

Evidence shows that the current/proposed supply of affordable housing for the Swadlincote urban core is not contributing to the shortfall in affordable housing in the Swadlincote rural fringe. The SD-SHMA suggests an annual shortfall in affordable housing of **51** homes in the Swadlincote rural fringe sub-market. However, the SD-SHMA (pvii) refers to the, "Need arising from the Swadlincote rural fringe could be met to some extent in the urban area..." This means that by adding the Swadlincote rural fringe shortfall in affordable housing (51) to that for the Swadlincote urban core (62) the annual shortfall in affordable housing is 103 homes.

It should be noted that although the Swadlincote rural fringe is predominately in the south/central of the District, it also includes some parishes in the northwest, namely Hatton and Hoon. It would seem reasonable to assume that people aspiring to live in the north of the District would not necessarily consider that their housing needs can be met at Drakelow Park. The evidence of shortfall in affordable housing to date shows that the current/proposed supply of affordable housing for the Swadlincote urban core is not contributing to the shortfall in affordable housing in the Swadlincote rural fringe. Therefore the opportunity should be taken to deliver the Swadlincote rural fringe affordable housing need (51) at Drakelow Park. Any evidence of need in Burton that might contribute to this analysis is not yet available from ESBC although it appears that this may be in the region of 27%.

Integrating the affordable homes across the whole development should be a key feature in the design and layout of the homes. The DCLG projections for an average household in South Derbyshire suggest that this will be around 2.26 by 2016. Based on 2,239 properties, Drakelow Park could be home to over 5,000 people. For a settlement of this size it will be important that the design, type and range of properties available promote a socially inclusive community. Acknowledging the need to promote social inclusive communities for a range of household incomes/sizes and on the basis that there will be a balanced provision of house types/prices the tenure split should be as that recommended by the SD-SHMA for the district overall – 60% social rent: 40% intermediate. In conclusion and based upon all available evidence she recommends the following:

- Minimum of 28% affordable be delivered across the whole site.
- Each phase shall contain a minimum of 20% affordable to a maximum of 55%. (This should facilitate the cash flow in the early development years allowing more affordable to be delivered in the later stages).
- 60% of affordable homes to be for social rent: 40% intermediate.
- That a site specific housing needs study which considers cross-boundary housing needs be undertaken every 3 – 5 years to assist all parties at the detail design stage(s).

**Derbyshire County Council – Highways initially** advised that the Walton Bypass be a prerequisite of the development and the commencement of the development be dependant upon prior completion of the Bypass and river crossing. Improvements are required on Walton Road, Rosliston Road; existing roundabouts require modification works; the existing signalised junction at Caldwell Lane/Rosliston Road is unacceptable; and can be mitigated by way of a contribution of £30,000; and a further contribution of £100,000 for off street highways works for South Derbyshire roads. The travel plan should encourage travel by walking, cycling, public transport and car sharing, to be reviewed every 5 years. The extension of Greenway north eastwards and west is required together with the retention of footbridge over the railway and the application for the footbridge over the River Trent to Branston should be resubmitted.

On reconsultation following the provision of further information DCC responded in June 2010 stating that the development has the potential for significantly impacting on the Staffordshire highway network, the A38 Trunk Road and Derbyshire roads. It advises that it cannot be over emphasised that the integral thrust of restraint of car-borne travel and modal shifts, has a bearing on the acceptability of the overall development in terms of mitigation of residential generated traffic. The evolution and embodiment of the Framework Travel Plan (FTP) initiatives within a S106 agreement are therefore fundamental to the acceptability of the development proposals as submitted. It states that the trigger points are disputed regarding proposed mitigation and advises that there is no reference in the Summary Transport Assessment (STA) as to when the Walton by Pass will be implemented however the Transport Assessment 06 April 2009 does refer to early provision of the Bypass. The delivery of the Bypass should be achieved at an early stage within the phasing through the S106. Other mitigation measures required are:

- £10,000 (index linked) for a traffic regulation order
- £30,000 (index linked) for improvements to Caldwell Road/ Rosliston Road junction

- £100,000 in an ESCROW account for Off site highway mitigation works
- £150,000 for a Greenway contribution
- A scheme for routing of construction traffic to and from the site during the construction period.

A further comment received is the requirement for SDDC, DCC and the developer to look at improved public transport access between the proposed development site and Swadlincote as the Transportation Assessment only assigns 10% of the development traffic between the site and Swadlincote. Subject to these issues being resolved and reflected in conditions and the S106 agreement, it is considered that from the DCC Highways viewpoint that the impact of the traffic arising from the development can be mitigated on the Derbyshire highway network.

**East Staffordshire Borough Council** advised that the Council considered the application at its Planning Applications Committee meeting on 18 January 2010 and in principle were supportive of the proposal. However, it still had reservations and reserved the right to comment further on the scheme. The concerns noted were transport issues not being resolved, agreement of the Burton Urban Area Transport Management Study (BUATMS) contribution to SCC Highways, commitment to provide further pedestrian and cycle links to both Branston and Stapenhill, involvement in Section 106 negotiations with regards to affordable housing and that it wished to be provided with an opportunity to participate in the planning committee meeting when the application is considered. Clarification on the Air Quality Management Areas was sought and it advised that the proposal should be completed in accordance with the Design and Access statement submitted. Although the Officer's recommendation was that the housing figures should come off East Staffordshire Borough Council's land allocations (as then required by the West Midlands RSS) the Planning Committee decided to not claim the figures for the Borough Council. (It is understood that ESBC will be commenting further but these were not available at the time of writing).

**Derbyshire County Council Greenways Officer** advises that space should be made available to connect the western end of the Greenway route to the northern end of the employment zone road for completeness and this will allow for eventual onward route through future provision on the neighbouring site, but prevents the path becoming a dead end.

**British Waterways** advises it would wish that the [withdrawn] bridge application be reinstated, as it would promote accessibility and the use of foot, bicycle or public transport. It states that the development fails to meet the sustainability objectives of PPS 1 in light of the absence of an up to date Development Plan and should the application be approved, a Disabled Disability Access compliant bridge crossing, suitable for walking and cycling should be integrated as a S106 requirement.

**Local Ward Members, Councillors Wheeler and Timms** do not raise any objections to the development proposed but state that the transport infrastructure is totally inadequate and flooding is an issue. A third river/railway crossing from the A38 circa Branston should be considered and that vital funding is required to ensure that the development can proceed. Concern regarding lack of surgeries and other facilities, loss of the green field, a high quality mixed commercial and residential development is required which reduces the need to travel for work and should look for a community that can live, work, be educated and socialise on the site.

**Barton-under-Needwood Parish Council** objects to the application as submitted and to the additional information submitted in December 2009 on the grounds of policy prematurity and traffic impact. More specifically it states that:

- The journey to work trip assumptions for the application reflect a policy aspiration rather than a reality
- It is unlikely that people would consider moving to the development without the household having access to a car
- The assumptions about the levels of traffic using Barton Turns roundabouts may well be underestimated
- Concern regarding increased trips through the village of Barton -under-Needwood
- Sustainable Travel Strategy is weak and entirely reactive- once people are established in an area they are unlikely to change their travel patterns.
- Developer needs to be more proactive in realising sustainable transport objectives
- Existing mini roundabouts on east side of Barton Turns junction are inadequate to cope with increased traffic volumes the development is likely to generate
- Significant traffic journeys into Barton for children attending John Taylor School and its sixth form
- A contribution to a school drop off area to the east of the schools sites should be conditioned if approval is given
- Subsidies and infrastructure for public transport need to be in place for the first phase
- Real time Passenger Information should be introduced
- The proposal can only be considered as one potential site to meet the strategic housing need and therefore is premature to the preparation of the Core Strategy for South Derbyshire
- Call for joint working between SDDC and ESBC to establish the merits of all sites acceptable of meeting the strategic housing needs for the greater Burton and Swadlincote areas

**The Council's Open Space and Facilities Development Manager** advises that more could be made of the SUDS element of the scheme; strengthen use of open watercourses, balancing ponds and swales as part of the sites Green Infrastructure and to create strong links to the riverside habitats. She suggests a phased delivery of play provision. Suggests relocation of recreation ground/play area to the school site and this proposed area to be a nature /wildlife area. A Multi Use Games Area or 3G/ Astro turf at the school would benefit the school and community and would be easier to manage. A management plan outlining key objectives for the site is requested and discussion about potential involvement of SDDC in management of the site would be welcome. If on-site provision falls short of S106 matrix requirement for SDDC off site contributions should be provided.

