

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	23 AUGUST 2022	CATEGORY: Delegated
REPORT FROM:	HEAD OF PLANNING AND STRATEGIC HOUSING	
MEMBERS' CONTACT POINT:	SARAH BEEBY Sarah.beeby@southderbyshire.gov.uk	DOC:
SUBJECT:	DEED OF VARIATION – CHURCH STREET	REF: 9/2013/0946
WARD(S) AFFECTED:	CHURCH GRESLEY	TERMS OF REFERENCE:

1. Recommendations

- 1.1 That the Committee approves an amendment to the Section 106 Agreement (S106) by means of a Deed of Variation (DoV) to accept the transfer of the SUDs pond to the residents management company.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the DoV.

2. Purpose of Report

- 2.1 This report considers the proposed amendments proposed by the applicant in relation to the ownership and management of the SUDs.

3. Background

- 3.1 Members may recall that the site was granted outline planning permission in March 2015 for 306 dwellings on a site allocated in the 2016 Local Plan. The original report is attached as an appendix.
- 3.2 The current s106 states that the SUDs pond on the site is to be transferred to South Derbyshire District Council (SDDC). The planning approved layout shows that the developer intends to provide one SUDs pond in the eastern corner of the site. In line with the current s106 requirements, the remainder of the public open space (POS) and play areas across the site will be going to a residents management company whereby the residents pay a monthly charge for the upkeep of the POS and play areas. And these areas will be maintained by a managing agent and their appointed contractor and the residents will have control over said agent.

4.0 Discussion

- 4.1 The developer has requested that rather than transfer the SUDs pond to SDDC, they transfer the SUDs pond to the residents management company and that way the residents management company are responsible for maintaining all POS areas within the site. The developer considers that from experience this is more favourable solution for all parties as it means that there is no ambiguity about who is responsible for what and both SDDC and the residents have one company to go to with any queries or suggestions regarding maintenance of all the POS areas and the SUDs pond.
- 4.2 The proposed arrangements are considered to be a pragmatic way of ensuring the most effective management of the SUDs on the site. The original S106 was signed in 2015 when there was not the same interaction with Severn Trent regarding the required standards (including adoption requirements) of SUDs features. The arrangements put forward by the developer allow for the potential betterment of achieving effective management arrangements, including dialogue with Severn Trent during the drafting of the Deed of Variation. This arrangement will assist in ensuring the District Council is not left with management of SUDs that are not up to the required standards of Severn Trent.

5.0 Conclusions

- 5.1 It is considered that the proposed amendments would be a more efficient and effective way to manage the on-site public areas of the site, providing clarity to future residents. It is therefore it is recommended that the Committee approve the proposed SUDs management arrangements and delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

Appendix

Reason for committee determination

The application is for a major development which is not in accord with the Development Plan and has attracted more than two objections.

Site Description

This is a green field site measuring 12.01 hectares which is located to the south and east of the built-up area of Church Gresley. The site lies outside, but abutting, the boundary of the urban area, as shown on Sheet 1 of the Proposals Map for the South Derbyshire Local Plan 1998. There are existing residential properties to the northeast and northwest and Gresley Wood to the south and southwest. There is National Forest land to the east with connecting footpaths to Albert Village and beyond. St George's Primary School is located to the north of the site. A small, triangular-shaped copse is located in the northern-most corner of the site, adjacent to St George's School.

Swadlincote Public Footpath No.1 abuts and then crosses through the northern and eastern boundaries of the site and Swadlincote Footpath No.2 crosses through the entire central section in an east/west direction. Swadlincote Footpath No.3 abuts the southwest corner of the site and Swadlincote Footpath No.4 abuts the southern boundary.

The site comprises predominantly of grassland with a number of trees along the boundaries within boundary hedgerows. There is also an existing hedgerow which bisects the site in a northeast/southwest direction.

Proposal

This is an outline application for residential development of up to 306 dwellings, with all matters, other than access, reserved for future consideration. This equates to a density of 31 dwellings per hectare. An indicative layout has been included within the Design and Access Statement, although this has since been updated. The originally submitted Development Framework drawing indicates that the main vehicular access into the site would be via Rockcliffe Close, with an emergency access proposed via St. George's School. Four pedestrian accesses are proposed; two off Church Street, and two leading off the public footpaths. The emergency access via the school is to be deleted from the scheme at the request of the County Highway Authority and an amended Illustrative Masterplan drawing has been submitted to show this. The amended drawing provides an indicative layout which allows for the route of Public Footpath No.2 to remain on its definitive line and also shows a larger area to be allocated to St. George's School to allow for expansion. A section of Public Footpath No.1 will require to be diverted if the detailed layout remains as per the Indicative Masterplan. The scheme also proposes areas of public open space totalling some 1.56 hectares, the formation of swales and a pond to be located centrally within the site and a balancing pond and pumping station to be located in the south eastern corner of the site.

