

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

1. The issues of fact raised by the 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. 9/2011/0054/TP

Applicant:

MR MICHAEL WHITE
WHITE HOME
WESTONHILL MOBILE HOME PARK
BRIDGE LANE
WESTON ON TRENT
DERBY

Agent:

MR MICHAEL WHITE
WHITE HOME
WESTONHILL MOBILE HOME PARK
BRIDGE LANE
WESTON ON TRENT
DERBY

Proposal: **PROPOSED TREE WORKS AT WESTONHILL CHALET
PARK BRIDGE LANE WESTON ON TRENT DERBY**

Ward: **ASTON**

Valid Date: **28/01/2011**

The application was deferred at the meeting of 26 April for a site visit. In the interim the site has been inspected by the Council's new Tree Officer whose further comments are detailed in italics below.

Reason for committee determination

The application is reported to Committee at the request of Councillor Watson because local concern has been expressed about a particular issue.

Site Description

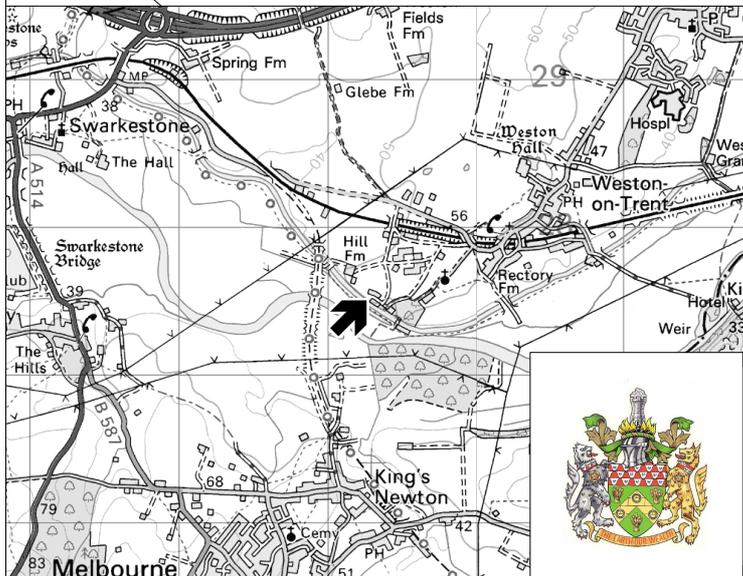
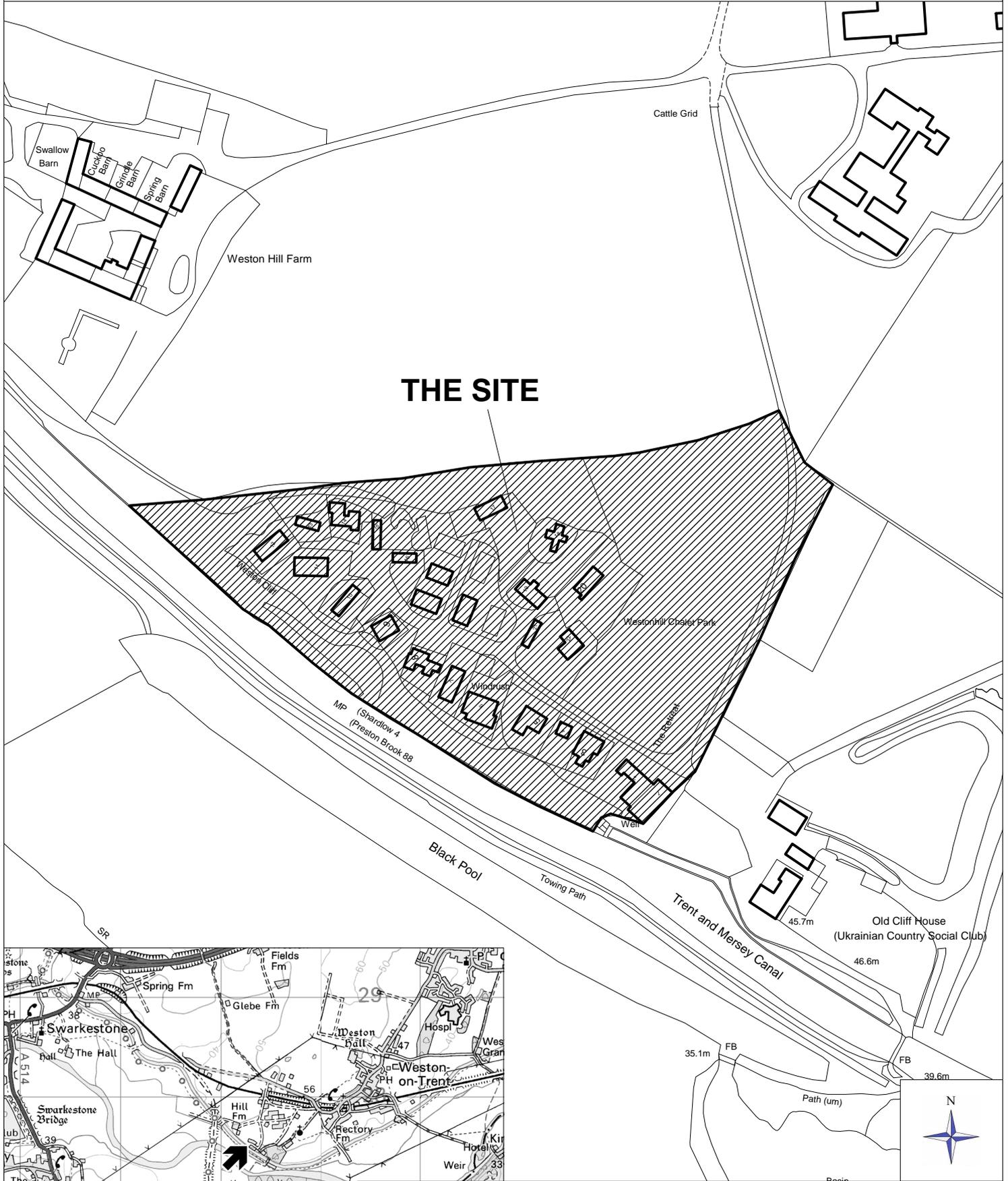
The site is located at the end of a long private drive and is a former quarry. It has a lawful development certificate for use as a caravan site.

Proposal

The applicant seeks consent to carry out unspecified works up to and removing some of the trees on the site, which are protected by a Woodland Tree Preservation Order (TPO). Trees not affected by the application are marked as specimens and as an area on the submitted plan, which has been amended following a site appraisal by the Council's consultant arboriculturist.

Applicants' supporting information

The applicant states:



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- A number of trees in residents' plots have already been pruned or felled without harming the overall amenity value of the area.
- The most important trees would be unaffected.
- The applicant needs to manage the site as and when necessary and there may be occasions when tree works are necessary. It would be onerous to apply every time work needed to be carried out to one of the less important trees.
- Tree works would only be carried out when it is expedient to do so and wherever practicable trees will be left in situ.
- The fundamental amenity value of the site would be preserved whilst allowing the applicant to carry out works to the less valuable trees as and when necessary.

Planning History

9/0394/1082 -Application for the siting of 12 mobile homes for holiday purposes – granted but not implemented.

9/2008/1123 Application for certificate of lawfulness for use of The Paddock for the siting of caravans. The application was refused on the basis that there was insufficient evidence to support the applicant's contention that it had been used for such purpose for a period of more than 10 years.

9/2009/0466 Application for certificate of lawfulness for the existing chalet park site. This was granted and authorises the use of the existing site for caravans.

9/2009/0785 – 4-metre wide access drive. Granted.

9/2009/1033 – Use of land for caravan site for holiday use – withdrawn pending consideration of highways matters.

9/2010/0171 – Use of Paddock as holiday caravan site – Committee minded to grant subject to legal issue concerning access – not yet determined.

9/2010/0708 – 3 metre wide access road. Granted.

9/2010/1039 - the change of use of land to use as part of existing mobile home park. Granted.

The Tree Preservation Order was made in January 2008.

Responses to Consultations

The Parish Council objects as consent would give the applicant the right to do as he pleases with the trees. Each case should be assessed individually.

The Council's consultant arboriculturist notes that the trees affected by the application are in the main located within the gardens of individual plots, although there are trees in communal areas also, mainly semi-mature Birch and Sycamore. The trees not affected by the application are the ones that provide the main public amenity value, notably the larger specimen trees and a woodland area on the north rim of the site, which can be seen on the skyline from Swarkestone Road and also the public footpath to the east. He objected to the loss of a mature Oak, which can be seen from the public footpath, which the applicant has now agreed to retain.

The new Tree Officer has now also visited the site and notes the particular amenity value of the wooded area W1 and W2. He also notes that here are several trees of value within the site, which have previously been assessed, and he agrees with the consultant's opinion on these. The trees within the park and those located within gardens are of mixed species, some of fair amenity value whilst others are in poor health with little or no value.