**The Rights of Way Officer (DCC)** does not raise any objections to the proposal but advises that Public Footpath No 1 (Drakelow) crosses the east section of the proposal and will be directly affected by the proposed development. If the footpath is to be diverted from its definitive route a permanent diversion order will be required. Until the order has been confirmed, the right of way should remain open, unobstructed and on its legal alignment at all times.

## Responses to Publicity

A petition objecting to the application signed by 41 residents was received together with three individual neighbour objections. The concerns raised were:

- Inadequate transport and congestion
- Pressure on existing services such as doctors, dentist, health care, adult education, libraries and secondary education
- Loss of the green field to housing
- Asbestos being buried on site
- Potential effects on existing wildlife
- Application is contrary to Saved Housing Policy 8 of the South Derbyshire District Local Plan 1998
- Site is unsustainable as a new river crossing is required due to the amount of traffic that will be generated
- The village of Barton-under-Needwood would have increased traffic volumes, most of which is a conservation area
- Insufficient liaison between South Derbyshire District Council, East Staffordshire Borough Council, Derbyshire County Council and Staffordshire County Council Highways
- The application should be determined by the Development Control Planning Committee and not a South Derbyshire District Council Development Control Officer
- The application is premature with regards to policy as an assessment of all the strategic sites has not been completed to show where the needs of housing should be for East Staffordshire and South Derbyshire
- Conjoined working with the respective Core Strategies is required and until then the proposal is premature.

On reconsultation in December 2009 additional responses received from one of the same objectors were that the information provided suggests that the culverts would collapse due to the additional strain placed on the culvert, traffic issues were still unresolved, green belt land was included in application and the instability of the local road infrastructure was a concern. Woodland should be increased, ringed plovers should be considered as the power station application had and an archaeological clearance should be carried out prior to any commitment to build on the land.

Hallam Land Management object to the proposal and they state that:

- The proposal prejudices land they are seeking to promote through the planning system in East Staffordshire
- The site could easily meet the East Staffordshire housing requirement
- Any application put forward to meet East Staffordshire's housing requirement should be submitted to East Staffordshire and not South Derbyshire
- Application can only be assessed on housing needs within South Derbyshire
- The analysis of the East Staffordshire housing requirement within the submission documents is incorrect
- Website suggests this could be a delegated decision, this must be a typographical error as such a major application should be heard at Committee
- If the proposal is determined on the housing requirements of South Derbyshire, Hallam Land's objection will be satisfied

- If the proposal is considered with regards to East Staffordshire's housing requirements then Hallam Land will make further specific representations related to transport and sustainable development.
- If it is the Council's intention to rely on East Staffordshire's housing requirements this needs to be publicised to allow for further representations as this would be a departure from planning law and practice.

### Supportive Responses

One letter has been received from the existing residents on the site stating that they have no objections to the application as submitted.

### **Development Plan Policies**

Saved South Derbyshire Adopted Local Plan (ALP) Policies (1998):

Environment Policies 1, 9, 10, 11, 13 and 14  
 Transport Policy 6, 7 and 8  
 Housing Policies 8, 11 and 14  
 Employment Policies 7 and 8  
 Shopping Policies 2 and 3  
 Recreation and Tourism Policies 4 and 8  
 Community Facilities Policy 1

n.b. The Secretary of State for Communities and Local Government announced the revocation of Regional Strategies with immediate effect on 6 July 2010. Therefore no weight should be accorded to PPS11 (Regional Spatial Strategies) and the East Midlands Regional Plan (2009) is no longer part of the Development Plan.

### **National Guidance/Policy**

Planning Policy Statements 1: Delivering Sustainable Development  
 Planning Policy Statement 3: Housing  
 Planning Policy Statement 4: Sustainable Economic Growth  
 Planning Policy Statement 5: The Historic Environment  
 Planning Policy Statement 7: Sustainable Development in Rural Areas  
 Planning Policy Statement 9: Biodiversity and Geological Conservation  
 Planning Policy Statement 11: Regional Spatial Strategies  
 Planning Policy Statement 22: Renewable Energy  
 Planning Policy Statement 23: Planning and Pollution Control  
 Planning Policy Statement 25: Development and Flood Risk  
 Planning Policy Guidance 13: Transport  
 Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation  
 Planning Policy Guidance 24: Planning and Noise

### **Planning Considerations**

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

- The principle of development (including specific issues of location, sustainability, scale, five year land supply, employment and strategic distribution)
- Environmental Impact Assessment



- The design and layout of the proposal
- Access, highway and transport issues
- Impact of the development on the amenity of nearby residents
- The provision of on-site facilities
- Viability of development and planning obligations.

## **Planning Assessment**

### The Principle of Development

The site is not allocated for any proposed use in the adopted Local Plan and there are no saved policies which provide up-to-date guidance on the scale or location of future housing needs.

Furthermore, following the revocation of the East Midlands Regional Plan, there are no longer any specific numerical or locational requirements for the development of new houses or other development in South Derbyshire.

Nevertheless, national guidance - particularly Planning Policy Statements (PPS) 1 (Delivering Sustainable Development), 3 (Housing) and 7 (Sustainable Development in Rural Areas) - provide relevant guidance on the determination of this proposal. In seeking the creation of mixed and sustainable communities, these policies aim to ensure that housing is developed in suitable locations which offer a range of community facilities and with good access to jobs, key services and infrastructure. Similarly, for employment, the overall aim of national planning policy in PPS4 is achieving sustainable economic growth. This includes reducing the need to travel especially by car, responding to climate change and raising quality of life and the environment in rural areas.

Recent ministerial pronouncements are also relevant to the determination of this application. In particular, it is clear that growth and development (including housing) should be promoted in accordance with locally determined needs. The key policy principles to be assessed are therefore the extent to which the proposal accords with the Development Plan (i.e. the saved policies from the Adopted South Derbyshire Local Plan 1998) and national planning policies, in terms of the sustainability of its location and scale. This includes issues around housing, previously developed land, heritage, biodiversity, employment and transport.

#### **1. Sustainability of the Proposed Development**

The Adopted Local Plan makes no provision for housing development on the site. In terms of 'windfall' development, Housing Policy 8 seeks to ensure that housing development in countryside is avoided unless for the operation of a rural based activity. Ordinarily a development of this scale would come forward as a strategic allocation in a local plan or LDF. The proposed development is therefore not in accord with the Development Plan.

Environment Policy 1 seeks to ensure that outside settlements, new development is not permitted unless it is essential to a rural base activity, unavoidable in the countryside and does not unduly damage its character. Where development is allowed, it should be designed and located so as to create as little impact as practicable.

