

REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

This section 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.

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

27/11/2018

Item 1.1

Ref. No. 9/2018/0812/RM

Applicant:
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Proposal: APPROVAL OF RESERVED MATTERS FOR ACCESS, LAYOUT, SCALE, APPEARANCE AND LANDSCAPING OF OUTLINE PERMISSION REF. 9/2014/0888 IN SO FAR AS THE ACCESS ROUNDABOUT, SPINE ROAD, GREEN INFRASTRUCTURE, OPEN SPACE AND DRAINAGE ON LAND AT SK2819 1873 (SITE C) WILLIAM NADIN WAY SWADLINCOTE

Ward: Newhall & Stanton/Swadlincote

Valid Date 27/07/2018

Reason for committee determination

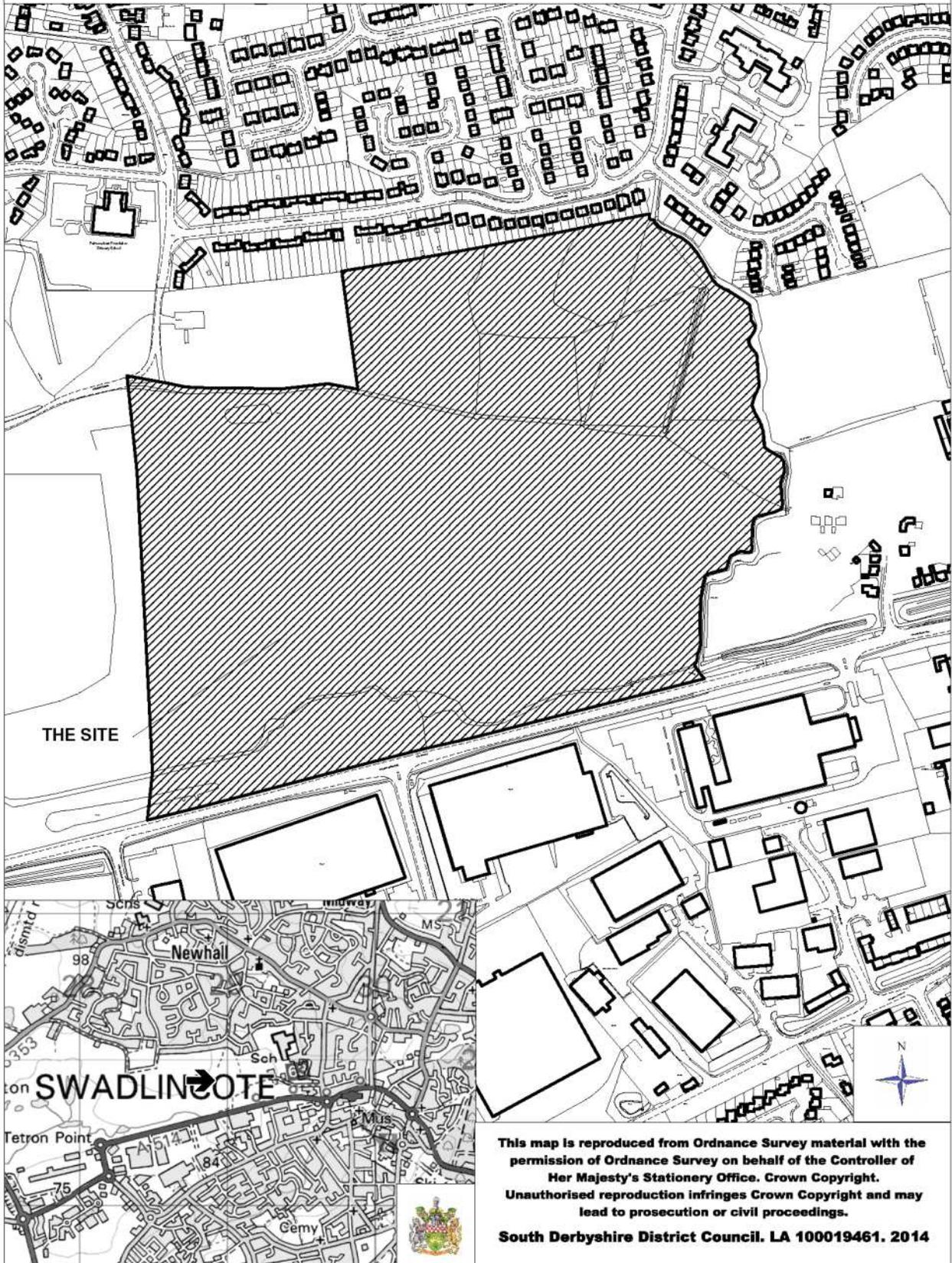
The item is presented to Committee as the Council has an ownership interest in the site.

Site Description

This 27 hectare site is located on the northern side of William Nadin Way and includes the Council owned sports pitches off Oversetts Road in the north western corner and the Local Wildlife Site (LWS), Breach Ley Farm Meadow, in the north eastern part. The site is broadly rectangular in shape and adjoined by existing residential development to the north, by the recent Morris Homes housing development to the east, and by the driving range and golf course to the west. Opposite the site, across William Nadin Way, are large industrial and warehouse buildings. Swadlincote town centre is located approximately 400 metres to the east.

The site levels range from 83m AOD within the northern portion of the site to 73m AOD along the southern boundary. The site formed part of an opencast coal mine between 1992 to 1998 and was returned to grassland with woodland areas. There are two watercourses and four ponds on the site. The main watercourse Darklands Brook runs along the eastern and northern parts of the site.

9/2018/0812 - Land at SK 2819 1873 (Site C), William Nadin Way, Swadlincote (DE11 0FL)



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South Derbyshire District Council. LA 100019461. 2014

Proposal

Outline permission for the residential development of the site was granted on the 29 June 2018. This application represents the first application for approval of reserved matters, related to the provision of the roundabout on William Nadin Way, spine road, landscaping (excluding the Oversetts Road sports pitches and the urban park), earthworks and drainage. The centre of the roundabout would be 165m from the eastern boundary with the Morris Homes development, whilst the spine road would run through the centre of the site in a north westerly direction ending in a turning head adjacent to the existing hedge to the north of the playing fields, where it would provide access to the northern housing parcel.

The applicant seeks, under this submission, to provide serviced parcels of residential land to the housebuilder(s). The total residential site area would be approximately 12 hectares. The concept masterplan indicates the main areas of green space are along the Brook on the northern boundary, around the central green area in between the residential parcels to the west of the spine road, along the eastern boundary with the Brook and in the north western corner adjacent to the wildlife site.

A phasing of the site is set out. This would be in 4 phases:

- Phase 1 – wildlife and drainage areas;
- Phase 2 – 125 dwellings on the south-eastern parcel with the central landscaped area;
- Phase 3 – 185 dwellings on the two parcels west of the spine road with the natural play area in between; and
- Phase 4 – 90 dwellings on the northern parcel, with the urban park and Oversetts recreation ground developed by other parties.

The section 106 agreement with the outline application secures 16.5% affordable housing which equates to up to 66 dwellings with a split of 68% social rent and 32% intermediate. The location of these dwellings would be included in the further reserved matters application for the detailed layout of the residential parcels and their design.

The drainage strategy states that each parcel would be provided with an allowable rate of discharge into the on-site network which would be attenuated and treated through a series of sustainable urban drainage (SuDS) methods. The network would discharge into the Darklands Brook at the south of the site and would be subject to restrictions to greenfield run-off rates. Foul drainage would be conveyed to a pumping station before a rising main carries the effluent to the existing Severn Trent Water (STW) sewer running through the site. Five dry basin attenuation basins are proposed – one within the northern green public open space (POS) area, one within the central green POS area and three in the south eastern corner adjacent to the Brook.

Applicant's supporting information

The Drainage Adoption Strategy confirms the above approach to surface and foul water drainage. Swales adjacent to the spine road are proposed for highway drainage. The five ponds would be privately maintained and would be the

responsibility of the developers of each parcel to agree with STW drainage connections to the main network prior to commencement of works. The document includes maintenance schedules.

The Phase II Ground Investigation Report details the analysis of boreholes and trial trenches and excavations pits. It concludes that the risk to future site users is considered low with respect to residential occupiers, with no remedial action recommended. The risk presented to controlled waters is assessed as low. The risk presented by ground gases is assessed as moderate with ground gas protection measures recommended across the proposed development site. The report recommends that consideration be given to the adoption of a programme of ground improvement across the site prior to the re-development.

Ecology Report Update

A total of four ponds are recorded within the site, and one 170m to the west. Two watercourses are present on site. A total of six hedgerows were recorded on site, which were considered to provide potential commuting habitat for wildlife and qualify as habitats of principal importance due to the dominance of woody native species. Breach Leys Farm Meadows LWS is located within the north east of the proposed development site extending eastwards out of the development area. The site is designated for its semi-improved neutral grassland. No Great Crested Newts (GCNs) were recorded within the ponds on site or within the search area. Smooth newt and common frog were recorded in some ponds. There was no evidence of bat roosts within the trees on site, and only 3 trees had potential to support bats.