Responses to Publicity

6 neighbours raise the following objections:

- a) No tree should be removed unless there is justification on health or safety grounds.
- b) All the trees on the site are fundamental to amenity.
- c) Many trees have already been felled.
- d) The objective of the application is solely to enable the applicant to site more caravans on the land.
- e) The site is a habitat for bats, which are protected. A habitat survey should be undertaken before any permission is granted as required by PPS9.

Reference is also made to various other historical and ongoing issues relating to the site, which are not directly relevant to this particular application.

Development Plan Policies

There are no relevant policies for TPO applications.

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 the amenity value of the trees.

Planning Assessment

The Order was made in response to an urgent request at a time when trees were being felled. As it was not possible to undertake a detailed tree survey in the circumstances, a Woodland Order was made, which covers every tree on the site. In response to this application the Council's consultant arboriculturist has been able to assess individual trees and considers that those making a valuable contribution to public amenity would be retained.

The Good Practice Guide states that protected trees should provide a reasonable degree of public benefit. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath. While the trees are valued by the residents the whole site is private land and

therefore the potential public views are available from the canal and towpath, Swarkestone Road and the public footpath to the east. From these vantage points, works to the affected trees, even if they were to be removed, would not have a demonstrably harmful impact on the overall public amenity value of the protected trees.

It is possible that the trees could provide a habitat for protected species. As this is an application for tree works, rather than a planning application the local planning authority cannot require a habitat survey. However the applicant will still have responsibilities under the Wildlife and Countryside Act, which applies even if a tree is dead or dying.

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 condition:

1. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing showing the retention of the woodland along the canal bank.

Reason: For the avoidance of doubt.

Informatives: You are advised:

Bats have been reported at the site and trees are a potential bat habitat. It is an offence to kill or damage or disturb bats or their roosts. No tree works should be undertaken at any time unless they are not used by bats. If bats are found you are advised to inform Natural England, Block 7, Government Buildings, Chalfont Drive, Nottingham, NG8 3SN. Practical advice on how to protect/relocate any bats may be obtained from Malcolm Hopton, Derbyshire Bat Group, 9 Ashton Close, Mickleover, Derby, DE3 5QD, (Tel. 01332 511427).

That the trees on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

Item 1.2

Reg. No. 9/2011/0278/U

Applicant:
Mr M Davis
Church House
Church Street
Coton in the Elms
Swadlincote

Agent:
Mr Barry Taylor
The Taylor John Partnership
28 Kingsdale Croft
Stretton
Burton Upon Trent

Proposal: **THE CONSTRUCTION OF A STABLE UNIT WITH
CHANGE OF USE TO EQUESTRIAN USE AT LAND AT
TOWER ROAD HARTSHORNE SWADLINCOTE**

Ward: **WOODVILLE**

Valid Date: **12/04/2011**

Reason for committee determination

The application is brought to Committee at the request of Councillor Taylor as local concern has been expressed about a particular issue.

Site Description

The application site is a field located in open countryside at the end of Tower Road, a residential cul-de-sac located outside the development boundary of Hartshorne village. Hedgerows enclose the site on all sides with an allotment site situated to the east. Open fields surround the remainder of the site. Hartshorne public footpath No. 15 runs along the western boundary of the site.

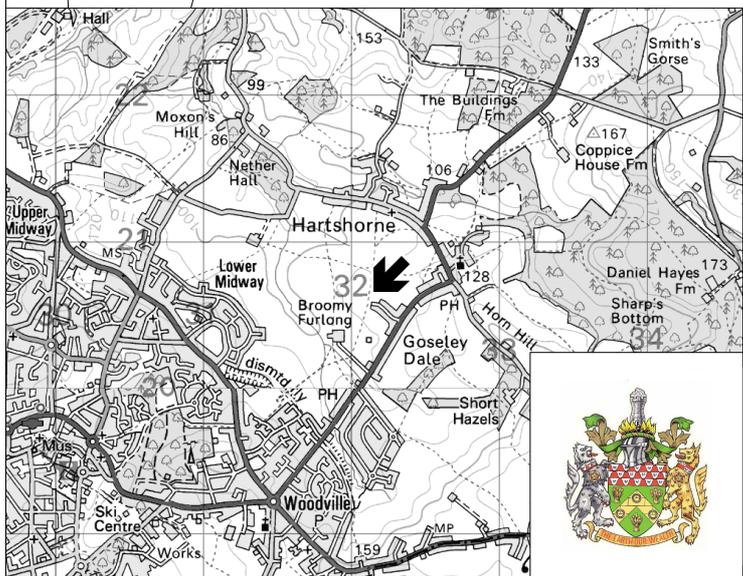
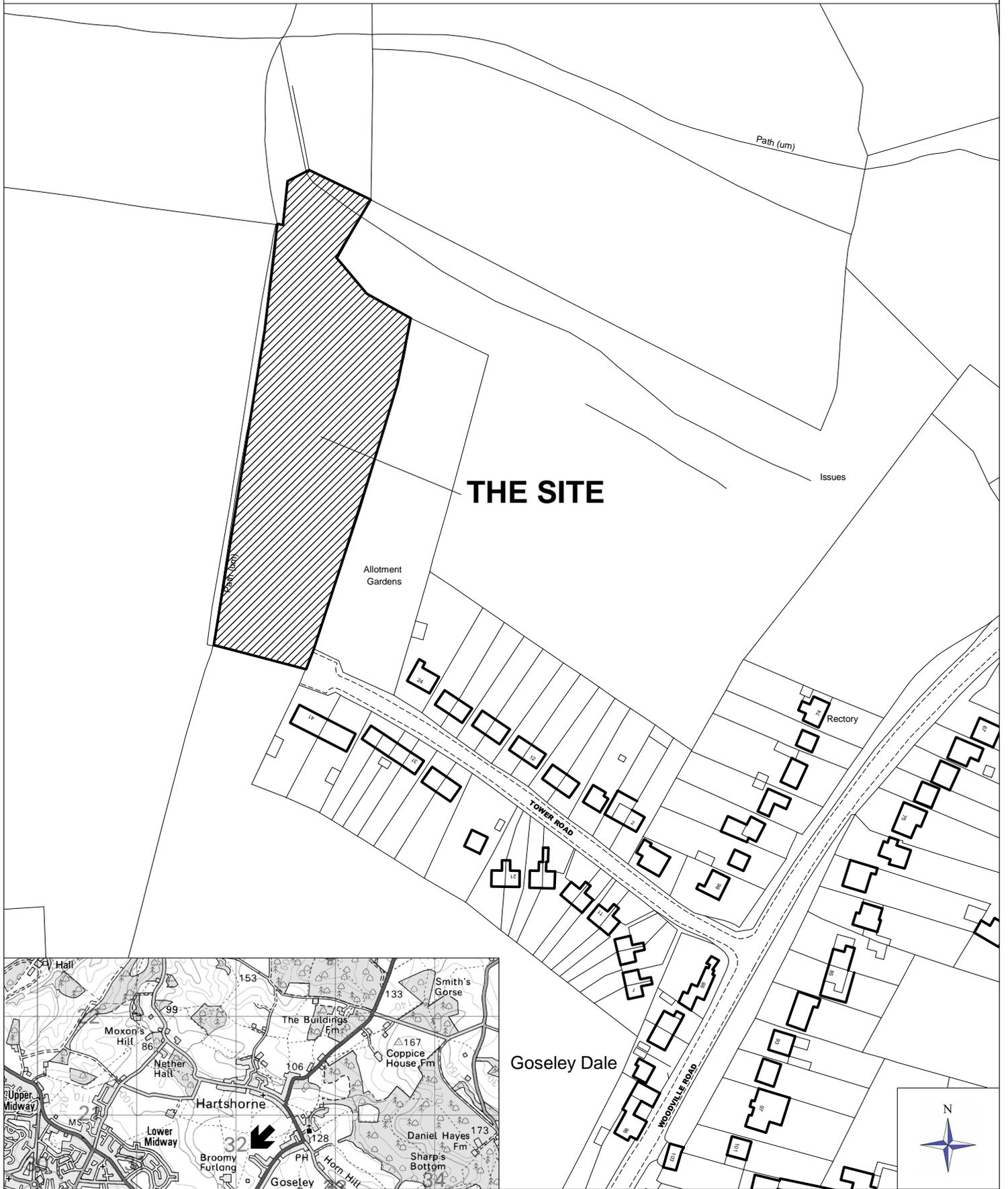
Proposal

The application proposes the erection of a stable block comprising three stables and change of use of the surrounding field to equestrian use. Access to the stables would be provided by a new access drive constructed of hardcore which would extend from an existing field access situated at the end of Tower Road. The stables would be of a timber construction with dark grey cement based corrugated roofing sheets and would measure 11.3m x 4.9m with a ridge height of 4.26m.

