

# **REPORT OF THE DIRECTOR 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).

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2015/0543	1.1	Melbourne	Melbourne	5
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

20/12/2016

**Item**            **1.1**

**Reg. No.**        **9/2015/0543/B**

**Applicant:**  
**Dr Howard Joynes**  
**Broadstone**  
**Broadstone Lane**  
**Ticknall**  
**Derby**  
**DE73 7LD**

**Agent:**  
**Dr Howard Joynes**  
**Broadstone**  
**Broadstone Lane**  
**Ticknall**  
**Derby**  
**DE73 7LD**

**Proposal:**        **THE VARIATION OF CONDITION 2 AND REMOVAL OF  
CONDITION 17 OF PLANNING PERMISSION 9/2014/0725  
RELATING TO THE ERECTION OF A DWELLING AND A  
FORESTRY BUILDING WITH SOLAR PV ALONG WITH  
INSTALLATION OF ACCESS TRACK,  
HARDSTANDINGS, DRAINAGE POND AND CREATION  
OF GARDEN SPACE ON LAND AT BROADSTONE  
HOLT BOG LANE MELBOURNE DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**     **18/10/2016**

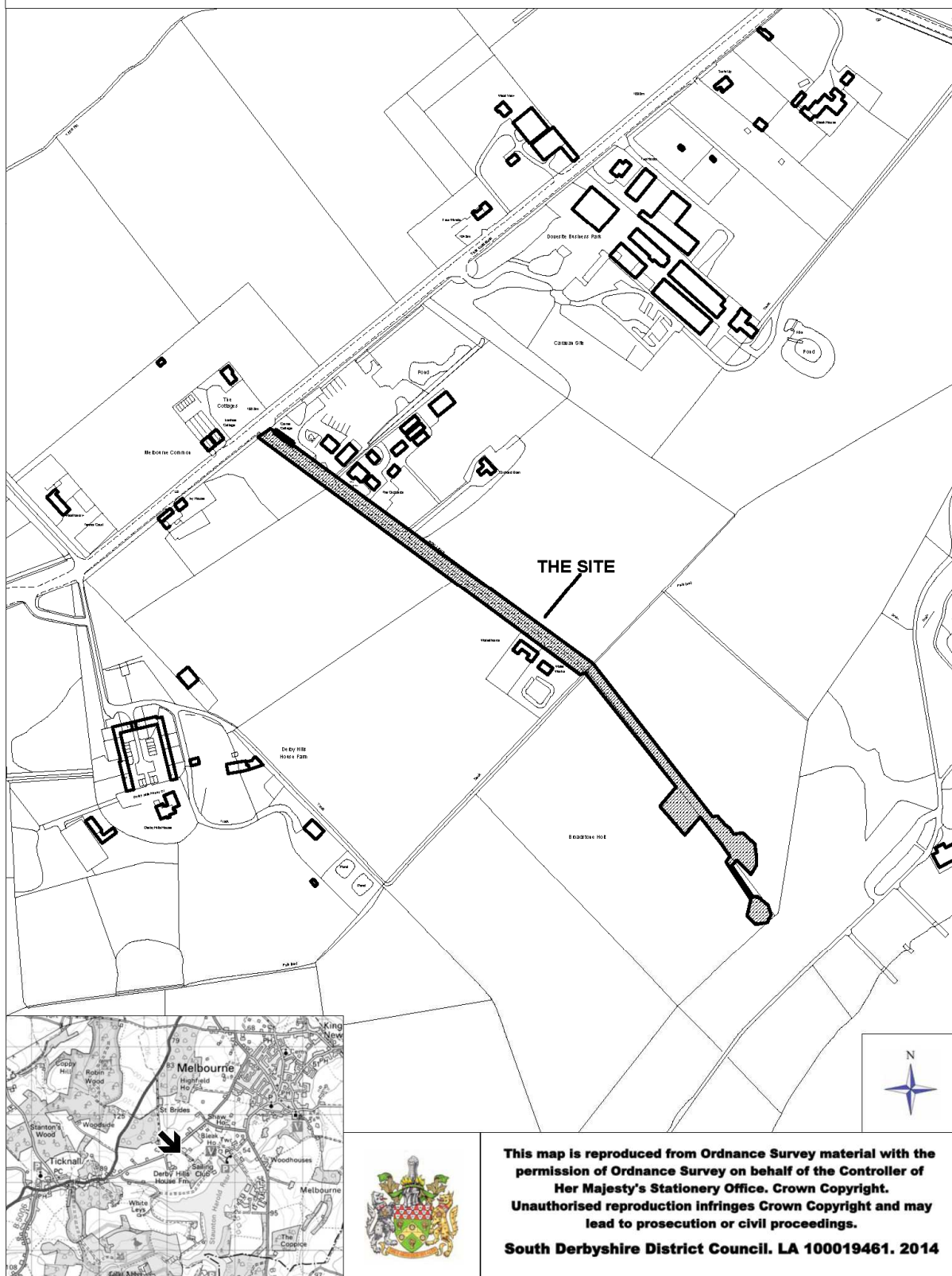
**Reason for committee determination**

The item is presented to committee as it is a development not in accordance with the Development Plan.

**Site Description**

The lies within Broadstone Holt, a semi-mature native mixed woodland planted under National Forest Tender scheme in 2007. The woodland is laid in patches with rides and clearings providing definition to each, presently managed by the applicant. Native species hedgerow mark the former edges of the fields now put to the woodland. The land slopes gradually from north to south, towards Staunton Harold reservoir, with the gradient increasing at the point where the dwelling exists. Beyond the site the land continues to water level before a rising densely wooded hill slope to the opposite side. Other emerging foothills exist around the reservoir providing some views towards the site, with the hill slope upon which the site is located rising further towards The Common to the north. Beyond the dam wall of the reservoir the valley snakes towards Melbourne and the River Trent beyond.

9/2015/0543 - LAND AT BROADSTONE HOLT, BOG LANE,  
MELBOURNE, DE73 8HU



Vehicular and pedestrian access is from Bog Lane to the north, with a public footpath crossing perpendicular to the Lane within the northern boundary of the aforementioned fields. A further permissive route has been established through the Holt, southwards to the reservoir. The sailing club building lies a short distance to the east on the shore of the reservoir, with the visitor centre and children's play area, overlooked by a former windmill, to the north-east. Isolated dwellings and commercial and agricultural buildings punctuate the upper half of the hill slope towards The Common, some partially or wholly masked from view by way of existing boundary trees or small copses. Most of these dwellings hug the line of The Common with one or two exceptions. Derby Hills Farm and Calke Abbey lie to the south, some distance from the site and close to the inlets to the reservoir. A cluster of industrial and utilitarian buildings sit to the east of the reservoir, partially screened by additional tree planting, and a circular concrete and glass block outlet tower characterises the upstream side of the dam wall.

## **Proposal**

It is proposed to vary condition 2 and remove condition 17 of the existing permission for the erection of a dwelling and agricultural building, along with associated ground works. Condition 2 controls the approved plans and deviations from those plans, as required in order to satisfy both Code for Sustainable Homes (CfSH) and Building Regulations requirements, have occurred. This application in effect seeks to regularise these relatively minor alterations. Condition 17 states:

*“The dwelling hereby permitted shall not be first occupied until a verification report prepared by a suitably qualified person demonstrating the proposal has achieved Level 6 of the Code for Sustainable Homes and Passivhaus standards has been submitted to and approved in writing by the Local Planning Authority.*

*Reason: In order to monitor the actual performance of the dwelling against that envisaged through the design stage”.*

The basis for the removal of this condition is explained below.

## **Applicant's supporting information**

A Supporting Statement sets out the reasons why it has been necessary to seek the removal and/or variation of conditions. It reaffirms that the endeavour remains to deliver an exemplar building of contemporary architecture and secure the use and implementation of green technologies. None of the changes are due to a desire to reduce costs, and in fact the majority of them have involved increased expenditure. All of the changes, however, would serve to enhance the durability of the house and also reduce further the reliance on anything other than renewable energies and technologies.

In respect of the changes to the approved plans (condition 2):

- a V-prop has been introduced beneath the western first floor bedroom in order to satisfy Building Regulation requirements given alternative solutions would

have compromised the integrity of the insulation and made the fixing of the timber cladding practically impossible;

- the Siberian larch timber cladding has been exchanged for Canadian cedar as the former has proved susceptible to significant cupping and has a life expectancy of only 5 to 10 years, whilst the latter is completely resistant to cupping and has a life expectancy of at least 30 to 50 years.
- the plant room is some 50% larger than approved and is now accessed internally, but falls well within the building footprint retaining a substantial cantilever above. This increase in size was necessary given the plant required to service all of the approved green technologies simply did not fit in the approved space.

In respect of condition 17, it is noted that the CfSH has now been rescinded, but planning consents with conditions relating to this standard still fall within its remit. It is recognised that the permission was granted subject to compliance with paragraph 55 of the NPPF as a truly outstanding house which is both exemplary in architectural form and technically innovative (not either/or as the NPPF states). This continues to be the aim and evidence is provided to show that the dwelling has bettered the stipulated standards for energy efficiency, environmental impact and design stage Passivhaus, including an 'as built' EPC/SAP certificate confirming an energy efficiency rating of 114% (i.e. negative carbon). The difficulties in satisfying certain requirements of both Code 6 and Passivhaus are highlighted, with the standards written in such a way that one has to comply with each requirement to achieve a compliance certificate even though this quite often leads to a reduction in energy efficiency and an increase in environmental impact. Examples are provided as illustration:

- Code level 6 requires a flood risk assessment be undertaken for the plot, despite the development sitting in 22 acres of sloping woodland with the house itself being in excess of 15 metres above the reservoir surface level;
- all water (rain, grey and foul) is to be stored, or treated and stored, prior to flowing through a pico-hydro electricity generation unit, with an added ecological benefit of a balancing pond thereafter. The Code requires rainwater harvesting which necessitates the storage of water underground which is then pumped back up to service toilets, etc. leading to significant additional use of energy. Additionally the increased use of bleaches and detergents required in the use of harvested water would have a detrimental effect on the septic tank used to 'clean' the water prior to use in the use in the pico-hydro unit;
- compliance with the Passivhaus standards in respect of the insulated envelope at the column bases to the steel frame of the house led to a detail that Building Control rejected in terms of structural robustness;
- for the security credits under the Code, the Crime Prevention Design Adviser advised that the construction materials are quite different to most housing, and in some cases it would be difficult to meet the exact 'Secure By Design' criteria mainly due to the sheer size and high specification of the items (e.g. glazing panels), demonstrating a clear contradiction between the requirements of Passivhaus and Code 6;
- the design of the house is modelled around sustainable living and lifetime homes with fixtures and fittings commensurate with the exceptional design. Although there are 3 en-suites, only one bath is installed and it was intended

this be capable of accommodating facilities for the disabled; yet under Code 6 the bath size is restricted to reduce potential water usage compromising the ability to accommodate an electrically operated bath seat; and

- the credits allocated to the various items under Code 6 are irrational with it possible to achieve 4 credits for installing three 7 litre food recycling bins in a kitchen cupboard, yet for the entire array of renewable energy technologies being installed (creating more energy than required) only 2 credits are awarded.

It is advanced that all of their consultants have indicated that a single home in the countryside cannot comply with the requirements of Code 6 as it is geared towards larger scale housing developments. The applicant emphasises that removal of the planning condition would in no way reduce the standards being sought in terms of a distinctive architectural form and ground breaking technical innovations. The design would continue to provide excellent levels of insulation, minimise the effect of thermal bridges, enhance passive solar gains and internal heat sources, control indoor air quality through a whole-house MVHR system, and achieve excellent levels of airtightness.

### **Planning History**

9/2014/0725     The erection of a dwelling and a forestry building with solar PV along with installation of access track, hardstandings, drainage pond and creation of garden space – Approved October 2014.

### **Responses to Consultations**

The National Forest Company has no comments to make.

### **Responses to Publicity**

Melbourne Parish Council has no objection.

Melbourne Civic Society notes that the applicant has raised a number of highly technical points and they are in no position to either refute the case made or even to comment on these matters.

The Melbourne Footpaths Group objects for the following reasons:

- i) the original application was very controversial as it is outside of any settlement area and in the National Forest, conflicting with the Local Plan;
- ii) the grounds used for granting permission were under NPPF §55 casting this building as of “exceptional quality and innovative design”, with officers noting the evidence that the dwelling would meet level 6 for the Code of Sustainable Homes;
- iii) officers put much weight behind the opinion of OPUN who made highlighted the importance of the CfSH and Passivhaus standards, and it appears that officers have been deceived given the applicant now asserts a single home in the countryside does not and cannot be made to comply with the

requirements of Code 6 as the CfSH primarily relates to larger housing developments.

- iv) given this, how can the applicant's present consultants be relied upon in regards to their claims for the eco-credentials of the property; and
- v) the application was originally granted on flawed grounds and if it is not possible to construct the building to the standards originally required, work should be halted until a scheme is developed which can adhere to condition 17.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 1998 Local Plan (saved policies): H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland) and EV11 (Sites and Features of Natural History Interest).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H24 (Replacement Dwellings in the Countryside), H25 (Rural Workers Dwellings), BNE5 (Development in the Countryside) and BNE7 (Trees, Woodland and Hedgerows)

## **National Guidance**

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

## **Local Guidance**

- Housing Design and Layout SPG
- Better Design for South Derbyshire

## **Planning Considerations**

The main issue central to the determination of this application is whether the proposed changes to the conditions would compromise the design approach and eco-credentials of the dwelling to the degree where it would undermine the very



principle of this dwelling being allowed in the countryside, as an exception to prevailing policy. This is a rare time where the principle of development can be called into question under a section 73 application.

## **Planning Assessment**

### The principle of development

As noted under the original application, the site lies outside of any defined settlement boundary within open countryside where the adopted and emerging Local Plan policies only make limited allowance for housing development. None of the exceptions provide the scope for the proposal here, such that the proposal remains in conflict with the Development Plan. The previous assessment however had regard to paragraph 55 of the NPPF which draws a slightly wider allowance for isolated dwellings in the countryside, allowing for designs of “exceptional quality or innovative nature” [emphasis added] which provide an enhancement to the immediate setting. The exceptional quality and innovative nature of the dwelling here is what supported the principle of development previously, and hence it is this which provides an intrinsic link and test to assess whether the principle of development would remain acceptable if this application were granted. It should be noted that as the proposal was previously found to fulfil both sub-criteria of the paragraph 55 allowance, even if it were to now fail under one criterion it could still be deemed compliant with paragraph 55.

### Whether the proposal remains outstanding and/or innovative

The previous report noted *“it is the quality of the overall approach combined with the need for any new development in the countryside to be sensitive to its setting and have a light touch from a general sustainability standpoint, that has generally invoked the exception. The layout, hard and soft landscaping, scale, massing, height, orientation, construction makeup, performance, detailing and materials are all relevant.... The way the design facilitates low dependence on centralised energy sources or self-sufficiency for instance is also pertinent”*.

The building was previously found to be read more as an association with the water and woodland instead of being detached from other buildings on Bog Lane and The Common. It was agreed that the proposed vernacular responds well to the reservoir, with the existing sailing club building and water outlet tower on the dam wall providing design cues for this proposal. The horizontal emphasis was recognised with the timber boarding helping to assimilate the proposal within the woodland whilst the inclusion of local brick on the lower floor drawing in the historical vernacular to good effect. The proposed alterations to the plans and approved materials are relatively minor and do not undermine these previous findings. The V-prop not ideal, but it is placed along the line of the hedgerow so not to draw attention. The alternative cedar timber would revert to a uniform silver colour in a similar timeframe (within 3 to 5 years) and it has been machined to match exactly the profile of the larch cladding previously approved. The increase in the footprint of the plant room, providing a few extra square metres of floorspace, is considered to be a necessity in ensuring the dwelling functions as a ‘negative carbon’ dwelling. In simple terms, had the size of the plant room not been increased, some of the green

technologies would have had to be abandoned. None of these changes alter the “exceptional quality” badge which was previously attached to the proposal, and on this basis alone the application can be supported.

Notwithstanding this, the innovative nature of the dwelling remains by way of (amongst other things) solar gain, low energy fixtures and fittings, air tightness ensuring performance at Passivhaus standards, on-site energy generation including photovoltaics, a ground source heat pump, solar hot water heating and the pico-hydroelectric unit (which also necessitates the harvesting of all water discharges). It was previously noted that an eco-friendly solution was no longer a requisite to demonstrating innovative nature, but this dwelling continues to fly the flag. Despite the need to step away for the CfSH requirements; it remains a dwelling of Passivhaus standard and a negative carbon dwelling – generating more energy than it requires and feeding surplus back into the grid. This dwelling therefore remains as an exemplar in the UK as one of the first carbon negative individual dwellings to be built.

### Other matters

The impact on the character of the area and local landscape, effect on public use of the land, biodiversity impacts and highway and pedestrian safety were all found to be acceptable previously – subject to conditions where required. There has been no material change in circumstances to reach a different conclusion on these matters now.

### Summary

Whilst it might be less than ideal that a dwelling permitted as an exception to the rule has not been constructed quite as envisaged from the outset; this is not uncommon for such a bespoke and innovative design. Members may well have experience of similar projects where there needs to be an ever evolving response to unforeseen issues which can only be identified as the project itself progresses. Officers were alerted to these problems early on in the process as the mismatch between regulations and standards became apparent, and since then there has been a positive dialogue to ensure that each step off the marked path is not so far to end up at a different destination. The outcome is still a dwelling which is of both exceptional quality and innovative nature, fulfilling the requirements of paragraph 55 of the NPPF and assisting in inspiring others to elevate design quality.