A total of 43 bird species were recorded during the walkover surveys on site between 2016 and 2018. Of the species observed, 19 are either protected (Schedule 1), appear on the RSPB list as declining (red or amber lists) or are listed as Species of Principal Importance, and as such are considered 'notable' species. During the detailed reptile surveys associated with the adjacent site, a small population of grass snake was recorded 170m to the west of the current site boundary along the watercourse within an area of marshy grassland. A management strategy is recommended, to be implemented within the LWS to restore it back to its designated semi-improved grassland. Further details of mitigation are provided within the Construction Environmental Management Plan (CEMP) and Landscape Environmental Management Plan (LEMP) submitted for approval of outline conditions.

Planning History

9/2014/0888 Outline application (all matters except for access to be reserved) for up to 400 dwellings, together with associated highways works, public open space to include children's play space, sports pitches and erection of changing facilities, new urban park, landscaping, associated drainage infrastructure (including suds), and creation of pedestrian and cycle ways – Approved 29/06/18

Responses to Consultations

The County Highway Authority states that the outline application covers the majority of the conditions relating to approval of the temporary and the permanent accesses onto William Nadin Way. The spine road alignment is considered acceptable and any additional condition(s) required in relation to the spine road shall be reported verbally at committee.

The Open Space and Facilities Manager is yet to comment on the latest landscaping scheme and this shall be reported verbally at committee.

The Environment Agency has no objections to the proposal. However, they do consider the proposed dwellings close to Nadin's Landfill site have the potential to be at risk. Concerns relate to landfill gas generated by that site which would continue to pose a risk to the proposed dwellings located close to it. They, however, cannot assess the risk outside the perimeter of the site because it falls outside of their regulatory remit. That site is generating landfill gasses and would continue to do so for an unspecified time. The risk is the effect that the various gasses have on both humans and the built environment. The latest field readings taken and reported by the site operator's contractors show that volumes of the gasses are variable and the flow of the gas or pressure is low. This equates to a low risk within the perimeter of the development site. Hence, whilst the Environment Agency cannot express or quantify the current and on-going risk to the human and built environment outside the perimeter of the landfill site, it is noted that if the developer wishes to continue with the development as planned that they must assess the risk to their satisfaction.

The Lead Local Flood Authority (LLFA) has no objections as a 5m easement has been provided between the watercourse along the eastern boundary and attenuation basins 3 and 4. They recommend that the angle of the headwall be altered at detailed design stage so water flows into the watercourse better.

The National Forest Company (NFC) notes a large area of woodland planting is proposed in the southern part of the site next to William Nadin Way, which is welcomed. The Ecological Survey suggests this is a wet area consisting of marsh and marshy grassland, such that a wet woodland mix should be more appropriate in this location. Planting should be at 2.5m centres. Details of how the trees would be protected from rabbits are needed. Part of the existing tree-belt across the front of the site would be lost to create the access but additional woodland planting should be proposed either side of the access to compensate and ensure that connectivity through the woodland is maintained. The proposed specimen tree species are acceptable and the size should be a 14-16cm girth, with larger stock for trees in prominent locations. Proposed hedgerows within the POS should be native.

Updated comments on the revised landscaping plans to incorporate these comments are awaited and shall be reported verbally at committee.

Derbyshire Wildlife Trust (DWT) advises they are satisfied that there are unlikely to be any protected species issues arising with no evidence of badger, GCN, reptiles or roosting bats found during the surveys. The submitted concept masterplan is broadly in accordance with the illustrative layout for the outline permission with the exception

that a Locally Equipped Area for Play (LEAP)/Natural Play space is proposed to be located to the north of the retained LWS. The built development blocks do also not appear to provide a buffer to the north and south of the wildlife site. The CEMP and LEMP required by conditions 29 and 20 of the outline permission would require amendment to reflect the location of the LEAP.

Peak and Northern Footpaths has no objection as it appears due consideration has been given to the public rights of way across the site.

The Coal Authority has no objections and is satisfied that the issue of coal mining legacy has been adequately dealt with.

Responses to Publicity

No objections have been received.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), H2 (Land north of William Nadin Way), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and BNE7 (Trees, Woodland and Hedgerows).

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning Considerations

The site is within the settlement confines for the Swadlincote Urban Area and part of strategic allocation H2 in the LP1, allowing for up to 600 dwellings. The site is the largest of three sites surrounding the golf course, for 400 dwellings, known as Site C, with the Site A for 68 dwellings off Park Road, Newhall and Site B for 132 dwellings on Woodland Road, Stanton. The outline permission 'fixed' the access point with a new roundabout proposed on William Nadin Way. This application includes consideration of the spine road, the layout and landscaping for the open space (excluding the Oversetts Recreation Area and Urban Park) and the drainage design

(SUDS). Consideration of housing design and layout, layout and appearance of estate streets, specification of the Oversetts Recreation Area and urban park, and the location and detailed design of play areas are not matters relevant to this application, and would be handled under subsequent reserved matters submissions.

The outline permission requires the submission of certain details alongside each reserved matters submission (in so far as relevant to that submission), including:

- a. a new street junction on William Nadin Way generally in accordance with the approved outline drawing;
- b. landscaping details that accord with the landscape strategy set out in the Design and Access Statement; and
- c. no housing or associated built infrastructure within the permitted boundary of Nadin's Landfill Site.

Policy H2 also sets out specific criteria:

- i) consider the site holistically with other development and open space enhancement opportunities;
- ii) a mix of dwelling types shall be provided across the three parcels of land which complement each other;
- iii) the provision of recreational and community facilities;
- iv) 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;
- v) an appropriate buffer in agreement with the Council to be placed around the Breach Ley Farm Meadow County Wildlife Site;
- vi) an appropriate easement along watercourses on the site free of built development;
- vii) provide high quality cycle and pedestrian links both within the development and connecting to existing and proposed networks, including NCN63 Burton to Leicester route.
- viii) developer Contributions to be made towards the provision of a new Household Waste Recycling Centre in the Swadlincote area.

With the principle of development established, matters relating to the impact on local services and facilities, ground conditions, ecology and flood risk have all been previously considered acceptable, subject to conditions and/or obligations. The focus under this application is primarily on the reserved matters applied for, but also as to whether the specifics required under condition 2 of the outline permission are also satisfactory at this stage.

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

- The layout and appearance of the roundabout and spine road;
- The layout and landscaping of the green infrastructure;
- The proposed phasing of the development;
- The earthworks and cut and fill; and
- The drainage strategy and flood risk implications.

Planning Assessment

The layout and appearance of the roundabout and spine road

The layout of the roundabout is broadly in accordance with the plan submitted at outline. However, improvements in terms of the width of the carriageway from 5.5m to 6m with 3m footways adjacent to the roundabout as opposed to 2m are proposed in the roundabout drawing submitted. Darklands Brook would be diverted to the north by a culvert underneath the highway.

The spine road would dissect the site through the middle in a north westerly direction with a straight alignment. It includes four 5.5m wide accesses, two for parcel 1 to the east, one each for parcels 2 (west) and 3 (north east) and a future highway connection point at its northern-most point. A 3m wide footway/cycleway is proposed on the eastern side with a 2m wide footway and 1m verge on the western side. Three swales are proposed on the eastern part of the spine road to accommodate highway drainage with discharge to basin 5 to the east.

The principle of the roundabout was established at outline stage and the proposed detailed design and the position and alignment of the spine road is considered acceptable by the Highway Authority. A temporary 6m wide access for construction purposes is shown, located 87m east of the centre of the proposed roundabout along William Nadin Way and would include a 12m temporary bridge over the Darklands Brook. This is also considered acceptable.

Two diversion orders for Footpaths 45 and 47 have been submitted and are at formal consultation stage. These involve diversions around parcel 1 (to the east of the spine road). Footpath 45 would instead pass through a linear area of open space linking to the route along the spine road, whilst Footpath 47 would run through the open space adjacent to the eastern boundary with both routes linking to a new pedestrian footpath over the brook to the south. Extensive new routes and links at up to 3m in width are indicated on the landscaping plans that link to both existing footpath and cycleway routes in accordance with part (vii) of policy H2.

Appropriate provision would be made for safe and convenient access to and within the developments of all users in accordance with LP1 policy INF2.

The layout and landscaping of the green infrastructure

Detailed landscaping plans for the site have been submitted with the exception of the Oversetts Recreation Ground and urban park. These shall be submitted with a further Reserved Matters application. The three parcels of development have extensive public open space with a significant section along William Nadin Way incorporating the Darklands Brook. The existing LWS is retained and improved in the north eastern corner. LP1 policy H2 requires an appropriate buffer around the Wildlife Site which has been secured.

There are green corridors that run through the centre of the site and link to both the central green area and Urban Park. There is a northern landscape scheme that

involves retention of the established hedgerow. All of the public open space and landscaped areas accord with areas shown on the section 106 plans agreed through the outline permission. Two LEAPs are proposed in the central green area in parcel 2 and to the north of the Wildlife Site in the north eastern corner, with the detailed design subject to a further reserved matters application.