Applicants' supporting information

The applicant has submitted a Design and Access Statement which includes the following details:

9/2011/0278 - Land at Tower Road, Hartshorne, Swadlincote DE11 7EU



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- The site offers ample room for good exercise of the animals to be housed within the application site with bridle paths and open areas in close proximity to the site.
- Movement of the horses will not present a nuisance to neighbours and should in general provide sufficient access to open ground to ensure very little impact on the road network.

In addition to the above the applicant's agent has advised that the stables would be for personal use only and not commercial use.

It is not expected that there would be more than a maximum of six car visits per day. There could be four horsebox movements in any one day on an occasional basis if horses were going to an event but this is unlikely to be more than once a month. An enclosed manure container would be located on site and removed approximately once per week when full for distribution on farmland.

Planning History

None.

Responses to Consultations

The Highway Authority has no objection subject to parking and manoeuvring space being provided on site in accordance with the submitted details prior to the premises being taken into use.

Environmental Health has no objection subject to a condition advising that no waste shall be burnt on site.

The Footpaths Officer has no objection providing the footpath remains open, unobstructed and on its legal alignment at all times.

Responses to Publicity

Five letters of objection have been received raising the following issues:

- a) Tower Road is a small, dead end road and is not in anyway sufficient enough in size or structure to support the resulting traffic if such a scheme went ahead.
- b) There would be horseboxes, horse lorries, many other visiting vehicles, causing major problems on a residential street.
- c) Concern about parking when horses are being attended to as cars for the allotment already take up road space.
- d) Potential odour issues from horse manure and attraction of vermin.
- e) The current landowner is in the building trade and the stable block may be seen as an opportunity to change status to buildings.
- f) Will there be enough land to graze three horses?
- g) The footpath that skirts the field is used on a daily basis by many dog walkers and others and if the stables were there this path would be obliterated.

A petition has been received with 54 signatures objecting on the following basis:

- a) Increased traffic down the cul-de-sac.
- b) Additional smells from stored horse manure, flies in the summer months.

- c) Concern that change of use of land could allow further change in the future allowing more buildings to be erected and ultimately lead to the building of houses.
- d) The residents of the street have not been properly consulted about these proposals.

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 1

National Guidance

PPS7

Planning Considerations

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

- The principal of development.
- Character and appearance.
- Impact on residential amenity.
- Highway issues.

Planning Assessment

Environment Policy 1 of the Local Plan allows for development that is essential to a rural based activity or unavoidable in the countryside providing it is designed and located so as to create minimal impact and that the character of the countryside and landscape quality is protected.

PPS7 seeks to control development in the countryside with the overall aim of protecting the countryside for its intrinsic character and beauty.

The proposed equine use is acceptable in principle within a rural location providing there is no adverse impact on the rural character of the surrounding area.

Whilst the stables would be clearly visible from the public footpath and from the end of Tower Road, they would be sited away from the road alongside the existing hedgerow that forms the boundary with the adjacent allotment site. The stables would be viewed in conjunction with existing allotment structures and the proposed timber construction at 4.3 metres to the ridge would be sympathetic to the natural surroundings such that it is not considered that the stables would be unduly prominent in this location or have any significant adverse impact on the rural character of the area.

The stable would be located a minimum distance of 55m away from the nearest dwelling, No. 24 Tower Road, situated beyond the allotment site. Manure would be stored in an enclosed container and the burning of waste on site would be prohibited by condition such that there would not be any significant adverse impact on residential amenity with regard to smells.

Access to the site would be from Tower Road via an existing field access located within a turning head at the end of the road. Tower Road is subject to both on and off-street parking. The applicant's agent has indicated that vehicle movements associated with the development would predominantly be via a car on a daily basis to attend the horses, with removal of manure taking place on a weekly basis and horsebox movements less frequent. Parking and turning provision would be provided on site and the Highway Authority has no objection.

The public footpath lies within the application site but on the opposing boundary to where the stables are proposed. An informative would be added advising that the footpath should remain unaffected and unobstructed.

The proposal is considered to be an acceptable development within this rural location and in conformity with the above planning policies.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the submitted material details as identified on the submitted drawing no. 837.11.H.1 received 6 April 2011.

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

3. The parking and manoeuvring space shall be provided in accordance with the submitted details prior to the development being first brought into use.

Reason: In the interests of highway safety.

4. There shall be no burning of waste on site.

Reason: In the interests of pollution control and to protect the amenity of nearby residential properties.

5. The stables shall be used for the social and domestic use of the applicant and their family only and shall not be used for commercial gain in association with any business.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.

Informatives:

Hartshorne Public Footpath No. 15 lies within the western boundary of the site.

The granting of permission is not consent to divert or obstruct a public right of way. The route must therefore remain open, unobstructed and on its legal alignment at all times. This also applies to the obstruction of the route by parked vehicles, plant and equipment.

Consideration should be given at all time to members of the public using the footpath.

There should be no disturbance to the path surface without prior authorisation from the Rights of Way Inspector for the area.

No structures, for example fences, gates or barriers may be installed on or adjacent to the path without prior authorisation from Derbyshire County Council's Rights of Way Section.

Item 1.3

Reg. No. 9/2011/0137/FO

Applicant:
MR CHRIS FORRETT
95 LANSDOWNE ROAD
SWADLINCOTE

Agent:
MR CHRIS FORRETT
95 LANSDOWNE ROAD
SWADLINCOTE

Proposal: **OUTLINE APPLICATION (ALL MATTERS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 95 LANSDOWNE ROAD SWADLINCOTE**

Ward: **SWADLINCOTE**

Valid Date: **21/02/2011**

Reason for committee determination

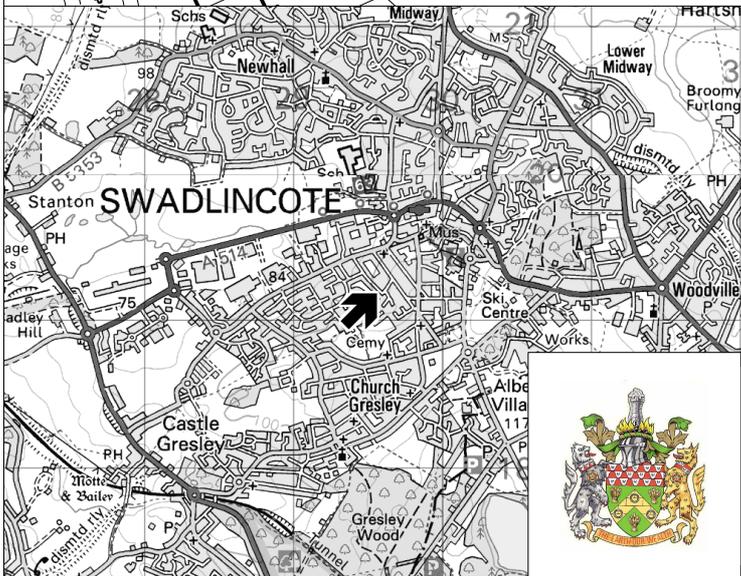
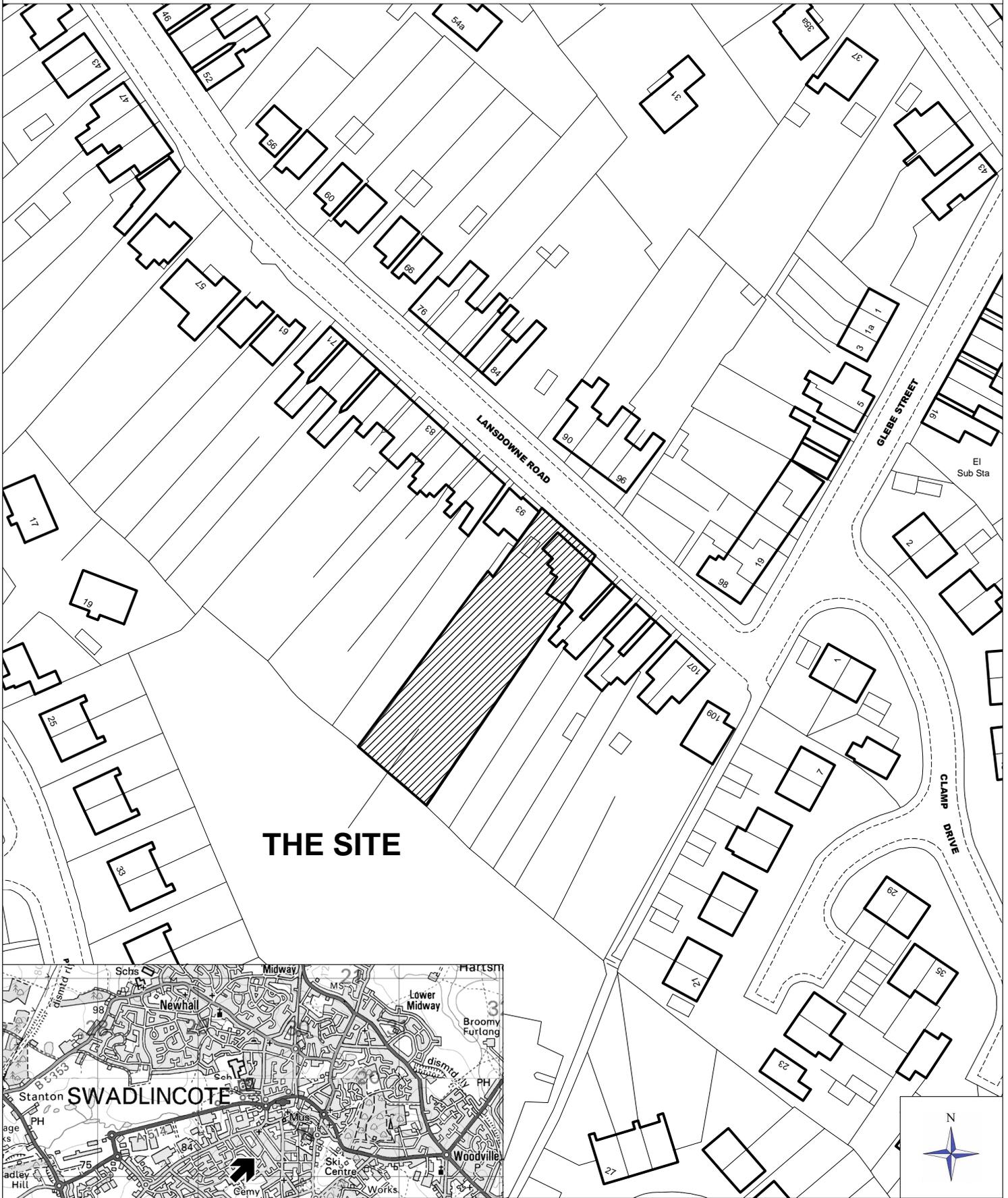
Members will recall this application being deferred for a site visit at the planning committee held on 26 April 2011.