Applicants' supporting information

The application is supported by several reports all of which are available to view on the Council's website. However, for ease of reference the individual reports and assessments are summarised as follows:

Design and Access Statement (DAS)

This provides details of the planning policy context, opportunities and constraints, design principles and development, consultation and design and access (layout, scale,

appearance and landscape). It concludes by stating that the proposal would create a high quality residential development in a sustainable and logical location.

Planning Statement

This provides information with regard to the site and its surroundings, the development proposal, planning policy and the planning considerations. It concludes by stating that:

- The site is allocated for development in the emerging Local Plan;
- The development will contribute towards the Council's housing land supply;
- The site is sustainable and the development is of high quality;
- The development will contribute to a strong, responsive and competitive economy providing significant jobs during the construction phase. The local economy will benefit as a consequence of increased expenditure from the future residents of the development;
- The development will provide a range and mix of house types and tenures and therefore support a strong, vibrant and healthy community;
- The development will protect and enhance the best of the local natural environment;
- The application site relates well to the existing built form and is a logical urban extension. It adjoins residential properties to the north and west and is contained to the south and east by defensible landscape;
- It sensitively addresses site development issues such as site access, sustainable travel, flood risk and drainage and other matters such as ecology and landscape setting;
- Appropriate financial contributions to support local services and infrastructure will be made;
- The provision of land for the expansion of St George's School;
- A financial contribution towards the relocation of Gresley FC;
- The development will qualify for a New Homes Bonus of around £2 million over a six year period which can be used to benefit the local community.

Landscape and Visual Impact Assessment

This confirms that the site can be seen predominantly from views in the east looking west with views from other sides being limited owing to the topography of the area and surrounding land uses. A substantial row of Willow trees add to the character of the urban and rural edge and define the boundary. These should be retained. The wide mature hedgerows within the site define the plateau. The National Forest character should be protected and enhanced with particular attention paid to the southwest boundary where a hedgerow and trees sits on the edge between recent tree planting and the site. The planting of new trees within the site will further establish the National Forest character. The boundary of the lower section of the site should be strengthened.

Statement of Community Involvement

A public exhibition was carried out on 7th May 2013 and ran from 16:30 to 19:30 with approximately 120 people attending. 47 completed feedback forms, emails and letters were received, with most people raising issues of access, traffic, drainage and school capacity. The report concludes by confirming that the developers have fully embraced the spirit of local consultation and that the issues raised have been considered in the evolution of the scheme and where possible have influenced the proposed development.

Arboricultural Survey

This identifies the constraints caused by existing trees, such as reduced light levels and the need to avoid damage to tree roots. The Tree Constraints Plan shows that some trees currently at heights of around 25m will need to be reduced before development proceeds. The woodland strip along the western boundary is dominated by pollarded Willows which required crown reduction to prevent collapse of the over-extended branches. The trees are of high landscape value and are considered to be old for the species.

Flood Risk Assessment

This concludes by stating that provided the sustainable design elements are incorporated into the detailed design phase, the proposed development will comply with the aims of the NPPF, adhere to the Environment Agency's Standing Advice and comply with Derbyshire County Council's requirements.

Phase 1 Habitat Survey

Whilst Great Crested Newt (GCN) were recorded as being present within the central ditch that runs across the site in 1985, the submitted survey did not record any and it was therefore concluded that the species was no longer present. Therefore, no mitigation measures will be required and the development could proceed without recourse to licensing if approved. The survey recommends careful work practices during the construction phase to reduce the risk of committing an offence under the Wildlife Act.

Drainage Strategy

Surface Water: This will discharge via various attenuation, treatment and SuDS techniques to an existing ditch course located just beyond the southern site boundary. It is anticipated that the open sections (ditch course, swales and balancing pond) will be adopted by the lead Local Flood Authority and the conventional piped drainage will be adopted by Severn Trent Water.

Foul Water: Discharge from the site will be via a new pumping station located on the eastern boundary of the site and rising main which will have one of two options as an outfall. The outfall for its rising main will be dictated by Severn Trent Water and could be either via a new rising main to connect to the existing rising main within the site, or through the site to a public manhole. Whichever option is chosen the development will be assured of a site-wide foul water drainage solution will be adoptable by Severn Trent Water.