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 hereby permitted shall be carried out in accordance with plans/drawings 13/10/00 Rev P, 13/10/01 Rev R, 13/10/02 Rev H, 13/10/20 Rev M, 13/10/21 Rev L, 13/10/10 Rev A (not in respect of floorplans), 13/10/11 Rev A (not in respect of floorplans) and 13/10/24; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt and to ensure the proposal acts to enhance the standard of architecture more generally.

2. The land known as Broadstone Holt, as outlined in blue on the appended location plan to this decision notice ref: 9/2014/0725, shall not be sold off or separately let from the dwelling and forestry building subject of this permission.

Reason: In order to ensure the long term management of the woodland is overseen by occupiers of the dwelling hereby permitted, by way of use of the forestry building also hereby permitted, in the interests of maintaining the woodland for long term public benefit.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling(s) hereby permitted shall not be altered, enlarged or extended; no hard surfaces, buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, the nature of the property and its long term energy and efficiency performance, having regard to the setting and size of the development.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; no forestry buildings shall be erected, extended or altered; no private ways shall be formed or altered; or other operations shall take place without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: In the interests of preserving the setting of the woodland and to ensure the building hereby permitted remains in an appropriate form suitable for the management of that woodland.

5. The forestry building hereby permitted shall be used solely for purposes associated with the management of the woodland, defined as Broadstone Holt and outlined within the blue line on the location plan appended to decision notice ref: 9/2014/0725, and not be sold or let separately to the dwelling hereby permitted.

Reason: To ensure the stewardship of the woodland remains associated with the dwelling hereby approved so to reduce future pressure for additional

buildings and/or dwellings, in order to protect the privacy of occupiers of the dwelling, and in the best interests of effective management of the woodland.

6. The car port and visitor parking space shown on the approved plans shall not be enclosed and remain unobstructed for the parking of vehicles.

Reason: To ensure that parking on the hardstanding adjacent to the dwelling is discouraged in order to ensure the design quality of the dwelling is not harmed when viewed from public aspects.

7. The alternative permissive routes through Broadstone Holt, as approved under condition 8 of planning permission ref: 9/2014/0725, shall be maintained and kept open, free of any obstruction to their use as such.

Reason: In recognition of the fundamental aim of the woodland and its very existence, noting that the development has led to the obstruction of a former permissive route.

8. The renewable energy technologies and rain/grey water harvesting and recycling incorporated into the development shall be maintained throughout the life of the development, including securing their replacement with equivalent technologies where those existing have reached the end of their useful lifespan. The pico-hydroelectric unit shall be installed and brought into use within 1 year of the date of this permission, and thereafter maintained in working order.

Reason: To secure a dwelling which provides more energy than it requires, averaged over an annual period, and to secure a carbon neutral or better dwelling.

9. The boundary treatments approved pursuant to condition 12 of planning permission ref: 9/2014/0725 shall be erected/completed in accordance with the approved details within 12 months of the date of this decision or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

10. The hard landscaping scheme approved pursuant to condition 13 of planning permission ref: 9/2014/0725 shall be completed within 12 months of the date of this decision. All planting, seeding or turfing comprised in the approved details of soft landscaping, including the compensatory area of tree planting shown on the approved plans (of a similar native mix to that already existing in the woodland and at a ratio of no less than 2:1 for each tree removed), shall be carried out no later than the first available planting and seeding season following the date of this decision; 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.

11. Other than that approved pursuant to condition 15 of planning permission ref: 9/2014/0725, no external lighting shall be erected or installed unless prior to its erection/installation precise details of the intensity, angling and shielding,

and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve the amenities of the area and prevent dark sky glow.

12. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the dwelling unless prior to their incorporation in the building details of the type, number, position and finish of such features have been submitted to and approved in writing by the Local Planning Authority. Any such features shall be incorporated in accordance with the approved details and thereafter maintained as such.

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

13. Space for the parking and manoeuvring of residents' and visitors' vehicles shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

#### Informatives:

Public Footpath 27 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve issues arising during the implementation of the original permission whilst allowing the development to proceed to a point where no further changes are likely to be required. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

20/12/2016

**Item**            **1.2**

**Reg. No.**        **9/2016/0001/U**

**Applicant:**  
**Mr Daniel Hill**  
**Poplars Farm**  
**11 Derby Road**  
**Foston**  
**DE65 5PT**

**Agent:**  
**Mr Daniel Hill**  
**Poplars Farm**  
**11 Derby Road**  
**Foston**  
**DE65 5PT**

**Proposal:**        **CHANGE OF USE OF PART OF AGRICULTURAL  
BUILDING FOR USE AS DOG BREEDING KENNELS  
AND INDOOR EXERCISE AREA AT POPLARS FARM 11  
DERBY ROAD FOSTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**     **09/03/2016**

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

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

#### **Site Description**

The application site is located on the northern side of Derby Road in the countryside and is the first of a small cluster of properties in the locality when approaching from the east. The site is a modest farm containing functional farm buildings of steel framed construction and more traditional, single storey red brick construction. The farm buildings are located to the north of the main dwelling with a substantial farm building on the western side of the site. There are other separate residential properties immediately to the west and also further away to the north on Sutton Lane. The site is located within Flood Zone 3 as defined by the Environment Agency flood maps but does benefit from protection from flood defences.

#### **Proposal**

The application follows refusal of applications 9/2014/1159 & 9/2015/0748 identified in the planning history below. This application differs insofar as the proposal to retain dog boarding has been omitted the proposal seeks to use the rear part of a steel framed building behind the farmhouse for dog breeding. The plans show the provision of 16 blockwork pens inside the building with a food preparation area and

9/2016/0001 - 11 Poplars Farm, Derby Road, Foston, DE65 5PT



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indoor exercise area. A new acoustic suspended ceiling is shown along with cooling and ventilation plant. External cladding to the building is also proposed.

Although there has been preceding unauthorised use for dog related uses at the site no breeding is currently taking place in the application building. Therefore this application is not retrospective insofar as this specific proposal to use the rear building for the breeding of dogs is concerned.

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

The application is accompanied by a noise assessment, which applies the following strategy:

- Environmental noise survey to determine the prevailing noise levels around the site.
- Predict noise levels from the development at the nearest residential properties.
- Assess the impact of noise with reference to BS 8233:2014.

The noise report recommends various noise control measures, including internal insulation and sealing of gaps, extensions of existing 2m high close boarded fences and control over outside exercising hours.

The report concludes that, with the recommended noise control measures, noise emissions from the development can be readily controlled to the levels suggested in BS 8233:2014 at the nearest noise sensitive properties.

### **Planning History**

9/2011/0727 – the erection of an agricultural feed silo – approved

9/2011/0938 - the erection of an extension to an existing cattle barn to provide a covered feed and bedding storage area – approved

9/2012/0957 - the erection of a feed and bedding storage barn – approved

9/2014/1159 - Retrospective application for the change of use of farm buildings from agriculture to dog boarding and breeding kennels and associated external alterations to buildings.

9/2015/0748 - Retrospective application for the change of use of farm buildings from agriculture to dog boarding and breeding kennels and associated external alterations to buildings

### **Responses to Consultations**

The County Highway Authority has no objection to the proposals subject to conditions requiring the provision of the appropriate visibility splays at the access and the provision and maintenance of parking and turning space.

The Environment Agency has no objection to the proposals but includes advisory notes.

Severn Trent Water Ltd has no objection in principle but seeks a condition to secure details of surface and foul water drainage.



The Environmental Health Manager has no objection in principle provided that the specification of the air conditioning and acoustic door can be agreed by condition. The County Flood Risk Management Team comments that the proposal falls outside its scope.

### **Responses to Publicity**

Hatton Parish Council objects as follows:

- a) Because of the large number of dogs involved there would be noise pollution to neighbours.
- b) There could be pollution of the nearby watercourse from dog waste.
- c) It is understood that dogs would be bred for testing purposes. Even if this is not the case the establishment is likely to attract animal welfare activists, causing further amenity problems. If permission is granted stringent conditions should be applied to reduce the number of dogs and to avoid breeding for testing purposes.

11 objections from residents have been received raising the following concerns:

- a) Dog breeding is not in the public interest given the number of unwanted and abandoned dogs.
- b) There is a possibility that breeding dogs could be from inappropriate sources, or could be affected by transmittable health problems.
- c) The application would be detrimental in animal welfare terms and the premises are not adequate to provide proper conditions in this regard.
- d) There could be adverse public health implications as a result of pollution from dog waste, including to nearby schools.
- e) The facilities to dispose of dog waste may not be adequate.
- f) Existing surface water flooding could become contaminated as could local watercourses.
- g) There would be noise pollution and disturbance to residents.
- h) Noise could also affect the well-being of nearby dogs.
- i) The proposed noise mitigation measures would not be adequate.
- j) A separate licence must be lawfully granted.
- k) The use has been ongoing despite previous refusals.
- l) There is already noise and disturbance from dogs kept at the site and it is unlikely that the mitigation measures would be implemented and monitored.
- m) Unauthorised use for dogs has been undertaken since 2014.
- n) There could be a need for external lighting which could cause pollution.
- o) It may not be possible to provide adequate ventilation to the premises.
- p) The ventilation system may cause pollution and noise.
- q) The plans show windows.
- r) There are no measures proposed to prevent rodent/pest infestation.
- s) The visibility splay to the access would require the use of third party land.
- t) Escaping dogs could be a nuisance to neighbours.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2, S6, E7, SD1, SD2, INF2
- 1998 Local Plan (saved policies): EV1

### **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE5

### **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Section 1 (Economy)

Chapter 3 (Supporting a prosperous rural economy)

Section 4 (Promoting sustainable transport)

Section 10 (Meeting the challenge of climate change, flooding etc.)

Section 11 (Conserving and enhancing the natural environment)

Paras 186 & 187 (Decision-taking)

Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)

Para 196 & 197 (Determining applications)

Paras 203-206 (Planning conditions and obligations)

Annex 1 (Implementation)

National Planning Practice Guidance

ID7 (Flood risk) ID30 (Noise) ID21a (Conditions) ID31 (Light) ID34 (Water & quality)

### **Planning Considerations**

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

- The principle of development
- Impact on amenity
- Highway safety
- Flood risk and water quality

### **Planning Assessment**

#### The principle of development

By making use of an existing building in a rural area the proposal meets one of the core principles in the National Planning Policy Framework to reuse existing buildings, underpinned by Section 3 of the Framework which similarly encourages such development in rural areas. Local Plan Policy E7 and Part 2 Local Plan BNE5 are

consistent with the NPPF in this regard. As such the proposal is acceptable as a matter of principle.

### Impact on amenity

The nature of the development is such that there is the potential for adverse impacts to affect the living conditions of neighbours. Paragraph 17 of the Framework seeks a good standard of amenity for all existing occupants of land and buildings and Para 123 seeks mitigation and reduction of adverse effects on health and quality of life arising from noise from new development. This is also the objective of Local Plan Policy SD1. The development could affect neighbours by noise, odour, water pollution and light and there have been previous refusals which included dog boarding, with the breeding enterprise situated in another building on the site. This application therefore needs to be considered wholly on its own merits.

In terms of noise, the Environmental Health Manager has considered the site circumstances, the noise report and proposed mitigation and has concluded that the use can be accommodated without causing undue harm to neighbours by noise. However he considers that further details of the air conditioning equipment and acoustic door are required to ensure that the impacts are acceptable in this regard. The recommended condition would secure the submission of these details and the implementation of mitigation measures prior to commencement.

The potential for light pollution, identified by objectors, could be controlled by condition.

It is recognised that a planning application has now been received for the erection of 400 dwellings on a strategic site allocated for residential development in the approved Local Plan Part 1 across the road from the application site. However, future occupiers of those dwellings would occupy properties which have been designed to take account of the existing noise situation including the current kennel activity, albeit at less than capacity activity, as well as the road noise including Derby Road which lies in between. The new properties would be further away than other, closer neighbours although directly opposite the exercise yard. As such occupiers of those properties would be unlikely to be any worse off than existing neighbours.

### Highway safety

The site is accessed from Derby Road (A516) which at the point of the access has a 40mph speed limit. The proposals would utilise the existing access that serves the farm rather than the narrower drive which serves the house, the two being side by side but independent of each other. On the advice of the County Highway Authority adequate visibility could be achieved over controlled land and adequate parking and turning space would be available.

Para. 32 of the National Planning Policy Framework states, amongst other things, that when making planning decisions account must be taken of whether safe and suitable access to the site can be achieved for all people and that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Local Plan Policy INF2 seeks safe

and convenient access and appropriate parking. In the light of the Highway Authority's opinion these policy tests are met by the application proposal.

### Flood risk and water quality

The application site lies within Flood Zone 3. Because the application relates to a use in the same vulnerability category as agriculture, and does not involve new building, the Environment Agency defers to its published Standing Advice for such development.

Para 109 of the Framework and Local Plan Policy SD1 seek to protect the water environment and to prevent unacceptable risk. Concerns raised about pollution of the water environment could be addressed by the imposition of the conditions recommended by Severn Trent Water Ltd, to secure details of the means of disposal of foul and surface water. This is underpinned by the Environment Agency having separate permitting control over the discharge of wash waters from the site (trade effluent) if these cannot be accommodated by the public sewers or sealed tank. The Agency's permitting regulations also control the disposal of solid waste from the establishment.

### Conclusion

The NPPF has a presumption in favour of sustainable development but there are three strands of sustainability - economic, social and environmental. There would be some economic benefit for the applicant by virtue of farm diversification and modest social benefits. The application has the potential to cause harm to amenity and the water environment. However the Framework is clear in Paragraph 203 that such impacts should be made acceptable by planning condition where possible. The recommended conditions would provide the necessary environmental safeguards such that the development is acceptable on balance, such that the proposal satisfies the relevant policy tests.

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 amended floor plan and elevation drawings received on 10 August 2016, and the location plan and Site Entrance Visibility Splay plan submitted with the application, unless as otherwise required by condition attached to this

permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. The use shall not commence 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 use commences.

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

4. The acoustic doors and ventilation system shall be installed before the use commences, in accordance with full details and specifications which shall have previously been submitted to and approved in writing by the local planning authority. The acoustic doors and ventilation system shall then remain in place for the lifetime of the use.

Reason: To ensure that adequate measures are in place to mitigate the impact of noise before the use begins in the interest of the amenity of the occupiers of nearby dwellings.

5. Notwithstanding Paragraph 4.2 of the submitted Environmental Noise Report, before the use commences a schedule of Noise Control Measures for the application site shall be submitted to and approved in writing by the local planning authority. All approved measures shall be put in place before the use commences and shall be retained and adhered to for the lifetime of the use.

Reason: To ensure that adequate measures are in place to mitigate the impact of noise before the use begins in the interest of the amenity of the occupiers of nearby dwellings.

6. Prior to the commencement of the development hereby permitted the applicant shall confirm in writing to the Local Planning Authority, as a minimum, that:

(1) Floor levels of the proposed development will be set no lower than existing levels; and

(2) Flood proofing of the proposed development has been considered by the applicant and incorporated where feasible and appropriate.

Any flood proofing incorporated shall thereafter be retained in situ and/or maintained as such.

Reason: To ensure that it is possible to incorporate important flood avoidance features including internal floor levels before the development begins In the interests of flood protection.

7. Prior to commencement of the use hereby permitted, the land in advance of the sight lines measuring 2.4m x 120 m, as shown on the submitted Site Entrance Visibility Splay plan, shall be cleared and thereafter retained free of all obstruction to visibility over a height of 1 metre (600mm in the case of vegetation) above the adjoining carriageway level.

Reason: In the interests of highway safety.

8. Prior to commencement of the use hereby permitted space shall be provided within the site curtilage for the parking and manoeuvring of vehicles, as shown on the submitted Site Entrance Visibility Splay plan and shall thereafter be retained free of any impediment to its use for these purposes.

Reason: In the interests of highway safety.

9. Prior to installation a scheme for the provision of any external lighting shall be submitted to and approved in writing by the local planning authority and shall be implemented strictly in accordance with the approved scheme.

Reason: To preserve amenity.

Informatives:

For the avoidance of doubt this permission relates to the use of the rear part of the barn shown within the application site delineated by a red line on the submitted location plan.

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

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

The Environment Agency advises:

The wash waters from the kennels are classified as commercial/trade effluent and may need to be Permitted as such before being discharged.

If the wash waters are directed to the foul sewer, permission should be sought from the sewage undertaker.

Environmental Permitting Regulations (2010) England and Wales

If the wash waters are directed to a private sewage treatment plant, a Permit issued from the Environment Agency will be required. This should only be considered as a last option and only if appropriate treatment and flow balancing are provided. The plant will require routine maintenance to be carried out under a contract with the supplier (specialist knowledge is required to ensure correct operation to meet permit conditions). Because the high strength of the effluent may affect the adequacy of the treatment, advice should be sought on the design, installation and operation of this

type of plant.

If it is directed to a sealed cesspool, it will not require a Permit. The contents of the cesspool can either be removed by a licensed contractor for off-site disposal or be disposed of by irrigation to agricultural land (subject to specific criteria).

Use of a septic tank is not appropriate for such wash water.

Solid waste (e.g. faeces, animal bedding) should be collected, bagged or otherwise suitably contained and disposed of to a suitably permitted facility by a registered waste carrier.

In addition, the producer of the waste has a Duty of Care to ensure that it is stored and disposed of in accordance with all appropriate legislation. In practical terms, the producer should ensure that:

- the waste is disposed of at a suitably permitted or exempt facility;
- the waste does not escape from control (including liquor runoff) by ensuring that it is adequately contained or packaged for transit;
- a detailed description of each waste type (including the quantity) within each load is given on the waste transfer note (copies of these notes should be kept for 2 years);
- anybody collecting the waste is registered as a waste carrier.