The proposed development would, however, represent an urban extension to Burton upon Trent. Furthermore, notwithstanding the revocation of regional strategies, the Panel Report of the *West Midlands Regional Spatial Strategy Phase Two Revision: September 2009* concluded that the housing market areas of Burton and Swadlincote clearly overlap and that development on the site would clearly serve both towns. The applicant also correctly points out that the majority of the site is “previously developed land” (i.e. brownfield). In this regard, PPS3 establishes a national target for 60% of new homes to be built on brownfield land and development at this location would assist in achieving that objective and in doing so may reduce the amount of greenfield land released to meet future housing needs. Similarly, sustainability and the protection of heritage assets are required by PPS5 (Planning and the Historic Environment) and, in turn, saved Local Plan Environment Policy 13. The proposal would involve restoring listed buildings and bringing them back into use. The need to promote biodiversity is also required by PPS9 (Biodiversity and Geological Conservation) and saved Local Plan Environment Policy 11. These issues are assessed under the EIA section of this report (below) but it is concluded that on the advice of the Council’s consultants (DWT) the proposal is acceptable on biodiversity matters.

PPSs 3 (Housing) and 7 (Sustainable Development in Rural Areas) also directs development to suitable locations which offer a range of community facilities and with good access to jobs, key services and infrastructure in both urban and rural areas. In terms of the sustainability of the development therefore, an important consideration is whether the development would be able to access or provide essential services and infrastructure and be capable of implementation without detrimental impact on the provision of infrastructure on the existing surrounding communities. These aspects are detailed elsewhere in this report (see below), but it may be concluded that the site has potential to meet this important objective subject to mitigation and developer contributions. As such, sufficient mitigation of the impacts identified through the consultation process must be delivered. Without the delivery of mitigation, such impacts could seriously undermine the sustainability of the development in future years and compromise the sustainable occupation of the adjacent communities. Thus, in order to be sustainable, the site must deliver appropriate infrastructure and services.

In terms of scale, the application proposes the construction of 2,239 dwellings. As noted above, the revocation of the East Midlands Regional Plan means there are no longer any specific dwelling targets to be met in South Derbyshire. However, it remains the Government’s policy to see increased rates of house-building nationally. In this regard, there is an ongoing requirement for the maintenance of a five-year supply of housing. Until the District’s housing need is determined through the Local Development Framework Core Strategy it would be reasonable to ensure a continuous supply of housing land on sites which represent sustainable development.

The Design and Access Statement indicates that the proposal, if approved, would be developed in phases with 981 dwellings being delivered in phase 1 which will take 6-8 years to develop, 566 dwellings in phase 2 which would take 5 –7 years and 692 dwellings in phase 3 which would take 5-7 years. The relocation of RBL is to take place at the end of Phase 1 in order to free up land to allow Phase 2 (further residential, second local centre and further open space and infrastructure) to be delivered.

Recent consultation on the South Derbyshire Local Development Framework Core Strategy: Issues and Alternative Options identified the site as a possible strategic development location to meet the long term housing needs of South Derbyshire. In this regard it has been established with ESBC that the site could represent an extension to Burton whilst meeting the housing requirements of South Derbyshire.

Whilst the most recent calculation of 5 year supply based on April 2009 figures indicated no immediate need to release land for housing (albeit based on now defunct regional Plan build rates), the housing provided on this site could nevertheless contribute towards meeting the District's needs.

Clearly, an important issue is the extent to which the development of this proposal would put at risk the implementation of development aspirations for Swadlincote in the emerging LDF Core Strategy. In this respect, the applicant contends that the nature and scale of the proposal is distinct from urban extension development options around Swadlincote. It is argued that, as a much larger development well located between two overlapping housing markets, it has the potential to increase locational choice for those seeking to purchase a home. Accordingly, the applicant concludes that the delivery of new housing at the site would complement rather than compete with new housing in Swadlincote. No evidence exists to suggest that this would not be the case. Furthermore, whilst a consent on this site would pre-judge the outcome of development options being considered in the Core Strategy process, PPS 3 is also clear in paragraph 72 that "prematurity" is not in itself a reason to refuse planning permission on sites which are sustainable.

The energy efficiency performance of the proposed development is also an important sustainability consideration. Both the Supplement to PPS 1 (Planning and Climate Change) and PPS 22 (Renewable Energy) require measures to address climate change through renewable energy.

PPS22 sets out the Government's target to generate 10% of UK electricity from renewable energy sources by 2010 and the further aspiration to double that figure to 20% by 2020. However these targets have now been superseded by broader carbon reduction targets set out in the Climate Change Act (2008) which has introduced legally binding targets to Cut Carbon Dioxide emissions by at least 34% on 1990 levels by 2020 and at least 80% by 2050. More recently the Government has consulted on a draft Planning Policy Statement on 'Climate Change: Planning for a Low Carbon Future in a Changing Climate' which reiterates the targets set out in the Climate Change Act together with other recently adopted low carbon strategies. This consultation document, once adopted, will replace the Planning and Climate Change supplement to PPS 1 and PPS 22 and will bring together planning policy related to low carbon energy generation and development in a single Planning Policy Statement.

Accordingly, the applicant has submitted an Energy Options Appraisal Report as part of the Sustainability Statement which identifies a number of technologies which might be available at this location to address renewable energy targets. These include Combined Heat and Power; geo-thermal and solar heating systems and it is suggested these should be considered further at detailed design stage. This is considered an appropriate approach and a suitable condition would need to accompany an outline planning permission referring to the most up to date guidance at the time.

## 2. Employment

Employment Policy 7 of the Local Plan seeks to ensure that the redevelopment of former industrial site and buildings for industrial development is not detrimental to the amenity and character of the locality on environmental and traffic grounds. Employment Policy 8 seeks to limit the environmental impacts of developments on their surroundings and to ensure that they can be properly assimilated. These issues are discussed under the EIA section below.

A Derby HMA Employment Land Review has been prepared to support the development of the Local Development Framework Core Strategy and indicates that there is an 80ha shortfall in available employment land within South Derbyshire to 2026.

The established RBL premises, measuring some 16ha (excluding wooded areas on the periphery), would be lost as a result of the proposed development, but new B1 and B2 business accommodation is proposed as part of the scheme, measuring some 12ha. RBL has expressed the intention to relocate its premises to the site of the former Drakelow C power station, owned by E.ON plc. However, while the submitted Interaction Statement indicates that the “existing manufacturing plant owned by Roger Bullivant Ltd would be relocated off site” during Phase 1 of the proposed construction schedule, it does not say where to. It is not known how much land these new premises would occupy even if there was a relocation to the E.ON site. If permission is granted for the current application and RBL does indeed relocate to the E.ON site, it can be anticipated that there would be unlikely to be a significant net loss of employment land. However if RBL does not relocate to the E.ON site, there may be some loss of employment land, amounting to approximately 4 ha.

## 3. Strategic Distribution

Planning Policy Guidance Note 13 indicates that in determining planning applications, local authorities should identify and, where appropriate, protect sites and routes, which could be critical in developing infrastructure for the movement of freight. In line with this and specific guidance in the now cancelled Regional Plan, this general location was identified in a recent consultation document on the LDF Core Strategy as being an option for accommodating such development. However, whilst the site was put forward for consideration, the “Strategic Distribution Site Assessment Study for the Three Cities Sub-Area of the East Midlands”, commissioned by the East Midlands Development Agency, published in May 2010 concludes that the site has very good rail connectivity, but is otherwise significantly constrained in terms of deliverability.

There would appear, therefore, to be insufficient grounds for seeking a refusal of this planning application on the basis that the land should be protected to meet a freight distribution need.

### Environmental Impact Assessment

#### 1. Transport

Transport Policy 6 of the Local Plan requires major new development to be sited close to the principal road network with appropriate level of access servicing and parking. It states that planning obligations will be required to meet the cost of any necessary

improvements to the highways network. Policies 7 and 8 look for developments to provide good access and networks for pedestrians and cyclists.