Geo-Environmental Report

Potential on-site and off-site sources of contamination have been identified and a summary of the potential ground abnormalities and development constraints identified through historical data and ground investigation, including:

- A large clay pit (clay, coal and shale) backfilled during 1970s/1980s
- Colliery spoil (Made Ground)
- Possibility of coal seams or abandoned workings
- Significant difference in levels across the site requiring earthworks, reprofiling or benching

- Marginal heavy metal contamination identified in one location
- Marginal exceedances of nickel, cadmium and selenium but not sufficient to significantly impact on groundwater
- Variable groundwater depths
- Elevated levels of carbon dioxide likely generated from the breakdown of carbonaceous material within the backfilled colliery spoil therefore gas protection measures will be required.

Transport Assessment and Travel Plan

- The development will be accessed by a safe and efficient vehicular access arrangement;
- The proposed development will be easily accessible on foot with the existing pedestrian footways providing access to a wide range of services including Swadlincote town centre;
- The site is ideally located to encourage journeys by bus via existing bus services;
- Implementation of a Framework Travel Plan
- Proposed development would be able to be accommodated on the local highway network and have minimal impact.

Planning History

None relevant to this application

Responses to Consultations

The County Highway Authority (CHA) has no objections subject to the receipt of an amended plan to show the emergency access to the school deleted from the scheme and an increase in the amount of land to be given to the school for expansion (now received); and subject to conditions, notes and details of S106 funding.

With regard to the submitted Travel Plan DCC considers that the document needs to identify a Travel Plan coordinator to manage travel to and from the site and take responsibility for the Plan. An explicit statement is required regarding a commitment to the reduction of single occupancy vehicle (SOV) journeys to and from the proposed development. An additional section is required to consider actions and activities to support the promotion of public transport. A specific aim needs to be included regarding reduction in SOV journeys. A condition should be attached requiring the submission of a full Travel plan as the current document is only a framework.

Sport England (SE) does not consider the site constitutes a playing field and therefore has considered this as a non-statutory consultation. The development will generate demand for sporting provision and existing provision within the area may not be able to accommodate this increased demand without exacerbating existing and/or predicted future deficiencies. Therefore SE considers that new developments should be required to contribute towards meeting the demand they generate through the provision of on-site facilities and/or providing additional capacity off-site. It is understood that several areas of informal open space would be included within the site and there is potential to support the relocation of Gresley Football Club as part of a Section 106 obligation. A further element is for the inclusion of a dedicated area of land to accommodate future expansion of St George's Primary School. SE's Sports Facilities Calculator provides an indication of the

likely demand that will be generated by the development for certain types of facilities. In this case a population of 734 people would generate a demand for just under 8 sq.m. of water space, 0.2 sq.m. of a badminton court and 0.02 sq.m. of an artificial turf pitch at a total capital cost of just under £252,000. A further detailed consideration also needs to be given to the rationale for a possible new football stadium and the potential for such a project if judged to be a suitable replacement for the existing facility. In the absence of clear evidence-based proposals for making provision for additional outdoor and built sports facilities, Sport England objects to the application in its current form.

Severn Trent Water has no objections subject to a condition relating to the submission and approval of a drainage scheme.

The County Education Authority considers that St George's School does not currently meet the DfE guidelines in terms of site area and the offer of more land as proposed on the originally submitted plan would not bring it up to the minimum guideline area for a school of the increased size as a result of the proposed development. However, it now accepts that the additional land shown on the amended plan would satisfy their requirements along with the proposed S106 contributions.

Derbyshire County Council (Strategic Development) has made representations with regards to developer contributions, which are as follows:

- £28.61 per dwelling (£5,893.66) towards the provision of a new Household Waste Recycling Centre in South Derbyshire;
- Access to high speed broadband;
- Protection of existing Public Rights of Way and provision of a new Greenway on site, along with a financial contribution of £14,400 for future maintenance;
- The provision of land with a financial contribution of £695,339.61 to provide an additional 61 primary pupil places at St George's CE Controlled Primary School;
- £790,103.82 towards the provision of an additional 46 secondary school places at The Pingle School;
- £335,302.20 towards the provision of additional 18 post-16 places at The Pingle School; and
- New homes designed to Lifetime Homes standards

Should the developer consider that the viability of the scheme would be adversely affected by the above contributions a Viability Assessment should be provided for review.

Derbyshire County Council (Policy) has assessed the application and considers that on balance the proposals would be broadly in accordance with national policies in the NPPF for sustainable development. It would form a logical extension to the urban area of Church Gresley in an accessible location to a variety of modes of transport. The proposals are broadly in accordance with the saved policies of the adopted Local Plan, particularly Housing Policy 4 which permits new housing development on the edge of the urban area of Church Gresley, although it carries only limited weight. The proposals are also in accordance with the emerging Local Plan. Overall, the proposed development is acceptable subject to the need for affordable housing and additional landscape mitigation measures.

Derbyshire County Council (Drainage) recommends the incorporation of a Sustainable urban Drainage System (SuDS) within the design of the drainage strategy and the

proposed drainage should be considered as early as possible in the planning and design process. Also it should be confirmed prior to commencement of works who the responsible organisation for future SuDS maintenance will be.