The application site does lie within Flood Zone 3, according to Agency maps. However, the proposal is for a change of use, with no increase in built development proposed. According to Table 2: Flood Risk Vulnerability Classification in the Flood and Coastal Risk section of the Planning Practice Guidance to the National Planning Policy Framework, the proposed use is the same flood risk vulnerability classification as the existing use. From a flooding perspective therefore, the proposal is covered by the Agency's Flood Risk Standing Advice.

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

**Item**            1.3

**Reg. No.**        9/2016/0288/OS

**Applicant:**  
Trine Developments Limited  
Watling Court  
Orbital Plaza  
Watling Street  
Cannock  
WS11 0EL

**Agent:**  
Mr Graham Fergus  
First City Limited  
19 Waterloo Road  
Wolverhampton  
WV1 4DY

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE DEVELOPMENT OF UP TO 72 DWELLINGS TOGETHER WITH ASSOCIATED ACCESS, OPEN SPACE, LANDSCAPING, INFRASTRUCTURE AND FACILITATING WORKS INCLUDING DEMOLITION ON LAND AT SK3119 0360, SK3019 9268 AND 61 COURT STREET WOODVILLE SWADLINCOTE**

**Ward:**            **WOODVILLE**

**Valid Date:**      **08/04/2016**

*Members will recall this item was deferred at the meeting on 6 September 2016 with a series of questions posed in respect of highway and transport impacts arising from the proposal, and the suitability of the mitigation proposed. The report remains as originally published save for additions made in italics.*

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

The item is presented to Committee at the request of Councillor Steve Taylor because local concern is expressed regarding a particular issue, and because this is a major application having received more than 2 objections.

#### **Site Description**

The site is located within the Swadlincote Urban Area, comprising some 3.54ha of predominantly sloping pasture land adjacent to Swadlincote Woodlands. A dormer bungalow at 61 Court Street with associated garden, garages and outbuildings is included, as is an access track to the side and rear which facilitates access to a telecommunications mast and an area of Council owned public open space (POS).

The slope of the site is most pronounced north of this POS where levels fall by some 8 metres. The northern boundary is demarked by hedgerow beyond which there is a





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**South Derbyshire District Council. LA 100019461. 2014**

public footpath (Swadlincote Footpath 22) and watercourse. Beyond this is a residential estate, erected around the 1990s. The western boundary is lined by mature hedgerow and the woodland of Swadlincote Woodlands. To the south, away from the POS, are residential properties along Court Street and Calwich Close, whilst the main eastern edge of the site leads onto further pasture land.

## **Proposal**

The existing bungalow and outbuildings would be demolished to facilitate access for the erection of up to 71 dwellings (reduced from the 80 originally proposed) along with public open space, drainage infrastructure and landscaping. The application is made in outline with only access to be considered in detail. Notwithstanding this, an indicative layout plan shows a central spine road running generally south to north with small cul-de-sacs in places. A spur in this road would allow for access to land to the east. The dwellings are indicatively shown as a mix of 2, 3 and 4 bed properties, with 30% for affordable housing purposes.

## **Applicant's supporting information**

The Planning Statement was written and submitted prior to the adoption of the Local Plan Part 1 and therefore the discussion regarding those policies is slightly out of date. However the report recognises the issues that would be apparent, particularly with the likely increase in traffic from the development; but notes that these issues have been adequately addressed in the Transport Assessment. The statement recognises the benefits, with the contribution to local housing and the infrastructure that would be delivered as part of the development.

A Design and Access Statement demonstrates that the development can address the site constraints and can successfully integrate with the existing area and local community in a positive way. Public and private realm would be clearly shown through the layout and use of materials, and would improve connectivity and provide more access to public transport modes.

A Statement of Community Involvement sets out that the applicant has consulted various parties and local residents which have been considered in the evolution of the scheme and, where reasoned and justified, their aspirations and/or requirements have been incorporated into the design approach.

The Transport Assessment and a Transport Addendum (both referred to herein as the TA) notes the site would be served by an extension to Frederick Street creating a crossroads with Court Street. The TA has considered the current highway operation network and its suitability in terms of accommodating the likely traffic created by the proposal, as well as the highway safety record of the highway and the accessibility of the site to local facilities. The TA has also demonstrated the trips generated would be low compared to the existing background traffic flows and the proposed and existing traffic flows can be safely and satisfactorily accommodated on the highway network.

*A Technical Note notes the County Highway Authority's response to clarify the likely timing of the Swadlincote Regeneration Route. They also note the view that traffic*

*from the proposal would travel via the Clock roundabout and to help understand the implications of this issue in more detail, traffic surveys on the approaches to the Clock roundabout have been commissioned and an improvement scheme designed. Aside from a design, capacity calculations for both the AM and PM peak periods have been made, a swept path analysis of an articulated lorry on the proposed improvements has been undertaken, and Road Safety Audit Stage 1 has recognised and accepted these improvements recommended.*

An Arboricultural Survey and Arboricultural Impact Report notes retention of good condition trees should be a priority whilst even some of the poorer quality trees should be considered for retention. The proposed works would require the partial removal of three hedgerows and the removal of 3 poor-category trees. The development would however have a minimal impact on retained trees and remaining hedgerows, and to minimise the amount of harm to root systems and canopies during construction periods, tree protection barriers shall be erected. Proposed planting should consist of native planting.

The Ecology Survey confirms there are no European sites within 5km of the site, there are no statutorily designated sites within 2km, and would it have no material impact on an SSSI and five non-statutory sites within 1 km of the site. The existing hedgerows and scattered trees are of valuable habitat importance. It is noted there is the potential for bats to roost within the existing bungalow and hedgerows and birds to roost in the scattered trees and hedgerows. There is no evidence of Great Crested Newts with the site but there is the potential for reptile species within the adjacent woodland area.

Bat Surveys were carried out in light of the Ecology Survey findings. It is noted that demolition of buildings would be required to facilitate the development. The daytime survey confirmed that the bungalow offers a good opportunity for roosting bats and recommends emergence surveys. There is no evidence of roosting bats with the garage and outbuildings. During nocturnal (emergence) surveys, it was clear that the bats were not existing/entering buildings but were using the site for commuting and foraging. A dawn survey confirmed there was no emergence activity with a small amount of foraging activity to the south-west of the property. Lighting near to hedgerows should be kept to a minimum as these are clearly important for the commuting bats.

A Flood Risk Assessment confirms the site falls within Flood Zone 1. Infiltration drainage may be acceptable on site depending on geological conditions. Outfall would be limited to greenfield rates. Details from Severn Trent outline two potential options for foul water drainage; a potential gravity connection across third party land to the north, but here the adjoining sewers are subject to adoption; or a pumped discharge to the south/east of the site. Modelling would be required to confirm if off-site improvements would be required (secured under separate legislation). In summary, the proposed site is at a low risk of flooding and has a viable means of drainage.

A Visual Impact Assessment states the site character would permanently change from open equestrian fields to permanent residential. The level of direct landscape effect would be moderate, with Swadlincote Woodlands ensuring that the effect does

not extend across the wider landscape. This level of direct and indirect landscape effects is not considered sufficient to justify withholding permission. The most significant visual effect would be experienced through the construction period which would be temporary, but even then it is apparent there are limited views of the site other than glimpse views from one location on the A511, between houses on the estate to the north, and at close proximity when passing the site on the public footpath.

The Archaeological Assessment finds there are no designated archaeological sites (scheduled monuments) located within the site or 1km of the site. There are non-designated heritage assets within the site which reflect the industrial landscape surrounding the site. In addition, ridge and furrow is well preserved along the centre of the site but do not form part of a complete open field system. On the basis that there are no other elements of medieval landscape feature, this is considered to be of local significance and indicates that the site has remained on the peripheries of the settlement. The assessment has shown a low potential for archaeological interest and that any local significance should not preclude development.

The Ground Condition and Coal Mining Report notes there various ground related issues that could affect development of the site. These are coal mining legacy where there could be unrecorded workings; the topography of the site for structural stability of the development; and potential for contamination off-site influencing receptors being introduced to the site. It is considered that a Phase II site investigation is required in order to provide sufficient information to facilitate the engineering design and gas mitigation approach to the site.

### **Relevant Planning History**

There is none relevant to this site, but there is a pending application for the erection of up to 44 dwellings on the land to the east of the site, accessed from Burton Road (the A511). A permission for a further 14 dwellings off Court Street expired without implementation recently.

### **Responses to Consultations**

The County Highway Authority notes the Transport Assessment (TA) as amended by way of further drawings and an addendum. They make particular comment that the Highway Authority does not necessarily 'agree' its content or concur with every detail, but it is not considered there is evidence to suggest that the conclusion would differ if the applicant devoted resources to further amending the details contained therein. Swept path diagrams for the Frederick Street/A514, Bernard Street/A514 and Granville Street/A511 junctions demonstrate that the situation is less than ideal at the Frederick Street and Granville Street junctions, insomuch as delivery, service and emergency vehicles would overrun the white lining onto the opposite carriageway when entering and leaving the junctions. This is already an existing issue but the proposed development would increase the number of such movements. However the number of times that this would occur would be insufficient to justify the refusal of the proposal, although additional traffic management measures – predominantly to control parking, during and/or after the development takes place, are considered necessary. These would take the form of Traffic

Regulation Orders funded by financial contributions of £15,000 towards three such Orders under a Section 106 Agreement. The TA analyses the capacity of the above junctions and concludes that they would operate within capacity with the development in place. The capacity of the Clock Island is also assessed and it is indicated that the island currently operates above capacity at peak times and, in future years, delays at the roundabout would increase. With the development in place delays would increase further, and these cannot be regarded as marginal, with traffic having an additional detrimental impact on the efficient operation of this junction. The applicant indicates a willingness to make contributions toward mitigating this impact, and it requested that sums be secured for the early implementation of the Swadlincote Regeneration Route (SRR) which would deliver a consequential reduction in flows through the junction. Contributions have been calculated on the basis of the cost of delays at the roundabout and equate to the sum of £584.16 per dwelling. Accordingly, a contribution of £41,475.36 is requested through a Section 106 Agreement. Based on the above comments, the Highway Authority does not consider that objections to the development could be sustained and, therefore there are no objections subject to financial contributions as outline above and conditions to secure the acceptable access detail and appropriate layout and control of the street network within the site.

*In response to the deferral of the application, officers wrote to the County Highway Authority posing the following questions:*

- i) what is the position of the Highway Authority if the SRR does not proceed or cannot be secured;*
- ii) what is the anticipated timetable for application, detailed design and delivery of the SRR;*
- iii) how is the SRR to be funded so to deliver it in line with the above trajectory; and*
- iv) what alternatives exist to mitigate the impact should the SRR not proceed?*

*In response the County Highway Authority notes the applicant considers that the increase in the queue lengths at the Clock Island “cannot be seen as material” or “regarded as raising any cause for concern”, but they consider that the impacts may be more significant. However, it is the degree of the significance which is relevant. As accident data has not revealed any trends or features of the highway that are contributing towards collisions; the impact, in the form of delays, would be more likely to affect economic and environmental factors, which would, though, still require mitigation. They also note that the potential for increased delays resulting from the development were obviously considered sufficient for the applicant to indicate a willingness to offer contributions towards off-site mitigations, including the SRR. Both the Highway Authority and the Council have previously been content to accept the principle of accepting contributions from development in the vicinity in partial contribution towards mitigation works. These include Darklands Road/William Nadin Way, Broomy Farm and Butt Lane/Hepworth Road; and the “lozenge” improvements to the Clock Island were proposed under the Broomy Farm development, as possible alternative mitigation. Nonetheless the Highway Authority remains committed to facilitating the provision of the SRR and anticipates the submission of a planning application for the SRR imminently with detailed design to follow over the remainder of the 2016/17 financial year. The SRR also forms part of the Local Enterprise*

*Partnership's (LEP) submission to Government for its third Growth Deal, with successful projects funded during the 2018/19 and 2020/21 years, and they have no reason to believe that the bid will not be successful. Irrespective of whether the funding is sourced from the LEP, some other public source, developer contributions or a combination of all three; there will inherently always be an element of risk and competition in securing funding streams. However, this is not seen as any reason to abandon accumulating funds towards network improvements.*

*The County Highway Authority also notes the applicant's "lozenge" proposal for the Clock Island, but opines that any capacity generated by the proposed works would be taken by the traffic generated by the Broomy Farm development, with no remaining capacity to accommodate additional development. As such, the scheme could not be used to mitigate the traffic generated by two developments.*

Peak and Northern Footpaths has no objection provided that the full width of Swadlincote Footpath 22, which runs along the northern boundary of the site, remains open and unobstructed at all times.

Severn Trent Water Ltd has no objection subject to a condition for foul water drainage.

The Lead Local Flood Authority notes that at this stage a ground investigation is not available to demonstrate the drainage hierarchy, although this could be done post consent and inform a detailed drainage strategy secured by condition. In addition the FRA advances a restricted discharge rate which is not appropriate, but again this can be addressed through condition. It is also recommended that any swale/attenuation pond that a sufficient easement be provided for maintenance.

Natural England has no objections and recommends their standing advice be used for assessing impacts on protected species, and that biodiversity enhancements be secured where possible.

The National Forest Company seeks 0.7ha of woodland planting to accord with policy, but note there are no details in the submission on how this will be met. However with 0.91ha of open space proposed in a position next to Swadlincote Woodlands, the planting could form an extension to the woods if suitably designed. This is notwithstanding the need to also accommodate an attenuation basin. The expected amount of National Forest planting could therefore be accommodated if it is suitably designed at reserved matters stage, and the NFC considers that this should be secured by condition.

Derbyshire Wildlife Trust (DWT) notes the site comprises amenity, improved and semi-improved grassland, hedgerows (native and ornamental), scattered trees and scrub, tall ruderal vegetation and a building. Survey work confirms there is no evidence for reptiles and great crested newt on the site. The bat survey work confirms no roosting bats are present, however foraging and commuting activity was noted over the site. It is considered a bat roost is in the local area, but not within the buildings on site. Badger surveys have confirmed badgers setts nearby are in use and the badgers use the site foraging and commuting. As a result appropriate protection zones, green corridors and mitigation during construction works is

recommended through condition. Furthermore if works do not commence by June 2017, updated bat and badger surveys would be required.

The Development Control Archaeologist notes the site has entries on the Derbyshire Historic Environment Record. The site also contains earthwork ridge and furrow. In terms of below-ground archaeology the site has a low background potential for previously unknown remains. Given the relatively small extent of the site, the lack of indicators for prehistoric activity in the vicinity, and the unfavourable topographic situation; further work to archaeologically evaluate the site as a whole is not justified. However there are two areas with potential for post-medieval/industrial interest, these being in the south-western corner where a building shown on the earliest available mapping perhaps represents a post-medieval farmstead pre-dating the industrial development of the area; and a former engine house in the north-western part of the site, perhaps associated with the contemporary extraction pits or with the colliery activity to the west. The medieval ridge and furrow earthworks (higher end of 'local importance') would be destroyed by the proposed development and in determining the application a balanced approach in weighing this harm to an undesignated heritage asset against benefits of the development proposals should be made. If permission is recommended, then a scheme of archaeological excavation and recording should be secured by planning condition. The western hedgerow alongside the woodland has also been considered against the 1997 Hedgerow Regulations for its importance, but the evidence is lacking in demonstrating it qualifies as such.

The Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment (CMRA) that coal mining legacy potentially poses a risk and that intrusive site investigation works should be undertaken in order to establish the exact situation. This should be secured by condition along with appropriate remedial works where necessary.

The Contaminated Land Officer notes the site is within influencing distance of historical features which could present hazards during the development. It is recommended that further intrusive site investigation be secured by condition, along with remediation/mitigation as necessary.

The Pollution Control Officer requests conditions to control noise, dust, air quality and hours of deliveries and works during the construction phase.

The Strategic Housing Manager seeks provision of 30% affordable housing in a mix of 2 and 3 bedroom dwellings (in a 68:32 rent to shared ownership tenure) to be spread across the site in clusters of no more than 10 dwellings. On the maximum number proposed, this would be 21 dwellings. Regard has been given to local need in the area and that, due to the welfare reforms, there is currently no demand for 2-bed flats.

The County Planning Policy Officer notes that infant and junior schools do not have the capacity to accommodate the additional pressure on places from this development and seek contributions:

- £68,394.06 for 6 infant places at Woodville Infant School; and
- £91,192.08 for 8 junior places at Woodville Junior School.

The NHS Southern Derbyshire CCG notes that the 5 practices potentially affected by the proposals are operating at capacity and a contribution of £27,388.80 is requested.