Site Description

The application site currently houses an end of terraced two storey dwelling with a large area of land to the side currently used for off street parking. It has a small front garden area, which is enclosed by a small boundary wall of approximately 1m in height and a large rear garden of approximately 65m in length. The area is predominantly residential with the majority of properties being two storey and terraced in design, with little or no off street parking provided. The land rises from Hearthcote Road to the north west of the site, rising up to Glebe Street in the east.

Proposal

The application has been submitted in outline form with all matters reserved. Following the deferral of the application at the planning committee in April 2011 a further indicative proposal has been received, therefore the design and access statement has been amended and in total three indicative proposals have now been submitted. The additional proposal (*figure 3*) is similar to that which is the subject of an appeal awaiting determination as identified in the planning history section of the report. Two proposals (*figures 1 and 2*) show demolition of the existing property at 95 Lansdowne Road and replacement of the existing property with three terraced properties. The difference in the proposals is that one proposal (*figure 1*) does not provide off-street parking and the other (*figure 2*) would provide off street parking. The applicant has stated that the properties would probably be 3 bedroomed, two storey in design and would have garden lengths of approximately 46m in length.



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The third proposal (*figure 3* - received 09 May 2011) shows the demolition of the existing house and the replacement with two two-storey dwellings fronting Lansdowne Road and two bungalows to be sited at the rear of the site accessed between the two proposed dwellings on the frontage. The proposed dwellings would have gardens of approximately 22m – 26m for the two storey properties and 12m for the bungalows with 2 car parking spaces each provided for each dwelling. The proposed parking would be situated between the front of the bungalows and the rear garden area of the proposed two storey dwellings.

Applicants' supporting information

The applicant has submitted:

- a) A Design and access statement
- b) A Coal mining report
- c) A Coal Assessment Report

Planning History

9/2010/0683 – outline application (all matters to be reserved) for the residential development similar to that submitted as *Figure 3* – refused under delegated powers 14 September 2010. Reasons for refusal:

“1. Saved Housing Policy 4 sets criteria against which proposals for housing development in the Swadlincote urban area will be judged. In addition Paragraph 41 of the recently revised PPS 3 (June 2010) removes the presumption that formerly stated that previously developed land is suitable for residential development. It further states that the whole of a residential curtilage should not be presumed as suitable for development. Housing Policy 4 and in particular Criterion (vi) of the adopted South Derbyshire Local Plan requires that development should be of a suitable scale and character should it satisfy the other criteria in that policy. The proposed development would urbanise the whole of the curtilage at 95 Lansdowne Road in a manner that would result in the urbanization of the large garden at the rear of the dwelling; it is this type of development that the provisions in PPS 3 seek to address and it is this type of development that Housing Policy 4 seeks to control when it states that development should be of a suitable scale and character. The dwellings on Lansdowne Road on its west side are characterised by dwellings fronting the highway with substantial rear gardens. Recent Government advice and the illustrative layout submitted with the application indicate that this development would be out of keeping with the scale and character of the locality. Accordingly the development would be contrary to the provisions of Housing Policy 4 of the adopted South Derbyshire Local Plan supported by the provisions of PPS 3 (June 2010) at Paragraph 41.

2. Saved Housing Policy 11 sets criteria against which the layout and design of development will be judged that include issues such as reasonable amenities for both existing and new dwellings. The passing and repassing of vehicles along the suggested access to the site would be potentially harmful to the amenity of the occupiers of the frontage properties by virtue of noise from vehicles accessing the site along what would be a sloping access and light into the rear of the houses from vehicle leaving the site during the hours of darkness. For these reasons the development is also considered to be contrary to the provisions of Housing Policy 11 of the adopted South Derbyshire Local Plan.

Currently an appeal has been received regarding this application the result of which is awaited – Reference APP/F1040/A/11/2149063/NWF.

Responses to Consultations

Severn Trent Water does not raise any objections to the application as submitted or to the amended proposal.

The County Highway Authority initially advised that it would object to the proposal to implement *figure 2*, which shows off street parking. It advises that this layout would require visibility splays of 2.4m x 33m for each individual space and this is not achievable without encroaching on to third party land, therefore it recommends refusal of this proposal. It would not object however to the proposal for *figure 1* which does not include any off street parking. It advises that the proposal would result in an increase in on street parking which, whilst it is not ideal, it considers it would be more of an inconvenience rather than a hazard to road safety and on that basis does not object to the proposal to provide no off-street parking.

Amended plans received 09 May 2011 - The County Highway Authority advises that whilst the plan (figure 3) indicates that an acceptable parking layout can be achieved the overall space available, measured from the plan does not appear to be adequate to accommodate this. In addition, visibility splays of 2.4m x 33m are indicated, as being achievable, however, there is no evidence to suggest that this can be achieved within controlled land.

Contaminated Land Officer advises that no objections are raised and that a condition requiring a scheme to be submitted to identify and control any contamination of land, or pollution of controlled waters prior to commencement should be applied if consent is given.

The Coal Authority initially objected to the application but the applicant then submitted a Coal Assessment Report, which overcame their original objection, and no conditions are required.

Amended plans received 09 May 2011 – The Coal Authority does not raise any objections to the amended design and access statement or to *figure 3* proposed.

Responses to Publicity

Two neighbour letters of objection were received. The concerns noted are:

1. Parking is a problem, as most houses do not have off street parking. The proposal would mean that the three extra properties would need to park on the street.
2. If the figure, which includes parking, is approved it only shows one space for parking and this is not sufficient for a 3-bedroom dwelling.
3. The properties proposed are close to a blind bend.
4. Large vehicles cannot access the road due to on street parking problems.
5. Severe disruption during demolition, building and construction works.
6. If proposal 2 is approved then the properties will be set back and affect the sunlight entering the kitchen, bathroom and garden area of 93 Lansdowne Road.

7. Overlooking from proposed bedroom windows of 93 Lansdowne Road.
8. Damage could result from building works at the proposed site.
9. No need for more housing in the area.

Amended plans submitted 09 May 2011 – a further letter of objection was received regarding *figure 3* proposed. The concerns noted are:

1. Loss of privacy of rear garden
2. Rear area would be like a car park, headlights and noise from vehicles, possibly 8 cars at all times of day, causing disturbance
3. The proposed access is dangerous and there are no parking restrictions making it difficult to see out of the access
4. Foundations of 93 Lansdowne may be affected when they excavate the site

Development Plan Policies

The relevant saved policies are:

Local Plan: Housing Policies 4 and 11 and Transport Policy 6.
East Midlands Regional Plan 2009: Policies 2 and 3

Supplementary Planning Guidance – Housing Design and Layout

National Guidance

Planning Policy Statements 1 and 3
Planning Policy Guidance 13 and 14.