The County Archaeologist is of the view that there is no archaeological potential within the site.

Derbyshire Wildlife Trust has no objections subject to conditions in respect of the protection of existing trees and shrubs and no removal of trees, shrubs or scrub to take place between 1st March and 31st August unless a recent survey has been undertaken to assess the nesting bird activity.

The National Forest Charitable Trust (NFCT) considers that the public footpaths within and bordering the site should be incorporated into the development to enhance access for both existing and new residents. The footpath that crosses the site from Church Street (Railway Side) to the Conkers circuit is well used and will become of greater importance should the development proceed. It should be accommodated within the development on its existing route along a green corridor and housing should provide natural surveillance. The woodlands surrounding the development should be enhanced to allow for increased use by new residents.

The National Forest Company (NFC) considers that sufficient land should be made available for the expansion of the school and the retention of the woodland in the northern corner of the site. None of the existing woodland areas are shown on the submitted Development Framework plan and an amended plan should be submitted to show these areas. It is acknowledged that some hedgerow will be lost as a result of providing the access roads but this should be kept to a minimum. The trees along the western boundary of the site should be protected by Tree Preservation Orders to ensure they are retained by the future occupiers of the dwellings proposed for this part of the site. The National Forest Strategy 2004 – 2014 should be considered as a material planning consideration in accordance with the advice in paragraph 92 of the NPPF. The Strategy sets out that new development should contribute to the creation of the Forest through complying with the Planting Guidelines. 30% of the site area should be planted as woodland and landscaping, which would equate to 3.6ha in this instance. Further information should be sought to demonstrate how woodland planting and landscaping can be accommodated within the development and quantify this in relation to the amount expected through the Planting Guidelines. If this amount of planting cannot be met the shortfall should be addressed by a financial contribution through the S106 agreement. The design of the development should reflect the Forest context and include street trees, tree planting, the use of timber within the materials palette and a natural play approach to the play area. The public footpaths should be better incorporated into the development and more consideration given to ensuring existing footpaths are retained within a safe and pleasant green environment. Houses should face the public footpaths and new routes created within the development to allow residents to walk to the play area and to the attenuation basin. The existing copses should be retained and incorporated within the development.

The Environmental Protection Officer (contaminated land) requires a condition regarding contaminated land.

The Environment Agency requires conditions relating to the submitted Flood Risk Assessment and the Drainage Strategy Report and the submission of a surface water drainage scheme.

Natural England has no objection given that foul flows would discharge outside the River Mease catchment area.

The Coal Authority requests a condition relating to site investigation and remedial works.

The Crime Prevention Officer has made recommendations with regard to the detailed design of the development.

The Peak and Northern Footpaths Society objects on the grounds that no suitable diversion of Public Footpath No.1 has been included in the plans. Also Government Circular 1/09 advises that the alternative alignment of public rights of way should avoid the use of estate roads for that purpose and preference given to the use of made estate paths through landscaped or open space areas away from vehicular traffic. Footpath 2 (and possibly 1, 3 and 4) would be diverted onto estate roads pavements which is not acceptable and would be opposed by the Society. No mention has been made with regard to a financial contribution towards off-site works to ensure the public footpaths can physically cope with the additional pressure that the occupiers of 306 dwellings will place on the footpaths. It should be ascertained that the old hedge running south westerly across the site is not mentioned in an Inclosure Award as damage or lack of maintenance would be illegal.

The local County Council Member has highlighted the impact that the proposed development would have on St George's School, which is over capacity. His view is that the provision of land along with a financial contribution to provide additional capacity would be required. He has also highlighted the need to consider the traffic impact on Church Street and Thorpe Downs Road.

Responses to Publicity

A total of 29 letters and emails have been received which express concern about the proposed development on the following grounds:

- a. Only one access point via Rockcliffe Close;
- b. Increased traffic at an already busy junction and in the vicinity of the school on Church Street;
- c. A second access point should be considered off Church Street;
- d. The number of proposed dwellings is too many;
- e. Incorrect information with regard to the diversion of the footpaths;
- f. School is already oversubscribed – no guarantee that the County Council will expand the school;
- g. Intensification of use proposed for the Teachers' car park access road;
- h. Increase in likelihood of accidents at the Rockcliffe/Thorpe Downs junction, particularly in bad weather;
- i. Incorrect information in the Transport Assessment – further modelling should be carried out to include school drop-off and pick-up times in the peak hours;
- j. No information on how the emergency access via the school will be managed – it will be used as a cut through endangering parents and children;
- k. Further information required on the details of signage and public footpaths – how will footpaths be sustained and managed?;
- l. Cycle routes should be increased by way of S106 contributions;