On the northern boundary of the brook existing woodland would be retained together with the creation of native woodland and heavy and standard trees. Part of the area to the west of the access is included within the urban park area and as such is excluded from the landscaping scheme, instead to be detailed in a further reserved matters application. Extensive tree planting, hedgerows, meadow and meadow wetland mixes for grassland are proposed within the landscaping scheme. The scheme is considered to provide high quality green infrastructure together with improvements to the existing Wildlife Site in accordance with LP1 policy INF7 and would reduce a deficiency in open space in the area in accordance with LP1 policy INF9.

The proposed phasing of the development

The phasing of the site is set out above. This phasing would secure the landscaping and improvements to the LWS prior to any dwellings being occupied, which is welcomed and each phase of housing sees the LEAP and/or further POS secured at the same time. The section 106 agreement secures the availability of POS for the phases through triggers (50% occupation of dwellings) and in relation to the Oversetts Recreation Ground, secures monies prior to occupation of 50% of the dwellings in the south sub-zone (phases 2 and 3). The urban park would be transferred to the Council's ownership prior to the occupation of 75% of the dwellings in the south sub-zone.

The earthworks and cut and fill

The cut and fill analysis indicates excavation areas for creation of the attenuation ponds and where the material would be re-located (filled). Analysis of the sections through the site shows the differences between existing and proposed levels to be minimised. There is a resultant difference of 7m between the land levels of the higher northern part to the southern area adjacent to the brook, but these are comparable to the existing 10m difference which presently exists. The site levels submitted accord with finished floor levels required within the outline Flood Risk Assessment (FRA) of no lower than 71.37m at the downstream end of the site and no lower than 74.28m upstream. On this basis, the proposed land levels are considered acceptable and are appropriate for the proposed dwellings (subject to a further reserved matters application), the proposed routes and the public open spaces created.

The drainage strategy and flood risk implications

The proposed drainage scheme reflects the requirements of outline condition 4 in relation to the SuDS design and surface water run-off rates and is in accordance with the FRA. The FRA requires a watercourse diversion where the access is proposed, a new watercourse crossing with retention of the old watercourse downstream, no

development within the 100 year (Flood Zone 3) or 1000 year (Flood Zone 2) floodplains and finished floor levels set no lower than 600mm above the 100 year plus 20% flood levels for each phase.

The on-site network would discharge into the Darklands Brook at the south of the site and would be subject to restrictions to greenfield run-off rates. Foul drainage would be conveyed to a pumping station before a rising main carries the effluent to the existing sewer running through the site. Swales adjacent to the spine road are proposed for highway drainage. The five Ponds would be privately maintained and would be the responsibility of the developers of each parcel to agree drainage connections to the main network prior to commencement of works with STW.

The Local Lead Flood Authority has no objection as the 5m easement along the watercourse on the eastern boundary has been secured and the concern in relation to the angle which is proposed for the outfall to flow into the watercourse can be dealt with at the detailed design stage. The Environment Agency has no objections as the proposal accords with the parameters set within the FRA and condition 34 of the outline permission. They have however identified concerns in relation to the prevention of landfill gas with the onus on the developer to ensure risks are low at the perimeter of the site. The proposed drainage scheme would thus not increase flood risk to other properties or surrounding areas and suitable SuDS measures to deal with surface water would be provided. The proposal therefore accords with LP1 policies SD2 and SD3.

Summary

The proposed groundworks, spine road, landscaping and provision of public open space accords with both the relevant criteria set out within LP1 policy H2 and the parameters set out on the outline permission and within the section 106 agreement. The development of the infrastructure elements of the site at an early stage would facilitate the swift delivery of housing on the allocation and the associated social 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 following conditions:

1. The development hereby permitted shall be carried out in accordance with the Concept Masterplan ref. P17-2978_001 Rev L, the Location Plan ref. P17-2978_004 Rev B, S184 Site Access General Arrangement ref: 95201-P02, the S278 Roundabout Access General Arrangement ref: 95001-P03, the Spine Road layout ref. 95101 P04, the Drainage layout ref. 72002 P03, the Landscaping Plans ref. P17-2978-01D and 02D, the Earthworks sections ref. 91004-P02, the Earthworks levels ref. 91002-P04, the Cut and fill analysis ref. 91003-P04, the Proposed site plan Flood Risk ref. 90001 P04 and the

Phasing plan ref. P17-2978-002, 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.

2. Prior to any other works commencing, a temporary access shall be formed to William Nadin Way for construction purposes, designed and laid out generally in accordance with the approved drawings/plans, and provided with visibility sightlines of 2.4m x 150m in each direction, the area forward of which shall be cleared and maintained clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The temporary access shall be constructed in accordance with Derbyshire County Council's specifications and shall be permanently closed and reinstated prior to the first occupation of any dwelling, whilst a scheme for the removal of the bridge over the Darklands Brook or for its incorporation into the pedestrian/cycle links through the site shall be submitted to and approved in writing, and subsequently implemented in full, prior to the occupation of 50% of the dwellings on phase 2 (as hereby approved under the phasing plan referenced in condition 1).

Reason: In the interests of highway safety, noting that safe and suitable access for construction purposes is required from the point of commencement of the development, and to ensure that temporary infrastructure affecting the Darklands Brook only remains where it would be of environmental and social benefit.

3. Notwithstanding condition 11 of the outline permission ref. 9/2014/0888, or any subsequent variation of that permission under s73 of the 1990 Act); prior to the first occupation of any dwelling on the site the new street junction onto William Nadin Way and associated works shall be implemented generally in accordance with application drawing 066720-CUR-00-XX-DR-C-95001-P03, laid out and constructed in accordance with the approved drawings and provided with sightlines, the area forward of which shall be levelled, constructed as footway and taken into the highway. For the avoidance of doubt, the developer will need to enter into an Agreement under Section 278 of the Highways Act 1980 with the Highway Authority in order to comply with this requirement.

Reason: In the interests of highway safety.

Informatives:

1. Construction works will require Traffic Management and advice regarding procedures should be sought from the Traffic Management team (01629 538686) at County Hall, Matlock. All road closure and temporary traffic signal applications will have to be submitted via the County Council's website; relevant forms are available at www.derbyshire.gov.uk/transport_roads/roads_traffic/roadworks/default.asp.
2. The Environment Agency advises that the proposed dwellings close to Nadin's Landfill site (hereafter referred to as the site) have the potential to be at risk. Their concerns relate to landfill gas generated by the site that would continue to pose a risk to the proposed dwellings located by the boundary of

the site. The EA are not in a place to assess the risk outside the perimeter of the site because it falls outside of their regulatory remit. The site is generating landfill gasses and shall continue to do so for an unspecified time. The risk is the effect that the various gasses have on both humans and the built environment. The latest field readings taken and reported by the site operator's contractors show that volumes of the gasses are variable and the flow of the gas or pressure is low. This equates to a low risk within the perimeter of the site. They cannot express or quantify what the current and on-going risk to the human and built environment is outside the perimeter of the landfill site. If the developer wishes to continue with the development as planned then they must assess the current and on-going risk to the human and built environment outside the perimeter of the site to their satisfaction.

3. The watercourses, attenuation pond(s) and/or swale(s) hereby permitted or which would be incorporated into public areas on the site should be designed to accord with health and safety guidance as set out in the CIRIA SuDS Manual 2015 (C753) or guidance that may update or replace it, and to meet the requirements of the Construction (Design and Management) Regulations (CDM) 2015 through assessing all foreseeable risks during design, construction and maintenance of the pond, minimising them through an 'avoid, reduce and mitigate residual risks' approach.

27/11/2018

Item **1.2**

Ref. No. **9/2018/0959/B**

Applicant:
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Proposal: **THE VARIATION OF CONDITIONS 1 & 3 OF PLANNING PERMISSION REF: 9/2018/0503 (RELATING TO THE RETENTION OF A SUN CANOPY (REVISED SCHEME TO THAT APPROVED UNDER PERMISSION REF. 9/2017/1357) AT 11 THE GREEN WILLINGTON DERBY**

Ward: **Willington & Findern**

Valid Date **04/09/2018**

Reason for committee determination

The item is presented to Committee because local concern has been expressed about a particular issue and there are special personal circumstances of the applicant which Members should consider and unusual circumstances and should be considered by the Committee.

Site Description

The proposed site is part of the existing beer garden and seating area at the rear of the Dragon public house adjacent to the canal towpath. This land is owned by Derbyshire County Council but leased to the owner of The Dragon.

Proposal

It is proposed to vary conditions 1 and 3 of planning permission 9/2018/0503 relating to the retention of a sun canopy within the existing seating area at the rear of The Dragon. Condition 1 relates to the approved plans and condition 3 states that no lighting shall be affixed to the structure. This application for the variation of conditions is to allow the applicant to affix lighting to the structure in accordance with a revised plan. In addition, a tiled floor below the canopy is proposed.