Planning Considerations

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

- Development plan policy and national guidance and advice
- Impact of the proposal on the neighbours and future occupiers of the dwellings
- Impact on highway safety
- Coal mining legacy issues

Planning Assessment

The application as stated above is in outline form only and all matters are reserved. However three indicative layouts have been submitted. The proposed development is in line with national guidance and development plan policy as it complies with Planning Policy Statement 3 and saved Housing Policy 4 being within the defined built up area of Swadlincote and is substantially surrounded by development. The scale and character of any of the proposals cannot be fully assessed in detail, as it is an outline application. However, the design and access statement does show that *figures 1 and 2* would be built in sympathy with the existing properties in the area which are terraced, two storey in design and are sited close to the site frontage. The application again (either layout – *figures 1 and 2*), whilst only in outline form do appear to accord to the Council's space about dwelling standards defined in the Housing and Design Layout Supplementary Planning Guidance. The principle therefore of three dwellings in this location is in accordance with national and local plan policies.

With regards to *figure 3*, this proposal has been considered previously and was refused as stated in the planning history section of the report and is the subject of an appeal. There have not been any changes to national or local policies and therefore the reasons stated previously with regards to the acceptability of *figure 3* are reiterated. The proposed development would urbanise the whole of the curtilage at 95 Lansdowne Road in a manner that would result in the urbanisation of the large garden at the rear of the dwelling contrary to PPS 3. The development would be out of keeping with the scale and character of the locality which saved Housing Policy 4 seeks to control where it states that development should be of a suitable scale and character. Furthermore, the passing and repassing of vehicles along the suggested access to the site would be potentially harmful to the amenity of the occupiers of the frontage properties by virtue of noise from vehicles accessing the site along what would be a sloping access and light entering the rear of the houses from vehicles leaving the site during the hours of darkness. This would be contrary to Saved Housing Policy 11, which sets criteria against which the layout and design of development will be judged including issues such as reasonable amenities for both existing and new dwellings.

The County Highway Authority have advised that they would object to the application if the applicant chooses to implement *figure 2* which shows off street parking provided and therefore it is recommended that approval should only be given to a scheme that is produced in accordance with *figure 1* providing no off-street parking on site. This would also ensure that any reserved matters application would limit properties to be in line with the existing properties of 93 and 97 Lansdowne Road and would therefore ensure that the properties would be of a suitable scale and character.

With regards to figure 3, the County Highway Authority have advised the overall space available for parking cannot be measured accurately from the plan and does not appear to be achievable neither does the required visibility appear to be achievable because it includes land that is outside the control of the applicant. For these reasons figure 3 is unacceptable with regards to highway safety.

In conclusion it is recommended that *figure 1* be approved but *figures 2 and 3* are unacceptable from a highway safety and a planning policy/highways safety perspective (respectively).

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

Recommendation

GRANT permission for the figure 1 layout 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, access 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. Approval is only given for a layout as indicated in figure 1 which shows no provision for off street parking.

Reason: Visibility splays cannot be achieved by providing off street parking and this would be to the detriment of highway safety.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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. 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.

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 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.

2. PLANNING AND OTHER APPEALS

Reference	Place	Ward	Result	Cttee/Delegated
9/2010/0891	Midway	Midway	Allowed	Committee
9/2010/0575	Overseal	Seales	Dismissed	Delegated
9/2010/1064	Linton	Linton	Dismissed	Delegated



Appeal Decision

Site visit made on 5 May 2011

by Stuart Hall BA(Hons) DipTP FRTPI MCIHT

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

Decision date: 3 June 2011

Appeal Ref: APP/F1040/A/11/2143418

Masons Arms, Burton Road, Midway, Swadlincote DE11 7ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Scott Pluthero against the decision of South Derbyshire District Council.
 - The application Ref 9/2010/0891/SMD, dated 10 September 2010, was refused by notice dated 2 November 2010.
 - The development proposed is conversion of existing public house into four 1 bedroom flats and the erection of five new houses.
-

Application for Costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal and grant planning permission for conversion of existing public house into four 1 bedroom flats and the erection of five new houses at Masons Arms, Burton Road, Midway, Swadlincote DE11 7ND in accordance with the terms of the application, Ref 9/2010/0891/SMD, dated 10 September 2010, subject to the conditions in the schedule attached to this decision.

Preliminary Matters

3. The original application was for the conversion of the public house and the erection of six new dwellings. This was amended to the description recorded above in the course of the Council's consideration of the application. The Council's decision, and therefore my decision, relate to the amended description of development.
 4. The appeal is accompanied by a signed unilateral undertaking, made pursuant to section 106 of the 1990 Act and providing for payments to be made towards medical services and open space needs arising from the development. The Council are content with its provisions. Having regard to Council guidance published in *Section 108 Agreements Version 8*, dated April 2010, I am satisfied that the terms of the undertaking meet the statutory tests of *The Community Infrastructure Regulations 2010*. Therefore, I take due account of the undertaking in reaching my decision.
-

Main Issue

5. Residential re-development of the appeal site is acceptable to the Council in principle, and I find no cause to disagree. Notwithstanding the Council's view that development that would generate less traffic would be more appropriate, the appeal scheme stands to be judged on its own merits. The main issue in this appeal is the effect of the scheme on the interests of highway safety.

Reasons

6. The former public house, with beer garden and car park to the sides and rear, stands on the corner of the A511 Burton Road and Sandcliffe Road, at a busy crossroads where signal controls were introduced about three years ago. Residential properties adjoin the site's side and rear boundaries. The site slopes markedly downwards towards Burton Road, and less so along that road away from the junction. The scheme would include a pair of two bedroom and one single bedroom dwellings on the frontage to Burton Road and two three bedroom dwellings facing Sandcliffe Road. The existing vehicle access to Burton Road, about 20 metres (m) from the junction, would be moved slightly further away and widened to serve a shared 15 space car park.
7. In declining to raise objection to the scheme the local highway authority refer to the former use of the site and, by implication, the traffic movements that the use would have generated. There is conflicting anecdotal evidence from the main parties as to the nature and volume of those movements. However, bearing in mind market trends I share the appellant's view that the public house, empty for several years, is unlikely to re-open. Therefore, I give limited weight to that potential fallback position. The main issue turns on whether, having regard to likely vehicle movements, the proposed parking and access arrangements would put highway safety at material risk.
8. There is no dispute between the main parties that 15 car spaces, adequately laid out, would meet the Council's normal requirements. Whilst any additional need may have to be met on-street, parking restrictions on all roads close to the site would prevent consequent harm to highway safety. This consideration also applies to the displacement of cars parked informally on the site now. Though four of the dwellings would have two spaces in tandem alignments, this is not an uncommon arrangement. There is no substantive evidence to counter the local highway authority's view that the proposed layout makes adequate provision for manoeuvring on the site, and that the width of the revised access would be acceptable.
9. It is likely that vehicle movements would be concentrated in peak hours and that some congestion within the site would occur from time to time. However, I find nothing inherent within the layout that would cause drivers to reverse onto the highway, or that would force them to wait unduly on the highway before entering the site. The signal of a driver intending to turn right into the site may be mistaken for an intention to turn right at the junction over 20 m further on. Even so, such circumstances are often encountered, and should not jeopardise the safety of highway users exercising normal care. Any consequent interruption to the free flow of traffic would be insignificant, given the similar effects of the signal controlled junction.

10. Interested persons maintain that visibility at the access is poor. However, at my site visit it was agreed that the footway width at the centre of the proposed access is some 2.6 m. From a point 2.4 m from the kerb adequate visibility would be available in both directions along Burton Road, where a 30 mph restriction is in force, before a driver need enter the carriageway. Though a bus at the adjacent lay-by stop would obstruct the view to the left, this would be an infrequent and not materially harmful event. Whilst a driver leaving the site would not at first see a vehicle about to turn into Burton Road from Sandcliffe Road, the signal control phase would forewarn of that possibility. The almost right angled turn would restrict approaching vehicle speeds.
11. Queuing traffic may well make it difficult for drivers to turn right out of the site when the Burton Road signal is at red. However, that would be an inconvenience rather than a risk to safety. Opposing traffic flows would inhibit drivers from entering the road and blocking the nearer carriageway. Taking into account the generous width of the Burton Road footway outside the appeal site, and the ease with which 2 m x 2.m vision splays could be achieved to each side of the proposed access, I find no evidence to substantiate concerns for the safety of bus users and other pedestrians.
12. I have regard to the record of reported road traffic accidents in the vicinity of the appeal site. However, it appears that the incidence of accidents has decreased significantly since the installation of signal controls at the junction. Further, there is no evidence that use of the existing access to the site has been the cause of any reported accident, or from which it could reasonably be deduced that the proposed development would lead to an increase in accidents.
13. I am aware that members of the Council's Planning Committee visited the site before the decision to refuse permission was taken. However, in the absence of substantive evidence to the contrary the foregoing considerations lead me to conclude that the scheme would leave the interests of highway safety substantially unharmed. Accordingly, I also conclude that it would not conflict with the highway and other safety objectives of saved Transport Policy 6 or saved Housing Policy 11 of the *South Derbyshire Local Plan*, adopted in 1998, or with the relevant thrust of national planning policy brought to my attention.
14. I have considered other representations from interested persons living nearby. However, I share the Council's views that potential harm to their living conditions was dealt with satisfactorily in amendments made to the scheme prior to its determination by the Council. These and all other matters raised do not outweigh the conclusion I have reached on the main issue. Subject to appropriate planning conditions, it follows that the appeal should succeed.