The applicant's consultants advise that they consider that the local road network has the capacity to support the additional movements arising from construction-related traffic and this would be relatively low in number compared to existing traffic flows. They suggest that a Construction Environmental Management Plan (CEMP) should be developed to encourage site employees to share vehicles or use public transport to reduce the dependency on private cars. Travel Plans would be developed and would include provision for improving accessibility to the site from surrounding areas through creation of walking, cycling and public transport routes (these would be based on the principles of the Framework Travel Plan). However, Chapter 5 of the Environmental Statement (ES) and Chapter 2 of the Addendum indicate that the proposal would give rise to increased delay and congestion and as such some localised road improvement would be required.

Transport issues have delayed and surrounded the proposal during the application process; with initially a holding direction from the Highways Agency, which was later lifted. No less than three Transport Assessments have been received during the consultation process along with a travel plan. It has now been accepted by the Highways Agency and both County Highway Authorities that the development would have an inevitable impact on the A38 and the local highway networks in both Staffordshire and Derbyshire. However, with the appropriate highways works secured through S106 agreements, S278 agreements or conditions they all agree these can be overcome and mitigated against.

## 2. Air Quality

PPS23 (Planning and Pollution Control) makes clear the importance attached to controlling and minimising pollution through the planning system. Full account is required to be taken of the potential for environmental impacts through development. The Environmental Statement identifies that the main potential impacts on local air quality would be dust emissions from earthworks and vehicles during construction. Predicted future air quality was modelled and results showed that it would comfortably meet current UK standards. The proposed power stations adjacent to the site are not predicted to have any adverse effects or quality impacts on the proposed residential areas of the proposal. The steam plumes would only marginally impact on the Employment Park adjacent to the site boundary.

The Environmental Statement (ES) submitted shows that during construction surfaces would be dampened down in dry weather, there would be a restriction of drop heights onto lorries on site, wheel washing facilities would be provided and reduced vehicle speed limits and routings on construction traffic would be imposed. All equipment for crushing, grinding and crushing would be fitted with dust control equipment wherever possible. A road sweeper would clean mud and other debris and lorries would be sheeted and skips when removing waste from the site. Further measures proposed are appropriate hoarding and fencing to reduce dust dispersion and restrict public access.

Any final comments from The Environmental Protection Manager in this regard will be reported to the committee.

### 3. Noise and Vibration

PPG24 (Planning and Noise) advises that noise-sensitive developments should, wherever practicable, be separated from major sources of noise (such as road, rail and air transport and certain types of industrial development). Where this is not possible, mitigation measures should be considered.

A noise survey was undertaken in August/September 2008 and the baseline noise measurements revealed the existing site noise levels are low but influenced by road traffic from the local highway network. No off site sources other than road traffic were detected. In the early stage of construction boundary screening of the site would reduce noise levels but the highway improvements at Rosliston Road and Walton Road would be likely to affect residents. Measures to mitigate and control noise and vibration would be implemented. The predicted modelling shows that for the majority of local roads, on-site noise impacts would be very slight and unlikely to be noticeable, the predicted increase would occur gradually over a 13 year period as phased development is completed. Due to this being gradual the increase in traffic noise would be unlikely to give rise to disturbance. Assessment of noise from the Employment Park could impact during night time only if it were to operate on a 24-hour basis. Noise from the school playground could impact on nearby properties but confined to very short periods in the day. The ES indicated that any potential noise impacts could be dealt with by way of planning conditions and design. All of these claims have been considered by the Environmental Protection Manager and subject to the safeguards he has outlined he concludes that the development would be acceptable in this regard.

### 4. Ground Conditions and Contamination

The Environmental Assessment identifies that soil and groundwater contamination has existed on the site but when the power stations were demolished work was undertaken to remove underground structures, backfill and re-level ground. There is potential to disturb contamination, which could harm human health, damage buildings and pollute local streams/rivers and groundwater (contrary to PPS23). However a ground investigation will be undertaken prior to construction. A remediation strategy may be required but subject to that, it seems that the environmental impacts and risks associated with ground conditions and contamination arising from the construction and occupation of the proposed development would be insignificant.

On the advice of the Council's Contaminated Land Officer it is suggested that a standard condition be applied with regards to investigations as there is probably made ground and potential for contamination on the site.

### 5. Water Resources

PPS25 (Development and Flood Risk) aims to ensure that flood risk is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk.

The works undertaken in the ES demonstrate that flood-levels from an extreme flood event would have no significant impact on the proposed development due to its height above the predicted River Trent flood level and the location for development away from the areas of the Darklands Brook. The ES states that the adoption of a sustainable form of surface water drainage will ensure the rates and volume of surface water would be

reduced in comparison to the existing conditions. Furthermore the District Council has sequentially tested the site (under the rules set out in PPS25) and found that there were no reasonable alternative sites at lower probability of flooding that are available to accommodate the proposed development and this was agreed as being acceptable in flood risk terms by the Environment Agency in June 2010.

The South Staffordshire Water Resources Management Plan indicates that water supply can meet the demand to 2035 including any likely new development and upgrades to the existing sewerage system in the locality would be implemented to ensure capacity to serve the proposed development.

Severn Trent Water has not raised any objections to the development proposed and has not expressed concern regarding surface water or sewerage capacity. Furthermore the Environment Agency is in agreement with the measures proposed by the applicants subject to standard conditions being applied and the removal of one culvert and retention of the other.

## 6. Ecology

The ES concludes that the development has been designed to retain the majority of the valued habitats and new habitats would be created that are either currently not present within the site or which improve nature conservation by increasing the area of habitat available and by creating interconnected networks of wildlife habitats to enable movement of species within the site and beyond. Some loss of habitats initially will be experienced but the impacts would be mitigated by habitat creation, including recreating wasteland habitats on new building roofs-representing best practice in biodiversity. At least seven species of bats are currently on site and all bat roosts would be retained and a strategy has been devised to inform future detailed design ensuring that the bat population would not be adversely affected.

An Ecological Management Plan will be developed and supported through S106 contributions, which aims to maximise the biodiversity potential of retained and newly created habitats alike, together with a programme of monitoring to ensure the objectives are delivered.

Following a response from Natural England the District Council undertook an assessment under the Habitats Directive, as implemented by the conservation (Natural Habitats Etc) Regulations 1994 (as amended), which contains three “derogation tests”, which must be applied when deciding whether to grant a license to a person carrying out activity which would harm a European Protected Species (EPS). Bats are a European Protected Species (EPS) and are protected under UK and European Law. The three tests are that:

- The activity to which the license is required must be for imperative reasons of overriding public interest or for public health and safety;
- There must be no satisfactory alternative and
- Favourable conservation status of the species must be maintained.

Bats as stated previously are protected species and have been found roosting and emerging from the stables and Lilac Cottage. The stables are to be renovated as part of this proposal. The survey work undertaken indicated that the stable block is of particular importance as a spring and summer roost for bats of four species and also has a high potential to support hibernation roosting. The stables and cottages are recorded on the Derbyshire Buildings at risk register and securing the beneficial reuse

of the site could substantially improve the condition of the listed building and further could also secure the long term future of any bat species using the stables as a roost. The applicants are seeking to maintain the future conservation of the species by the bat mitigation strategy which states that the cottage and stable block would be retained, any works affecting these roosts would be avoided by working during less sensitive periods in the bat year, existing well used habitat linkages would be retained, lighting would be directed away from known roosts, bat roosts will be monitored and if necessary the mitigation strategy will be adjusted and important habitats and features for bats will be managed in accordance with the Ecological Management Plan for the site.

It is considered that Natural England would be likely to grant a license. Given this and that it is in the public interest that the permission can be implemented, the LPA can discharge its duty under Reg 3(4) of the Natural Habitats Regulations 1994 (as amended).

Derbyshire Wildlife Trust and Natural England have not objected to the proposal subject to standard conditions being applied especially with regards to the requirements of the Ecological Management Plan. This can be secured through a S106 agreement and has been suggested by the applicants as part of the submission.