This application only deals with lighting and does not address the fact that the canopy structure has been installed with fully glazed elevations contrary to approved plans. The applicant was requested to address the issue as part of this application

but declined, preferring to address that issue in a separate application. The scope of a decision under this Item is thus constrained to the proposal as submitted.

Applicant's supporting information

The applicant has submitted relevant plans and elevations of the canopy structure and, in addition, has provided details of the proposed lighting installation, a lighting assessment, a light spill contour map and lighting receptor location plan.

Planning History

- 9/2010/0982 Alterations to existing public house to rearrange kitchen, toilets and living accommodation, provision of new access from canal side including new external eating/dining/drinking area, erection of a smoking shelter and alterations to car parking layout – Approved 23-12-10

- 9/2010/1012 The demolition of rear toilet block and store, porch and bay window to allow for alterations – Granted 23-12-10

- 9/2011/0461 Retrospective application for the erection of front & rear extensions and alterations to canal side ground levels to form new seating area. The erection of smoking shelter, fencing to rear seating area, external lighting, timber bin store, rebuilding of existing garage and installation of ventilation duct indicated – Approved 18-01-12

- 9/2012/1037 The erection of a glazed verandah and retention of minor landscaping works – Approved 01-02-13

- 9/2013/0627 Shed demolition, store extension, glazed screen, patio extension, wickerwork screening & kitchen/cellar extension – Approved 16-10-13

- 9/2013/0966 Change of use of existing dwelling to public house with extensions and alterations (retrospective in part) to provide for relocated kitchen, additional seating, external terrace and smoking shelter at ground floor, and offices, welfare facilities and 2 units of independent accommodation at first floor; along with conversion of existing garage to ancillary accommodation, conversion of existing prep room to micro-brewery, and relocation of vehicular access and reconfiguration of car parking – Approved 13-02-14

- 9/2015/0130 Change of use of land to extend beer garden, rep of retaining wall, formation of pathway and steps, and erection of gate on land to the canal side – Approved 22-04-15

- 9/2015/0375 Single storey extensions to the kitchen and restaurant areas – Approved 24-06-15

- 9/2017/0520 The retention of fixed external bar – Approved 11-07-17

- 9/2017/0649 The erection of an extension to the restaurant – Approved 09-08-17
- 9/2017/1357 The erection of a sun canopy – Approved 16/03/2018
- 9/2018/0449 The retention of fixed external bar (revised scheme to that approved under application ref. 9/2017/0520) – Refused 20-07-18
- 9/2018/0503 The retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) Approved 03-07-18

Responses to Consultations

The Environmental Health Officer notes that as the lighting is not high level spotlighting, it isn't something that they would usually comment on, such that they have no objection.

The Conservation Officer notes that given the nature of the site, the canopy and the type of lighting proposed; it is not considered harmful to the character of the conservation area.

The Canal and Rivers Trust does not have an in-principle objection to the proposal and notes that the majority of light spill would not reach the canal itself. Nonetheless it does still show the lighting would create a significant level of illumination in the vicinity of the canopy and would make this area highly visible from the canal. They are however concerned that there may be a risk that this may affect the behaviour of bats which often use canal corridors as foraging routes and frequently utilise canal side trees for roosting. The Trust requests that consideration be given to the fitting of some form of screening or reflectors to the lights which direct more light inside the canopy reducing the potential adverse impacts on wildlife and the visual impact of the lighting on the canal side area. The details of measures to further limit light spill could be secured by condition.

Responses to Publicity

Willington Parish Council objects as this is an alteration to the original planning conditions.

16 objections have been received, raising the following concerns/points:

- a) lighting and playing of music would bring an unsavoury element to the village and negate from the family friendly atmosphere of the picnic area;
- b) lighting would lead to more noise, drunkenness and anti-social behaviour;
- c) there should be no heating outside of The Dragon pub;
- d) the reasons for the condition on the original consent still apply, those being protecting neighbour amenity and the character of the conservation area;
- e) lighting would be detrimental to the character of the conservation area;
- f) use of the canopy for music on what is common land;
- g) its erection has made the canal side less pleasant and people under the influence of alcohol are able to spill out onto the canal unchecked to disturb boaters and local residents;

- h) taking up room where a family picnic area should be helping all businesses, not just the Dragon;
- i) would cause a disturbance to boaters mooring close to the pub;
- j) more people using the facility will lead to more anti-social behaviour; and
- k) the canopy is ugly and unnecessary and does nothing to bring in tourism nor help the community.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE9 (Advertisements and Visual Pollution), BNE10 (Heritage).

National Guidance

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

Local Guidance

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Trent and Mersey Canal Conservation Area Character Statement (CACS) 2013

Planning Considerations

The original application (ref. 9/2017/1357) for the canopy structure was presented to the Committee in February 2018. Permission was given in March 2018 following a confirmation of no objection from the Canal and Rivers Trust. A further application was submitted to agree the structure in the same location, but rotated by 90 degrees (ref. 9/2018/0503). This was approved under delegated powers in July. Both permissions include a condition preventing the affixing of lights to the approved structure.

Members should be conscious that this application seeks to vary conditions attached to the latter permission. The principle of the structure is thus already established and any decision made under this proposal cannot require the removal of the structure. The main issues central to the determination of this application are thus:

- The impact on the character of the conservation area;
- The effect on residential and visual amenities of the area; and
- Impact on biodiversity.

Planning Assessment

The impact on the character of the conservation area

The reason for the condition is set out on the existing decision notice, stating it being *“in the interests of protecting the amenities of neighbouring occupiers and the appearance of the conservation area”*.

The Dragon public house and rear seating area are within the Trent and Mersey Canal Conservation Area. Policy BNE2 states that *“development that affects heritage assets will be expected to protect, conserve and enhance the assets and their settings. In accordance with national guidance and supplementary planning documents...”*. The policy goes on to highlight the assets and specifically makes reference to transport heritage, including the Trent and Mersey Canal. Whilst the lighting spill plan shows some spillage outside of the seating area, the lighting levels diminish relatively quickly and as such this would have a limited effect. The Conservation Officer notes that the nature of the site and the canopy, along with the type of lighting proposed is not considered to bring about a harmful impact on the character and appearance of the area. The proposal is therefore considered to preserve the character and appearance of the conservation area in line with policies BNE2 and BNE10.

The effect on residential and visual amenities of the area

As noted above, the existing condition has a purpose in protecting amenity. The installation of lighting or the flooring would not enable patrons to sit outside in less inclement weather any longer than they currently could, particularly when low level lighting can currently be used on tables without the need for planning permission. In addition, as shown on the lighting spill plan, light levels quickly diminish to 0.2 and 0.1 lux on the canal towpath and drop to less than 0.1 lux before reaching the water. A similar drop in lighting levels is seen in the remaining directions. This is not considered to bring about an undue adverse effect, and given there are no objections from the Environmental Health Officer, the proposal is considered to comply with policy SD1.

Impact on biodiversity

Although the condition was not imposed in the interests of protecting wildlife, the observation of the Canal and Rivers Trust that the lighting could affect the behaviour of bats which forage along the canal is noted. This is not an incorrect observation, but the light spillage outside of the seating area is limited and diminishes rapidly with greater distance from the light source. However, bats could take a foraging route over the canopy itself such that the request for further details of measures to limit the extent of light spill is of some merit. This could be secured under a new condition.

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 drawing No 23 F received on 3 September 2018; 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.

2. Notwithstanding the approved plans, prior to any lighting being installed details of measures to limit light spillage shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be installed prior to first use of the lighting and be thereafter maintained in situ throughout the life of the development.

Reason: To minimise light spill in the interests of safeguarding foraging opportunities for bats.

3. Notwithstanding the approved plans, before their installation the materials to be used in the creation of the solid floor beneath the canopy shall be submitted to and approved in writing by the Local Planning Authority. The approved materials shall then be used.

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

:

Item **1.3**

Ref. No. **9/2018/1073/TP**

Applicant:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Agent:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Proposal: **THE FELLING AND PRUNING OF TREES COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NUMBER 132 AT WILSON CLOSE MICKLEOVER DERBY**

Ward: **Etwall**

Valid Date **04/10/2018**

Reason for committee determination

The item is presented to Committee as the Council is the applicant.

Site Description

The trees sit across 3 areas of public open space and whilst impressive in their own right, additionally screen the housing adjacent, softening this edge of estate position.

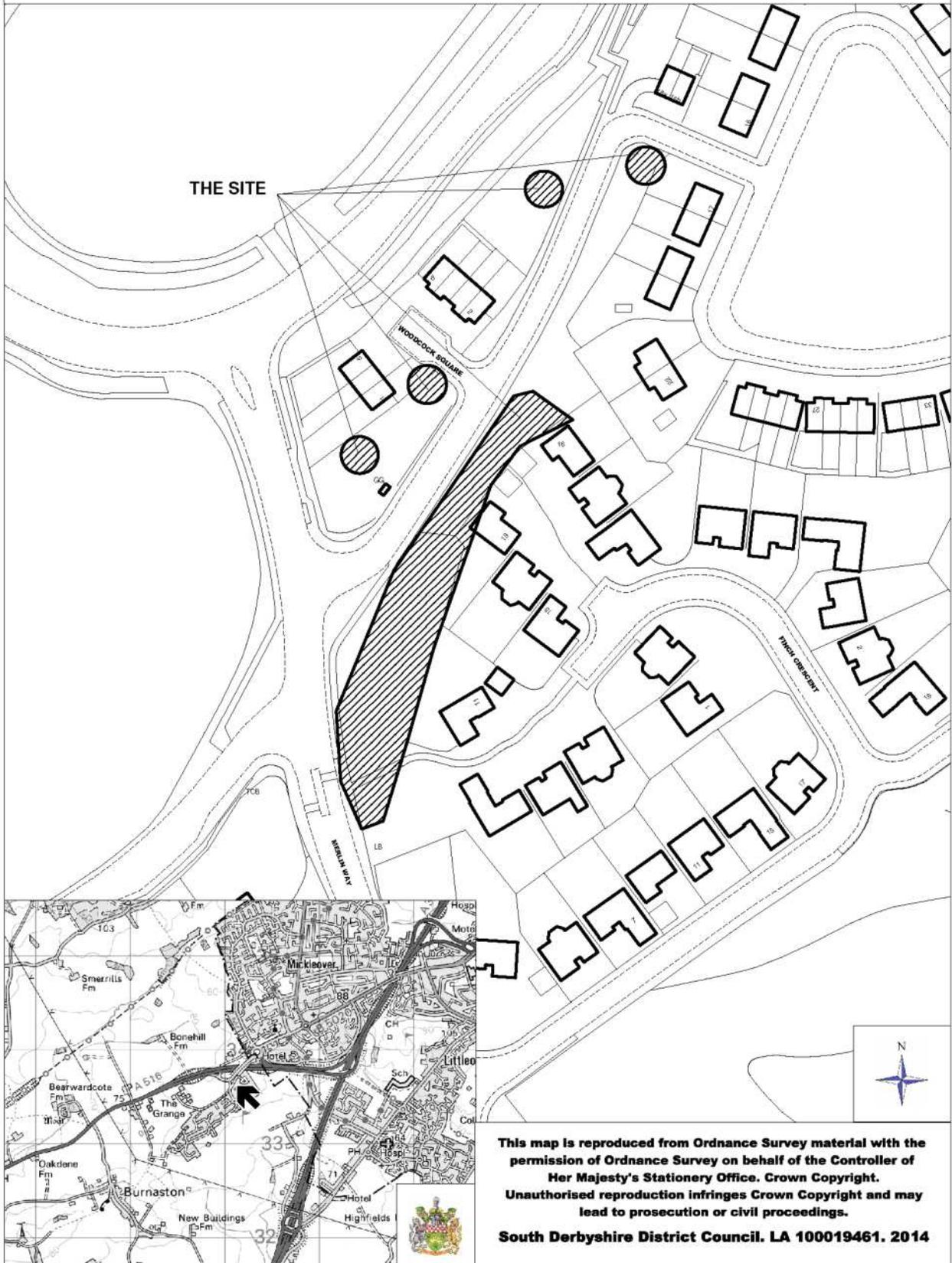
Proposal

The proposal is to thin out the poorer specimens in Group 1 (broadleaf trees and conifers), removing 9 trees, whilst works to standalone trees (ref. 13 (Ash), 16 (Oak), 17 (Ash) and 21 (Oak)) are predominantly limited to raising their respective canopies by way of a crown lift.

Applicant's supporting information

The Council's Tree Officer has advised the works to the broadleaf trees are required to remove nuisance (due to low lying branches) whilst the conifers (larch and pines) have become unsuitable for long term retention, having poor stem taper which puts them at a higher risk of snapping in high wind. The works to the Ash and Oak trees are in the interests of providing clearance to public areas and adjacent private property and buildings.

9/2018/1073 - Wilson Close, Mickleover, Derby DE3 0TT



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Planning History

TPO132 was confirmed 1996.

Responses to Consultations

None.

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness)
- 2017 Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows).

National Guidance

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

Planning Considerations

The main issue central to the determination of this application is whether the proposed work is warranted given their protected status.

Planning Assessment

The removal of poorer specimens (as is proposed in Group 1) in similar circumstances has proved to be of benefit, removing the potential for them to fail in high winds whilst allowing the others a little more space to flourish. The current situation is that the group is too dense and this has caused trees to grow too quickly, their trunks now too narrow to be sustainable in the long term. The offer of the group would not be compromised by this work.

The crown raising work to the four individual trees (Oak x 2 and Ash x 2) simply removes potential nuisance, their lower branches in conflict with adjacent footpaths, private fencing and gardens. Crown raising is standard practice and would not undermine their high offer to the locality.

Given the well treed nature of the locality and the fact that those being removed are being removed because of the need for more growing space, it is not proposed to seek any replacements.

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 consent subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.

Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).

2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.

Reason: To safeguard the health of the tree(s).

27/11/2018

Item 1.4

Ref. No. 9/2018/1135/TP

Applicant:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Agent:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Proposal: THE CROWN LIFTING OF FOUR SYCAMORE TREES COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NUMBER 65 ON LAND TO THE REAR OF GEORGE NEWBERRY PLACE CHURCH GRESLEY SWADLINCOTE

Ward: Church Gresley

Valid Date 22/10/2018

Reason for committee determination

The item is presented to Committee because the Council is the applicant.

Site Description

The trees sit on land to the south of numbers 4-7 George Newberry Place, Church Gresley, in close proximity to the small rear gardens of those properties. The site is flat, with the trees visible from the public realm by virtue of their height.

Proposal

The proposal is to crown lift the four trees, removing ivy from their trunks and cleaning the lower trunk of epicormics/secondary growth.

Applicant's supporting information

The trees are causing damage to a wall. Some of them are also damaged by animals (squirrels, etc. scraping back bark).

Planning History

An area TPO has been in force since 1988.

Responses to Consultations

None

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness);
- 2017 Local Plan Part 2: BNE7 (Trees, Woodland and Hedgerows).

National Guidance

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

Planning Considerations

The main issue central to the determination of this application is whether the work is warranted given the protected status of the trees.

Planning Assessment

Whilst there is argument that these trees have served their time, they continue to provide a useful screen and still appear healthy. The work proposed would lessen their potential to overbear on the adjacent properties, lifting the crown to allow some depth of view (and extra light) for those adjacent occupiers when using their gardens and ground floor rooms. The crowns are quite high at the moment, so the suggested 'lift' would not be as significant as it may sound. The crown/bole cleaning (and removal of the ivy) though would noticeably change things here, for the better – that work resulting in a line of tidier trees, considerate of the evolved context.

The work is unlikely to alter things in regards the aforementioned damage to a wall, although no evidence of such was found at the time of the site visit. Sycamores are hardy trees and the work should have no detriment on their long term health.

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 work hereby approved shall be carried out within two years of the date of this consent.

Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).

2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.

Reason: To safeguard the health of the tree(s).

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated	Page
9/2017/0196	Grove Close, Thulston	Aston	Allowed	Delegated	36
9/2017/0797	Main Street, Repton	Repton	Dismissed	Delegated	42
9/2017/1296	Commonpiece Lane, Cropper	Etwall	Allowed	Delegated	47



Appeal Decision

Site visit made on 16 October 2018

by Kevin Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2018

Appeal Ref: APP/F1040/W/18/3207248 41 Grove Close, Thulston, Derby DE72 3EY

- 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 Mr C Parks against the decision of South Derbyshire District Council.
 - The application Ref 9/2017/0196, dated 20 February 2017, was refused by notice dated 27 February 2018.
 - The development proposed is erection of 2 new dwellings.
-

Decision

1. The appeal is allowed and outline planning permission is granted for erection of 2 new dwellings at 41 Grove Close, Thulston, Derby DE72 3EY, in accordance with the terms of the application, Ref 9/2017/0196, dated 20 February 2017, and subject to the conditions listed in the attached Schedule.

Procedural Matters

2. The application was made in outline with all matters reserved. I have had regard to the site location plan (drawing 01 Rev A) and the existing site plan drawing (02 Rev A). I have also taken into account the Indicative Site Plan as Proposed drawing (11 Rev D) but have regarded the details of this drawing as indicative.
3. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018 and replaces the first Framework published in March 2012. This change to national guidance is a material consideration and the main parties have had an opportunity to comment on it. References hereafter in the decision are to the new Framework.

Main Issues

4. The site lies within an area of Green Belt. Therefore, the main issue is whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.