Conditions

15. I have regard to conditions suggested by the Council, should I be minded to allow the appeal, in the light of advice in *Circular 11/95 The Use of Conditions in Planning Permissions*. For the avoidance of doubt, and in the interests of the proper planning of the area, it is appropriate to specify the plans to which this decision relates. I have not been made aware of any local circumstances that would justify requiring details of drainage arrangements that would be subject to other legislative control. Whilst a precautionary approach to the risk of contamination or pollution is appropriate, the evidence of risk is not substantive enough to render necessary the Council's suggested conditions. I attach a less onerous requirement in line with advice in the Circular.

16. In the interests of appearance, there should be control over landscaping, the choice of external building materials, and the types of boundary treatment to be used. Exceptionally, having regard to the proximity and layout of adjacent dwellings, it is appropriate to remove permitted development rights in relation to 2 storey rear extensions to the five proposed dwellings and to windows in the rear elevations of units 7, 8 and 9. The existing quality of the street scene does not justify the more sweeping removal of permitted development rights proposed by the Council. Whilst submitted plans give finished floor levels, it is reasonable to control final ground levels on this sloping site.
17. Highway safety interests dictate that the erection of gates should be controlled, that vehicle access alterations and visibility splays should be provided before the car park is brought into use, and that the timely availability of parking spaces is secured in relation to the first occupation of each dwelling. Bearing in mind the limited options available to a developer, I am not convinced that highway safety interests warrant the prior submission of details of a site compound. However, control over its form and location would help to safeguard the living conditions of adjoining occupiers during the construction period. Where appropriate, I have amended the Council's suggested wording to reflect more closely advice in the Circular.

Stuart Hall

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 02, 12B, 13B & 14A.
- 3) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 4) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted, and details of proposed boundary treatment, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a scheme of landscaping and planting has been submitted to and approved in writing by the local planning authority. The scheme shall include details of existing trees on the site and of any to be retained and the measures for their protection during the course of development; details of proposed finished ground levels; and a programme for the scheme's implementation. Landscaping shall be carried out in accordance with the approved scheme. Any trees or plants which within a period of five years from the completion of the development hereby permitted die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size and species.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), to the rear of any dwelling hereby permitted no enlargement or extension shall be constructed above one storey in height, and no window other than those expressly authorised by this permission shall be constructed in the rear roof planes or rear walls of units 7, 8 and 9 as identified on approved plan 12B.
- 7) No gate or other barrier shall be erected across the proposed vehicle access within 10 metres of the highway boundary. No other gate on the highway boundary shall be hung so as to enable it to be opened outwards.
- 8) No development shall take place until details of the construction, layout and marking of the proposed vehicle access, car park and vehicle manoeuvring areas have been submitted to and approved in writing by the local planning authority. Parking spaces shall be designated for the primary use of the occupiers of specified dwellings and shall be completed and made available for use prior to the first occupation of the corresponding dwelling. Thereafter the spaces shall be maintained clear of any impediment to that use.
- 9) Prior to the occupation of the first dwelling to be occupied the vehicle access shall be modified in accordance with the details shown on approved plan 12B and provided with 2 m x 2 m pedestrian vision splays at each side of the access and with vision splays extending to the extremities of the site frontage to Burton Road from a point 2.4 m from the highway boundary measured from the centre of the access. Thereafter the visibility splays shall be maintained free of obstruction above a height of 0.6 m.
- 10) No development shall take place until details of arrangements for the storage of plant, equipment and materials; the loading and unloading of goods vehicles; any parking for site operatives' and visitors' vehicles; and any site office or other covered temporary accommodation, have been submitted to and approved in writing by the local planning authority. Provision shall be made in accordance with the approved details and kept available for such use until the practical completion of the development.



Costs Decision

Site visit made on 5 May 2011

by Stuart Hall BA(Hons) DipTP FRTPI MCIHT

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

Decision date: 3 June 2011

Costs application in relation to Appeal Ref: APP/F1040/A/11/2143418 Land at Masons Arms, Burton Road, Midway, Swadlincore DE11 7ND

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Scott Pluthero for a full award of costs against South Derbyshire District Council.
 - The appeal was made against the refusal of planning permission for conversion of existing public house into four 1 bedroom flats and the erection of five new houses.
-

Decision

1. I allow the application for an award of costs in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. With reference to their decision notice, there are two elements in the Council's reason for concluding that the appeal scheme would be harmful to highway safety interests in conflict with the development plan. These are: that traffic movements at the access would exceed its capacity for safe use; and that manoeuvring difficulties on the site would add to the awkward use of the access and to the possibility that vehicles would be reversed onto Burton Road. Paragraphs B16 and B20 of the Annex to Circular 03/2009 explain that planning authorities are expected to produce evidence to substantiate reasons for refusal and to show reasonable grounds, backed by evidence, for not following professional advice.
 4. On the first element, the Council's evidence amounts to little more than the observation that, though total traffic movements may be less than when the former public house was in use, unlike then most movements would occur during peak hours. The suggestion that the local highway authority's lack of objection was based on a failure to make this distinction is not substantiated. I consider it most unlikely that a competent authority would fail to take into account the significance of peak hour flows and traffic conditions.
-

5. Though there are well-established methods for predicting traffic flows from residential development, no attempt is made to quantify flows and relate them to passing traffic volumes. Whilst evidence of reported road traffic accidents is produced, there is no analysis of their relevance to the matter at issue. In my appeal decision I refer to their apparent limited relevance to current circumstances.
6. On the second element, the parking layout may give rise to some awkward manoeuvres within the site. However, the Council's stance conflicts with the local highway authority's stated view that the proposed 15 spaces and adequate manoeuvring space are in line with current standards. There is no evidence before me that supports the Council's rejection of that view. Specifically, bearing in mind that the proposed access width would meet the highway authority's requirements, I find nothing to substantiate the Council's assumption that there would be a greater risk that vehicles would be reversed onto the highway.
7. There is no evidence that Planning Committee Members were unduly influenced by representations from residents living near to the site. I am aware that Members visited the site before determining the application, and I have no cause to doubt the probity of their decision. However, it is not reasonable to make a decision based on perceived local knowledge, in the face of professional advice as in this case, if it cannot be substantiated by evidence.
8. The employment of a highways and transportation professional to prepare the Council's statement of case does not overcome the absence of substantive evidence to support assertions that highway safety interests would be harmed. The foregoing considerations lead me to conclude that the tests of Paragraphs B16 and B20 of the Circular are not met. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that South Derbyshire District Council shall pay to Mr Scott Pluthero the costs of the appeal proceedings such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stuart Hall

INSPECTOR



Appeal Decision

Site visit made on 11 May 2011

by **Jean Russell MA MRTPI**

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

Decision date: 7 June 2011

Appeal Ref: APP/F1040/A/11/2147137

167 Burton Road, Overseal, Swadlincote, England, DE12 6JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Chris King against the decision of South Derbyshire District Council.
 - The application (ref: 9/2010/0575/FM), dated 16 June 2010, was refused by notice dated 20 August 2010.
 - The development proposed is the erection of one no. detached 1½ storey dwelling with associated landscaping and parking.
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Decision

1. I dismiss the appeal.

Main Issues

2. I consider that the main issues are whether the proposed development would be acceptable in principle on this site; its effect on the character and appearance of the surrounding area; and its effect on the living conditions of nearby occupiers.

The Site and its Surroundings

3. The proposed dwelling would be sited in the rear garden at 167 Burton Road; it would be accessed via the existing shared drive to nos. 167 and 165a. These properties form part of a suburban ribbon development, which appears to be separated by fields from the village of Overseal to the south. There are other dwellings to the north but a public footpath and open countryside lie to the west, while the eastern side of Burton Road is also dominated by agricultural land.

Reasons

Principle of Development

4. The *Derby and Derbyshire Joint Structure Plan* is no longer in force. The site lies outside of a defined settlement boundary according to the *South Derbyshire Local Plan* (LP). Thus, the proposed development falls to be considered under LP Housing Policy 6, which only permits new housing in other rural settlements where it would infill a small gap for not more than two dwellings within a small group of houses. In my view, the appeal garden represents a backland and not an infill or gap site. The proposed development would conflict with LP Housing Policy 6.
5. Government guidance in *Planning Policy Statement 1: Delivering Sustainable Development* (PPS1) and *PPS3: Housing* encourages the making of efficient use of land, and the development of land for housing in sustainable locations. The proposed development would increase the density of housing in an area that is on

a bus route and close to village shops and amenities. However, the development of many semi-rural and/or garden sites could be justified on the same basis.

6. In order to deliver sustainable development, PPS1 and PPS3 also prioritise the use of previously developed land for new housing. PPS3 has been amended so that private gardens are no longer categorised as such. In my view, the proposed development would not be so beneficial in sustainability terms as to outweigh the conflict with the LP. Moreover, PPS1 further expects local authorities to prepare spatial plans with a clear vision for the future pattern of development. LP Housing Policy 6 can be said to provide just that.
7. I conclude that the proposed development would conflict with LP Housing Policy 6 and the conflict is not justified by other material considerations. The proposed development is therefore unacceptable in principle on this site.

Character and Appearance

8. Dwellings along this stretch of Burton Road typically stand on a consistent building line and have long back gardens. These make a positive contribution to the spacious and semi-rural character of the area. Nearby dwellings at Green Lane to the north have a more diverse layout, but they too stand in generous plots.
9. The proposed dwelling would be the only backland house along this part of Burton Road. It would disrupt the existing linear pattern of development. I also find that, although garden space would be retained for the dwelling and at no. 167, the development would result in a subdivision and significant loss of garden land so as to seriously harm the distinctive character of the area. It would fail to complement the local area in terms of density and layout as required by PPS3.
10. The proposed dwelling would stand some 14-17m from the footpath to the rear. It would be larger and higher than nearby garden buildings; at the back it would be two storeys high. There is a hedge to the rear of the site, but this could be cut down and it would offer less screening in winter. The proposed house would in any event be just 1-3m from garden land to the north west, which is bound only by a low wire fence. In my view, the proposed dwelling would be visible from the footpath, even if a planning condition was imposed to require a new boundary treatment to the side of the site. As a result of its size and position, it would appear unacceptably intrusive and out of character with the area.
11. The 1.5 storey front elevation of the proposed house would be more than 70m from Burton Road. It would be too far from the street to appear unduly prominent, but it could be glimpsed down the access. I consider that it would be seen from there as being in an incongruous position. This adds to my concern that it would compromise the established layout and character of the area.
12. I have no objections to the proposed building style. Materials and landscaping could be controlled by conditions. Nevertheless, as a result of its size and position, I conclude that the proposed development would cause unacceptable harm to the character and appearance of the area. It would conflict with LP Housing Policy 6, PPS1 and PPS3, which require new housing to be in keeping with the scale and character of the settlement and appropriate to its context.

Living Conditions

13. The side elevations of 165a and 167 Burton Road abut the existing shared drive. Both properties have clear-glazed, habitable room windows facing the drive. There is also a conservatory to the rear of no. 165a, which has windows to the access and back garden.

14. Although there are parking areas to the front of nos. 165a and 167, the drive is already used to give access to the rear. The side elevations of the two dwellings are just a few metres apart. Clearly, then, their occupiers can overlook each other now. I would not dismiss the appeal solely to protect privacy at nos. 165a and 167.
15. That said, the proposed dwelling would serve to increase the number of users and the frequency of use of the drive. It would exacerbate the existing lack of privacy at the adjoining properties, particularly within the conservatory at no. 165a, and this adds to my misgivings about the scheme. That the occupier of no. 165a supports the proposal does not lessen my concern. It is proposed to erect a new fence along the drive, but if this was extended directly in front of windows as a privacy screen, the result would be a loss of light and outlook.
16. The development would be sited and designed so as to cause no unacceptable loss of privacy at 169 Burton Road. The adjoining garden at no. 169 is also sufficiently large that the proposed dwelling would not visually dominate the space or cause an unacceptable loss of outlook or enjoyment.
17. I conclude that the proposed development would not cause unacceptable harm to the living conditions of nearby occupiers so as to warrant a refusal of permission. It would not unduly conflict with LP Housing Policy 11, which expects new housing to provide reasonable amenities. However, the development would increase the extent to which adjoining dwellings are already overlooked, so as to add a little additional weight to the balance against the appeal.

Other Matters

18. I accept that, subject to conditions, the proposed development would cause no unacceptable loss of highway safety or conflict with LP Transport Policy 6. This does not alter my conclusions on the first two main issues.

Conclusion

19. Notwithstanding my conclusion on the matter of living conditions, it is the conflict with LP Housing Policy 6 and the harm the proposed development would cause in relation to character and appearance that leads to my decision. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jean Russell

INSPECTOR



Appeal Decision

Hearing held on 17 May 2011

Site visit made on 17 May 2011

by Andrew Jeyes BSc DipTP MRTPI

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

Decision date: 9 June 2011

Appeal Ref: APP/F1040/A/11/2145275

Hill Farm, Sealwood Road, Linton, Swadlincote, Derbyshire DE12 6PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Lewis against the decision of South Derbyshire District Council.
 - The application Ref 9/2010/1064, dated 18 November 2011, was refused by notice dated 17 January 2011.
 - The development proposed is the conversion of former farm office to residential use.
-

Decision

1. I dismiss the appeal.

Application for Costs

2. An application for costs was made by Mr Robert Lewis against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The decision notice refers to saved Environment Policy 1: *Development in the Countryside* of the South Derbyshire Local Plan 1998 [LP]. The direction under Paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 refers to Policy EV1 relating to "*Development in the Countryside*". The Council confirm that these are the same policy and that LP Environment Policy 1 is regarded as saved. Other Local Plan policies are also referred to in similar abbreviated form.
4. The appellant has referred to the proposed house as a live-work unit, but confirmed at the Hearing that its use would be entirely residential and that the work element applied to other existing buildings within the farm complex. I have considered the proposal on this basis. The Council also indicated at the Hearing that saved LP Housing Policy 7 applied to this proposal and I have therefore considered this policy.

Main Issues

5. The main issues are whether the proposal meets the aims of:-
 - [a] Policy 3 of the East Midlands Regional Plan 2009 [EMRP] and in PPS3¹ and PPS7² in relation to sustainable development within the countryside; and
 - [b] saved LP Environment Policy 1 and saved LP Housing Policy 7 in relation to houses in the countryside.

¹ Planning Policy Statement 3: *Housing*

² Planning Policy Statement 7: *Sustainable Development in Rural Areas*

Reasoning

6. The proposal is to convert an existing office used to service businesses at Hill Farm, including a long established sign-writing business and letting of stables for DIY livery, into a separate residence. It would be occupied by the appellant's son, who is employed within the sign-writing business, which occupies a substantial separate building to the south of the complex. The appellant indicated that the sign-writing business was originally an adjunct to a business relating to display and sale of horseboxes from the site some 28 years previously, but the Council could not confirm a grant of permission for the use.
7. The office was originally part of a farm building, then used as the farm office and then as a general office for activities on the holding. The office use for the sign-writing business is now relocated to within the sign-writing building. The proposal would involve replacing two external doors with windows, the rendering of the existing first floor blockwork walls together with some internal alterations.

Sustainable Development in the Countryside

8. The EMRP indicates at Policy 3 that within rural areas, development needs should be provided for and that development should contribute to the character and vitality of rural communities, shorten journeys and facilitate access to jobs and services. Whilst the Government has indicated that the EMRP is to be abolished, it currently is the most up-to-date aspect of the development plan and carries substantial weight. PPS3 has a strategic objective of creating sustainable, inclusive, mixed communities, and sustainability is a core principle identified in PPS7.
9. Hill Farm is situated some ½ mile from the public highway at Linton, along an unmade track that also serves some other houses and rural enterprises. Linton has a limited range of services and it was agreed that the site is in an unsustainable location. Bus services are available along the nearest public highway, but no information on service provision was submitted. A timetable on the nearest bus stop indicated an hourly service between Burton-upon-Trent and Ashby-de-la-Zouch via local settlements. The distance of the site from bus services would indicate that the majority of access to goods and services would be by use of a car.
10. The appellant suggests a condition restricting occupation of the proposed house to a person employed at the sign-writing business with, in the first instance, his son being the occupier. In his view, this overcomes the unsustainable nature of the location as journeys to work, as occurring now, would be negated so making the enterprise more sustainable. However, the conversion of a building used as part of the economic diversification of the rural area to a dwelling would not increase sustainability or, as the appellant indicated at the Hearing, be neutral in sustainability terms. Whilst commuting by the appellant's son would be reduced, there would be an increase in traffic from the site to access the wide range of other services normally relied on, including commuting to work by the son's wife.
11. For the above reasons, the proposal would not overall represent a sustainable form of development as it would not shorten journeys and facilitate access to jobs and services. The proposal would therefore conflict with EMRP Policy 3 and with policy in PPS3 and PPS7.