Given the forgoing it is considered that the impact of the development on ecology would be acceptable.

## 7. Landscape and Visual Amenity

Saved Local Plan Environment Policies 9 and 10 seek to protect existing trees and woodland and promote new planting particularly in the National Forest area.

The ES identifies that landscape character would be impacted during the construction phase particularly the residential areas of Burton Upon Trent, the open areas along the northern floodplain of the River Trent and the nearby areas of rolling countryside to the southeast of the site. Fields, trees and hedgerows in the north of the site would be lost together with some individual trees for widening of the entrances and a small area of woodland in the centre of the site. However it is argued that on completion when new areas of tree and woodland planting have become established, these adverse impacts would be largely reversed with the removal of detracting industrial influences and the development would create improved public access through the site and into Stapenhill, providing new open spaces especially along the northern banks of the River Trent. The extent of new planting would result in a net gain in the amount of woodland across the site in line with National Forest objectives and the restoration of the sunken gardens associated with the former Drakelow Hall would also make a positive contribution to landscape and views within and to the site.

The Council has evaluated the site through its landscape arboricultural consultant/landscape architect and its Open Space and Facilities Manager who were initially concerned at the loss of 4 hectares of mature woodland. However it is noted that the site when fully developed would produce a net gain of 2.26 hectares of woodland. The National Forest confirms that the proposal would provide an overall proportion of 36% Green Infrastructure (GI) (the requirement being 30% for developments over 10ha within the forest area). It advises that some GI aspects could be improved i.e. loss of habitat features including 4.05ha of woodland, 2.69ha of semi improved grassland and 393 metres of hedgerows and it does question whether more



can be done to retain other features. Notwithstanding the shortcomings of the masterplan and extensive attempts at reworking the layout, it is considered that overall and in the long term, the site would be better planned out as proposed rather than the status quo remaining and the result would be an improved landscape with considerably better public access especially to the waterside area which is currently inaccessible other than to specialist users of the river. All of the on-site recreation and public open space facilities would be managed and maintained by a separate management company. A contribution to built facilities in the area (as per the usual formula set out in the Council's SPG) can be secured through the S106 agreement along with changing rooms at the new sports pitch area.

## 8. Archaeology and Cultural Heritage

The assessments carried out found that there was limited potential for remains of prehistoric, Roman and medieval data on the site and it was agreed with archaeological advisors at DCC and SCC that standard archaeological conditions could be imposed. In the event that any archaeological deposits are found they would be adequately investigated and recorded in line with PPS5 (Planning for the Historic Environment) and saved Local Plan Environment Policy 14.

The ES advises that the restoration and refurbishment of the Grade II Stable Block and other structures will substantially improve their condition and the incorporation of listed buildings into the main local centre within the development will be beneficial to the setting of the structures, providing for their long-term preservation.

It is considered that these findings are correct and the proposal presents an opportunity to bring the listed structures back to life and give them a secure future through new uses in line with PPS5 and saved Local Plan Environment Policy 13. Conditions or legal agreements need to be in place to ensure the proper repair of the listed structures (and also the conversion of the stable block) in line with the listed building consent granted last year.

### The design and layout of the proposal

High quality design plays a central role in *'Making South Derbyshire a better place to live, work and visit'*, which forms the overall vision for the Council (Corporate Plan 2009 –2014). This reflects the need for good design established in saved Local Plan Housing Policies 11 and 14. The Council has also recently published guidance to encourage improved applications and therefore better designed developments as advocated by PPS1 (para.33). The guidance sets out the methodology necessary to achieve a high quality 'product' and utilises the Building for Life scheme advocated by CABE for the objective assessment of schemes. The application was prepared prior to this guidance being published but nevertheless the scheme has been assessed using these criteria.

The application being only outline with all matters reserved can be altered at reserved matters stage and therefore the design and layout cannot be set in detail at this stage of the application process. However the applicants have produced a master plan and the design and access statement is fully supportive of the land uses shown, with the transport issues, implications, travel plan, environmental assessments and flood risk findings being based upon the master plan layout shown. Indicative layouts are shown in the design and access statement with indications as to expected heights of buildings, street scene elevations and colour pallets that are expected to be used on the site. An

appraisal of the local villages in both South Derbyshire and East Staffordshire has been undertaken and the design and layout indicated at this stage of the application, the impact of the development is considered acceptable. The housing densities proposed and employment densities proposed are acceptable and conditions can be applied to ensure that the development is carried out in accordance with the master plan and also with principles set out in the design and access statement submitted.

An initial Building for Life (BfL) assessment of the scheme has been undertaken by the Design Excellence Officer. Out of the 20 possible, the scheme scored 11 in its current form. The assessment at this stage is made from the information supplied in the Design and Access Statement (DAS) given that nothing exists on the ground. The role of the DAS at the outline stage is to try to ensure that the proposals for the detailed design stage are of a high enough quality and include a certain style of architecture specific to the scheme which sets the scene for the detailed stages. In this respect, the DAS fails to ensure high quality design when it comes to architectural details that have a distinctive character specific to the scheme. The scheme could also improve with a stronger link with the neighbouring community and town centre beyond. Given the scale of development, the proposals could go further to make the site really feel like part of Burton on Trent - truly knitted together although the site does clearly identify its own focal points. However some design points are lost due to the application being at an outline stage but many of the key master planning elements have been successfully achieved. Whilst it would be perfectly possible, for example, for the BfL score *not* to go up from the 11 points at a later date, the scheme certainly has the potential to score more highly at the detailed design stage when these issues and opportunities can be addressed.

#### Access, highway and transport issues

Saved Local Plan Transport Policy 6 among other things seeks to ensure that all development is properly accessed; is serviced by public transport where appropriate and meets the cost of any necessary improvements to the highway network. Transport policies 7 and 8 similarly seek provision for pedestrians, people with disabilities and cyclists. Recreation and Tourism Policy 8 seeks to safeguard the existing network of footpaths and bridleways. PPG13 seeks to: promote more sustainable transport choices for both people and for moving freight; promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling, and reduce the need to travel, especially by car.

The success of the site in terms of its sustainability credentials relies on links to the nearest urban area where its population can access main services. From the beginning, it has been recognised that although the site appears to be in a location very close to the main urban area of Burton-upon-Trent, it is separated by the River Trent and a railway line. The land on the other side of the River is mainly occupied by a private golf course (Branston) and as such has little fundamental functional role to play in the future of the site. Nevertheless, an application to bridge the river to access the course was originally submitted alongside the main application but was subsequently withdrawn (it is understood, on grounds of security concerns). The part of the town closest to the site is separated by a railway line which runs at varying levels along the site's north-eastern boundary over which is the residential area of Stapenhill and a public footpath route to the town centre. Currently there are three means of connecting to Stapenhill from the vicinity of the site. A road and footway bridge at the eastern extremity of the site would be the main means of vehicular access to the town. An iron

footbridge containing a public footpath is in a rather poor state crossing the railway further to the west and is only accessible by steps. This is considered to be a secondary link and given its poor connections on the other side, not worthy of improvement. The third via a rough track (Waterside Road) that runs beneath the railway on the northern most point of the site where the railway is at its highest running over a viaduct, presents the site's best opportunity and as such the layout of the master plan relies on this. An uninterrupted connection to the public highway network to the town centre via Stapenhill would be required and this would be a strong positive element to site access. Securing this access would need to be addressed in the Section 106 agreement.

Of major concern to ESBC, the HA and SCC highways has been the impact the development would be likely to have on Burton and the A38. All parties were initially concerned that the building of the Walton by-pass and bridge could jeopardise the potential of building a third, more strategic bridge over the Trent designed to serve land to the South of Burton and service future major housing allocations in that part of East Staffordshire. However, the HA and SCC appear to have been persuaded that the current application should not be prejudiced by plans on the other side of the river which are of an indeterminate timescale. The trips generated by the development have been extensively modelled and all highway authorities are now in agreement with the data and methodology employed by the applicant's consultants.