Reasons

5. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 145 identifies the construction of new buildings within the Green Belt as inappropriate, but lists certain forms of development

- which are not regarded as inappropriate in the Green Belt. These include e) limited infilling in villages.
6. Policy S8 of the South Derbyshire Local Plan Part 1 (adopted 13 June 2016)(the LP1) contains a presumption against inappropriate development within the Green Belt and development proposals received within the Green Belt will be assessed against national policy. The policy is therefore consistent with the Framework.
 7. Thulston is identified as a Rural Village under Policy H1 of LP1, and does not have a defined settlement boundary. Policy H1 permits limited infill and conversions of existing buildings within rural villages where no settlement boundary exists.
 8. Policy BNE5 of the South Derbyshire Local Plan Part 2 (adopted 2 November 2017)(the LP2) further restricts development in rural areas to a list of specific circumstances. The policy offers support where the proposal is considered infill that is in keeping with the character of the locality and where it represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing, and where it would not unduly impact on landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets. The Framework does not include these additional criteria for infilling, however the local policy has been adopted following the publication of the first Framework in 2012, and would be expected to be more specific than national policy. I do not find conflict, therefore, between Policy BNE5 and the Framework, despite the additional criteria to be met.
 9. The proposed two dwellings would not exceed the number of dwellings permitted under Policy BNE5, and I consider the proposal would be limited in number. I have had regard to the Inspector's approach in this matter in the appeal decision¹ referred to me by the Council. The determinative questions in this case are whether the proposal would constitute infilling of a small gap, whether it would be within a small group of houses, and whether it would be in keeping with the scale and character of the settlement.
 10. The appeal site comprises the rear part of the existing garden to 41 Grove Close. The overall site is L-shaped, extending behind the properties at Nos 33 to 39. I note it is described as having been an orchard, however the site is laid to grass and maintained as part of the garden of No 41. A long garden storage building runs along one side of the garden with a small glasshouse towards the rear. To the rear is a hedgerow and several mature trees, which physically separates the site from an expansive, open field beyond. I consider that the garden, given its domestic scale, appearance and function, forms part of the developed extent of the village, separate physically and functionally from the open countryside to the rear.
 11. The Council considers that the character of Thulston is one of predominantly linear development. However, I observed clusters of development leading from Grove Close, including The Pinfold, Sturges Lane and Grove Court, whilst Grove Close itself curves back at the end of the cul-de-sac. 21 to 31 Grove Close stand perpendicular to the street, with Nos 33 to 39 set well back from the highway. There is therefore some variety to the layout of development, with houses set at various angles and behind others, such as 1 Grove Court

¹ APP/F1040/W/17/3176356, dismissed 15 September 2017

- adjacent to the site, creating a more clustered pattern of development, and lending the village an organic character.
12. Moreover, there is development to either side of the appeal site. 15 The Pinfold stands close to the side boundary on one side, whilst 1 Grove Court stands beyond the opposite side boundary, although separated by its rear garden. 33-39 Grove Close stand to the north of the site, along with No 41. The site is therefore surrounded by development on three sides, with a strong natural boundary to the fourth side enclosing the site. Given these physical characteristics, the modest overall size of the site, and the small scale of the village, I consider the proposal would constitute infill of a small gap within a small group of houses.
13. In terms of the further criteria of Policy BNE5, I viewed the site from the B5010 road to the south of the appeal site. The rear boundary of the site forms a natural division with the open countryside and the dwellings would be largely screened by the treeline in views from this direction. When the screening is less dense, such as during the winter months, the dwellings would be viewed against the backdrop of the existing built form, and contiguous with it. Therefore, I consider that the proposal would not have a harmful effect on landscape character.
14. The proposed dwellings would be a backland form of development, being accessed through the existing site at No 41. Whilst the application was made in outline with all matters reserved, the indicative layout suggests the dwellings could be laid out to suitably reflect the spacing and density of surrounding development. Given the surrounding context of development to three sides of the site, and the broader clustered pattern I observed to the built form, I find the proposal would not be out of character with its surroundings.
15. I am referred by the appellant to various appeal decisions. Whilst I have had regard to them, I note that they relate to different local planning authorities and with different site circumstances. I have therefore considered the appeal scheme on its own merits.
16. Therefore, having regard to the evidence before me, and my observations on site, I find that the proposal would amount to limited infilling within a village. Consequently, in principle, the proposal would not be inappropriate development within the Green Belt, and would accord with the requirements of Policies H1 and S8 of LP1 and Policy BNE5 of LP2, and with the aims of the Framework.
17. With respect to the purposes of the Green Belt, given my findings that the proposal would amount to limited infilling within a village, and is not therefore inappropriate development in the Green Belt, the proposal would, by definition, not have an adverse impact on the openness of the Green Belt or the purposes of including land within it.

Other Matters

18. Matters of layout, scale, appearance and landscaping are reserved for future consideration. However, having regard to the indicative plans submitted, I see no reason why suitably designed and laid out buildings could not be achieved on the site. However, as these matters are reserved, they are not determinative in this appeal.

19. Access is also a reserved matter. I note, however, that no objection was raised by the Local Highway Authority in principle to the development, subject to recommendations regarding visibility splays which could be addressed at reserved matters stage. I see no reason to reach a different conclusion based on the evidence before me and my observations on site. Other concerns are raised in respect of increased traffic in the village, however, given the small scale of the development, I do not consider there would be a materially harmful increase in traffic as a result of the development.
20. The Council did not refuse the application in respect of the potential effect on the living conditions of neighbouring occupants, and I note that the indicative layout submitted shows separation distances in accordance with the Council's standards are achievable. I note the concerns of the interested parties in these respects, however, the effect on living conditions would be considered by the local planning authority at reserved matters stage when detailed plans are put forward. This does not therefore weigh against the proposal in my considerations.
21. Interested parties have raised concern over the loss of protected trees on the site. Further information was submitted during the course of the application to address potential impact on the mature oak tree. The Council concluded that the impact on the tree would not be significant, subject to protection measures to be undertaken during the course of works. From all I have seen and read, I do not reach a different conclusion.
22. Interested parties, including Elvaston Parish Council, point to the unsustainable nature of the village due to it having no shops or schools, and that no more housing is needed due to a large housing scheme being progressed in the parish. However, the village is identified under policy H1 as a village where limited infill will be allowed and I have found no conflict with Policy H1. Whilst there are limited services, the dwellings would help to support them, such as the public house and other services in nearby Elvaston. I consider therefore that the provision of housing would be acceptable given the policy context and extent of services in the area.
23. In respect of concerns that the proposal would set a precedent, I have reached my conclusions based on the particular site circumstances and the evidence before me. Any future application would be for the Council to deal with on its merits.
24. I note concerns regarding the impacts of the construction process. Whilst this is likely to be disruptive it would be short-term and is not a reason to withhold permission.

Conditions

25. The Council has suggested conditions in the event the appeal is allowed, which I have considered in light of the tests of conditions within the Framework and guidance of the Planning Practice Guidance.
26. As of 1 October 2018, any planning permission granted on or after that day with pre-commencement conditions imposed must have the written agreement of the applicant / appellant to the wording of those conditions². The appellant has confirmed their agreement to the Council's suggested conditions.

² Section 100ZA(5), and (6) of the Act

27. I have imposed conditions relating to the submission and timing of reserved matters applications, and the commencement of development, in the interests of certainty.
28. A condition requiring implementation of proposed tree protection measures is necessary to protect the existing trees subject to Tree Preservation Order on site from damage, and is a pre-commencement condition in order to ensure protection is in place before work starts.
29. I note the comments of the Council's Archaeologist regarding the potential for below ground archaeological remains on the site. A pre-commencement condition requiring a written scheme of investigation for archaeological work is necessary, therefore, to ensure any archaeological remains and features are adequately recorded, in the interests of the cultural heritage of the District.

Conclusion

30. I have found that the proposal would not constitute inappropriate development within the Green Belt nor would there be any other harm arising which would indicate development should be withheld. For the above reasons, taking into account the development plan as a whole and based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Kevin Savage

INSPECTOR

Schedule – Conditions

- 1) Details of the access, 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 implemented in accordance with the Arboricultural Method Statement (dated September 2017), with any protective and/or precautionary measures installed/implemented prior to the commencement of the development or first occupation/use as the case may be.
- 5) a) No development, including preparatory works, shall commence until a Written Scheme of Investigation for archaeological monitoring (WSI) has been submitted to and approved in writing by 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 and provision to be made for post investigation analysis and reporting;
 - iii) provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - iv) provision to be made for archive deposition of the analysis and records of the site investigation; and nomination of a competent person or persons/organisation to undertake the works set out within the WSI.b) The development shall take place in accordance with the approved WSI and shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the approved WSI and the provision to be made for publication and dissemination of results and archive deposition has been secured.

END OF SCHEDULE



Appeal Decision

Site visit made on 16 October 2018

by **Kevin Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2018

Appeal Ref: APP/F1040/W/18/3207758

Site adj 46 Main Street, Repton, South Derbyshire DE65 6NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr William Gibson against the decision of South Derbyshire District Council.
 - The application Ref 9/2017/0797, dated 20 July 2017, was refused by notice dated 16 February 2018.
 - The development proposed is three detached three bedroomed houses with single/double garages.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018 and replaces the first Framework published in March 2012. This change to national guidance is a material consideration and the main parties have had an opportunity to comment on it. References hereafter in the decision are to the new Framework.
3. Interested parties drew to my attention the draft Parish of Repton Neighbourhood Development Plan (PRNDP). The Council has clarified that the PRNDP has undergone examination, but that the PRNDP group subsequently requested that they review the Plan in light of the revised Framework, and further consultation is to be undertaken shortly. Given this stage of preparation, with further examination required, it does not, at the current time, form part of the development plan. I therefore attribute limited weight to the PRNDP as a material consideration in the determination of this appeal.

Main Issues

4. The main issues in this case are:
 - Whether the proposal would represent an appropriate location for housing, having regard to relevant development plan policies and guidance;
 - The effect of the proposal on the character and appearance of the surrounding area, including landscape character;
 - The effect of the proposal on protected trees.

Reasons

Whether appropriate location for housing

5. Policy H1 of the South Derbyshire Local Plan Part 1 (adopted 13 June 2016)(the LP1) identifies Repton as a Key Service Village, within which development within the settlement boundary is appropriate, as is development adjacent to the boundary where it comprises an exceptions or cross subsidy site of no more than 25 dwellings. The site lies beyond the settlement boundary and I am not provided with evidence that the site is promoted as an exceptions or cross subsidy site, which relates primarily to affordable housing-led development.
6. The site is therefore within the countryside for planning purposes, and accordingly falls within the fifth tier of the settlement hierarchy under Policy H1. Within these areas, the policy supports only development of limited infill and conversions of existing buildings.
7. Policy BNE5 of the South Derbyshire Local Plan Part 2 (adopted 2 November 2017)(the LP2) further restricts development in rural areas to a list of specific circumstances. Of these, I am not provided with evidence that the proposal would be essential to a rural based activity, nor that it would be unavoidable outside settlement boundaries. The policy offers support where the infill would be in keeping with the character of the locality and where it represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing, and where it would not unduly impact on landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.
8. In respect of whether the development would amount to infill, three proposed dwellings would exceed the stated two dwellings within Policy BNE5. However, this is qualified by the word 'normally' which implies that a greater number could be considered appropriate in the right circumstances.
9. The appeal site is a roughly L-shaped piece of open land occupying a broad frontage on the main road out of Repton to the south. The land slopes up from the road, steepening toward the rear with a stand of trees on the boundary. A maintained hedgerow runs along the front of the site, set in from the footpath next to the road. The land is otherwise laid to grass.
10. Opposite the site, and with a similar width of road frontage, is an undeveloped field with a tall tree line to the roadside boundary and evident rural character beyond. Together, these two stretches of undeveloped land form a distinctive break in the built form as one travels out of Repton. Indeed, development ceases at practically the same point on both sides, ending with the entrance to Gibson Technology on one side, and 63 Main Street on the other. There is, therefore, a clear sense of having left the village at this point.
11. Beyond these gaps to either side, there is further linear development, mainly on the adjacent side to the appeal site. Although continuous for a distance south of the appeal site, there are also discernible gaps through which the countryside can be seen, and which lend this area a dispersed, rural character. I therefore find that the undeveloped nature of the appeal site serves an important role in defining and maintaining the compact built extent of Repton, and preventing it coalescing with the dispersed linear development further along Main Street.

12. The dwellings would occupy a significant extent, but not all of the site's width, with a proposed 'wildlife zone' between Plot 3 and the entrance to Gibson Technology. There is a further break in the built form to the other side of this entrance before 42 Main Street is reached. Therefore, in view of the overall extent and largely undeveloped nature of the gap between Nos 42 and 46 in which the site sits, and the proposed layout, I find that the appeal scheme would not represent infilling of a small gap within a small group of housing, as required by Policy BNE5, but would form a considerable extension of the linear development on Main Street towards Repton.
13. The proposal would not satisfy any of the other criteria of Policy BNE5, nor would it constitute any of the exceptions in Paragraph 79 of the Framework where isolated homes in the countryside would be supported. The proposal would therefore not represent an appropriate location for housing, and would conflict with Policies H1 of LP1 and BNE5 of LP2. The proposal would in turn conflict with the Sustainable Growth Strategy set out under Policy S1 of LP1.

Effect on Character and Appearance

14. The proposal would see three dwellings positioned at a shallow angle to the road. Plot 1, closest to 46 Main Street would sit more to the rear, with Plots 2 and 3 closer to the road. Given the rise in ground levels, the dwellings would sit above the level of the road, and would require parts of the land to be dug out to allow the dwellings to sit into the rising topography.
15. The rising ground and low hedgerow to the front result in the site being open to clear views from the road on approach in both directions. Whilst I observed the dwellings to the south on Main Street to be set into the rising ground towards the rear, they generally appeared to be sited at or close to the road level when viewed from the front. By contrast, the proposed dwellings would be placed on higher ground, above the level of the road and neighbouring dwellings. As a result, the dwellings would appear unduly prominent with this open and visible site. The recessed position of Plot 1 would also fail to respect the consistent building line of dwellings to the south and would appear discordant as a result. Moreover, the dwellings would erode the existing break in development, extending the built form in a conspicuous manner, intruding into the rural landscape and detracting from the existing rural character of the site.
16. In terms of design, the dwellings would have wide footprints, broadly spanning the frontage of the site. This would contrast with the properties nearby to the south, which I observed to have narrower footprints and generally to extend from front to back, rather than across the site. In addition, the dwellings would also incorporate an uncharacteristic double roof design to the front which is not reflective of the traditional pitched roof designs of surrounding development.
17. The dwellings, therefore, would form an uncharacteristic development which would fail to respect the surrounding context, and would result in the harmful erosion of the site's rural qualities which make an importance contribution to the surrounding landscape and mark a clear separation in the built form.
18. For these reasons, the proposed dwellings would harm the character and appearance of the area, and that of the surrounding rural landscape. The proposal would therefore conflict with Policy BNE1 of the LP2, which requires all developments to be well designed and respond to their context and have regard to valued landscape, townscape and heritage characteristics. I also find

conflict with Policy BE4 of the LP2, which resists development which would have an unacceptable impact on landscape character, visual amenity and sensitivity and cannot be satisfactorily mitigated. The development would further fail to accord with Policy BE5 as it would not amount to infill development which would be in keeping with the character or the locality, and would unduly impact on landscape character.

19. The proposal would also conflict with the design related aims of the Framework, set out mainly in Chapter 12, and with the South Derbyshire Design Guide Supplementary Planning Document (November 2017).

Effect on Protected Trees

20. A Tree Preservation Order (TPO) (No 429) covers two individual Ash trees to the north of the site and the woodland area (W1) to the rear. The Council's concern relates to the proposed cutting into the bank below the existing tree line, and insertion of flood prevention and drainage measures for the dwellings which it considers may alter the water table and affect the health of the trees.
21. There is consensus that the Ash trees would not be affected in the proposed layout, and that a Cypress tree (T4) can be removed. The Council's Arboricultural Officer (AO), in raising the possibility of an effect on the water table, categorised the potential impact on trees within the woodland as low/moderate, and requested an arboricultural impact assessment to address soil level alterations and the potential effect on area W1. The appellant contests this, pointing to an assessment prepared for an earlier application, and states that the dwellings would not be close enough to have an impact.
22. I understand that the woodland was planted around 2008, following granting of planning permission for an industrial unit to the rear within the Gibson Technology site, which was not ultimately built. The TPO was subsequently made in 2016. Whilst this is a relatively young stand of trees, it nevertheless makes a significant contribution to its surroundings, providing a natural backdrop and connection to rural land beyond, whilst also screening the Gibson Technology site.
23. The dwellings would be set away from the tree line by several metres, but would involve some cutting into the steep slope of the bank below the tree line. In view of the protected status of the trees, any harm of loss resulting from the development would be harmful to the landscape character of the area. Therefore, the risks associated with the development should be fully understood. The appellant's tree report¹ concludes only that 'Development of the site can be achieved and the protected trees on the site retained' but offers no substantive explanation as to potential risks or mitigation of those risks. I am not persuaded, therefore, that the proposal has adequately considered the potential effect on protected trees.
24. In the absence of sufficient information to address the potential risk to protected trees, the proposal would fail to accord with Policy BNE4 of the LP2, which expects developers to retain key valued landscape components such as mature trees, established hedgerows and topographical features within development sites, and Policy BNE5, which requires development not to unduly

¹ Report on trees on land to the front of Gibson Technology Ltd, DE65 6NZ For Gibson Technology Ltd - Tree Health Consulting Ltd Ref: THC/2016/06/02 AS- 2nd June 2016

impact on landscape character and quality. There would also be conflict with the Framework, which requires that the intrinsic character and beauty of the countryside, including trees and woodland, is recognised.

Other Matters

25. I have had regard to the relevant parts of the draft PRNDP drawn to my attention by interested parties. However, they do not lead me to different conclusions in respect of the main issues.
26. No objection was raised by the Council to the proposal in respect of access or highway safety, or in respect of ecology and biodiversity, subject to implementation of various mitigation measures. I have no reason to conclude otherwise based on all I have seen and read. These matters would, however, be neutral in the overall planning balance.
27. I have had regard to other concerns raised by interested parties, beyond those encapsulated by the main issues, including privacy, loss of view, flood risk, pressure on schools, and disruption from construction. However, these are matters which do not affect my findings in respect of the main issues.

Planning Balance and Conclusion

28. The Council indicates that it can demonstrate a five year housing land supply, which is not challenged by the appellant. Therefore, whilst the additional dwellings would attract limited weight in favour of the proposal, the Council's housing land supply position means that its housing policies are not considered to be out of date for the purposes of Paragraph 11 of the Framework, and the presumption in favour of development does not apply in this case.
29. There would be some economic benefits through the construction process and from subsequent occupation of the dwellings and spending by residents in the local area. However, given the small scale of the development, and the temporary nature of the construction works, such benefits would carry limited weight in favour of the proposal.
30. I further acknowledge the relatively accessible location of the site with access to services in Repton. However, given the small scale of the development, its contribution towards supporting the viability of local facilities, whilst positive, would be limited. Moreover, given its location, occupants would still be likely to rely on the private car for the majority of transport needs which would weigh against the proposal in environmental terms.
31. S38(6) of the Planning and Compulsory Purchase Act 2004 indicates that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. The limited benefits identified are, to my mind, insufficient to outweigh the conflicts with the development plan which I have identified in this case.
32. The appeal is therefore dismissed.

Kevin Savage

INSPECTOR



Appeal Decision

Site visit made on 16 October 2018

by **Kevin Savage BA MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2018

Appeal Ref: APP/F1040/W/18/3204651

Agricultural Barn, Land to the North of Commonpiece Lane, Cropper, Ashbourne, Derbyshire DE6 5JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr J O'Halloran against the decision of South Derbyshire District Council.
 - The application Ref 9/2017/1296, dated 27 November 2017, was refused by notice dated 31 January 2018.
 - The development proposed is change of use of an agricultural building to a dwellinghouse along with associated operational development.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for change of use of an agricultural building to a dwellinghouse along with associated operational development, at Agricultural Barn, Land to the North of Commonpiece Lane, Cropper, Ashbourne, Derbyshire DE6 5JF, in accordance with the terms of the application Ref 9/2017/1296, dated 27 November 2017, and subject to the conditions listed in the attached schedule.

Procedural Matters

2. The description of development in the banner heading and formal decision, is taken from the appeal form, as Section 4 of the application form did not clearly describe the proposed development.
3. Drawing 02001 Rev P2 is titled 'Plan & Elevations as Existing', but it is clear that it actually shows the proposed plan and elevations. Drawing 01001 Rev P1 in fact shows the existing plans, elevations and sections. I have considered the appeal on this basis.

Background and Main Issue

4. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses)¹ and any building operations reasonably necessary to convert the building. There is no dispute between the main parties that the proposal meets the requirements of paragraph Q.1. and

¹ Of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended.

therefore that it constitutes permitted development under Class Q, subject to the prior approval of certain matters.

5. Paragraph Q.2.(1) lists conditions under which the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to the impact of the development on various matters. The Council's decision notice indicates that prior approval was refused only in respect of matter (a) transport and highways, and there is no dispute between the parties in respect of the other matters.
6. Therefore, the **main issue** is the effect of the proposal on highway safety.

Reasons

7. The appeal site is located to the outside of a bend on Commonpiece Lane with an existing access to an area of hardstanding in front of an agricultural building. The Council's concern is that drivers approaching the site from the junction with James's Lane would not have sufficient visibility to see vehicles waiting to turn right into the site. It argues that the proposal would increase the use of the access and in turn the likelihood of rear end shunts.
8. The appellant has submitted a traffic speed survey undertaken by a highways consultant, who concludes that given the proximity of the James's Lane junction to the site, vehicle speeds would be no greater than 30 miles per hour on approach to the bend. This would equate to a need for a 43 metre forward visibility, which is shown on the submitted plan Ref 17-0519/001 Revision A.
9. The Council, through the comments of the Highway Authority, disputes this forward visibility, arguing that 57 metre visibility is required, based on the 85th percentile speeds within the survey, and puts forward visibility at 20 metres, based on there being no verge and a large hedge to the inside of the bend.
10. The appellant further points to a planning permission granted for the site in 2012² for development of a new stable building and manège, which was not implemented, but where the Council raised no objection in terms of highway safety. The appellant argues this use would have generated more vehicle movements than the single dwelling now proposed.
11. The existing entrance is used to access the agricultural building and adjacent fields, and is likely therefore to generate an amount of agricultural traffic such as tractors with trailers or machinery. Whilst the bend is sharp, the access itself is visible from the junction with James's Lane, and therefore drivers approaching the site would be aware there is an entrance, with the possibility of vehicles turning in or out.
12. Whilst the appellant's plan shows a 43 metre forward visibility on approach from James's Lane, this is indicated as cutting across the hedge on the inside corner. However, given the visibility of the entrance and the short accelerating distance from the junction at James's Lane, and the lack of visibility around the bend, it should be expected that drivers would not be travelling at excessive speed, which is borne out by the speed survey, and that they would be exercising due care approaching the bend to safely take the corner. I am not provided with evidence of any accidents on the bend, nor did I observe any warning signs alerting drivers to particular danger.

² Council Ref 9/2011/1033/NO, granted 10 August 2012

13. The Council's analysis of the perceived risk, however, gives an impression of a busy road with a high risk of accidents occurring. The proposed use as a dwelling would generate limited vehicular movements given its small scale. Those movements would not be materially greater than those which occur in respect of the existing agricultural use, or which would have arisen from use as a stable. Moreover, the road is not a major thoroughfare, but a lightly trafficked rural road. I observed traffic to be intermittent, with several minutes between vehicles at times. The likelihood of a vehicle having to wait any length of time to turn right into the site is therefore very low. At worst, a vehicle may have to wait for a few seconds for the road to be clear. However, the risk of a vehicle approaching behind the waiting vehicle, far enough back not to have seen it slow and stop, but close enough to then meet it within the limited time it is stationary whilst waiting to turn is, to my mind, extremely small.
14. I accept that, on the ground, the full forward visibility sought by the Council may not exist. However, the access already exists, and therefore the perceived risk already exists, and would not be wholly generated by the proposed development. The scale and nature of the proposal means it would not lead to a demonstrable increase in vehicular movements which would exacerbate this risk to such a degree as to materially harm highway safety, when compared to the existing situation.
15. I note the appellant's reference to a separate development nearby at Longford Lane, which I observed at my site visit. However, I am not provided with the full particulars of this proposal, for example whether a previous access existed, with which to establish if the situations are directly comparable. I have not found this example determinative, therefore, in my consideration of the appeal.
16. I have had regard to the National Planning Policy Framework³, so far as it is relevant to the subject matter of the prior approval. Paragraphs 108 and 109 require that safe and suitable access to the site can be achieved for all users, but that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Given my findings above, I conclude that the access would be sufficiently safe and suitable, and would not have an unacceptable impact on highway safety. I therefore find no conflict with the Framework in this respect.
17. For the reasons set out above, I conclude that the proposal would not have a harmful impact on highway safety, and would be acceptable with respect to matter (a) of Paragraph Q.2.(1).

Other Matters

18. I have had regard to the comments of an interested party, raising objection to the principle of the proposal. The GPDO gives the right to change an agricultural building to a dwelling under Class Q, but is subject to restrictions to prevent agricultural buildings being erected and immediately turned into dwellings. Those buildings converted to dwellings under Class Q would not set a precedent, as each case must satisfy all applicable conditions, limitations and restrictions of the GPDO to benefit from the permitted development right.

³ Published 24 July 2018

Conditions

19. Paragraph Q.2.(3) stipulates that development under Class Q must be completed within a period of three years from the approved date. Paragraph W(12) requires the development to be carried out in accordance with the approved details. I shall therefore impose a condition specifying the approved plans, in the interests of certainty.
20. Three conditions are suggested by the Highway Authority requiring the access and parking area to be laid out in accordance with the plans prior to occupation of the building as a dwelling house, and a requirement for gates to the entrance to be set back from the highway and inward opening. These conditions are necessary in the interests of highway safety.

Conclusion

21. For the reasons set out above, the appeal is allowed.

Kevin Savage

INSPECTOR

Schedule – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 01001 (Location Plan as Proposed); 01002 Rev P1 (Site Plan as Proposed); 02001 Rev P2 (Plan & Elevations as Existing – *in fact as Proposed*); 28328_T Rev 0 (Topographical Survey); SA30388/01 (Location Plan at 10,000 Scale); 01001 Rev P1 (*Existing Plans and Elevations*); 17-0519/001 Rev A (Site Access Arrangements incl visibility splays).
- 2) Prior to the proposed dwelling being occupied the existing access shall be modified in accordance with the application drawings, laid out, constructed and maintained in perpetuity free of any impediment to its designated use.
- 3) The dwelling shall not be occupied until the space has been provided within the application site in accordance with the approved plans for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.
- 4) There shall be no gates or other barriers within 5 metres of the nearside highway boundary and any gates shall open inwards only.

END OF SCHEDULE