Houses in the Countryside

12. There are two relevant saved policies in the Local Plan. Saved LP Environment Policy 1 indicates that outside settlements development would not be permitted unless it is essential for a rural activity and safeguards the character of the countryside. Saved LP Housing Policy 7 indicates that outside settlements, the conversion of buildings to provide residential accommodation will be permitted providing that the building and its conversion is of a design in keeping with the rural surrounds.

13. The appellant accepts that the proposed accommodation is not essential for the other activities at Hill Farm and information required to establish essential need, as indicated in Annex A to PPS7, was not therefore submitted. However, the appellant considers that the accommodation would be desirable, as it would provide increased levels of security and would provide additional cover for the livery activities on the site, that currently cater for 10 horses for external owners and three of the appellant's horses. There have been two break-ins with loss of equipment connected with equine activity.
14. Policy EC12 in PPS4³ indicates that the re-use of buildings in the countryside for economic development purposes will usually be preferable, but residential conversions may be more appropriate in some locations and for some types of building. The premises have been marketed as offices with no result, although the marketing agent referred to a lack of facilities and mainly relied on the web for marketing, the office being remote from the area although used for display. There is no substantial evidence to indicate the unsuitability of and lack of market for the premises or why residential use would be preferable in planning terms.
15. The existing house at Hill Farm, occupied by the appellant, is located close to and faces the lane that provides sole access. This property can provide the essential security needed for the premises and a second dwelling, whilst desirable to provide cover, cannot be justified for this reason. The proposal does not meet the terms of Saved LP Environment Policy 1 to justify new residential development within the countryside.
16. The current office is an undistinguished building of a brick ground floor with a blockwork first floor over part, both with a pitched tiled roof. It is part of a larger building used for the livery business. The building is seen as part of a larger complex of buildings including a larger range of agricultural sheds to the south, with the more modern agricultural style building used by the sign-writing business beyond. The proposal is to render the first floor blockwork and paint in a suitable colour. Whilst the Council would wish to see a brick faced building, the proposal would not stand out as being of an appearance that would harm the rural surrounds. In this respect, the proposal would meet the terms of saved LP Housing Policy 7.

Other Matters

17. The appellant has referred to three other decisions in the district relating to the conversion of buildings to residential use in the countryside. The Council point to specific over-riding factors in each case justifying the grant of permission; these were not relevant in the consideration of this appeal. As a result of these factors, these cases do not create a precedent for this appeal.

Conclusions

18. The Local Plan was adopted in 1998 and any saved policies must now be viewed in the light of subsequent Government policy, including PPS3, PPS4 and PPS7, and the EMRP adopted in 2009. The proposal would comply with saved LP Housing Policy 7 in respect of conversions, but this does not outweigh the lack of compliance with the terms of saved LP Environment Policy 1 relating to development in the countryside. Nor does it outweigh later policy in the EMRP and in PPS3, PPS4 and PPS7 that indicates that the proposal would represent unsustainable development within the countryside.
19. For these reasons and considering all other matters, I dismiss the appeal.

Andrew Jeyes

INSPECTOR

³ Planning Policy Statement 4: *Planning for Sustainable Economic Growth*



Costs Decision

Hearing held on 17 May 2011

Site visit made on 17 May 2011

by Andrew Jeyes BSc DipTP MRTPI

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

Decision date: 9 June 2011

Costs application in relation to Appeal Ref: APP/F1040/A/11/2145275 Hill Farm, Sealwood Road, Linton, Swadlincote, Derbyshire DE12 6PA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Robert Lewis for a full award of costs against South Derbyshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the conversion of former farm office to residential use.
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Decision

1. I allow the application for an award of costs in the terms set out below.

The submissions for Mr Robert Lewis

2. The costs application was submitted in writing. A full award is sought and reference is made to paragraphs A31, A32 and B29 of Circular 03/2009¹. Additional points were made orally, regarding an e-mail from the Council dated the 15 March 2010 in relation to a previous refusal on the site. At that time, the case officer indicated that the proposal for conversion was acceptable in relation to saved Housing Policy 7 of the South Derbyshire Local Plan 1998 [LP] if a porch were omitted, although it is accepted that the case officer was not the decision maker. In addition, in that case, the Council referred to saved LP Housing Policy 7 and not to Housing Policy 8 as referred to in their statement for this appeal, although it was acknowledged that this was corrected at the Hearing.
3. In response to the Council's views:-
 - [i] Ridgeway Farm, Repton: It was accepted that this site is not as far from its related settlement as the appeal site but was still some distance from the limit of development. It was for conversion of office to residential but there was an appeal decision not agreeing with their initial decision to refuse.
 - [ii] Riding Bank Farm, Cockshut Lane, Melbourne: The point regarding the replacement building is accepted, but the decision notice indicates compliance with saved LP Housing Policy 7; and
 - [iii] Common Farm, Ashby Road, Melbourne: These buildings are not listed and the appellant is surprised they are on a local list but there is no test for historic buildings as part of the policy. Again, the decision notice indicates compliance with saved LP Housing Policy 7.

The Council has still exhibited an inconsistency in policy choice.

¹ Circular 03/2009: *Costs awards in appeals and other planning proceedings.*

The response by South Derbyshire District Council

4. The response was made orally. It was acknowledged that saved LP Housing Policy 7 should have been referred to in submissions, but it was not accepted that the proposal complied with this policy. Bulk and design is an issue with saved LP Housing Policy 7 and the e-mail of the 15 March 2010 does refer to design, so the appeal proposal would have been refused on this ground in any case.
5. The appellant refers to three other planning decisions as providing similar circumstances, but they are not the same as the appeal proposal. In detail:-
 - [i] Ridgeway Farm, Repton: This site was closer to a settlement and had a previous refusal that, in part, related to the lack of commercial promotion of the site; this was allowed at appeal. The permitted application followed the appeal decision.
 - [ii] Riding Bank Farm, Cockshut Lane, Melbourne: This was a replacement building for an occupied mobile home which brought substantial environmental benefits; and
 - [iii] Common Farm, Ashby Road, Melbourne: The conversions related to buildings that were regarded as being of historic interest, were in keeping with the character and appearance of the area and followed the sequential approach indicated in PPS².

Reasoning

6. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. In respect of decisions elsewhere, whilst they related to residential conversions, the circumstances described at the Hearing were not relevant in the consideration of this appeal. As indicated in the appeal decision, these decisions do not create a precedent for the proposed conversion at Hill Farm. Each case must be considered on its individual merits and the Council has not made a decision in the appeal case that is inconsistent with other decisions in their district. The Council has not therefore been unreasonable in this regard.
8. In respect of Local Plan policy, the only saved policy referred to on the decision notice is saved Environment Policy 1 of the South Derbyshire Local Plan 1998 [LP], which relates to development in the countryside. In the officer's report, it is indicated that issues relating to design and impact on character raised in a previous refusal have been overcome. In their statement to the Hearing, the Council referred to saved LP Housing Policy 8, which relates to new housing development within the countryside, as a relevant policy, but did not discuss its relationship to the proposal and nor did the appellant in his submissions. The reference to saved LP Housing Policy 8 did not therefore lead to any unnecessary work.
9. In the written costs application, the appellant indicated that the Council had not considered all of the relevant policies, with saved LP Housing Policy 7, which relates to residential conversions, not being referred to at any stage. At the Hearing, the Council agreed that this saved policy was relevant and that saved Housing Policy 8 was not. The Council, at the Hearing, indicated why the proposal was not considered to agree with saved LP Housing Policy 7 and this resulted in debate at the Hearing. As the appeal decision indicates, I do not concur with these views.
10. The Council, in relation to a previous submission had provided officer's advice that, if a porch was omitted and the design was appropriate, residential use of the premises would comply with saved LP Housing Policy 7. Such advice is not binding on the Council and they were now of the opinion, although I did not agree, that the design was inappropriate. The Council also indicated in the officer's report on the appeal

² Planning Policy Statement 7: *Sustainable Development in Rural Areas*

application that previous concerns relating to design and impact on character raised in a previous refusal had been overcome.

11. For these reasons, I conclude that the Council failed to indicate in the reason of refusal or in their statement to the Hearing, a relevant saved LP Policy that they relied upon at the Hearing to indicate that the proposal was not acceptable. This constitutes unreasonable behaviour.
12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has been demonstrated in this respect and that a partial award of costs is justified.

Costs Order

13. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that South Derbyshire District Council shall pay to Mr Robert Lewis the costs of the appeal proceedings limited to those costs incurred in contesting the appeal in relation to saved LP Housing Policy 7, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
14. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Jeyes

INSPECTOR