## **Responses to Publicity**

5 (increase of 1 since the last report) objections have been received raising the following concerns:

- a) there is not a need for the (affordable) housing given existing sites with permission or being built;
- b) the dwellings would not be affordable given their likely price;
- c) volume of traffic the proposal would generate;
- d) impacts on the Clock Island and exacerbation of existing safety issues there;
- e) the Clock Island must be improved;
- f) impact on local schools and health facilities, which are nearing or at capacity with little or no scope to expand;
- g) could stretch facilities further forcing residents to shop elsewhere due to lack of parking;
- h) dentist surgery would become overcrowded;
- i) the TA fails to consider congestion on Court Street, Bernard Street, Granville Street and Frederick Street;
- j) capacity of junctions onto the A514 and A511;
- k) existing on-street parking in the vicinity poses a hazard and prevents emergency and service vehicle accessing easily;
- l) risk to pedestrian safety;
- m) access issues during the course of construction and for refuse/service vehicles thereafter;
- n) ecology surveys completed outside of optimal survey time;
- o) inadequate surveys in respect of bats, with potential for a roost to exist in the bungalow;
- p) potential for the development to disturb the habitat/wildlife in the woodland;
- q) loss of hedgerows on the site;
- r) the development would be contrary to the Council's aim of retaining green spaces within settlements;
- s) loss of privacy/overlooking from the dwellings, especially given rising land levels;
- t) overshadowing from dwellings/trees;
- u) detrimental to the quality, character and amenity value of the area;
- v) *impact on the quality of life;*

Councillor Steve Taylor has considerable concern of the potential impact of this application on the local area. Principally the key problem envisaged is its location and lack of access to the main highway network. A development of this size should not rely on the existing street network and access would be reliant on a route along Court Street/Granville Street to a very poor current access on to Burton Road that has poor visibility and is normally congested. The route to Burton Road also includes a junction and congestion as a result of on street parking on a terraced street. The other route to Swadlincote Road along Frederick Street includes a crossroads – a



narrow junction that has poor visibility and is also usually congested. It is envisaged that potential residents would use Bernard Street to Swadlincote Road, further from the proposed site but an alternative in congestion towards Tollgate Island. This road is normally double parked along its length and only provides single file access. For these reasons alone a development of this size is not appropriate at this location. In Councillor Taylor has sought clarity on the prospects of the SRR following the Council's decision not to engage with the County on devolution, and the prospective infrastructure projects that could come with that. Accordingly he encourages officers to seek clarification as he does not believe applications can continue to be approved on the assumption it will happen. Should the application be approved however it is expected that normal health, education and recreation contributions be made alongside a contribution to the SRR.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): EV7 (Open Land, Swadlincote), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE8 (Trees, Woodland and Hedgerows), BNE9 (Local Green Space) and BNE11 (Heritage).

## **National Guidance**

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

## **Local Guidance**

- Housing Design and Layout SPG
- Section 106 – A Guide for Developers

## **Planning Considerations**

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

- Principle of development;
- Infrastructure contributions and affordable housing;
- Highway impact and connectivity;
- Biodiversity;
- Cultural heritage;
- Flood risk;
- Visual impact; and
- Design and amenity.

## **Planning Assessment**

### Principle of development

The site is well related to existing services and facilities within the heart of the Swadlincote Urban Area and is, in this respect, sustainably located. Its location within the urban area means the principle of it coming forward as a windfall site is acceptable in principle. The 5 year supply contains an element of windfall as part of the annual delivery, and this would help to provide a further boost to the supply and cushion to assist the Council in defending sites should the supply fall at any stage.

The site however is, in the majority, within the open space designation under saved policy EV7. This open space was designated some 18 years ago prior to the Swadlincote Woodlands coming forward as accessible space. Throughout this time the site has not been open to the public other than on a perceptual, or visual, basis. As part of the proposals some of the site would be made accessible for the benefit of prospective occupants and those already residing near to the site, and this carries some weight in tempering the principle of this loss. However, it is the simple fact that the land has not been accessible and would remain so in the event of a refusal, which demonstrates that the designation has not achieved its purpose in so far as this site is concerned. With ample accessible woodland to the west and the existing public open space to the south, it is not considered the proposal could be resisted on these grounds. Indeed, it is highly material that it is not presently a candidate green space in the emerging Part 2 Plan, particularly as it would appear to fail to meet the terms for designation now under the NPPF.

### Infrastructure contributions and affordable housing

Affordable housing would be secured in line with policy H21, with 30% of the dwellings (*up to 22*) provided. The proposal would have impacts on existing services and facilities, of which some would be beneficial through additional inward investment in the local economy. However primary education capacity is of concern and for this reason contributions to mitigate the impact are sought by the County. There is capacity at Granville College to accommodate secondary age pupils. Similarly healthcare requires mitigation in the same fashion. Furthermore the traffic impact of the development, during both the construction and occupation phases, is

considered to require mitigation so to avoid adverse cumulative impacts. In summary, the contributions (based on the indicative housing mix provided) would be:

- Education (infant age): £68,394.06
- Education (junior age): £91,192.08
- Healthcare: £27,388.80
- Outdoor sports facilities: £50,600.00
- Built facilities: £28,244.00
- Swadlincote Relief Road: £41,475.36
- Traffic Regulation Orders: £15,000.00

The NFC seeks 0.7 hectares of woodland planting in line with policy INF8. At the same time, some 0.58 hectares of POS (and a Locally Equipped Area for Play (LEAP) within this) is required on site to serve prospective occupants. The indicative layout suggests there is inadequate room for both given the need for above ground attenuation in the open space; but it is feasible to consider the woodland as open space as long as it is made available as such. Nevertheless the balance between wooded and open space for public access would need to be considered more carefully at the reserved matters stage given the pending application on land the east, the Council's existing POS to the south which appears to require investment, and the need for a cohesive solution across all the relevant 'parts' making up this wider space within Swadlincote. It is thus recommended that flexibility be allowed so to allow for financial contributions in this particular case for all or part of the open space and/or National Forest planting, secured under the legal agreement, should the equivalent provision not be provided on the site itself.

#### Highway impact and connectivity

The consultation response from the Highway Authority above provides a succinct summary of the pertinent matters which have been considered. In brief, there will be an adverse impact on the Clock Island but this can be mitigated for by way of the SRR – a project which is still very much progressing towards fruition. The impacts on junctions with the A514 and A511 are noted but it is clear that the main concern is toward the temporary effects during the construction period when a greater number of LGVs and HGVs are likely to access the site. Thereafter the numbers of HGVs accessing the site should reduce to zero, or thereabouts, and LGVs should fall back broadly in line with the existing numbers of service/delivery vehicles already using these streets. Refuse vehicles would continue to access in the same fashion, and simply extend their route into the site; whilst domestic vehicles would represent a tolerable increase on the numbers already using these roads and junctions. These impacts are likely noticeable to a degree, but not so severe to warrant refusal.

*The above efforts to allay the concerns of the Committee are noted and welcomed. Indeed the response of the County Highway Authority provides comfort for 3 of the 4 questions posed. In taking each of the questions in turn, the following points should be noted in reaching a decision on the application:*

- i) *What is the position of the Highway Authority if the SRR does not proceed or cannot be secured;*

*It is made clear that there would be an increased impact on the Clock Island which cannot handle further traffic without some impacts. However what is of particular note is that there is not a perceived highway safety issue – it is one of convenience. There is no evidence to suggest that increased traffic levels from the development would elevate the likelihood of accidents at the island. Instead the impact would increase the queuing time by a marginal amount on the arms of the island – namely the Swadlincote Road and Burton Road approaches. Members should be highly conscious of the test set out in the NPPF – that the cumulative impacts must be ‘severe’ in order to withhold permission on highway grounds. It is not considered a minor delay to individual journeys constitutes a severe impact. The economic influence arising from additional journey time arising as a result of this development is likely to be immeasurable against the existing economic impacts. The same can be said for environmental impacts, such as air quality and noise.*

- ii) What is the anticipated timetable for application, detailed design and delivery of the SRR;*

*An application is expected imminently, within the next few months. An officer at the County is charged with progressing this to an application and a considerable amount of work has already been completed, with officers at this authority having been involved in pre-application discussions for some time. The detailed design to follow over the remainder of the 2016/17 financial year to enable works to be commenced without further delays for further technical approvals.*

- iii) How is the SRR to be funded so to deliver it in line with the above trajectory;*

*The SRR forms part of the Local Enterprise Partnership’s (LEP) submission to Government for its third Growth Deal, with successful projects funded during the 2018/19 and 2020/21 years. There is no reason to presently believe that the bid will not be successful. Members will understand that, irrespective of whether the funding is sourced from the LEP, some other public source, developer contributions or a combination of all three; there is inherently always an element of risk and competition in securing funding streams. However, as noted above, it is considered this risk is very much reduced given the business case for relieving problems at the Clock Island and the extent of work towards the detail of the SRR which has taken place recently. This element of risk is certainly not a reason to abandon accumulating funds towards network improvements.*

- iv) What alternatives exist to mitigate the impact should the SRR not proceed?*

*This has been looked at in some detail. There is one main alternative – alterations to the Clock Island which would provide a lozenge shaped island instead of the current circular feature. Swept path analysis demonstrates that HGVs can navigate this design from all directions. This*

*solution is achieved by utilising the large expanse of 'unowned' carriageway to the Moira Road/High Street side of the island, where vehicles creep from the stop lines in order to enter the island quickly. The lozenge solution would force vehicles back to their stop line and use the extra space instead for increasing the distance to travel around the island and in turn the ability for multiple vehicles to traverse it simultaneously – not presently an easy task. With the opportunity for multiple vehicles on the island at the same time, as well as reducing hesitation for those joining the island (given they would have a better opportunity for entering the flow of traffic); the delay time in the approach queues should reduce. Notwithstanding this, the Highway Authority notes that this cannot be used to 'double mitigate' where the headroom this solution provides would already be absorbed by the Broomy Farm development.*

*It should also be recognised that there will be only a gradual increase in traffic on to the existing network as the various developments in the area proceed. Indeed, Broomy Farm for instance (given the need for reserved matters approval and the likely build rate) is unlikely to see dwellings occupied until 2018, with the whole development not occupied until circa 2022 – well after the anticipated completion of the SRR based on the above funding timescales. Other developments would progress at similar rates, and the proposed development here would similarly not see occupations until 2018. In brief, the evidence points towards the SRR being delivered alongside lead-in times for developments in the vicinity and/or before the occupation of those developments reaches a critical mass. Again, the same would be true for the proposal. In summary, notwithstanding the Highway Authority's concerns it has not requested that the application be refused if no alternative mitigation is found. As such it is considered that a refusal on grounds of 'congestion' would not be sustainable at appeal given the wording of the NPPF.*

The proposed access to the site is acceptable following amendment whilst internal layout would be a reserved matter controlled by conditions. It is anticipated that parking provision will achieve expected standards and pedestrian routes and connections would be beneficial in promoting sustainable modes of transport for occupants and existing residents in dwellings to the north and south of the site.

### Biodiversity

DWT has assessed the proposals at some length and now consider that impacts are either acceptable, with it demonstrated that protected species would not be harmed; or that they can be mitigated through condition. Due to the existence of setts nearby, it will be necessary to secure certain elements of the indicative layout by condition and provide buffers where required. Further conditions can help to secure biodiversity gain from the proposals.

### Cultural heritage

There are no listed buildings or conservation areas which would be impacted upon by the proposals, and below-ground archaeology can be addressed by condition. The focus is solely on the loss of ridge and furrow which has an elevated local importance. However, as a non-designated heritage asset, it must be weighed

against the public benefits of the proposal and carries reduced weight in harm terms given its lack of national or locally designated status. This matters is revisited below.

### Flood risk

The site is not at an elevated risk of flooding and the drainage strategy signals the ability to drain the site in a satisfactory manner, although conditions will be required to achieve acceptable standards. Foul water would need to be pumped back uphill in order to reach the nearest available public sewer, but Severn Trent Water has not raised issue in respect of capacity.

### Visual impact

The Visual Impact Assessment notes there would be noticeable and permanent change to the landscape in this locale. However the south elements of the site, south of the high ground around the existing POS, would be well enclosed by existing dwellings and the Swadlincote Woodlands. The focus therefore is on views of the slope running down towards the northern boundary, and the public footpath along this edge. Undeniably, the impact from this footpath would be pronounced as it present gives the impression that one is on the edge of the urban area with open landscape to the south with little hint of Woodville beyond except for a ribbon of development along Burton Road. However other than a further glimpse views in a handful of locations on the estate to the north and one from the A511 near the Midway Inn; it is difficult to appreciate this site as a green space within the heart of the urban area. Its lack of public access also adds to this lessened impact arising from its loss. Views from elevated ground further afield are so distant that the sites assimilation into the built form it is seen in context with would have no discernible impact. As a result, given this is not considered to be a valued landscape; the level of impact is towards the lower end and it is not sufficient in its own right to justify withholding permission.

### Design and amenity

Amended designs have addressed potential layout and Building for Life concerns raised to the initially submitted scheme. Amenity standards would also be protected following the omission of a plot and the likely orientation of dwellings on the site. A strong built frontage along the main road would exist, along with natural surveillance of open and public areas; and appropriate appearance and detailing can be secured at the reserved matters stage.

### Summary

The above assessment identifies that there is some residual harm arising from visual impacts, the loss of some ridge and furrow and the fact that any additional traffic is less than ideal at the present time. *It must be noted that the additional traffic does not lead to a safety issue – only a convenience issue. It is this point upon which Members are asked to carefully consider whether this is demonstrable harm which justifies the refusal of permission. There is sufficient evidence to suggest that the SRR will come to fruition in a timely fashion to address the capacity concerns, and in the absence of evidence to the contrary it is not considered that the cumulative*

*impact would be 'severe'.* Planning obligations *can ensure* that the harm is mitigated, and *any residual harm* needs to be weighed against the benefits – namely provision of market and affordable housing in a very sustainable location and resulting gain/cushion to the 5 year housing land supply without the loss of open land to the edge of a settlement elsewhere. This is wholly in line with the strategic approach to housing delivery under the Local Plan. The economic benefits of the development should also be recognised. In this respect the identified harms are not considered to significantly and demonstrably outweigh the benefits arising.

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 authority be delegated to the Planning Services Manager to secure the amounts which might be required in lieu of on-site woodland planting or POS with flexibility subject to the completion of a Section 106 Agreement to secure the financial contributions as set out above;
- B. Subject to A, **GRANT** permission subject to the following conditions:
  - 1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:
    - (a) appearance;
    - (b) landscaping;
    - (c) layout; and
    - (d) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

- 2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

- 3. The access shall be laid out in accordance with drawing ref: 5436/003 and the reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan (ref: A191-105 Rev A), and each application for

reserved matters approval shall incorporate, in so far as relevant to that/those matter(s) and/or phase of development, the following specific detail/requirements:

- (a) undeveloped areas of green infrastructure adjacent to the northern edge of the site and along the boundaries with Swadlincote Woodlands;
- (b) retained hedgerows and trees shall, as far as practicable, not form boundaries to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
- (c) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats outside of private areas, including grassland creation where feasible to mitigate for the loss of suitable habitat for ground nesting birds and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;
- (d) the internal layout of the site shall accord with the Highway Authority's Policy Document '6Cs Design Guide' and national guidance laid out in Manual for Streets;
- (e) a swept path diagram to demonstrate that emergency, goods and service vehicles can adequately enter, manoeuvre within the site and leave in a forward gear;
- (f) detailed design for the provision of bin stores within private land at the highway end of private shared accesses to prevent refuse bins and collection vehicles standing on the residential street for longer than necessary causing an obstruction or inconvenience for other road users;
- (g) at least 0.7 hectares of woodland planting along with at least 25.4m<sup>2</sup> of public open space per bedroom (to include a locally equipped area for play), unless a financial contribution is made in respect of one or both requirements (in full or in part) under the provisions of the legal agreement accompanying this permission.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, in the interest of highway safety, and in the interest of safeguarding protected species, biodiversity conservation and enhancement.

4. No construction works shall take place on the site, and no deliveries shall be received or dispatched from the site, other than between 8:00am to 6:00pm Monday to Friday, and 8:00am to 1:00pm on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

5. No generators shall be used on the site during the construction phase other than in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect the amenities of adjoining residential occupiers.

6. The gradient of the new estate street accesses shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.



### Pre-commencement

7. If this permission is not implemented prior to June 2017, updated badger and bat surveys shall be submitted to and approved in writing prior to any works commencing on site. Where necessary, additional mitigation with a relevant timetable for its provision shall be included as part of the recommendations arising from the findings of these surveys. The approved mitigation shall then be implemented/incorporated into the development in accordance with the approved timetable.

Reason: In the interests of safeguarding protected species, noting that the site's potential to provide habitat for the species concerned.

8. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers (and other mammals) from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include:
  - a) creation of sloping escape ramps (mammal ladders) for badgers (and other mammals potentially using the site), which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 200 mm outside diameter being blanked (capped) off at the end of each working day.

The approved measures shall be implemented throughout the construction period.

Reason: In the interests of safeguarding against harm to protected species.

9. No development or other operations on the site (including demolition, ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

10. No development shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
  - a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection/buffer zones" to include ponds, hedgerows, woodland, trees other habitat as required.

- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on habitats and species during construction
  - d) The location and timing of sensitive works to avoid harm to habitats and species.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person (as required).
  - h) Use of protective fences, exclusion barriers and warning signs.
  - i) The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
11. No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority indicating:
- i) a construction traffic routeing plan;
  - ii) the proposed temporary means of construction access;
  - iii) site accommodation;
  - iv) storage of plant and materials;
  - v) areas for parking and manoeuvring of site operatives' and visitors' vehicles;
  - vi) loading, unloading and manoeuvring of goods vehicles
  - vii) hours of operation;
  - viii) measures to minimise noise close to habitat for protected species; and
  - ix) method of prevention of debris being carried onto the highway.

Before any other operations are commenced the scheme shall be fully implemented in accordance with the approved details and be retained/followed as such throughout the construction period.

Reason: In the interests of highway safety and biodiversity, recognising that even initial stages of development could cause unacceptable impacts on the public highway and protected species.

12. No development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the design shall include appropriate Give Way white lining and signage and the provision of visibility splays at the junctions of Court Street and Calwich Close with Frederick Street. The access shall be retained in accordance with the approved scheme throughout the construction period free from any impediment to its designated use until it is replaced/completed pursuant to the requirements of condition 24.

Reason: In the interests of highway safety, recognising that even initial stages of development could cause unacceptable impacts on the public highway.

13. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written

satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and

- i) the programme and methodology of site investigation and recording;
- ii) the programme for post investigation assessment;
- iii) provision to be made for analysis of the site investigation and recording;
- iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi) nomination of a competent person or persons/organization to undertake the works set out within the WSI.

(b) No development shall take place other than in accordance with the archaeological WSI approved under (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 archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible, noting that initial ground works could lead to the permanent loss of such items.

14. (a) No development shall commence 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; 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 Local Planning Authority dispenses with any such requirement specifically and in writing.