- m. Exacerbation of flooding problems already experienced at Thorpe Downs Road and Silkstone Close with Severn Trent Water refusing to adopt the pumping station and drains;
- n. The copse at the north eastern corner of the site should be retained as it assists in absorbing water;
- o. Safety on Rockcliffe Close;
- p. Insufficient parking proposed for the development;
- q. Risk of children drowning should be mitigated against;
- r. Existing infrastructure would be unable to cope;
- s. Noise and disturbance caused by the construction of the development;
- t. Devaluation in property prices;
- u. Impact on quality of life currently enjoyed by residents of Rockcliffe Close and general loss of residential amenity;
- v. Thorpe Downs Road is dangerous during snowy and icy weather;
- w. Rockcliffe Close is not suitable as the only access to the development;
- x. Loss of a greenfield site and valuable agricultural land and loss of a much-used amenity area – brownfield sites should be developed first;
- y. Impact on wildlife, such as bats and great crested newts and loss of habitats, such as hedges and trees;
- z. Increased risk of flooding;
- aa. Doubt that the houses are needed as new houses are still being built;
- bb. A new school should be built on the land instead of houses;
- cc. Full details should be submitted together with an EIA;
- dd. The application is premature as the new Local Plan hasn't been through its Public Examination phase;
- ee. Breach of the Human Rights Act;
- ff. Contrary to SDDC's Swadlincote Walking Strategy;
- gg. The Landscape and Visual Impact Appraisal has not considered views of the site from the footpaths;
- hh. Proposal is contrary to Saved policies H4 and Env1;
- ii. Prominent intrusion into the landscape;
- jj. Several inaccuracies in the Transport Assessment;
- kk. Consideration should be given to the provision of a pedestrian crossing;
- ll. Downgrading of local fire station will put community at risk.

A further 19 letters/emails have been received in response to the amended Illustrative Masterplan STMOD-DYS-CG-003 Rev:D, which, for the most part, raise issues and objections similar to the above. However, in addition to these, the following points are made:

- a. The removal of many of the existing hedgerows and trees will impact on nesting birds and winter food – loss of habitat is not acceptable;
- b. Land would be best used to grow crops or graze animals to help with the growth in population;
- c. Little additional investment in leisure facilities, police, healthcare etc;
- d. Church Gresley is a village which should not be destroyed by urban sprawl;
- e. None of the residents' concerns have been addressed within the revised plans;
- f. Location of the balancing pond seems pointless and would be better positioned between Thorpe Downs Road and the new estate;
- g. Removal of trees will increase soil erosion and flooding at the bottom of the estate;
- h. Proposal is contrary to Policy H4 of the adopted Local Plan;

- i. Adequate education provision should be in place before, or at least the same time as, the development is completed;
- j. Parked vehicles on Church Street impede the free flow of traffic resulting in heavy goods vehicles mounting the pavements or causing congestion;
- k. Risk to children entering school at the Church Street access;
- l. The copse at the northern corner of the site should remain;
- m. The site should be split into two with two accesses;
- n. Impact on privacy;
- o. Increased tarmac and concrete will exacerbate flooding;
- p. No detail submitted for the northern part of the site;
- q. The amended plan does not address earlier concerns with regard to conflict with existing local and national planning policies;
- r. The Transport Assessment ignores the amenity aspects such as noise and environmental pollution;
- s. Not possible to properly consider the merits of the proposal without addressing the full implications of a comprehensive access solution and therefore an holistic approach is necessary;

Development Plan Policies

The relevant policies are:

Adopted Local Plan: Housing Policies 4, 8, 9, 11; Environment Policies 1, 9, 10; Transport Policies 6, 7; Recreation & Tourism Policies 4, 8; Community Facilities Policy 1

Emerging Local Plan (pre-submission March 2014) S2, S4, S6, H3, SD1, SD2, SD3, SD4, BNE1, BNE4, INF1, INF2, INF6, INF7, INF8, INF9

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 14, 17, 32, 34, 36, 38, 47, 49, 50, 75, 92, 103, 109, 118, 121, 186, 187

National Planning Practice Guidance (NPPG)

Planning Considerations

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

- The principle and general sustainability
- Affordable Housing
- Impact on the character of the area
- Urban design and Open Space
- Ecology
- Highway matters
- Section 106 obligations

The principle and general sustainability

The Council has submitted its Local Plan Part 1 to the Secretary of State. The housing strategy within the Plan is evidence-based and identifies the application site as an allocation that would make a strategic contribution towards meeting housing need for the

District. However, the emerging Local Plan Part 1 has yet to be publicly examined and therefore only limited weight can be given though the more advanced the Plan the greater the weight that can be accorded according to the NPPF. Policy H3 of the Emerging Local Plan relates to this site, and considers it to be the principal of three sites (Church Street, Moat Street, and Bridge Street) that, collectively, would provide much needed housing for the District together with a new football ground for Gresley Rovers FC. The commentary to the policy confirms that the site is accessible to a wide range of shops, services and community facilities including St. George's Primary School and that additional land for an extension to the school will be secured through the development of the principal site. The policy text provides for:

A Residential development for around 350 dwellings.