All data and conclusions drawn have now been examined and explored in depth by the HA, DCC and SCC Highways and all three authorities are now in agreement that subject to obligations being secured through S106 negotiations at the appropriate juncture (yet to be determined), and conditions, the transport implications can be mitigated and the site can be sustainable in highway terms provided the travel plan is adhered to. Should it fail in any way, mitigation measures (in the form of a further funding account that can be drawn upon) are suggested and these again have all been agreed between the relevant authorities and the developer. It remains for the applicants to meet these fully in accordance with the authorities' requirements.

#### The provision of community facilities

Community Facilities Policy 1 points out that major developments like this will not be permitted unless adequate provision has been made for community facilities, infrastructure and amenities made necessary by that development. A sufficient range of facilities is important in order that the development is sustainable and particularly that avoids the need for residents to travel off the site for everyday requirements as much as possible. Community Facilities Policy 1 and Housing Policy 14 seek to ensure that new facilities associated with residential areas are designed to respect the scale and character of the housing areas in which they lie and ensure that local amenity is protected. Shopping Policies 2 and 3 resist major out of town shopping but make clear that proposals for small local shops will be permitted (among other things) subject to adequate car parking acceptable impact on local amenity.

The proposal set out above states the community facilities that are to be provided on the site. The range of recreational facilities has been discussed in the landscape section above. Given the size of the population, the community and commercial facilities proposed are of a type and range that would create a valuable community focus for life on the development arranged in a central area. Moreover, most of the facilities would be provided in phase 1 of the development. The proximity of Burton also

offers good opportunity for reaching a wider range of services in the town by various modes of transport.

#### Impact of the development on the amenity of nearby residents

The site being an industrial site with RBL currently occupying it, has an extant permission for general industry and currently has a negative impact upon residents through its potential noise impacts, its visual industrial processes including the stockpiling of concrete pipes and associated manufactured goods and its urban like features in a countryside location on the edge of Stapenhill at Burton upon Trent. The redevelopment of this mainly Brownfield site, with housing, employment (which can be controlled), public open space, water bodies, recreational facilities, local centres, primary school and increased woodland planting will ensure that a high quality mixed use development would be provided. It would provide access to listed buildings and structures which would be brought back into use, provide public access to protected trees and enhance wildlife habitats and corridors. This could mark a net improvement to local residents and would provide nearby residents with the choice of being able to access new high quality local centres without having to travel to Burton and would provide the opportunity to access new housing on an affordable basis within South Derbyshire within a highly sustainable site.

#### Viability of development and planning obligations.

The applicant by way of their legal representatives submitted a viability assessment in November 2009 together with draft heads of terms for a section 106 agreement. The District Council responded to this by issuing a matrix which showed what requests had been submitted to the District Council by way of consultation and what contribution the developers were offering (if any) based on their viability assessment. The applicant's responded by advising on each element why their offer differed and this information was supplied to the individual consultees in response to gain their further comments.

The applicants have always made it commonly known that their offer is based on an overall viability appraisal and contributions could only be made to consultees at the expense of deducting contributions from others (i.e. there is an overall pot from which deductions would reduce the affordable housing contribution). They advised that the viability would be reassessed during the project and would be an upward only reassessment on three yearly intervals, future surpluses being allocated to an improved package of affordable housing, subject to a maximum to be agreed. In summary the developer's viability argument was that the proposal could only generate 10% affordable housing and that this would be based upon 50% shared equity and 50% social rented, along with some, but not all of the other infrastructure requirements.

The District Council had the viability assessment independently tested by the District Valuer's Office. In February 2010 the District Valuer supplied his appraisal of the site and the District Council were advised that the 'super profits' generated would allow for £104 million which equates to 883 (or 39.42%) affordable homes or some mix of further affordable housing and other infrastructure requirements.

As the difference between the applicant's viability assessment and the independent appraisal of the District Valuer were so vast and some figures had been assumed, because data was not available, further discussions took place as to how to reach agreement on the residual amount available and therefore the amount of affordable

housing and other infrastructure contributions that could be provided. The District Valuer re-ran his appraisal on 01 June 2010 following a request from the District Council and advised that the 'super profits' on the amended appraisal would equate to £63.2million which equates to 689 (or 30.77%) affordable homes or some mix of further affordable housing and other infrastructure requirements. The applicant still disagreed with this assessment. They re-ran their appraisal and responded that they will be prepared to provide 15% affordable homes on a 50% shared equity and 50% social rented basis, without further infrastructure funding.

The District Council reviewed these figures and continued to disagree with the developer given the findings of the District Valuer. Annexe A is a summary of the minimum that would be required to be provided by the scheme in order to assimilate the development into its location and for it to be considered a sustainable development. It is considered that these requirements are the minimum necessary to make the development acceptable in planning terms, are directly related to the development as required by Community Policy 1 of the Local Plan. They are fairly and reasonably related in scale and kind to the development. Absent these requirements, the development cannot be said to be sustainable nor comply with policy.

Of particular concern to the applicant has been the viability of the scheme and the requirement to meet 28% affordable housing across the site and the size of the contribution requested by the Local Education Authorities (the latter, in the opinion of the applicant, not being justified on the advice of their specialist consultants). However, as can now be seen from the attached annexe, in addition to the other provisions less contentious, the applicant has reluctantly agreed to comply with the requests as follows:

1. Affordable Housing will be supplied at a rate of 25% on a 60%/40% (social for rent/intermediate) tenure split subject to the following:
  - (a) A viability review to be triggered by either party at a minimum of 3 years from the date of the permission.
  - (b) A review of the need for AH on the Drakelow development within 3 years of the date of the permission which will determine the correct level of AH provision until the next review.
  - (c) The viability review can be an upwards and downwards review so that the actual amount of AH to be provided will be dependent upon that viability review subject to a minimum provision of AH of 20% should the needs study justify it.
  - (d) Following the first review, a five yearly review of both the needs assessment and viability assessment shall be undertaken and at each review a minimum of 20% AH must be provided should the needs study justify it.
  - (e) The developer shall finance all reviews/studies subject to maximum cost to be agreed.
2. Education provision
  - (a) Staffordshire County Council as secondary and post-16 providers in lieu of Derbyshire County Council (DCC): A contribution of £5.4m for secondary education (triggers to be agreed) subject to evidence that this is genuinely required to meet the educational needs arising from the development (subject to independent arbitration in the event of disagreement).

- (b) DCC as primary school providers: subject to the full agreement of DCC, the completion, at the developer's expense, of a 1-form entry school on a 2 ha site, prior to the commencement of phase 2 (as identified in the Phasing Strategy (drawing RBL001-109 rev G); and subject to justification (and subject to arbitration if necessary), the completion of a 2-form entry school at the developer's expense, at a point in time to be agreed with the DCC.

Section 106 agreements now stand to be tested under the criteria set out in regulation 122 of the recently published Community Infrastructure Levy Regulations 2010. This states that *'A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development.'*

The contributions/works required as set out comply with these criteria.

## Conclusion

The above indicates that development at this location could be sustainable in a range of respects. Whilst there is no apparent current shortfall in housing land in the District, and the site is therefore not "needed" in terms of housing supply, it is in other respects sustainable. National planning policy in PPS 3 is clear that applications should not be refused solely on grounds of prematurity. It is therefore considered that a refusal on grounds of prematurity could not be sustained. The revocation of Regional Strategies also tends to weigh against the refusal of permission in this case. The proposal could therefore be acceptable in terms of the principles of planning policy. However without the vital services and facilities necessary to meet the needs of new occupiers and to reduce pressure on those that meet the needs of existing residents, the development itself would not be considered sustainable. Therefore it is imperative that appropriate contributions are secured through a S106 agreement to ensure the sustainability of this development and its deliverability. As these have now been agreed the development would present an attractive and sustainable addition to the area to be delivered over the next 15 years or so.

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

## Recommendation

- A. That subject to the agreement of all of the foregoing, the Secretary of state be advised that the Local Planning Authority is minded to **GRANT permission** subject to the satisfactory conclusion of the S106 agreement to secure the provisions as stated at Annex A, and subject to conditions.
- B. That subject to no objection from the Secretary of State (A), the Head of Planning Services be authorised to negotiate the satisfactory detailed terms of the S106 agreement and further necessary conditions not already listed below.

1. The development hereby permitted within the land edged red, on Plan Ref: RBL001-101/Rev I (April 2008) shall be begun either before the expiration of 5 years from the date of this permission, or before the expiration of 3 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.  
  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Application for approval of the reserved matters, namely: siting, design, external appearances, means of access and landscaping shall be made to the Local Planning Authority before the expiration of 20 years from the date of this permission. Such development shall be begun no later than 3 years from the approval of the last such matter to be approved.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
3. Approval of the details of the layout, scale and appearance of any buildings, the means of access to and within the site and landscaping of the site (hereinafter called "the reserved matters") for each phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase. Plans and particulars of the reserved matters for each phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
4. The reserved matters submitted in accordance with condition 3 and details submitted in accordance with any other condition of this planning permission shall accord with the Land Use Framework Plan (Plan ref: RBL001-102 rev K (August 2008) and the design principles outlined in the illustrative master plan (Plan Ref: RBL001-018 Rev N (April 2009)).  
  
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
5. Any other reasonable conditions relating to implementation.
6. No development shall commence until a phasing plan and programme in respect of the phased delivery of the development has been submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the phasing plan and programme unless otherwise varied with the written agreement of the Local Planning Authority.  
  
Reason: For the avoidance of doubt.
7. For the purposes of this planning permission all references to a 'phase' shall be interpreted as being a reference to a 'phase' as defined on the phasing plan and programme approved pursuant to this Condition 5 unless otherwise agreed in writing with the Local Planning Authority.  
  
Reason: For the avoidance of doubt.
8. Any other reasonable conditions relating to phasing.

9. No development of any phase shall take place until full details of both hard and soft landscape works in that phase have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved in accordance with the agreed phasing plan. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration.

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

10. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

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

11. All hard and soft landscape works shall be carried out and finished not later than the first planting season following completion of the relevant phase of the development.

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

12. A landscape management plan, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 7. The landscape management plan shall be implemented as approved.

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

13. Any tree or shrub within a phase which forms part of the approved landscaping scheme for that phase and which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

14. None of the existing trees or hedgerows indicated as existing on the master plan drawing number E6484-103-GR-PPW-Existing March 2010 (as referred to in the more detailed ES plans 2155/11a (June 2008) and 2155/10b (June 2008)) shall be cut down, uprooted or destroyed, nor shall be topped or lopped without the prior written approval of the Local Planning Authority. If any of the existing trees or hedgerows to be retained are removed or, uprooted or destroyed or dies, a replacement shall be planted in the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

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



15. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.

Reason: In the interest of the health and safety of the trees.

16. No site clearance works or development of any phase shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

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

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

17. Any other reasonable conditions relating to landscaping.
18. No development of any phase shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

19. Unless otherwise agreed in writing by the Local planning authority, prior to the commencement of development, details of a 1.8 metre high boundary fence to be provided adjacent to the existing railway boundary to a standard to mitigate the noise from the railway, shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be provided in accordance with the approved details prior to the development of the site and subsequently maintained thereafter.

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

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

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

21. Any other reasonable conditions relating to materials.
22. No development within any phase shall take place until there has been submitted to, and approved in writing by the Local Planning Authority, an initial design stage assessment by an accredited assessor for The Code for Sustainable Homes and an accompanying interim certificate stating that the dwellings within the submitted phase achieve either Code Level 3 or the then-required Code Level rating, whichever is the higher. The development shall be carried out in accordance with the certificated design.  
  
Reason: To comply with the guidance set out in PPS1, the Council's design guidance and in the interests of sustainability.
23. Any other reasonable condition relating to sustainability and renewable energy.
24. No development of a particular phase shall commence before details of the finished floor levels of each building within that phase have first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase shall be constructed in accordance with the approved details.  
  
Reason: To protect the amenities of adjoining properties and the locality generally.
25. No development of any phase shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the development. The approved measures shall be implemented throughout the construction period.  
  
Reason: To protect the amenities of adjoining properties and the locality generally.
26. During the period of construction of any phase of the development which abuts any occupied dwelling within the site, no construction work shall take place outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.  
  
Reason: To protect the amenities of adjoining properties and the locality generally.
27. Before use of the non-residential uses commence, a scheme designed to protect the living conditions of occupants of nearby buildings from noise, vibration and odours from fixed plant or equipment including the air ventilation and extraction system, including the methods of treatment of the emissions and the external ducting, shall be submitted to and approved in writing by the Local Planning Authority. Before the uses hereby commence, the measures approved under the scheme shall be installed and brought into use. Thereafter the approved measures shall be retained, operated and maintained in accordance with the manufacturer's specifications.  
  
Reason: To protect the amenities of adjoining properties and the locality generally.
28. No deliveries shall be taken in or dispatched from the proposed local centre outside the following times: 0700 hours to 1900 hours Monday to Saturday and at any time on Sundays, Bank and Public Holidays, unless otherwise agreed in writing with the local planning authority.

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

29. Before use commences of any building for retail or commercial use (within Use Class A1-A5) or of the proposed community centre, details of all external lighting equipment associated with the proposed use of that building shall be submitted to and approved in writing by the Local Planning Authority and the development shall be implemented in accordance with the approved details. No other external lighting equipment may then be used on that building except with the approval in writing of the Local Planning Authority.

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

30. Any other reasonable conditions relating to noise and/or construction management.
31. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision D, dated 9 November 2009, undertaken by THDA and the following mitigation measures detailed within the FRA:
- a) (Paragraph 9.6) Limiting the surface water run-off generated by all events up to the 100 year plus 20 % commercial (for climate change), 30% residential (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and 30% less than the existing Brownfield site, and not increase the risk of flooding off-site.
  - b) (Paragraph 9.1) Improvement/protection and maintenance of the existing Darklands Brook.
  - c) (Paragraph 8.5) Finished floor levels are set no lower than 600mm above the 100 year plus 20% for climate change flood level, or 150mm above proposed external ground levels or the adjacent highway (whichever is the greater) applicable to each phase of the site.
  - d) (Paragraph 9.11) no raising of ground levels within the 100 year flood plain of the Darklands Brook.
  - e) (Paragraph 7.14.4) Provision of suitable security/trash screens to both ends of the existing culverts.
  - f) (Paragraph 7.14.5) Provision of Structural repairs to Culvert 2, in accordance with the time scales detailed within the supplementary culvert report.

Reason: In the interests of flood protection.

32. Any other reasonable conditions relating to flooding or flood risk/pollution.
33. Development of each phase shall not begin until a surface water drainage scheme for that phase of the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. Each phase of development shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall also include:

Limiting the surface water run-off generated by all events up to the 100 year plus 20 % commercial (for climate change), 30% residential (for climate change)

critical rain storm in accordance with paragraph 7.4 and tables 7.4, 7.7 and 7.9 of the approved FRA.

Provision of a minimum of surface water run-off attenuation storage on the site in accordance with paragraphs 7.8 and 7.9 and tables 7.7 and 7.9 of the approved FRA.

Details of how the scheme shall be maintained and managed after completion.

Reason: In the interests of flood protection.

34. The development hereby permitted shall not be commenced until such time as a detailed design of the Culvert 1 Replacement Scheme as outlined on Drawing No. 110 Revision B, has been submitted to, and approved in writing by, the local planning authority in consultation with the Environment Agency. Implementation of the Culvert 1 Replacement Scheme shall be undertaken during the ground works phase of the development, and be fully operational prior to the first occupation of new dwellings across the site.

Reason: In the interests of flood protection.

35. Prior to the commencement of development, a working method statement to cover all works involved in the construction of the Culvert 1 Replacement Scheme shall be submitted to and agreed in writing by the local planning authority in consultation with the Environment Agency. Thereafter the development shall be carried out in accordance with the approved designs and method statement for the Culvert 1 Replacement Scheme and any subsequent amendments shall be agreed in writing with the local planning authority in consultation with the Environment Agency.

The working method statement shall include details on the following:

- a. Time programme for the works
- b. Methods used for all channel and bank-side/water margin works
- c. Machinery to be used
- d. Location and storage of plant, materials and fuel
- e. Access routes to the works, access to the banks of the watercourses
- f. Method of protection of areas of ecological sensitivity and importance
- g. Site supervision
- h. location of site office, compounds and welfare facilities.

Reason: In the interests of flood protection.

36. Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

a) A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

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

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

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

- 37. Prior to commencement of development in each phase a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

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

- 38. The development of any phase or sub-phase shall not be commenced until a scheme has been submitted to and approved in writing by the local planning authority for disposal of foul and surface water from that phase, roof drainage, sealed at ground level. The development of each phase shall be carried out in accordance with the approved details for that phase unless otherwise agreed in writing with the Local Planning Authority.

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

- 39. The development of any phase shall not be commenced until a scheme has been submitted to and approved in writing by the local planning authority to install oil and petrol separators.

Reason: In the interests of pollution control.

- 40. Prior to the commencement of any phase of the development the developer shall submit a scheme highlighting details of the likely resultant noise levels from activities during the construction phase of that phase at the nearest noise sensitive premises. The investigation shall address the impact that the activities will have, in terms of noise, on nearby residential properties. This assessment and mitigation measures shall be submitted for the approval of the Local Planning Authority prior to commencement of the development of that phase.

Once agreed, all identified noise control measures shall be implemented and thereafter retained.

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

41. The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage in each phase have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

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

42. a) No demolition/development shall commence in each phase until a Written Scheme of Investigation has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and
- The programme and methodology of site investigation and recording
  - The programme for post investigation assessment
  - Provision to be made for analysis of the site investigation and recording
  - Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - Provision to be made for archive deposition of the analysis and records of the site investigation
  - Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"
- b) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition ?."
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
- d) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the Local Planning Authority in writing within two working days. Works shall be halted in the area/part of the building affected until provision has been made for the retention and/or recording in accordance with details submitted to and approved in writing by the Local Planning Authority.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

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

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

44. a) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- b) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- c) No development shall take place within each phase until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment for that phase has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3, 1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
45. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
46. Prior to the commencement of development in each phase details of a programme of further survey work relating to great crested newts, bats, breeding birds, slow worm, common lizard and grass snakes shall first be submitted to and approved in writing by the Local Planning Authority. Details of any required conservation measures and proposed habitats, including implementation, management and maintenance proposals shall be included in the report and the development of that phase implemented in accordance with the approved details.
- Reason: To ensure compliance with PPS9.
47. The Bat Mitigation Strategy shall be implemented in accordance with a programme to be submitted to and agreed in writing by the Local Planning Authority.
- Reason: To safeguard the European protected species.
48. As much as possible of the railway ballast habitat within the central area of open space shown on the Green Infrastructure Plan shall be retained and where this is

not possible, the habitat loss shall be compensated through the creation of brown roofs and/or wildlife garden, as described in the Ecological Management Plan.

Reason: To ensure that as much of the biodiversity of the site as possible is retained.

49. All measures set out in the Ecological management Plan shall be implemented in accordance with a programme submitted to and agreed in writing by the Local planning Authority.

Reason: To comply with the provisions of PPS9.

50. Any other reasonable conditions relating to ecology.

51. Before any other operations are commenced in each phase, a scheme shall be submitted to the Local Planning Authority for written approval indicating the proposed temporary means of construction access, site accommodation, storage of plant and materials, and areas for parking and manoeuvring of site operatives and visitors vehicles and loading, unloading and manoeuvring of goods vehicles.

Reason: In the interests of highway safety.

52. Before any other operations are commenced, excluding demolition and site clearance, the access and on-site facilities which are the subject of condition 51 above shall be laid out and constructed in accordance with the approved scheme and retained throughout the construction period free from any impediment to their designated use.

Reason: In the interests of highway safety.

53. Prior to the submission of full or reserved matters applications for each phase the developer shall submit a development masterplan for that phase for the written approval of the Local Planning Authority. The masterplan shall include -

- Detailed design concept for the site
- Details of phasing and construction of accesses to the existing highway network
- Details of road hierarchy
- Connections through the site and to the surrounding area
- Street layout and dimensions together with service vehicle access information
- Details of Public Transport Route Strategy together with infrastructure to be provided, including real time information, and timeframe for implementation
- Details of footpaths, cycleways and landscaping
- Details of locations of the school, retail centres and employment areas
- Details of parking strategies, including low parking areas and secure cycle storage facilities
- Details of means of disposal of surface water from proposed highway areas
- Details of land to be protected for future provision of rail halt

Applications for full permission or approval of reserved matters within that phase shall be in accordance with the approved masterplan for that phase unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.



54. Notwithstanding the submitted information no development shall be commenced until details of the access(s) to Walton Road have been submitted to and approved by the Local Planning Authority in consultation with Derbyshire County Council as Local Highway Authority. The accesses shall be implemented in accordance with the approved design and with the phasing detail required as part of Condition ? below.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

56. Prior to the first occupation of any development on the site a scheme for the following highway improvement schemes shall be submitted and approved. Works will be completed prior to the occupation of the 150th dwelling:

(a) The realignment of Walton Road and the change of priority at the junction of Walton Road and Rosliston Road South generally in accordance with drawing nos. 06-0297 111 and IPD-09-104-SK001 but more specifically in accordance with detailed designs submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority;

(b) The widening of the Walton Road carriageway to 6.75m minimum between the site and the proposed Walton on Trent Bypass generally in accordance with drawing no. 07-0297 100 but more specifically in accordance with detailed designs submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority.

Reason: In the interests of highway safety and to ensure that sufficient mitigation is in place to assimilate the development in to the the adjoining highway network.

57. No development or combination of development shall be occupied that would result in trip generation exceeding 426 vehicle trips in the AM peak or 380 vehicle trips in the PM peak (based on the trip rates set out below) unless and until road schemes broadly in accordance with Infrastructure Planning and Design Limited layout drawings IPaD - 09- 104-P-110 Revision D, IPaD - 09-104-P-111 Revision D, and IPaD - 09-104-P-112 Revision D have been implemented in full, open to traffic and approved by the Local Planning Authority in consultation with the Highways Agency. The vehicular trip rates to be applied are as follows:

Residential (per dwelling)	AM Peak 0.37, PM Peak 0.335
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Employment (per 100sqm)	AM Peak 0.87, PM Peak 0.76
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Reason: In the interests of highway safety and to ensure that sufficient mitigation is in place to assimilate the development in to the the adjoining highway network.

58. Any other reasonable conditions relating to highways and/or transportation issues recommended by any of the three highway bodies.
59. Any other reasonable conditions relating to the development not already covered above.

Informatives: Any relevant advisory note.