(b) Prior to first occupation of the development (or parts thereof) an independent verification report must 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 should 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) If required by the conceptual site model, 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'.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination on or off the site which might be brought to light by development of it, noting that initial ground works have the potential to open up a new pathway to a receptor or mobilise contaminated material around or off the site.

15. No development shall commence until further intrusive site investigation works to fully establish the risk from coal mining legacy on or adjacent to the site has been undertaken and the findings, along with details of the recommended remedial works/mitigation necessary to ensure the safety and stability of the proposed development, have been submitted to and approved in writing by the Local Planning Authority. Any remedial works approved shall be undertaken prior to commencement of the development, whilst any mitigation to be incorporated into the buildings to be erected shall be incorporated prior to first occupation of each respective dwelling.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

16. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

17. No development shall commence until a scheme of noise and vibration control has been submitted to and approved in writing by the Local Planning Authority. The scheme should consider construction phase noise and vibration arising from the development and the mitigation measures necessary. The approved scheme shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

18. No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby approved, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.

Reason: To ensure that the visual impact of the development is minimised as far as possible and to ensure acceptable impacts on adjoining residential property, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions (i.e. roads, drainage, SuDS, etc.).

19. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000. The assessment shall demonstrate, with appropriate evidence, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i) into the ground (infiltration);
- ii) to a surface water body;
- iii) to a surface water sewer, highway drain, or another drainage system;
- iv) to a combined sewer.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options.

20. No development shall take place until a detailed design, timetable for implementation and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling/road/hard surface served by the surface water drainage system.

Reason: To ensure that the principles of sustainable drainage can be incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

21. No development shall commence until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling served by the foul drainage system.

Reason: In the interests of flood protecting and pollution control, noting that initial works to set site levels will have implications for the effective drainage of the site.

22. No development involving the construction of a street or dwelling shall commence until an external lighting strategy has been submitted and approved in writing by the Local Planning Authority. This strategy shall be implemented in full as part of the installation of external lighting across the site.

Reason: In the interests of protecting foraging and commuting habitat for protected species.

#### Pre-occupation

23. Prior to the first occupation of a dwelling hereby approved, a Landscape and Ecological Management Plan (LEMP) for all retained habitats within the development site shall be submitted to and be approved in writing by the

Local Planning Authority. The plan should incorporate the details provided in the ecological appraisals and the content of the plan should include the following:

- a) Description and evaluation of features to be managed / enhanced or created.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options and methods for achieving aims and objectives.
- e) Timescales
- f) Prescriptions for management actions.
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- h) Details of the body or organisation responsible for implementation of the plan.
- i) Ongoing monitoring and remedial measures for where conservation aims and objectives of the plan are not being met.
- j) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured as by the developer with the management body(ies) responsible for its delivery.

The approved plan shall be implemented in accordance with the approved details.

Reason: In the interests of mitigation, preservation and enhancement of biodiversity.

24. Prior to the first occupation of any new dwelling hereby permitted, the new estate street junction shall be constructed. The junction shall be laid out in accordance with the approved plan ref: 5436/003, constructed to base, drained and lit. Give Way white lining and signage and visibility splays of 2.4m x 33m to the north and 2.4m x 43m to the south shall be provided at the junctions of Court Street and Calwich Close with Frederick Street. The area forward of the splay lines shall be constructed as footway and included in the highway for adoption.

Reason: In the interests of highway safety.

25. Prior to the first occupation of any new dwelling, the proposed new estate street, between each respective plot and the existing public highway, shall be laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

26. Prior to the first occupation of a dwelling, details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of each respective dwelling and shall thereafter be retained for use at all times.

Reason: In the interests of encouraging sustainable modes of transport.

27. Prior to the first occupation of each dwelling, space shall be provided within each plot curtilage for the parking of vehicles in accordance with the 6Cs Design Guide and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions shall not be less than 3m x 6m.

Reason: In the interests of highway safety.

Other

28. 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 2A and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of 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 its development.

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. You are advised, as part of the application for approval of reserved matters, to provide details of the following (so to avoid the need for additional conditions at a later stage):
  - facing materials, eaves and verge details, and cill and lintel details;
  - surfacing materials; and
  - boundary treatments (including materials thereof).
- d. 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 [www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital

copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department:  
[thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
  - CLR guidance notes on Soil Guideline Values, DEFRA and EA
  - Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
  - Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
  - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
- e. 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 the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement
- f. Pursuant to Section 38 of the Highways Act 1980, and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock.
- g. The application site is adjacent to a Public Right of Way (as shown on the Derbyshire Definitive Map). This route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. You are also advised:
- the granting of planning permission is not consent to divert or obstruct a public right of way; and
  - if it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 08456 058 058 for further information and an application form.
- h. The Crime Prevention Design Adviser advises that in submitting details under a reserved matters application, that (1) all exposed housing elevations are well treated to allow a view between interiors and external space; (2) where housing is set in blocks of more than two properties rear garden access should originate within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less; (3) that enclosed parking courtyards would be



best gated or overlooked; and that (4) the open aspects of the footpath route and proposed links are not compromised by any landscaping sited between footpath and the development.

- i. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.
- j. No removal of buildings, hedgerows, shrubs or scrub should take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period in order to ensure that wildlife protection legislation is complied with.
- k. In the interest of pollution control there must be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preliminary works to clear vegetation on site.

20/12/2016

**Item**            **1.4**

**Reg. No.**        **9/2016/0751/SSA**

**Applicant:**  
**Mr Rob Wood**  
**Derbyshire Fire & Rescue Service**  
**Derby Road**  
**Ripley**  
**DE5 3H**

**Agent:**  
**Mr Graham Normington**  
**James Totty Partnership**  
**38 Wilkinson Street**  
**Sheffield**  
**S10 2GB**

**Proposal:**        **DEMOLITION OF EXISTING FIRE STATION AND  
CONSTRUCTION OF NEW COMMUNITY FIRE STATION,  
DEMOLITION OF EXISTING TRAINING TOWER AND  
ERECTION OF SMOKE HOUSE, ALONG WITH  
ALTERATIONS TO EXISTING ACCESS, BOUNDARY  
TREATMENTS AND RECONFIGURATION OF SERVICE  
YARD AT SWADLINCOTE FIRE STATION CIVIC WAY  
SWADLINCOTE**

**Ward:**            **SWADLINCOTE**

**Valid Date:**     **09/08/2016**

**Reason for committee determination**

The item is presented to Committee as the Council owns part of the site.

**Site Description**

The site lies to the northern side of Civic Way with the stopped up limb of Midland Road to the east. The medical centre car park borders most of the western boundary although the rear garden to 14 Toulmin Drive meets the north-western corner. To the rear are former fire service houses on Rowley Court, which have recently been refurbished and brought back into active use by the Council, separated by a public footpath. The ground presently slopes towards this footpath with a former footbridge providing connectivity between Rowley Court and the site. To the front of the site is a grassed area with protected mature maple, sycamore and lime trees and an incoming access road. The existing building is of 1950s origin whilst a more recently constructed smoke tower is located to the rear yard.

**Proposal**

It is intended to demolish the existing fire station and smoke tower and replace these with a new purpose-built fire station which would accommodate 4 appliances and all

9/2016/0751- FIRE STATION, CIVIC WAY, SWADLINCOTE, DE11 0AE



support facilities for staff, along with a new smoke house in the rear yard. The main building would also provide community facilities with independent access and meeting room but also with access to the gym, for possible use by other outside agencies such as the ambulance service. The external yard would be extended out to the northern boundary with a new retaining wall constructed alongside the footpath in order to accommodate parking for full time and retained staff as well as separate parking for the community facilities. The whole site would be secured with a new fence.

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

A Design & Access Statement summarises the approach to the proposed design and access means to the new facility. The building has taken account of sustainability in the overall design development and a key aspect is the provision of natural light and ventilation to almost all areas. A BREEAM rating of excellent is envisaged with low energy consumption as well as PV panels being located on the main roof. The Statement also outlines the need for the new fire station, it being constructed in 1952 and now operating beyond the end of its functional design life. The existing building is neither suitable nor sufficient to meet the needs of a modern fire & rescue station, with the partial refurbishment in 2010 only providing a stop gap solution. The building presently does not comply with the Equality Act whilst the maintenance backlog for the site is estimated at around £400,000. The site remains the optimum location from which to respond and whilst a review of available sites within the Swadlincote area has been undertaken; no suitable alternatives have been found. The new build scheme would include provision for both Community and Youth Engagement/Cadet uses (including potential NHS use of the gym) with general station accommodation provisions to meet the requirements of a Day Crewing station.

A Flood Risk Assessment outlines the Environment Agency have confirmed the site is not within a Flood Zone for either a 1 in 100 year or 1 in 1000 year storm event, with no history of the site flooding. The site is therefore not considered to be at a significant risk from flooding from surface water, and there is no evidence of groundwater issues on the site. It is considered there will not be an increased flood risk to the wider catchment from the development drainage.

The Arboricultural Assessment notes the limited tree stock is located around its boundaries and within the grass verge adjacent to Civic Way. The proposals would require the removal of a couple of hawthorn and a hedge on the Midland Road boundary, a row of leylandii conifers to the north-western corner, and a small rowan to the frontage. These are all considered to be of limited arboricultural merit. The retained trees would buffer the proposed new fire station, softening its impact on the local landscape and aiding in its incorporation.

The Ecological Report notes semi-natural habitats within the development boundary are restricted in area and of negligible ecological interest as the site is dominated by hardstanding. The habitat survey included internal and external surveys of two buildings that require demolition and no evidence of occupation by bats was identified, with both buildings affording negligible potential to support roosting bats. Statutory and non- statutory designated sites would not be at risk of adverse impacts. Overall, given the urban setting and the similarity of the existing and

proposed development, it is considered that there is no significant risk of adverse ecological impacts.

An External Lighting Assessment analyses the proposed external lighting for the site and the spill across the site and onto adjoining land.

The Geotechnical & Geo-Environmental Report explores historical mapping and land uses on and adjoining the site, with the former railway noted. Geological and groundwater vulnerability maps are also assessed in order to establish the likely ground conditions. No surface water courses are identified within 250m of the site, although a culverted watercourse may be present 60m to the north of the site. It is understood that coal may be at or close to the surface, with it potentially worked at some time in the past; and their potential presence should be considered prior to any site works or future development activity. Made ground was initially encountered in all of boreholes taken, with natural strata was encountered underlying this. The results of the chemical analyses received to date have revealed the site is free of significant contamination, whilst the results of the gas monitoring indicate that gas protection measures are not required. Deepened pad/trench fill foundations are likely to prove the most appropriate for the main fire station building whilst piles are likely to prove appropriate for the smoke house. Soakaways are unlikely to be viable.

## **Planning History**

9/2011/0920 The installation of a new DDA compliant ramp and handrails to the front - Approved January 2012

9/2007/1355 The erection of a training tower - Approved January 2008

## **Responses to Consultations**

The County Highway Authority raises no objection subject to conditions to secure a construction management plan, details of the retaining structures on the eastern and northern boundaries, and timely provision of the amended access and parking on site.

The Coal Authority advises that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site, and recommends this be secured by condition.

The Lead Local Flood Authority has no comments to make.

The Development Control Archaeologist advises the proposals will have no archaeological impact.

Derbyshire Wildlife Trust advises that survey work is adequate and there is no concern as to impact on bats. They support the recommended enhancement for the site to include native planting and bird and/or bat boxes within the proposals, and this should be conditioned.

The National Forest Company advises they would not expect this type of development to include National Forest planting but advises that, as with recent developments and planting along Civic Way such as the NHS facility and Sainsburys; there is potential to include timber boarding to reflect the Forest context. They also advise that a condition should be imposed to ensure that retained trees are suitably protected during construction.

The Police Crime Prevention Design Adviser notes that the scheme is largely acceptable from a Secured by Design point of view, and is registered for this standard. Most outstanding matters are predominantly technical specifications and would not be finalised until tenders are set. Consideration has been given to the raising of levels adjacent to the footpath at the rear but this is considered to be less of a risk than the section between the end of Toulmin Drive and the site boundary, as this section diverts at a sharp angle and sight lines are consequently removed. The section between the site and Rowley Court is straight, and views are longer, so a higher retaining wall is not felt to be an issue. Furthermore fire fighters' private vehicles would be closer to the footpath boundary, so the extra height difference would be an aid to site security. Bringing the footpath link up to adoptable standards, particularly in respect of lighting, would be a benefit to all.

The Environmental Health Officer has no objection.

## **Responses to Publicity**

A single representation has been received, commenting that this proposal is a great idea and provides more modern facilities, however it is questioned whether a more suitable location could be found, such as along William Nadins Way giving better access than the current site; with the land then used for further development of tenanted/assisted housing.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development); S3 (Environmental Performance), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF6 (Community Facilities) and INF8 (The National Forest).
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland) and EV11 (Sites and Features of Natural History Interest).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

## **National Guidance**

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

## **Planning Considerations**

The principle of redeveloping the site for the same use, facilitating more modern and efficient facilities which can also provide for a community benefit, is welcomed. Matters in respect of ground conditions, drainage and ecology are satisfactory, subject to conditions where necessary. The main issues central to the determination of this application are therefore the outward effects of the proposal as well as the approach to design.

## **Planning Assessment**

### Access and layout

The amended access is of little concern, it being based on an existing 'in/out' loop taken by appliances at the present time. Its widening would allow for separate movement of traffic associated with the community use of the building without compromising the security of the main site. No objection is raised by the Highway Authority and existing trees can be preserved by way of a method statement to ensure works within the root protection areas is appropriate.

Attention is given to the raising of levels to the rear of the site in order to create a relatively level 'plateau'; with the existing yard area. The effect would be the enclosure of the footpath to the northern edge by way of a retaining wall, varying in height along its length. However this is not considered to pose a risk for pedestrians using this route subject to lighting. The existing pinch point referred to by the Crime Prevention Design Advisor is an existing issue which can be pursued separately in order to lessen this concern. The lighting of this route alongside the provision of a widened footway to the front of the site would also facilitate the provision of improvements to the current route of National Cycle Route 63 where users presently have no choice but to use Civic Way to connect between the Delph and Darklands Lane. The route would take cyclists onto Midland Road and along the rear of the site onto Toulmin Way, and appears to be of sufficient width to be used as, and adopted, as such.

The segregated arrangement of parking on site is of merit, facilitating the wider use of the main building whilst ensuring securing to the main yard. The position of the smoke house is broadly comparable to the existing tower although of greater 'mass' and slightly closer to the nearest property on Toulmin Drive. However it would still accord with the Council's SPG if this were a new conventional dwelling given there are no habitable spaces proposed within. Proposed lighting does not cause a concern in principle.

## Design and appearance

The Council's Design Excellence Officer has been involved in discussions in respect of the design. Various alternatives have been considered but the function of the building remains a constraint throughout, with the engine bay sited to the eastern end of the building – opening out onto the yard and the existing exit forecourt. The position of this side of the building terminates views out of the town centre down Midland Road, so it is unfortunate that the main entrance and frontage of the building cannot be sited here instead. However the mix of materials and interest by way of reveals in the horizontal and vertical arrangement of the building, alongside softening by way of the existing mature trees, assist in raising the quality of built form on this site.

The smoke house to the rear is a functional structure only which, due to its use, would not carry the usual detailing. However a suitable choice of materials can still be secured in order to lessen the prominence of this structure.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plans/drawings 05H, 20F, 21F, 22D, 35, 101, 16.007/E/5 and DRAIN/01; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. No development shall commence on the site until a scheme of intrusive site investigation has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in full and a report of the findings arising from the intrusive site investigations, along with proposed remedial measures (if any), shall be submitted to and approved in writing by the Local Planning Authority prior to any works of construction commencing. The approved remedial measures shall be implemented prior to first use of the buildings hereby approved.  
Reason: To ensure the stability and safety of the development to protect against coal mining legacy, noting that such investigation and remedial works



are necessary at an early stage in order to determine the mitigation required (if any).

4. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway, pedestrian and cyclist protection and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety and neighbouring amenity, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.

5. No development shall commence until details of the finished floor levels of the buildings hereby approved, and of the ground levels of the wider site as proposed relative to adjoining land levels, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels.

Reason: To protect users of the footpath to the northern boundary and to protect the amenities of adjoining properties and the locality generally.

6. No development shall take place until a scheme for the protection of existing trees and hedgerows as indicated to be retained on the approved plans, along with a scheme for compensatory landscaping (including tree planting) on site, has been submitted to and approved by the Local Planning Authority. The scheme for the protection of existing trees affected by the proposed access and car park shall include measures to ensure the root protection areas and canopies of these trees are not adversely affected both during and after the construction phase. The temporary protection measures shall be installed prior to any works commencing on site and thereafter retained as such throughout the construction phase, whilst any permanent protection measures shall be installed as part of the works to be carried out on site prior to the first use of those areas for their intended purpose. All planting, seeding or turfing comprised in the approved landscaping scheme 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.

Reason: In the interests of the appearance of the area, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

7. Notwithstanding any details submitted, prior to the construction of any building or raising of ground levels commencing on site, details of the retaining structures to the eastern and northern boundaries of the site shall be submitted to and approved in writing by the Local Planning Authority. The

details shall include cross sections and elevations, whilst the existing railway platform on the northern boundary shall, as far as practicable, be incorporated and remain visible to users of the adjacent footpath. Where retention of the existing railway platform is shown not to be possible, the retaining structure shall be designed with features so to emulate the former existence of the platform in this location. The retaining structures shall be constructed in accordance with the approved details prior to first use of the site pursuant to this permission.

Reason: To ensure that the works and proposed boundary features do not compromise the safety of users of the adjacent highways, and to retain heritage features of local importance.