B The Council would require below listed site specifics and accord and with other Local Plan Policies:

- i) Developer contributions for additional land to enable an extension to St George's Primary School;
- ii) Consideration to the provision of a new football ground on the Bridge Street site of an acceptable standard in terms of quality with contributions achieved where viable;
- iii) Consideration given to any undue adverse impact on nearby occupiers which may require mitigation of the visual impact to be put in place;
- iv) Access points to serve the site shall be developed appropriately with the principal site being access off Rockcliffe Close;
- v) The presence of coal mining legacy and resulting potential for unstable land will require the submission of a Coal Mining Risk Assessment in support of planning applications;
- vi) Provide high quality cycle and pedestrian links both within the development and connecting to existing and proposed networks including NCN63 Burton to Leicester route.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *'if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'*.

Paragraph 14 of the NPPF states *'at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking'*. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:

- *'Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *Specific policies in this NPPF indicate development should be restricted'*.

Paragraph 215 states that due weight should be given to relevant policies in exiting plans according to their degree of consistency with this framework.

In terms of housing supply, paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are crucial to the delivery of the housing strategy over the plan period. In addition, there is a burden on the Local Planning Authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of at least 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites. The Council cannot currently demonstrate a five year supply of housing land.

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. It has been made clear through appeal decisions made since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The objectively assessed housing needs of the Derby Housing Market Area have been agreed across the three local authorities, with South Derbyshire needing to provide 13,454 dwellings up to the end of the plan period in 2028.

The application site is considered to be in a sustainable location with appropriate services in terms of the presumption in favour of sustainable development and is contained within the most sustainable settlement within the district. It has access to a range of facilities, services and transport options, and in acknowledgement of the contribution that it would make towards meeting an identified strategic housing need, the proposal represents sustainable development in principle. In the context of the 1998 Local Plan that is out of date, in so far as, policies for the supply of new housing are concerned, the presumption in favour of sustainable development would apply unless any adverse impacts would significantly and demonstrably outweigh the benefits.

In terms of policies in the current adopted 1998 Local Plan, the site lies on the fringes of the built-up area of Church Gresley. Policy H4 of the adopted Local Plan supports residential developments within this location provided that the site is substantially surrounded by development and:

- (i) Does not result in a prominent intrusion into the rural landscape outside of the built up area;
- (ii) Does not involve the loss of the best and most versatile agricultural land;
- (iii) Does not constitute ribbon development other than the infilling of a small gap in a substantially built up frontage;
- (iv) Does not place excessive demands on public utility services;

- (v) Does not involve the development of open spaces, gaps and landscaping features that make a valuable contribution to the character or the environmental quality of the area;
- (vi) Is of suitable scale and character; and
- (vii) Does not prejudice the continued viability of adjacent industrial premises or community facilities.

The site is bordered on two sides by existing development and on the remaining two sides by hedgerows and trees. Whilst it cannot be argued that the proposal would not result in some intrusion, the contours of the site are such that the development would slope away from Church Street down towards the eastern boundary. The site does not comprise good agricultural land, being a former opencast coal extraction site which has since been backfilled. The development would not constitute ribbon development and would not involve the development of any landscape features that make a valuable contribution to the area. The proposed density is considered to accord with the existing residential density of Church Gresley and would therefore be of suitable scale and character. It would not prejudice the continued viability of industrial premises or community facilities.

Affordable Housing

The SHMA suggests, over the period of 2012 – 2017, there is a housing need for 1,723 affordable homes, (345 affordable homes per year), across South Derbyshire. Church Gresley is one of the areas that make up the urban area of the Swadlincote sub-market area of the District, which also includes Castle Gresley, Midway, Newhall and Woodville.

The housing mix needs to reflect the both the demand for houses registered on District housing waiting list currently and the projected sub-market area future demand. The SHMA recommends an affordable housing mix as follows for South Derbyshire of 10-15% one bedroom; 35-40% two bedroom; 35-40% three bedroom and 10-15% four bedroom properties.

The Council's Housing Strategy Manager has advised that the development should provide 30% affordable housing and the SHMA suggests that a split of 68% rent and 32% intermediate housing would be appropriate for the site. Based on current evidence, in order to deliver the affordable housing need a proportion of affordable housing is sought, underpinned by Local Plan Saved Housing Policy 9 and Chapter 6 (para 50) of the NPPF. In this case, because of viability considerations (see education and Section 106

Contributions

assessment below), the provision of 30% affordable housing would have adverse implications for other contributions that are fundamental to the development's overall sustainability.

Impact on the character of the area

Given the location of the site outside the development boundary and the proximity of public rights of way, there would inevitably be an impact on the character of the area. However, the site does not present the most attractive of settings being previously used for opencast mining, although over time it has taken on a more rural character. There is a clear opportunity to provide a built form that creates a high quality environment incorporating local distinctiveness in accord with paragraph 60 of the NPPF and Local Plan Saved Housing Policy 11. Whilst the detail would be considered at reserved matters stage for each phase of the development, the submitted Masterplan and Design and Access

Statement provide a sound basis for this to come forward, with the development appearing as a logical extension to Church Gresley.

Urban design and Open Space

The application is in outline only therefore it is not possible to carry out a full Building for Life assessment at this stage. Nevertheless the site presents some key aspects that would form the basis of a good scheme in urban design terms. It is well served by the public transport and the proposed development would include open space facilities on site that would provide facilities for the wider area and therefore help to make it a sustainable development. The Illustrative Masterplan indicates a main spine road running around the development with more minor roads leading off, with a centrally-located pond, swales and landscaped area that would break up the massing of the built form. Notwithstanding the concerns of the reported footpath society, the unchanged route of Public Footpath No.2 would continue to link Church Street to the National Forest planting areas outside.

Issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions, although the principle objectives for these can be secured by conditions at this stage.

In view of the urban design and open space matters considered above the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policies 4 and 8 of the Local Plan.

Ecology

With regard to protected species, it is apparent that whilst Great Crested Newt (GCN) were present in 1985, the submitted survey did not record any and it is concluded therefore that the species is no longer present within the site. Consequently, no mitigation measures will be required and nothing further is required by way of licensing. Although GCN are no longer present a method statement is to be produced to ensure the protection of common amphibians (and potentially grass snakes and slow worms) during site clearance and construction. The method statement would include ecological supervision of vegetation removal and topsoil stripping, and dismantling by hand any potential refugia (areas in which organisms can survive through a period of unfavourable conditions). Any amphibians, reptiles or small mammals disturbed or uncovered would either be caught by hand and relocated to a safe area or left to vacate the construction site as and when. Careful work practices are recommended during the construction phase to reduce the risk of committing an offence under the Wildlife Act and an informative should be attached to this effect.

Derbyshire Wildlife Trust (acting for the Council) has no objections but requires conditions in respect of the protection of existing trees and shrubs and no removal of trees, shrubs or scrub to take place between 1st March and 31st August unless a recent survey has been undertaken to assess the nesting bird activity.

The views of Natural England are confusing as the site is not within the River Mease SAC catchment area and therefore there is no requirement for a financial contribution towards water quality management. An update to their position will be reported at the meeting.

Highway matters

Chapter 4 of the NPPF relates to the promotion of sustainable transport and paragraph 38 highlights *'For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties'*.

The originally submitted Development Framework Plan showed an emergency access into to the site via St George's School. This has now been deleted following concerns expressed by the CHA and the amended Illustrative Masterplan now annotates this as being a pedestrian/cycle access point only. There are no objections to a single vehicular access into the site via Rockcliffe Close, as it has been constructed to a standard to take the additional capacity. The proposal is thus considered to be in conformity with Local Plan Saved Transport Policy 6. Whilst the development would have an impact on the highway network and the potential to affect the wider transport infrastructure, the NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In this case there is no evidence that the cumulative impact would be so.

The CHA has requested a condition should be attached requiring the submission of a full Travel Plan as the current document is only a framework. This could be requested as part of the Reserved Matters applications for each phase of the development.

Section 106 obligations

Since submission of the application, detailed and extensive negotiations have been on-going with the applicants. Negotiations have largely been around surplus profit from the site and prioritising the various competing demands for funding infrastructure mitigation. As in so many cases the issue here is with viability. An added complication here is that the site is largely made up of fill material (of indeterminable quality and bearing capacity) which is understood may extend to a depth of c.30 metres. This clearly has implications for the cost of bringing the site forward for residential development. Indeed, through the submission of a viability assessment, it has been demonstrated to the District Valuer (DV) that because of the ground conditions, there is insufficient profit in the development of the site to meet all of the expected obligations.

In such cases financial contributions need to be prioritised which result in some infrastructure being provided at the expense of others. In this case it is clear from discussions with the LEA and local members that the critical priority of the infrastructure is education. To date negotiations have confirmed that extra land as requested by the LEA would be provided along with the financial contribution as set out below which would enable St George's School to undergo an essential improvement programme which simultaneously would enable accommodation of the children generated by the new housing developments in the locality. The list below shows this contribution and the others that the viability assessment shows are affordable. Other contributions requested either fail the CIL Regulations tests or are unaffordable.