8. Notwithstanding the approved plans, prior to the construction of the northern retaining structure, precise details of the intensity, angling and shielding, and the area of spread of lighting to the adjacent footpath shall be submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details prior to completion of the retaining structure and thereafter maintained in working order.

Reason: In the interests of designing out crime and anti-social behaviour, and so to preserve the amenity of adjoining occupiers.

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; prior to first use of the buildings or yard/car park hereby approved, plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective area(s)/building(s) to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

10. Prior to the construction of a building or creation of hard surfacing, precise details, specifications and, where necessary, samples of the facing and surfacing materials to be used in the construction of the external walls and roof of the building(s) and on the car parking/service areas/access road 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 buildings, site and the locality generally.

11. Notwithstanding the approved plans, prior to first use of a building pursuant to this permission amended plans to include the provision of a widened footway to Civic Way from the toucan crossing eastwards to Midland Road (stopped up) shall be submitted to and approved in writing by the Local Planning Authority. The widened footway shall be installed prior to first use of a building or in accordance with a timetable first submitted to and approved in writing by the Local Planning Authority.

Reason: In order to secure improvements to National Cycle Route 63 which would otherwise not be possible in the future, pursuant to Local Plan policy INF2.

#### Informatives:

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

Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - [es.devconprocess@derbyshire.gov.uk](mailto:es.devconprocess@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

Temporary traffic management may be need for the duration of the works and the applicant is advised to contact Derbyshire County Council's Traffic and Safety section (01629 533190) regarding this matter.

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

The applicant should be aware that the granting of planning permission does not imply approval of the construction details submitted. Such details will need to be submitted for approval as part of the Section 278 Agreement process. Consideration should also be given to the adoption of the footpath to the rear of the site (if not already adopted) and the footway to be created to the site frontage.

Consideration should be given to the inclusion of public art on the retaining structure adjacent to the public footpath, reflective of the former railway station and platform in this position.

**Item**            **1.5**

**Reg. No.**        **9/2016/1011/FM**

**Applicant:**  
**Mr & Mrs John & Melanie Bridgen**  
**88, Main Street**  
**Rosliston**  
**Swadlincote**  
**DE12 8JL**

**Agent:**  
**Mrs Helen Broadhurst**  
**Vale Planning Consultants**  
**Elder House**  
**2 Boyers Orchard**  
**Harby**  
**Melton Mowbray**  
**LE14 4BA**

**Proposal:**        **CHANGE OF USE WITH ALTERATIONS AND  
EXTENSIONS TO AGRICULTURAL BARN TO FORM A  
DWELLINGHOUSE ALONG WITH CHANGE OF USE OF  
LAND TO CREATE GARDEN AT 88 MAIN STREET  
ROSLISTON SWADLINCOTE**

**Ward:**            **LINTON**

**Valid Date:**     **27/09/2016**

**Reason for committee determination**

The item is presented to Committee as the proposed development is not considered to be in strict compliance with the saved 1998 Local Plan Policy H7: Residential Conversion.

**Site Description**

The application site is located to the west of the Rosliston village confine (as identified within the 1998 Local Plan, and proposed within the Local Plan Part 2), located to the west of a number of recently approved residential developments to the east between the site and Coton Lane and Main Street, but the site itself lies within the open countryside.

The site is accessed from a long drive which also serves 88 Main Street, Rosliston. The building to be converted is a relatively modern agricultural building constructed in brick and corrugated metal sheeting and is currently in agricultural use. The existing building is surrounded by a post and rail fence with a substantial area of hedging to the north and west of the building with open fields to the south.

9/2016/1011- 88 MAIN STREET, ROSLISTON, DE12 8JL



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## **Proposal**

The application proposes the conversion, alteration and extension to the existing barn into a single dwelling. The existing metal cladding is proposed for removal and replacement with cedar boarding, a single storey oak framed extension is proposed to the west of the building. Vehicular access is proposed via the existing driveway, with an area of car parking is proposed to the east of the building, with an area of residential amenity space proposed to the west.

## **Applicant's supporting information**

The Planning and Design & Access Statement sets out the background to the proposals, the planning history and the pre-application discussions undertaken. An assessment of the NPPF is provided which concludes that the submitted scheme represents an opportunity to deliver a small scale housing development, which will support and enhance this rural area and which is well related to the settlement, and which will consolidate the role of Rosliston as a large sustainable village, which acts as a local service centre to the wider rural community and thus complies with the NPPF.

The proposal is considered by the statement to comply with the requirements of policies H1 and S2 of the 2016 Local Plan and the detailed requirements of policy H7. The building is considered to be of a simple agricultural design and form which is appropriate for this edge of settlement location and reflects its rural context. It is contended that the fundamental structure of the existing building remains unchanged, and that the alterations and extensions envisaged are minor in nature. In addition, the proposed conversion has been designed to provide a simple form utilising existing opening and minimising any new openings being deigned in an agricultural rather than domestic scale.

## **Planning History**

- |              |  |
|--------------|--|
| 9/2016/0483: | Prior approval for a change of use of agricultural building to a dwellinghouse (Class C3). Withdrawn 2016.   |
| 9/2015/0723: | Outline application (all matters except for access to be reserved) for residential development of up to 24 dwellings on land at Coton Lane. Approved 31/03/16. |
| 9/2016/0615: | Approval of reserved matters for layout, scale, appearance and landscaping of planning permission ref: 9/2015/0723. Awaiting determination.                    |

## **Responses to Consultations**

The County Highways comment that land accessed via the same track was the subject of a previous application (9/2001/0075) which was refused on highway grounds and dismissed at appeal. However, in the intervening time, recommended standards have been revised and, whilst the Highway Authority remains of the opinion that the means of access to the site is less than ideal, under current circumstances and in the view that the barn could generate some traffic, it is not

considered that a refusal of the above proposal could be sustained. Therefore, there are no objections to the proposal from the highway point of view.

The Pollution Control Officer whilst having no objections to the proposed development recommends the inclusion of conditions relating to the following; restriction on bonfires on site, there being no portable generators on site, and a restriction on site working.

The Contaminated Land Officer has no comments or objections on the application.

### **Responses to Publicity**

One letter stating no objection has been submitted.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development); H1 (Settlement Hierarchy); SD1 (Amenity and Environmental Quality); SD2 (Flood Risk); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); SD4 (Contaminated Land and Mining Legacy Issues); INF2 (Sustainable Transport); BNE1 (Design Excellence); BNE3 (Biodiversity); BNE4 (Landscape Character and Local Distinctiveness).
- 1998 Local Plan (saved policies): EV14 (Archaeological and Heritage Features); H5 (Village Development); H7 (Residential Conversion);

### **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: H28 (Residential Conversions); BNE5 (Development in the Countryside); SDT1 (Settlement Boundaries and Development).

### **National Guidance**

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

### **Planning Considerations**

The main issue central to the determination of this application is the compliance of the proposed scheme with the requirements of policy H7 of the 1998 Local Plan.

### **Planning Assessment**

As the application site is located outside the village confine of Rosliston, albeit directly adjacent to it, the application needs to be considered under Policy H7 of the 1998 Local Plan. This policy sets three tests which all need to be met for the conversion of buildings within the countryside to be deemed acceptable;

- (i) The building is of a form and bulk and general design in keeping with its surroundings; and
- (ii) The building is suitable for conversion without extensive alteration, rebuilding and/or extension; and
- (iii) The conversion is in keeping with the character of its surroundings.

The existing building is of agricultural design, appropriate for its previous use as a cattle shed and has a simple form which is considered to be of a form and bulk appropriate for its location on the edge of the village of Rosliston.

The proposals includes the conversion of the existing building, which involves the retention of the existing steel structure of the building, the insertion of a first floor, internal walls, and the replacement of the existing metal cladding with cedar boarding for the walls and a tiled roof. A single storey extension is proposed to the western elevation of the building to provide an extension to the living area. The conversion utilises the existing substantial main opening of the building and new windows have been kept to a minimum in order that the building keeps its appearance as a former agricultural building.

The question as to whether the alterations and the proposed extension are considered to be excessive is one for interpretation. However, in light of the proposal including an extension to the building, the installation of a new roof and openings it is considered that these alterations are such that tip the proposals over the balance of what could be reasonably be considered as extensive. Therefore, whilst the conflict with part ii of policy H7 is not excessive the proposal is not considered to strictly comply with the requirements of this part of the policy.

It is considered that the conversion in its detailing is such that the building would retain its agricultural character and would in overall terms enhance the building and its surroundings. This is subject to the approval of suitable materials for the conversion.

The building is currently bound on all sides by timber post and rail fencing, which the application proposes to retain. Whilst this boundary treatment is reflective of this agricultural edge of the village it is considered that that the provision of some form of hedge planting along the southern boundary of the site would help to screen the car parking area and any domestic paraphernalia from the wider countryside.

#### Other matters

As the application proposes the conversion of a relatively modern agricultural building, it is not considered that there is a reasonable likelihood that the building would support any protected species (bats or birds).

In terms of highway safety, whilst the access track to the site which also serves the existing dwelling at 88 Main Street is less than ideal the fact that the existing building could generate some traffic it is not considered that any objection to the proposal on highway safety grounds could be reasonably sustained.



## Conclusion

Whilst there is some conflict with the requirements of policy H7 in terms of the level of alterations proposed to the building, the proposal also needs to be considered in light of the specific circumstances of the case. That being the location of the building within close proximity to the settlement confine for Rosliston, and the recently approved residential development to the east of the site. As such the site is considered to be located in a sustainable location close to the existing facilities within the village, which lends weight to the overall sustainability of the proposed conversion, as would the fact that the proposed conversion would lead to an enhancement of the immediate setting of the building as it is considered to be more closely associated with the existing (and recently approved) residential development of the village. The proposal is therefore considered in overall terms to represent a sustainable form of development and is recommended for approval.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with drawing number 16/12/001 Rev A; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.  
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.

4. The existing building/structure shall be retained in so far as shown on the approved plans, with no other existing walls or roofs (or parts thereof) removed and/or replaced.

Reason: The erection of a new dwelling in this location would be contrary to the development plan and the objectives of sustainable development.

5. During the period of construction of any phase of the development, the following working times and working restrictions shall be adhered to;
  - i. No work including deliveries shall take place outside the following times: 0800 - 1800 hours Monday to Friday and 0800 - 1300 hours on Saturdays and any time on Sundays, Bank and Public holidays (other than emergency works).
  - ii. There shall be no bonfires on site.
  - iii. No portable generators should be used on site without prior written consent from the LPA.

Reason: In the interests of protecting the amenity of existing residents during the construction period.

6. Large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

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

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, together with measures for their protection in the course of development.

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

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. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

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

11. Prior to the dwelling being occupied, space shall be provided within the site curtilage for the parking and manoeuvring of residents' vehicles, laid out and constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The parking and turning space shall thereafter be retained free of any impediment to its use for these purposes.

Reason: In the interests of highway safety.

#### Informatives:

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

The application site is affected by a Public Right of Way (Footpath 10, Rosliston as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Communities Department at County Hall, Matlock.

Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.

If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 580000 for further information and an application form..

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com)

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/ Delegated</b>	<b>Page</b>
9/2014/1141	Melbourne	Melbourne	Allowed	Committee	71

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## Appeal Decision

Inquiry opened on 18 October 2016

Site visit made on 25 October 2016

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

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

**Decision date: 06 December 2016**

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**Appeal Ref: APP/F1040/W/16/3147682**

**Jawbone Lane, Melbourne, Derbyshire DE73 8BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Investin Properties (Jersey) Ltd against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/1141, dated 28 November 2014, was refused by notice dated 7 October 2015.
  - The development proposed is the erection of up to 69 dwellings and detailed means of access.
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### Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 44 dwellings and detailed means of access at Jawbone Lane, Melbourne, Derbyshire DE73 8BW in accordance with the terms of the application, Ref 9/2014/1141, dated 28 November 2014, subject to the conditions in the attached schedule.

### Procedural and Preliminary Matters

2. I opened the Inquiry on 18 October and it sat for 4 days, closing on 25 October. I conducted an accompanied site visit following the close of the Inquiry on 25 October.
  3. The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. Following the submission of the application, the description of the development proposed has been changed to the following: '*residential development of up to 44 dwellings and detailed means of access*'. The application was determined by the Council based on this amended description.
  4. At the Inquiry, the appellant requested that the appeal be determined on the basis of a residential development of up to 34 dwellings and an indicative layout plan that was submitted with a subsequent planning application involving 34 housing units that I understand has been refused as an affordable housing scheme. Both the Council and the appellant agreed at the Inquiry that, should the 34 dwelling layout be considered, the redline plan should be reduced in area to reflect the amended scheme layout and to omit land included that is in the ownership of the Parish Council.
  5. Having heard submissions at the Inquiry, I find that the amended proposal is within the scope of this appeal outline planning application and has been
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consulted upon in the subsequent application; it would reduce the extent of the proposed development compared to that considered when the Council made its decision; and the appellant had given the Council sufficient notice of its intentions to allow the Council to adequately consider the amended indicative layout. Therefore, applying the 'Wheatcroft Principles'<sup>1</sup>, I am satisfied that these amendments do not prejudice the interests of any of the parties and I have determined this appeal on the basis of the amended indicative layout showing 34 housing units and the amended redline boundary shown on Drawing No I15.1-001D, submitted at the Inquiry, but using the amended description on which the Council made its decision.

### **Main Issues**

6. The main issues are whether a five-year supply of deliverable housing sites has been demonstrated; the effect of the proposal on the character and appearance of the surrounding area and whether it would preserve the setting of nearby heritage assets.

### **Reasons**

#### ***Five-year Supply***

7. Since the adoption of Part 1 of the Local Plan in May 2016, the Council has published its updated July 2016 Housing Position Paper, which demonstrates that it has a 5.33 year housing land supply for the five-year period of 2017 to 2022. However, it has accepted that the figures used in that paper indicate that a 4.82 year supply would be delivered for the period 2016 to 2021. Following discussions at the Inquiry, the Council has amended its trajectory. These amendments would result in it demonstrating a 5.27 year supply for 2017 to 2022, which would reduce the 2016 to 2021 figure to a 4.73 year supply. The Council has accepted that the July 2016 Housing Position Paper represents the latest position. Therefore, although the Examination Inspector for the Local Plan Part 1 found in her report that the Council had demonstrated a 5.08 year housing land supply for the 2016 to 2021 period, based on the November 2015 Housing Position Paper, this has now been superseded by the Council's own updated figures.
8. Whilst neither the National Planning Policy Framework (Framework) nor government guidance specify what period of time should be used to demonstrate a 'five-year supply of deliverable housing sites', the 2016 to 2021 period is most relevant to the current appeal, rather than a future five-year period for 2017 to 2022 as suggested by the Council. This is because it covers the period that includes the date of this appeal, with a significant part of the first year of that period remaining, and includes known completions, which should give a greater degree of certainty over delivery than using a future period. It is also the period mentioned in the Local Plan Part 1 Examination Inspector's Report. Furthermore, the appellant has contested the Council's trajectory for the 2017 to 2022 period, suggesting that the start dates and/or delivery rates for 10 of the sites are over optimistic. Although the Council's adjusted figures still show that there would be a five-year supply for this period, I am concerned that this supply figure would be very vulnerable to any

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<sup>1</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P&CR 233

potential delays to the development due to matters that have been identified by the appellant.

9. The Framework aims to boost significantly the supply of housing and the Council has accepted that its most up-to-date housing land supply figures indicate that it would not meet what I consider to be the most relevant five-year period for this appeal. Based on this, and the reasons that I have previously given, I find that the Council has not demonstrated a five-year supply of deliverable housing sites in accordance with the Framework.
10. The Council has referred to 2 recent appeal decisions<sup>2</sup> on sites in the District in which the Inspector has concluded that a five-year supply of deliverable housing sites has been demonstrated. However, these appeals were determined before the Council published its July 2016 Housing Position Paper and, based on the evidence provided, the Inspectors in those appeals had not been provided with sufficient information to test the Council's position on its claimed housing land supply. Whilst the appellant at the Inquiry accused the Council's officer of acting dishonestly in not stating the period covered by the five-year housing land supply provided to the Inspector for the appeal in Linton, I have no evidence to support this accusation. However, it is clear to me that the Inspector did not know the full circumstances behind the 5.33 year supply that was mentioned in the decision letter. Therefore, I have attached limited weight to these previous appeals with regard to my determination of the five-year housing land supply for the current appeal, which is based on the most up-to-date evidence.

#### ***Character and Appearance***

11. The appellant has undertaken Landscape and Visual Impact Assessments (LVIAs) for the 69 dwelling and 44 dwelling proposals and an LVIA, dated February 2016, has been provided to accompany the subsequent application for a 34 dwelling proposal. Whilst the indicative layout plan for the 34 dwelling proposal would not include the area of open space shown along the north east boundary of the site on the indicative layout plan for the 44 dwelling proposal, it would not develop the large area of agricultural land to the north west, which is adjacent to Melbourne Cemetery and footpath FP15 and is the nearest part of the original site to Kings Newton Conservation Area (CA).
12. The appeal site for the 34 dwelling proposal includes agricultural land and a residential property, known as Bond Elm, which has a generous curtilage. It is located adjacent to the rear gardens of predominantly 2 storey residential development in Huntingdon Court and Oaklands Way which form part of the north eastern development boundary of Melbourne. The appeal site lies outside the settlement boundary of Melbourne as defined in the 1998 South Derbyshire Local Plan (SDLP) and, at the Inquiry, the Council confirmed that its emerging Local Plan Part 2, which when adopted will redefine the settlement boundaries, also omits the site from the boundary of Melbourne. As such, it lies within the surrounding countryside.
13. The site is classified in Derbyshire County Council's 'The Landscape Character of Derbyshire' as being within the Estate Farmlands Landscape Character Type in the Melbourne Parklands in which the fields are bounded by managed

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<sup>2</sup> Appeal Refs APP/F1040/W/15/3132831 Cauldwell Road, Linton and APP/F1040/W/15/3139116 Land at Jawbone Lane, Melbourne

hedgerows and mature trees and the land use is generally a mixed agricultural landscape with extensive cropping. The Council and appellant have agreed that the site accords well with this character. It forms part of the rolling pastoral farmlands and lies on a gentle south facing slope that falls away from its north western end. It is bounded to the east by Jawbone Lane, which is a relatively narrow rural lane with a footway, grass verge and hedgerow along the appeal site side and a field boundary with hedges and trees on the opposite side, and the County Council has designated it as a 'Greenway'.

14. The proposal would adversely affect the landscape character of the appeal site, as it would result in built development on currently undeveloped land. However, it would retain some of the landscape features of the area, including the trees and hedgerows, which would help to screen the built development. The Council has accepted that the site is not part of a 'Valued Landscape' in terms of the Framework. Additional boundary planting would help to screen the development by obscuring views into the site. Although this would also prevent views through the site of existing features in the landscape, at my site visit there did not appear to me to be any places where important views would be lost as a result of such planting. As such, I find that the proposal would have a moderate adverse effect on the landscape character of the area.
15. The appeal proposal would be accessed from Jawbone Lane and would therefore require the creation of a new relatively wide access road with the removal of part of the hedgerow to provide the required entry widths and visibility splays. This, together with the widening of part of the footway and carriageway, would erode the rural character of that part of Jawbone Lane. However, it would be towards the end of the lane that is close to the junction with Huntingdon Close, which is a residential cul-de-sac within Melbourne, and close to the entrance to Bond Elm, which provides a more urban character to that part of the lane. Furthermore, most of the proposed dwellings on the indicative layout would be sited a significant distance from the highway behind an area of open space, allowing a sufficient gap for landscape planting, with the access being curved to reduce views into the site.
16. I have also considered the effect on the character of Jawbone of the additional traffic that would be generated by the development. Whilst the vehicles would enter and leave the development via Jawbone Lane, they would only need to travel a relatively short distance along the lane to arrive at Station Road in Melbourne, which is a main route and links up with routes in most directions. As most of Jawbone Lane would remain as a narrow rural lane with a tight bend and no footway along part of it, it would not be attractive for vehicular use. As such, I cannot see any convincing reason why the proposal would result in a significant increase in traffic using Jawbone Lane from that which uses it when accessing other nearby dwellings in Jawbone Lane, Station Road and Huntingdon Close. Therefore, I am satisfied that the proposal would not result in a significant change in the character and appearance of Jawbone Lane as a rural lane that is a Greenway and part of the National Cycle Network.
17. With regard to views of the proposal for users of the footpaths, it would be visible from FP15 when leaving Kings Newton. However, the dwellings would be seen against the backdrop of existing dwellings in Oaklands Way and Huntingdon Court. Also, the land falls away from the footpath, which would ensure that the proposed dwellings would not appear dominant in the skyline, particularly as most of the existing planting, including pine trees, would remain



and new planting would be able to be provided along the site boundary under reserved matters. I accept that the users of the footpath would have a high sensitivity but, based on the above and my observations at my site visit, I find that the proposal would result in a medium magnitude of change, due to the loss of part of the agricultural land to residential development, which would result in a moderate adverse visual effect. This would be its most severe resulting visual impact, as the proposed development would be set back from the boundary of Melbourne Cemetery, limiting views of it from the Cemetery and footpath FP14.

18. I have considered the concerns about the effect of the proposal on the separation between the built up areas of Kings Newton and Melbourne, which in the area of the appeal site consists mainly of open fields between Jawbone Lane and the settlement boundaries. However, part of the site is occupied by Bond Elm, which is a large house, together with its outbuildings and extensive curtilage, which already gives a perception of built development in that area. The proposal would not cause any significant reduction in the perceived separation of the two settlements, as there would be agricultural fields that would remain between them with boundary hedges and fencing. Also, the far boundary of the development would not extend significantly closer to Kings Newton than the residential development in Oaklands Way.
19. Taking the above into account, I conclude on this main issue that the proposal would not cause any significant harm to the character and appearance of the surrounding area. Whilst it would be outside the defined settlement boundary in the SDLP, it would be adjacent to that boundary, which is subject to be amended in the emerging Local Plan Part 2. In terms of SDLP Environment Policy 1, which only permits development outside settlements where it is essential to a rural based activity or unavoidable in the countryside, it can be argued that meeting a shortfall in a five-year housing land supply makes the development unavoidable. If this is the case, the proposal would accord with the Policy, as the development could be designed and located so as to create as little impact as practicable in the countryside. Nevertheless, the proposal would fail to accord with SDLP Policy H5, as it would not be within the defined confines of Melbourne.
20. The proposal would also fail to accord with Local Plan Part 1 Policy H1, which establishes a settlement hierarchy that places Melbourne in the second tier as a 'Key Service Village' where development of sites adjacent to settlement boundaries can be considered as an exception or cross subsidy site as long as not greater than 25 dwellings. The proposal would, however, accord with Local Plan Part 1 Policy BNE1, as it would be able to be designed to respond to its context and have regard to and respect valued and important landscapes, townscape, historic views and vistas and heritage characteristics; and Policy BNE4, as it would protect the character and local distinctiveness of the District's landscape and visual amenity and would retain key valued landscape components.

### **Heritage**

21. I have considered the statutory duties under sections 66(1) and 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990, which are to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses and to

- pay special attention to the desirability of preserving or enhancing the character or appearance of a CA. The Framework does not distinguish between listed buildings and CAs in terms of designated heritage assets. In this respect, it identifies in paragraph 132 that development within the setting of a heritage asset can harm its significance.
22. The Council has argued that the proposed development would be within the setting of Kings Newton Conservation Area (CA), which is in an elevated location to the north of the site. The CA includes a number of Grade II listed buildings. I accept the views of Historic England (HE) that it is particularly significant because its medieval layout is well preserved and readily apparent. Part of this significance is the retention to the south of its historic relationship with the agricultural land that sustained it. In this respect, footpath FP15 that is accessed between buildings fronting Main Street offers views of market gardens, some of which at my site visit appeared to be overgrown. The cultivated landscape, which has a historical significance, contrasts with the tight-knit form of development along Main Street and provides a physical and perceptual separation between the buildings in Melbourne and those in Kings Newton CA.
23. HE has identified the harm that the 44 unit proposal would cause to the heritage assets as transforming the character of agricultural land historically associated with Kings Newton to housing and a reduction in the area of separation between Kings Newton and Melbourne. In assessing the harm that the 34 unit proposal would cause to the heritage assets, I observed at my site visit that the appeal site is separated from the CA by market gardens and open fields with boundaries that include hedges and trees. As such, it is mainly hidden from view from footpath FP15 near to the rear of the buildings along Main Street, although I accept that when some of the trees and hedges have lost their leaves it might be more apparent.
24. The proposed dwellings would be on lower ground than the buildings in the CA. This would ensure that the skyline would not be broken in views from the edge of the CA over to the horizon, which include the church at Breedon-on-the-Hill. Due to the separation distance between the CA and the proposed development, together with any screening that would be provided by landscaping, the proposal would not have a significantly greater impact on views from the CA than the development at the edge of Melbourne that is currently visible.
25. Whilst the proposal would result in additional built development on the site and thus reduce the overall area of open land between Melbourne and Kings Newton, a significant gap consisting of open fields would remain. This, together with the character of the site, which includes the large dwelling and outbuildings at Bond Elm, and its relative location adjacent to visible development in Melbourne, would ensure that the perceived separation between Melbourne and Kings Newton would be retained. As such, I am satisfied that the proposal would result in minor harm to the setting of Kings Newton CA, which would amount to less than substantial harm to its significance.
26. The other heritage assets that the Council has indicated would have their setting harmed by the proposal are the Grade II listed Melbourne Cemetery mortuary chapels and the undesignated Melbourne Cemetery. In this respect the architect who designed the chapels and the landscape gardener who laid

out the gardens at the Cemetery contribute to their significance. Although their setting has changed significantly since the Cemetery was first constructed when it was surrounded by open countryside, the eastern boundary still retains a rural setting. This rural setting contributes to views out of the Cemetery and views of the chapel spire and planted trees from outside the Cemetery.

27. The most significant view from the Cemetery is that through the carriage arch, which looks out onto the eastern boundary that is planted with trees. Whilst the open countryside beyond would be more apparent in the winter months than when I visited the Cemetery, the proposed development of 34 dwellings would be set back away from this boundary and would therefore not interfere with these views. I observed that the main public views of the spire and Cemetery trees are from the nearby footpaths and Jawbone Lane. In this respect, I am satisfied that the relative location of the proposed development, together with the existing boundary treatment along Jawbone Lane, much of which could be retained, supplemented or replaced, would ensure that the existing views of these historical features would not be interfered with by the proposal. Therefore, I find that the proposal would preserve the setting of the listed building at Melbourne Cemetery and the Cemetery itself.
28. In weighing the less than substantial harm to the significance of the heritage asset against the benefits of the proposal, as required in paragraph 134 of the Framework, I have taken account of the economic and social benefits of providing up to 34 dwellings that include some affordable homes. Whilst I have attached considerable weight to the desirability of preserving the heritage asset's significance, the harm that I have found is limited. Therefore, the less than substantial harm that I have found that the proposal would cause to the significance of the CA is outweighed by the public benefits of the proposal.
29. In conclusion on this main issue I have found that the proposal would preserve the setting of Melbourne Cemetery and Grade II listed chapels but would fail to preserve the setting of Kings Newton CA. As such, it would accord with saved SDLP Environment Policy 13, as it would preserve the setting of listed buildings, but would fail to accord with saved SDLP Environment Policy 12, as it would have an adverse effect on the character of a CA, and Local Plan Part 1 Policy BNE2, as it would not protect, conserve or enhance the setting of the CA. It would accord with the Framework with regard to this issue, as the less than substantial harm that the proposal would cause to the significance of the CA would be outweighed by its public benefits.

#### ***Section 106 Planning Obligations***

30. Following the close of the Inquiry, the appellant submitted an engrossed Section 106 Agreement, dated 27 October 2016. The obligations in the Agreement would secure the provision of contributions towards Kings Newton Bowls Club house, a healthcare contribution towards extra consulting rooms at Melbourne and Chellaston Medical Practice, contributions towards the provision and maintenance of off-site public open space in the area, an outdoor sports facilities contribution and a contribution towards the maintenance of a sustainable drainage scheme. They would also secure contributions to help meet the identified shortfall in primary, junior and secondary school places as a result of additional demand that would be generated by the future occupants of the proposed dwellings.

31. The above contributions would be related to the number of dwellings that would be completed, using agreed formulae to calculate the sums to be paid, and are supported by development plan policy and guidance. As such, I find that they would be directly related, and would be fairly and reasonably related in scale and kind, to the development. I have examined the evidence provided by the Council, the Local Education Authority and the NHS Southern Derbyshire Clinical Commissioning Group regarding the need for these contributions and compliance with the Community Infrastructure Levy Regulations (CIL) Regulation 122 and Regulation 123(3). Based on this, I am satisfied that all the planning obligations in the Agreement would be necessary to mitigate the effects of the development on local facilities and services and they meet the tests in CIL Regulations 122 and 123(3). I have therefore taken them into account in my determination of this appeal.

***Other Matters***

32. The local residents were represented at the Inquiry by Melbourne and Kings Newton Action Group, Melbourne Civic Society, Kings Newton Residents' Association and a local District Councillor. I am satisfied that the matters raised by these parties cover the most relevant concerns expressed by local residents in their correspondence objecting to the proposal. I have addressed many of these concerns under the main issues. With regard to the other concerns, the planning obligations would address those regarding the effect on local facilities and services, and those regarding the effect on wildlife and drainage and the effect of noise from aircraft using the nearby airport would be addressed under planning conditions.
33. Whilst reference was made by objectors at the Inquiry to flooding at a recent new development on the edge of Melbourne, the available information demonstrates that the risk of flooding to the appeal development from all sources is considered low and it would be within Flood Zone 1. This indicates to me that the risk of flooding would not be significantly increased due to the proposal. With regard to concerns about the loss of agricultural land, I am satisfied that it would be insufficient to cause any significant harm in this respect.
34. In terms of the impact of traffic generated by the proposal on highway safety in the area, I have noted the concerns about the junction of Jawbone Lane with Main Street, the traffic using Swarkestone Causeway and the potential increase in the use of Jawbone Lane. However, the Highway Authority has not objected to the 44 dwelling proposal, subject to planning conditions. Also, limited evidence has been provided to show that there are any existing safety problems with the use of Jawbone Lane and there is little evidence to show that the route via Jawbone Lane and Main Street would be sufficiently attractive to use for vehicular access to the site to result in a significant increase in traffic using it due to the development. Therefore, given that an acceptable access would be secured through a planning condition and the internal layout is a reserved matter, I find that there is insufficient evidence to support the claims that the proposal would cause any significant harm to highway safety or that the residual cumulative impacts on transport would be severe.
35. With regard to localism and the emerging Neighbourhood Plan (NP), the evidence given at the Inquiry indicates to me that the NP is still at a relatively early stage in its preparation, having been prepared in draft over about a 2

year period that involved 3 drop-in sessions, and is not yet ready to proceed to referendum. Therefore, although I have been told at the Inquiry that the current draft NP supports the settlement boundaries for Melbourne identified in the draft Local Plan Part 2 and seeks to maintain the separation between Melbourne and Kings Newton, it could well be subject to change following further stages in its progression. I have therefore given it limited weight in this appeal.

36. I have noted the concerns that allowing this appeal would make it difficult for the Council to resist further new development in the area, which would have the cumulative effect of closing the separation between Melbourne and Kings Newton and thus harming the character and appearance of the area and the setting of heritage assets. Although there have been previous applications and previous appeals for housing in the area, each case should be determined on its own planning merits in the light of prevailing policies and guidance. Granting planning permission for the proposed development in the current appeal should not prevent other subsequent proposals in the area from being refused on planning grounds.

37. Following the Inquiry, the Council has referred to recent court judgments<sup>3</sup> made after the close of the Inquiry. With respect to both the Barwood Case and the Daventry Case, they involve significantly different circumstances from the current appeal, particularly with regard to the Council being able to demonstrate a five-year housing land supply. In the Daventry Case, there was an apparent failure to assess the issue of the weight to be accorded to development plan policies under the approach mandated by paragraph 215 of the Framework, which I have addressed in reaching my decision on the current appeal. Whilst I have noted the points made, I consider that neither of the cases is directly comparable with the current appeal, which I have determined on its own individual planning merits having regard to prevailing policies and guidance.

### ***Planning Balance***

38. I have considered the proposal in the context of the presumption in favour of sustainable development. As I have found that the Council cannot demonstrate a five-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. In such circumstances, paragraph 14 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
39. The benefits of the proposal include the provision of up to 34 dwellings, which should make a contribution towards addressing the overall shortfall in the five-year housing land supply from 2016 to 2021. This includes 30% affordable housing, which would be secured by a planning condition. I have given significant weight to these benefits, given that the Framework aims to boost significantly the supply of housing, but taking account of the relatively small shortfall, the Council's demonstrable five-year supply in 2017 to 2022, and the

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<sup>3</sup> East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin) and Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146

size of the contribution from the proposed development in meeting this shortfall.

40. The economic benefits of the proposal include the jobs that would be created during construction, a potential increase in spending to support local businesses and services and the economic activity generated by the increase in the supply of market and affordable homes. The social benefits would be related to the affordable housing and a potential increase in support for local community facilities and services. Whilst the level of these benefits would be reduced by a reduction in the number of dwellings, they would still represent significant benefits, particularly when there is a lack of a demonstrable five-year housing land supply.
41. The site lies adjacent to Melbourne settlement which, as its Local Plan Part 1 classification as a Key Service Village indicates, is capable of accommodating new development at an appropriate scale. Melbourne is served by a bus service from Swadlincote and Derby and a multi-user Greenway runs close to it that connects to Derby. It has a post office, shops that include a convenience store, a GP practice, dentist, primary school, leisure centre, library, sports pitches and public houses that are relatively near to the site. As such, the Council has accepted that the site is in a sustainable location and I agree that it is located near enough to essential facilities and services to enable future residents on the site not to be reliant upon the private car. This, together with the landscaping under reserved matters, would assist in minimising the impact that the proposed increase in housing would have on the environment.
42. Although I have found that the proposal would fail to preserve the setting of a CA and the character and appearance of the surrounding area, the resulting harm to the environment would be mitigated by landscaping and the design of the proposed development. As such, the overall negative effect of the proposal on the environment would not be great enough to prevent it from amounting to sustainable development in accordance with the Framework.
43. I have found that there would be conflict with development plan policies with regard to the development being located outside a settlement boundary and in terms of its failure to preserve the setting of a CA. However, the scale of the harm to the significance of the heritage asset would be relatively low and I have accordingly attached reduced weight to this conflict with development plan policy. Furthermore, the settlement boundaries in the SDLP do not allow for the housing development that would be necessary to ensure that the full, objectively assessed needs for market and affordable housing in the housing market area would be met over the plan period, and are due to be reviewed in the Local Plan Part 2 Examination to take this into account.
44. In considering the weight to be attached to the development plan policies that are relevant for the supply of housing and are therefore not to be considered up-to-date, I have taken account of the recent adoption of the Local Plan Part 1. Therefore, I have attached significant weight to the relevant policies in that Local Plan. However, with regard to the relevant saved policies in the SDLP, including those that define the settlement boundaries, I have attached limited weight to them, due to the age of the SDLP and its apparent failure to boost significantly the supply of housing in accordance with the Framework. As such, I have given reduced weight to the conflict with development plan

policies associated with new housing development outside settlement boundaries.

45. Based on the stage that the Local Plan Part 2 has reached in its progress towards adoption, I attach some weight to its draft policies, in accordance with paragraph 216 of the Framework. Whilst the Pre-submission version of the plan does not include the appeal site within the proposed settlement boundary for Melbourne, draft Policy BNE5 indicates that planning permission will be granted for new development in the countryside if it can be demonstrated that it is well related to a settlement, the site is not a valued landscape and the development will not unduly impact on landscape character, biodiversity, best and most versatile land and historic assets. Taking account of my findings on the effect of the proposed development, I consider that the proposal would accord with draft Policy BNE5.
46. For the above reasons, I find that the adverse impacts of the proposed development, including its impact on the setting of a heritage asset, would not significantly and demonstrably outweigh its benefits. Therefore, although I have found that the proposal would not accord with the development plan as whole, other material considerations that I have given above, including the presumption in favour of sustainable development in accordance with the Framework, outweigh this conflict with development plan policy.

#### ***Planning Conditions***

47. I have considered the conditions that have been agreed between the Council and appellant should the appeal be allowed, following discussions at the Inquiry. It is necessary to impose the standard conditions for outline planning permission to ensure that development is carried out expediently. A condition referring to the plans is necessary to provide certainty over the extent of the amended site boundary and the details of the access, particularly as access is not a reserved matter. A condition to ensure that account is taken of the design and layout on the indicative plan and the appearance detailed in the Design and Access Statement for 34 dwellings when considering reserved matters is necessary for the avoidance of doubt. The inclusion of details that would be required under reserved matters is necessary to ensure that the proposal would be designed to take account of the environment and highway safety.
48. A condition to control the times when work would be carried out on trees, hedgerows, shrubs or scrub, a condition to ensure that badgers and other mammals would be taken into account when carrying out the works and a condition to secure the implementation of a Habitat Management Plan (HMP) are necessary in the interests of protecting wildlife. An Ambient Noise Assessment has been carried out and, as the development would be near to the flight paths of aircraft using East Midlands Airport, the noise mitigation measures set out in that document should be secured by a condition.
49. In order to minimise the inconvenience and the impact of the proposal on amenity and health and safety during construction a condition to implement a Construction Management Plan (CMP) or Construction Method Statement (CMS) and a condition to provide an acceptable means of temporary access to the site are necessary. The CMP or CMS would include the routing of vehicles, which should help to address some of the concerns of local residents. The condition regarding the provision of a temporary access would also ensure that it would

- be closed when a permanent access would be provided in the interests of highway safety.
50. Conditions to secure measures to protect trees and hedgerows, control finished floor and ground levels, and control the planting and maintenance of any approved landscaping are necessary to safeguard the character and appearance of the area. A condition regarding surface water drainage is necessary to minimise a potential increased risk of flooding. A condition to secure appropriate disposal of foul water is necessary to prevent pollution in order to protect the environment.
51. A condition to secure the provision of affordable housing on the site is necessary to secure some of the benefits of the proposal and to ensure that it would comply with the requirements of the development plan in this respect. Whilst the necessary improvements to the public highway would be undertaken under Section 278 of the Highways Act, it is necessary in the interests of highway safety to prevent any dwelling from being occupied until the means of access to the site has been completed in accordance with the details shown on Drawing No 16257-01 Revision B, which I understand has been approved by the Highway Authority and only involves land within the highway boundary or the boundary of the site. A condition to ensure that dwellings are not occupied until appropriate access, parking, manoeuvring and bin storage has been provided for that dwelling is necessary in the interest of residential amenity and highway safety. I am satisfied that all the conditions that I have included are reasonable and necessary and reflect the advice in the national Planning Practice Guidance.

**Overall Conclusions**

52. I have found that a five-year supply of deliverable housing sites has not been demonstrated and the proposal would not have a significant adverse effect on the character and appearance of the surrounding area, but it would fail to preserve the setting of Kings Newton CA. Although it would be in conflict with development plan policies, it would represent sustainable development in accordance with the Framework. Therefore, for the reasons given above and having regard to all relevant matters raised, I conclude that the appeal should succeed.

***M J Whitehead***

INSPECTOR



## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jack Smyth	of Counsel, instructed by Ardip Kaur, Solicitor, South Derbyshire District Council
He called	
Nicola Sworowski MA	Planning Policy Manager, South Derbyshire
BSc(Hons) MRTPI	District Council
Melanie Morris BA(Hons)	Mel Morris Conservation
DipArchCons IHBC MRTPI	
John Nuttall BA(Hons)	Parkwood Consultancy Services Ltd
DipLA MA CMLI	
Chris Nash BSc(Hons) MA	Principal Area Planning Officer, South Derbyshire
MRTPI	District Council

### **FOR THE APPELLANT:**

Satnam Choongh	of Counsel, instructed by Fisher German LLP
He called	
Richard Mowat MA(TRP)	Director, Johnson Brook Planning and
MA(LPM) MRTPI	Development Consultants
Ben Wright BA(Hons)	Director, Aspect Landscape Planning
DipLA CMLI	
Mike Kimber MA(Hons)	Project Manager, Headland Archaeology (UK) Ltd
MCifA	
Tom Collins BA(Hons)	Associate Planner, Fisher German LLP
MSc MRTPI	

### **INTERESTED PERSONS:**

Margaret Gildea	Melbourne and Kings Newton Action Group
Jessica Long	Melbourne Civic Society and Kings Newton
	Residents' Association
Councillor Jim Hewlett	District Councillor for the Melbourne Ward

**DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY**

- 1 Draft Section 106 Agreement, submitted by the appellant on 18 October
- 2 APP1: E-mail from Mr Nash on 16 August 2016 re Linden Homes decision, submitted by the appellant on 18 October
- 3 APP2: E-mails between the appellant's agent and the Council following a meeting on 24 August, submitted by the appellant on 18 October
- 4 APP3a: E-mails between the appellant's agent and the Council, 1 to 8 September 2016, regarding the early substitution of plans and drafting of a joint letter to the Planning Inspectorate to request the substitution of the 34 unit proposal, submitted by the appellant on 18 October
- 5 APP3b: Draft joint letter regarding the early substitution of plans and drafting of a joint letter to the Planning Inspectorate to request the substitution of the 34 unit proposal, submitted by the appellant on 18 October
- 6 APP6: High Court Judgment: Wychavon District Council v Secretary of State for Communities and Local Government [2016] EWHC 592 (Admin), submitted by the appellant on 18 October
- 7 APP7: Agricultural Land Classification by Soil Environment Services Ltd, June 2016, submitted by the appellant on 18 October
- 8 APP8: E-mail to Richard Mowat from agent of Dyson Group and St Modwen, owners of land at Church Street, Church Gresley, Swadlincote, regarding delivery, submitted by the appellant on 18 October
- 9 CD1.32: Extract from South Derbyshire Pre-Submission Local Plan Part 2, submitted by the Council on 18 October
- 10 SDDC1: Secretary of State decision letter and report for Appeal APP/Y3940/A/13/2206963, dated 21 September 2016, for development on land off Coate Road and Windsor Drive, Devizes, submitted by the Council on 18 October
- 11 SDDC2: Extract from PINS procedural Guide, August 2016, submitted by the Council on 18 October
- 12 Statement on behalf of Melbourne and Kings Newton Action Group read at the Inquiry by Margaret Gildea, submitted by Margaret Gildea on 18 October
- 13 SDDC4: E-mail, dated 18 October 2016, from Planning Prospects to the Council regarding land at Church Gresley, submitted by the Council on 19 October
- 14 SDDC5: E-mails regarding Appeal Ref APP/F1040/W/15/3139116 for Linden Homes proposal, submitted by the Council on 19 October
- 15 SDDC6: Track changes to the proposed conditions in the event the appeal is allowed, submitted by the Council on 20 October
- 16 SDDC7: CIL Compliance Statement, 20 October 2016, submitted by the Council on 21 October
- 17 SDDC8: Further track changes to the proposed conditions in the event the appeal is allowed, submitted by the Council on 24 October
- 18 SDDC9: Final proposed conditions in the event the appeal is allowed, submitted by the Council on 24 October
- 19 APP9: Table of disputed sites and agreed amended five-year housing land supply figures for 2016 to 2021 and 2017 to 2022 for the appellant and the Council, submitted by the appellant on 25 October
- 20 APP10: Five-year housing land supply disputed sites pro-formas, version 2 17 October 2016, submitted by the appellant on 25 October
- 21 APP11: Copy of decision letter for Appeal Ref APP/H1840/W/15/3008340 Land off Worcester Road, Drakes Broughton, submitted by the appellant on 25 October

- 22 SDDC10: Extract from the Statement of Common Ground for the Inquiry Appeal Ref APP/F1040/W/15/132831 Cauldwell Road, Linton, submitted by the Council on 25 October
- 23 Formal Statement on behalf of Melbourne Civic Society and Kings Newton Residents' Association read at the Inquiry by Jessica Long, and associated appendices, submitted by Jessica long on 25 October
- 24 Copy of Statement of Councillor Jim Hewlett read at the Inquiry by Councillor Jim Hewlett, submitted by Councillor Jim Hewlett on 25 October
- 25 Amended draft Section 106 Agreement, submitted by the appellant on 25 October
- 26 Copy of e-mail and attachment, dated 24 October 2016, regarding education contributions for Chellaston Academy, submitted by the Council on 25 October
- 27 Closing submissions on behalf of the Council, submitted by the Council on 25 October
- 28 Closing submissions on behalf of the appellant, submitted by the appellant on 25 October
- 29 Final engrossed Section 106 Agreement, submitted by the appellant on 28 October
- 30 E-mail, dated 22 November 2016, from Chris Nash of the Council referring to the High Court Judgment: East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin)
- 31 E-mail, dated 24 November 2016, from Chris Nash of the Council referring to the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146
- 32 E-mail, dated 25 November 2016, from Tom Collins on behalf of the appellant commenting on the High Court Judgment: East Staffordshire Borough Council v Secretary of State for Communities and Local Government & Barwood [2016] EWHC 2973 (Admin)
- 33 E-mail, dated 29 November 2016, from Chris Nash of the Council commenting on the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146
- 34 E-mail, dated 30 November 2016, from Tom Collins on behalf of the appellant commenting on the Court of Appeal Judgment: Gladman Developments Ltd v Daventry District Council & Ancor [2016] EWCA Civ 1146

#### **PLANS SUBMITTED AFTER OPENING THE INQUIRY**

- A APP4: Drawing No YOR.2292-01K Jawbone Lane, Melbourne-Masterplan, considered at Appeal Ref APP/F1040/W/15/3139116 for Linden Homes proposal, submitted by the appellant on 18 October
- B APP5: Drawing No I15.1-001E: Amended Location Plan, submitted by the appellant on 18 October
- C SDDC3: Drawing No I15.1-001D: Amended Location Plan, submitted by the Council on 18 October

**SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos I15.1-001D and 16257-01 Revision B.
- 5) The details submitted pursuant to the reserved matters listed in condition 1 shall broadly be in accordance with the details shown on Drawing No A632 05 Rev A and the Layout and Scale and Appearance parameters on page 20 of the Design and Access Statement, February 2016. The reserved matters approval applications shall include, in so far as relevant to those matters and/or phase of the development, the following details/ requirements:
  - a) Tree planting within the street scene accompanied by details of tree pits/subterranean cages to allow full maturity to be achieved and details of those existing trees on the site to be retained;
  - b) the internal layout of the site to be designed in accordance with the guidance contained in 'Manual for Streets' and parking provision of at least 2 spaces per dwelling of dimensions no less than those set out in the '6Cs Design Guide';
  - c) driveways/parking spaces connecting to the estate roads provided with 2 metre x 2 metre x 45 degree pedestrian visibility splays on either side of the accesses at the rear of the footway/margin;
  - d) driveways/parking spaces connecting to the estate roads shall be no steeper than 1 in 14 for the first 5 metres from the nearside highway boundary and no steeper than 1 in 10 thereafter;
  - e) siting of bin collection points within private land at the highway end of private shared accesses sufficient to cater for up to 2 bins per dwelling the collection point serves;
  - f) a swept path analysis to demonstrate that service and emergency vehicles can safely enter and manoeuvre within the site; and
  - g) a timetable and phasing plan for the implementation of the landscape scheme.
- 6) No removal of trees, hedgerows, shrubs or scrub shall take place between 1 March and 31 August inclusive unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on the site during this period and details of measures to protect the nesting bird interest on the site have been submitted to and approved

in writing by the local planning authority. The approved protection measures shall then be implemented as approved.

- 7) The dwellings hereby permitted shall be constructed so as to provide all the noise mitigation measures set out in section 5 of the Ambient Noise Assessment Ref 8352/0901/01 Issue 1, October 2014, and these measures shall be retained thereafter.
- 8) No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The CMP/CMS shall provide for:
  - i) a dust mitigation strategy taking into account national practice guidance and highlighting details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises;
  - ii) storage of plant and materials;
  - iii) site accommodation;
  - iv) loading, unloading of goods vehicles;
  - v) parking of site operatives' and visitors' vehicles;
  - vi) routes for construction traffic;
  - vii) hours of operation;
  - viii) a method of prevention of debris being carried onto the highway;
  - ix) pedestrian and cyclist protection; and
  - x) any proposed temporary traffic restrictions.No portable generators shall be used on site, unless details have been included in the CMP/CMS and have been subsequently approved. The approved CMP/CMS shall be implemented before any other operations are commenced and adhered to throughout the construction period for the development.
- 9) No other operations shall take place until a temporary access for construction purposes has been provided in accordance with a detailed design that shall have been submitted to and approved in writing by the local planning authority. The access shall be retained in accordance with the approved details until it is replaced by, or it becomes redundant as a result of, the permanent access to be secured in line with the approved plans; whereupon within 28 days all means of access to Jawbone Lane other than the permanent access shall be permanently closed with a physical barrier and the existing vehicle crossover(s) reinstated as verge/footway in accordance with a scheme that shall have been submitted to and approved in writing by the local planning authority.
- 10) No development or other operations on the site (including ground works and vegetation clearance) shall take place until there has been submitted to and approved in writing by the local planning authority a scheme which provides for the protection of all hedgerows and trees identified for retention in the details submitted under condition 1 growing on or adjacent to the site. The approved protection measures shall then be

implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

- 11) No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby permitted, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary, have been submitted to and approved in writing by the local planning authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.
- 12) No development shall take place until the detailed design of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The drainage scheme shall demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall include:
  - i) surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
  - ii) limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it shall not exceed the run-off from the undeveloped site and shall not increase the risk of flooding off-site;
  - iii) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm;
  - iv) detailed design (plans, cross sections, long sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system, highway drainage infrastructure, maintenance access, and the outfall arrangements;
  - v) details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters; and
  - vi) a timetable for the delivery and/or phased delivery of the drainage scheme.

The scheme shall subsequently be implemented in accordance with the approved details and timetable.

- 13) The development hereby permitted shall not take place until a scheme to dispose of foul drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

- 14) No works which include the creation of trenches or culverts or the presence of pipes shall take place until measures to protect badgers and other mammals from being trapped in open excavations and/or pipe and culverts have been submitted to and approved in writing by the local planning authority. The measures may include:
- a) creation of sloping escape ramps (mammal ladders) for badgers and other mammals potentially using the site, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 200mm outside diameter being blanked (capped) off at the end of each working day.
- The approved measures shall be implemented throughout the construction period.
- 15) No development shall take place until a scheme for the provision of affordable housing as part of the development shall have been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units and 75% social rented and/or affordable rented and 25% intermediate housing;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing with no more than 80% of market housing units occupied before completion and transfer of the affordable housing units;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those on the District Housing Waiting List; and
  - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other forms as may be proposed by the local planning authority and agreed with the affordable housing provider.
- The affordable housing shall be retained in accordance with the approved scheme.
- 16) The management of all retained and created habitats outside the curtilage of domestic properties shall be subject to a Habitat Management Plan (HMP) which shall be submitted to and approved in writing by the local planning authority prior to the occupation of any dwelling on the site. The content of the HMP may extend to the use of additional land and shall include the following:
- a) location, description and evaluation of features to be managed;

- b) ecological trends and constraints on site that might influence management;
- c) aims and objectives of management, including mitigation and enhancement for species identified on site and as advocated by the response of the Derbyshire Wildlife Trust, dated 21 April 2016;
- d) management options for achieving aims and objectives;
- e) prescriptions for management actions;
- f) preparation of a work schedule for an agreed period of time;
- g) details of the body or organisation responsible for implementation of the HMP; and
- h) ongoing monitoring and remedial measures.

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

- 17) No dwelling hereby permitted shall be occupied until a means of access for vehicles/pedestrians/cyclists has been constructed in accordance with the details shown on Drawing No 16257-01 Revision B.
- 18) Prior to the occupation of each dwelling hereby permitted:
  - (a) the new estate street(s) between that dwelling and the existing public highway shall be laid out in accordance with the approved plans under condition 1, constructed to base level, drained and lit in accordance with Derbyshire County Council's specification for new housing development roads;
  - (b) space shall be provided within its curtilage, or shared courtyard where applicable, for the parking and manoeuvring of residents' and visitors' vehicles associated with that dwelling, laid out in accordance with the approved plans under condition 1, and that parking and manoeuvring space shall be thereafter retained throughout the life of the development free from any impediment to their designated use as such; and
  - (c) where serving multiple properties, bin collection points shall be provided prior to the first occupation of the dwellings to which they relate and shall be thereafter retained throughout the life of the development free from any impediment to their designated use as such.
- 19) All planting, seeding or turfing comprised in the approved details of landscaping under condition 1 shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any plants which within a period of 5 years, and trees within a period of 10 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. Any publically landscaped areas shall be maintained as such until these areas are transferred to the local authority or nominated management company.