- Education: St George's Primary School: £695,339
Secondary (Pingle School): £790,104
Post 16 (Pingle School): £335,302
- Recreation/POS: £497,355

- Adoption of SUDs: £80,000
- Waste & recycling: £5,893

The largest contribution (in equivalent cash terms) however would be for affordable housing provision. During the examination of various viability reports by the DV, it was concluded that the scheme should be able to support the above S106 contributions and still enable the provision of upwards of 17.32% of affordable housing depending on the model used. However, the applicants have stated that according to their calculations the scheme can only stand 5%. This diversity of value is fairly typical given that the nature of viability assessment which is far from standardised or rule-bound. Clearly a 5% offer would not be acceptable given the DVs findings. But it remains for the local planning authority to come to a view regarding the offer made and whether it could achieve a better outcome at appeal. After much difficult negotiation, a revised offer of 15% affordable housing along with the rest of the S106 package (as above) has been secured. In the interests of securing the improvements to the local schools and to ensure that a timely start on site is made to assist with meeting the district's housing delivery programme, it is recommended that the offer represents a good compromise and should not be passed up. An alternative more positive result at appeal cannot be guaranteed and the overall package could therefore be jeopardised.

In the background to this is the issue around Policy H3 in the emerging Local Plan and an acknowledgement that the application site is one of three sites cited in the policy in the context of the provision of a strategic site for residential development. As such, the text states: *'...The development of the wider location offers the opportunity to provide for an extension to St. George's Primary School and a replacement football club for Gresley FC on the smaller site (Bridge Street), as they have outgrown their current premises.'* The history of the new football facility is an important consideration here. The impetus to move the club was started in the early 1990s and came from the then Gresley Rover's winning of the league to qualify for promotion to the Football Conference. At the time the existing stadium at the Moat Ground was inadequate to take advantage of the promotion and so the club did not progress. Negotiations with the then landowners sought to progress the development of the land at Thorpe Downs and include the reclamation of the land on Bridge Street adjoining, specifically for a new a new community stadium for the football club. The Thorpe Downs development was completed but the Bridge Street ground stalled though reclamation works were completed and the land remodelled for the footprint of the new stadium.

Since that time no funds have been available to complete the project hence the identification of the opportunity and the citation in the Local Plan. At this stage there is no separate provision available for any contribution towards the new community stadium from the proceeds of the development of this site. However, £319,428 of the Recreation/POS sum is for provision of off-site formal and built recreation facilities. It would be thus consistent with the SPG for this sum to be held in reserve for a contribution towards the new stadium. Any further contribution to the stadium would need to come from the affordable housing allocation. Although the stadium project is not yet in a position to move forward, it is hoped that a fund for its continued construction could be set up from the £319,428 and, subject to member approval, a further £680,572 could be made available from the affordable housing allocation (equivalent to about 5 units). These sums could be held for an agreed period of time (say two years) and in the event that the project had not progressed over that time period, the funds would revert to their roles as originally designated. The sums could only be drawn down for the stadium once the Council was

completely satisfied that the project could proceed without undue risk and that it would result in a genuine community facility.

Conclusion

The application relates to one of the Council's sites put forward for residential development through the Local Plan Part 1 process, which, together with the Moat Street football ground proposes up to 350 dwellings. The development is likely to be able to contribute to the early delivery of homes, helping the Council to meet its requirement for a five year supply of deliverable housing. By reference to the NPPF's three sustainability dimensions (economic, social and environmental) the provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire's economically active population as well as helping to support the vitality and viability of the area. Construction jobs would be created and retail trade in the area is likely to benefit from the influx of new residents. The local schools would benefit by the provision of land for a much needed expansion (primary) as part of a significant contribution to the wider education provision.

The proposed scheme would also have a positive impact on local communities by providing new homes (market and affordable). In terms of healthy communities the Illustrative Masterplan includes a good level of green infrastructure, open space and recreation areas. Pedestrian links would be retained and incorporated into the layout which would assist in supporting active lifestyles and encourage alternatives to the car for accessing local facilities and employment.

The reports accompanying the application explain how a range of environmental factors have been taken into account to ensure sustainable development (including landscape, ecology, arboricultural, flood risk and drainage). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features and wildlife. The scheme also helps to mitigate future climate change through reducing CO2 emissions by the provision of new homes in a highly accessible location and by reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through the provision of a sustainable drainage strategy and green infrastructure.

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 applicant entering into a Section 106 Agreement with the Council to secure the contributions referred to in the planning assessment of the report and subject to the following conditions: