

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Appeals

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

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.

Reference	Item	Place	Ward	Page
9/2015/1159	1.1	Repton	Repton	15
9/2015/0976	1.2	Woodville	Woodville	24
9/2015/1176	1.3	Hilton	Hilton	39
9/2016/0041	1.4	Netherseal	Seales	45
9/2016/0042	1.5	Newhall	Newhall & Stanton	48
9/2016/0112	1.6	Midway	Midway	53
9/2015/0876	2.1	Etwall	Etwall	58
9/2015/0877	2.2	Etwall	Etwall	85

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

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

Item **1.1**

Reg. No. **9/2015/1159/RSD**

Applicant:
Mrs Helen Dawkins
Miller Homes Ltd
2 Centro Place
Pride Park
Derby
DE24 8RF

Agent:
Mrs Helen Dawkins
Miller Homes Ltd
2 Centro Place
Pride Park
Derby
DE24 8RF

Proposal: **APPROVAL OF RESERVED MATTERS OF PLANNING
PERMISSION REF: 9/2014/1093, INCLUDING MATTERS
OF LAYOUT, SCALE, APPEARANCE AND
LANDSCAPING ON LAND AT SK3126 2140 MOUNT
PLEASANT ROAD REPTON DERBY**

Ward: **REPTON**

Valid Date: **11/12/2015**

Reason for committee determination

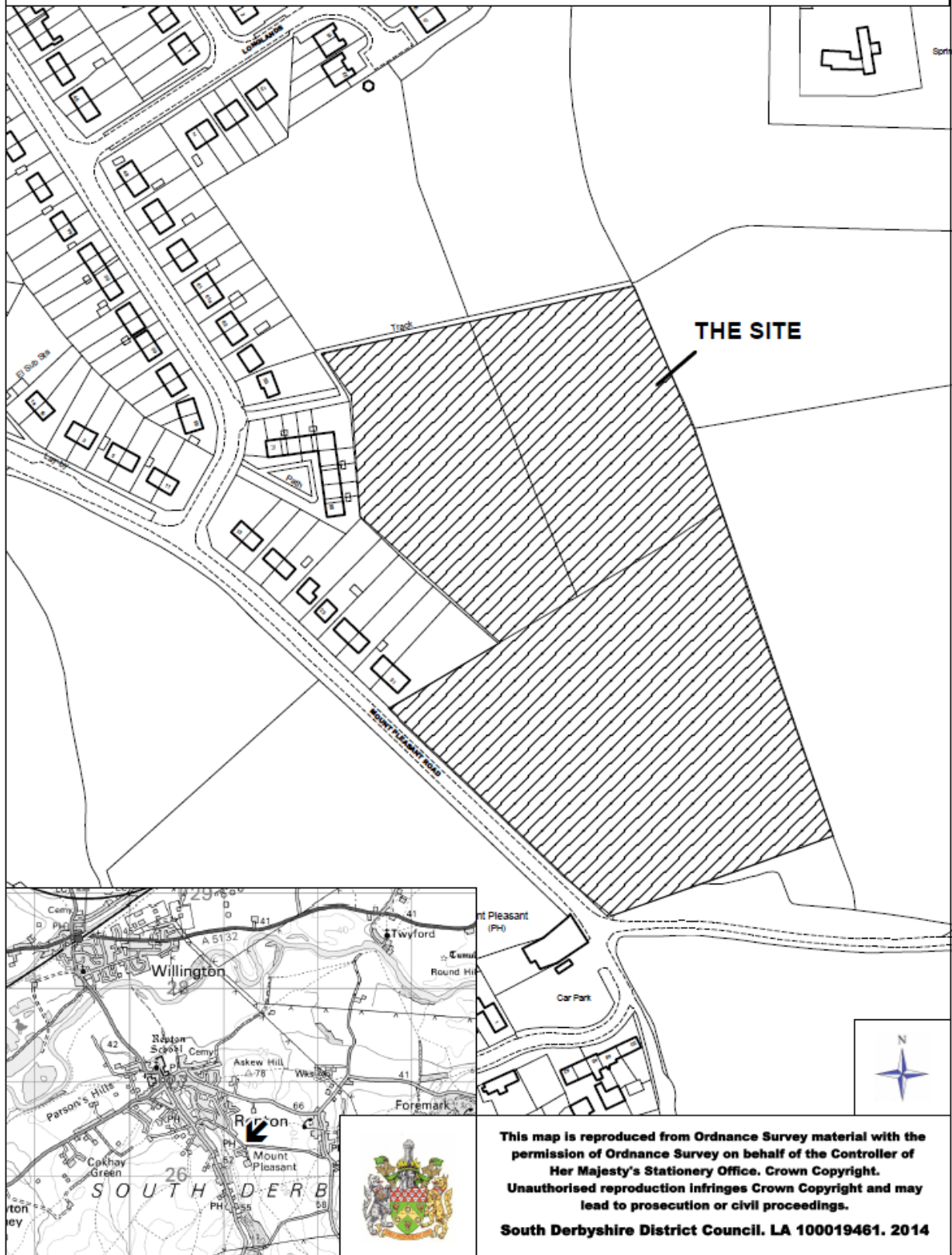
The item is presented to committee because this is a major development subject to more than two objections.

Site Description

The site extends to approximately 3.4 hectares of agricultural land located on the eastern edge of Repton. It is bounded by Mount Pleasant Road and Springfield Road (and properties thereon) to the east and south, and the second phase of residential development at this location. The site is irregular in shape comprising two distinctive fields bisected by an existing hedgerow and overhead power cables, with levels falling from the north-eastern corner towards the south and east.

The site boundaries are predominantly hedgerow and trees with rear boundaries to dwellings providing a mixture of fencing in addition. The exception is the north-west boundary along which public footpath 27 runs, with this route contained to a corridor by post and rail fencing. A small spinney of trees, protected by way of a Tree Presentation Order (TPO), lies to the eastern boundary of the site. Vehicular access to the site is currently gained via an existing field access off Mount Pleasant Road or from Longlands via the adjacent site with planning permission.

**9/2015/1159- Land at Mount Pleasant Road, Repton.
DE65 6GQ**



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. South Derbyshire District Council. LA 100019461. 2014

Proposal

Following approval of outline permission with detail of access for what is seen as 'phase 3' of the wider development on this eastern edge of the village; it is now sought to secure the layout, scale, appearance and landscaping for the provision of 75 dwellings with associated garaging, parking, estate roads, footways, public open space (POS) including a children's play area (LEAP) and above ground drainage features (SuDS). The LEAP would be located adjacent to one secured on the site to the north and provide a wider 'shared' facility across both phases. A number of parking spaces for occupants of Council owned properties to the west boundary of the site (on Springfield Road) would also be provided within the site.

Applicant's supporting information

Aside from layout plans and elevational drawings showing the setting out of the site and for each dwelling proposed, details of the POS and LEAP, the SuDS and materials for each dwelling are provided. A Construction Environmental Management Plan (CEMP) and Landscape & Environmental Management Plan (LEMP) also accompany the submission.

Planning History

9/2013/1053: Erection of 33 dwellings (24 of which for affordable housing purposes) – Approved April 2014 and varied under 9/2014/0618 in September 2014 ('Phase 1').

9/2013/0643 and 9/2014/1158: Outline and reserved matters applications for erection of 40 dwellings – Approved April 2014 and March 2015 respectively ('Phase 2').

9/2014/1093: Outline application (all matters reserved except for access) for the residential development of up to 75 dwellings and associated infrastructure – Approved July 2015 ('Phase 3').

Responses to Consultations

The County Highway Authority raises no objection and relies on conditions attached to the outline permission.

The Environment Agency has no comments to make.

Derbyshire Wildlife Trust has considered the plans, CEMP and LEMP and note that existing ecological features have been respected through retention and incorporation within the layout. The Trust therefore supports the layout and additional documents submitted.

The Police Crime Prevention Advisor raised concern in respect of the parking for the adjacent bungalows and the link into their grounds weakening the sense of ownership and territoriality of two formerly separate and distinct private areas. It is

advised that this route be secured for residents' use only by the inclusion of a practical and secure gating provision.

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

Peak and Northern Footpaths comment that surface of the public footpath should be improved to accommodate the extra use which will be generated by the development and current fences alongside the path should be removed and not replaced; whilst the crossing at the new estate road should be clearly delineated on the ground so that vehicle users are aware of the presence of walkers.

Responses to Publicity

Repton Parish Council sought confirmation that the play area would be located close to the village.

Four objections have been received, raising comments concerning the following:

- a) loss of countryside;
- b) too many houses on the site;
- c) building to the north half of the site only would be acceptable and in line with the number of houses proposed in the emerging Plan;
- d) surrounding roads cannot cope with more traffic and increased danger from vehicles;
- e) there appears to be no provision for maintenance of the central hedgerow; and
- f) the green spaces are small and round the edges, not providing sustainable amenities for children.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policy 11 (H11); Transport Policy 6 (T6); Environment Policies 9 and 11 (EV9 and EV11); Recreation & Tourism Policy 4 (RT4); and Community Facilities Policy 1 (CF1).

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H9 (Land at Longlands, Repton), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure) and INF9 (Open Space, Sport and Recreation).

National Guidance

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

Local Guidance

- Housing Design and Layout SPG

Planning Considerations

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

- Highway, drainage, open space and plot layout
- Scale and appearance of the built form
- Landscaping and biodiversity

Planning Assessment

The principle of development of this site has been established through the outline permission. Representations referring to the principle of development, such as traffic impacts on surrounding roads and the impact on the open countryside have already been discussed and deemed acceptable subject to conditions or planning obligations secured under the outline permission. The scope of the outline permission also allows for development in the southern 'half' of the site such that a decision here cannot be predicated on the principle of developing this southern half being unacceptable. The assessment is thus solely confined to the Reserved Matters - layout, scale, appearance and landscaping.

Highway, drainage, open space and plot layout

The detailed layout largely follows the masterplan provided with the outline permission. The highway extends from Mount Pleasant Road, reprioritising the junction here, and towards the northern end of the site – crossing the public footpath with the main SuDS pond to one side, in the north-western corner. A desire line for walkers across the pond is not accommodated, which remains of some concern as this was an aim of the masterplan in redressing the current 'dog leg' arrangement of the footpath around the end house on Springfield Road. Unfortunately the balance between providing adequate drainage capacity, lack of other feasible positions for the pond and the topography of the site has concluded there is no other option available. Hence whilst not ideal, every effort has been made to make the walking route attractive whilst also minimising the structures necessary to provide the attenuation pond.

The pedestrian link from the phase 2 site continues south along the eastern boundary and to the south-eastern corner where a crossing onto Mount Pleasant Road is provided. A similar link along the southern edge of the site connects with the highway footway to the west. These links complete the envisaged north to south route through open space from Milton Road to the north and Mount Pleasant Road, with further connections to Longlands and Springfield Road (via the public footpath,

upgraded and lit where it passes through a corridor between existing dwellings). The location of the LEAP is also as envisaged, to the highest ground to ensure that the built form is stepped away from the crest of the ridge between Repton and Milton, whilst at the same time facilitating a wider single provision made up of two LEAPs. A substantial tree planting buffer to the eastern boundary is also proposed as was envisaged. The open space and play provision is acceptable to the Open Space Manager.

The plot layout along the south-western and central parts of the site reflects the regimented arrangement of dwellings along the key road through Phase 2 and the overall approach to increasing density away from the higher ground and 'green' edges of the development - the density 'loosening' when travelling to the eastern and southern edges resulting in a more organic layout. This is with the exception of the Alms houses fronting the public footpath which achieves a mirrored framing of the public footpath as it travels into the site from Milton - an appropriate balance between ensuring a low ridge height close to the high ground whilst providing a rhythmic frontage to the straight public footpath. The proposal also complies with the distance between dwellings standards set out in the SPG.

The scheme also delivers 8 dedicated parking spaces for use by occupants of the sheltered bungalows to the western boundary of the site. A path connection to the boundary would be provided, along with a gating arrangement secured by condition, with the Council left to provide the balance of this path.

Scale and appearance of the built form

All dwellings are between 1.5 and 2 storeys high with roof pitches designed to reflect the traditional local vernacular. In terms of scale the dwellings are considered wholly appropriate. As to appearance a range of urban designs and rural designs are presented and placed accordingly across the site, ensuring green edges and corridors are fronted by the rural character dwellings. Detailing to the dwellings throughout is well suited and reflects that secured in phases 1 and 2. Materials compliment this design approach well.

Landscaping and biodiversity

The planting along the eastern boundary, whilst narrow in part, follows the principles of providing a landscaping buffer along this edge. However it is considered there is a need to secure denser planting as well as additional trees along the public routes through the site, and hence at the time of writing minor amendments are being secured. These will be reported to Members at the meeting.

The Wildlife Trust is satisfied with the proposals in the LEMP and the CEMP provided with the application, and it is considered the detail proposal maintains the potential to enhance biodiversity across the site.

As for hard landscaping, high quality exposed boundary treatments are secured (such as walls fronting highways, or arrow top railings to define public and private space to dwellings) along with variation in kerb heights and materials to indicate the significance and purpose of certain areas of highway, driveways or footways.

Summary

Overall the envisaged “high quality finish” for this development has been embraced and well executed by the applicant, providing the potential for a high quality development. Conditions can secure any finer details in addition to the control already remaining in place under the outline permission.

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 approval subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following plans/drawings/documents unless as otherwise required by condition attached to this permission or permitted 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):
 - a. (Layout and materials plans) REP/RLP/201 Rev A, REP/DL/201 Rev D and REP/MAT/PH2 Rev A;
 - b. (Drainage details) REP-ATT-DET-001 Rev A and 15717/162;
 - c. (Landscaping plans and play equipment details) MILL19596 11B sheets 1 to 4 and Q3828;
 - d. (Habitat protection and enhancement) the Landscape & Environmental Management Plan Rev B and the Construction and Environmental Management Plan (labelled November 2015); and
 - e. (Housetypes and garages) MPR/APT/PD/01A, MPR/APT/PD/02B, ALMS801-MPR, ALMS801-MPR-plots 236 & 237, ALMS222-801-MPR (PLOT 222), 204801 - MPR, 205801-MPR Rev A, 301801 - MPR, 304801-MPR Rev A, 307801-MPR Rev A, 307DA801-MPR Rev A, 415801-MPR Rev A, 418801-MPR, 420801-MPR (Amended 25-02-16), 432801-MPR (Amended 25-02-16), 432B801-MPR, 509801-MPR Rev A, 509802-MPR (in so far as plot 262), 517801-MPR Rev B, HQIM1 MPR, GAR801REP and GAR2801REP.

Reason: For the avoidance of doubt.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no walls, fences or other means of enclosure shall be erected forward of the principal elevations of dwellings, or boundary walls or fences to those dwellings, except as authorised under the submitted application, without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: In order to maintain the character of streets and public spaces as secured under the plans hereby approved.

3. Gutters and downpipes shall have a black finish.

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

4. Notwithstanding the approved drawings/plans, no development involving the construction of a dwelling shall commence until details, including samples and/or drawings where necessary, of the following materials/features have been submitted to and approved in writing by the Local Planning Authority:

- a. colour of fascia boards and mortar for verges;
- b. chimneys, roof lights and dormers;
- c. utility cupboard colours (both wall and ground mounted);
- d. highway kerb styles to all road typographies; and
- e. tree pit/root cage details for new trees and subterranean tree root protection measures for existing trees and hedgerows (if and where necessary), accompanied by planting or installation methodology.

Thereafter the dwellings/highways/driveways/footpaths shall be constructed, and trees planted, in accordance with the approved details.

Reason: To ensure a good standard of design in the interest of the appearance and character of the area.

5. Notwithstanding the approved drawings/plans, no development involving the construction of a dwelling shall commence until drawings, to a minimum scale of 1:10 including cross sections, showing typical details for cills and lintels, eaves and verges and string courses have been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, no fascia boards shall be placed over corbelling and there shall be no use of cloaking tiles/dry verges. The dwellings shall thereafter be constructed in accordance with the approved details.

Reason: The plans submitted are insufficient to establish whether such architectural details are satisfactory, in the interests of the appearance of dwellings and the overall character of the area.

6. Prior to the first occupation of each dwelling served by a shared driveway (i.e. not adopted as public highway), bin collection space shall be provided in accordance with the approved plans to serve that dwelling and thereafter retained free of obstruction for such use.

Reason: To ensure a good standard of design in the interest of the appearance and character of the area.

7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, prior the construction of a boundary wall or fence amended details and plans indicating the positions, design, materials and type of boundary treatments to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before each respective dwelling is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

8. The footpath links and improvements to the existing public footpath shall be provided in accordance with the approved plans prior to the occupation of the 38th dwelling or in accordance with a timetable/phasing plan first submitted to and approved in writing by the Local Planning Authority.

Reasons: In the interests of good design and to encourage the use of sustainable modes of transport.

Informatives:

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

This decision is considered to adequately address the requirements of conditions 1, 2 (a & d-f), 3 and 10 of outline planning permission ref: 9/2014/1093. Whilst some details have been provided in respect of condition 3 (b & c), the extent of these details is not considered sufficient to offer full discharge of the pre-commencement requirements.

The Council's Legal Officer reminds the applicant that part of the site is owned by the Council with a public footpath and a 15 foot wide right of way for agricultural purposes only over this land. Upgrading of the footpath or the making of improvements to land either side of the it will require the applicant to liaise with the Council separately on this matter.

The application site is affected by a Public Right of Way (Footpath 27, as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock.

22/03/2016

Item **1.2**

Reg. No. **9/2015/0976/SMD**

Applicant:
Mr Eyley
c/o S G Design Studio
202 Woodville Road
Hartshorne
Swadlincote
DE11 7EX

Agent:
Mr Stephen Greaves
S G Design Studio Limited
202 Woodville Road
Hartshorne
Swadlincote
DE11 7EX

Proposal: **THE ERECTION OF TEN DWELLINGS INCLUDING
ACCESS, INTERNAL ROAD AND GARAGES ON LAND
ADJACENT TO 59 ASHBY ROAD WOODVILLE
SWADLINCOTE**

Ward: **WOODVILLE**

Valid Date: **16/10/2015**

Reason for committee determination

The item is presented to Committee at the request of Councillors Mrs Coe and Mrs Farrington.

Site Description

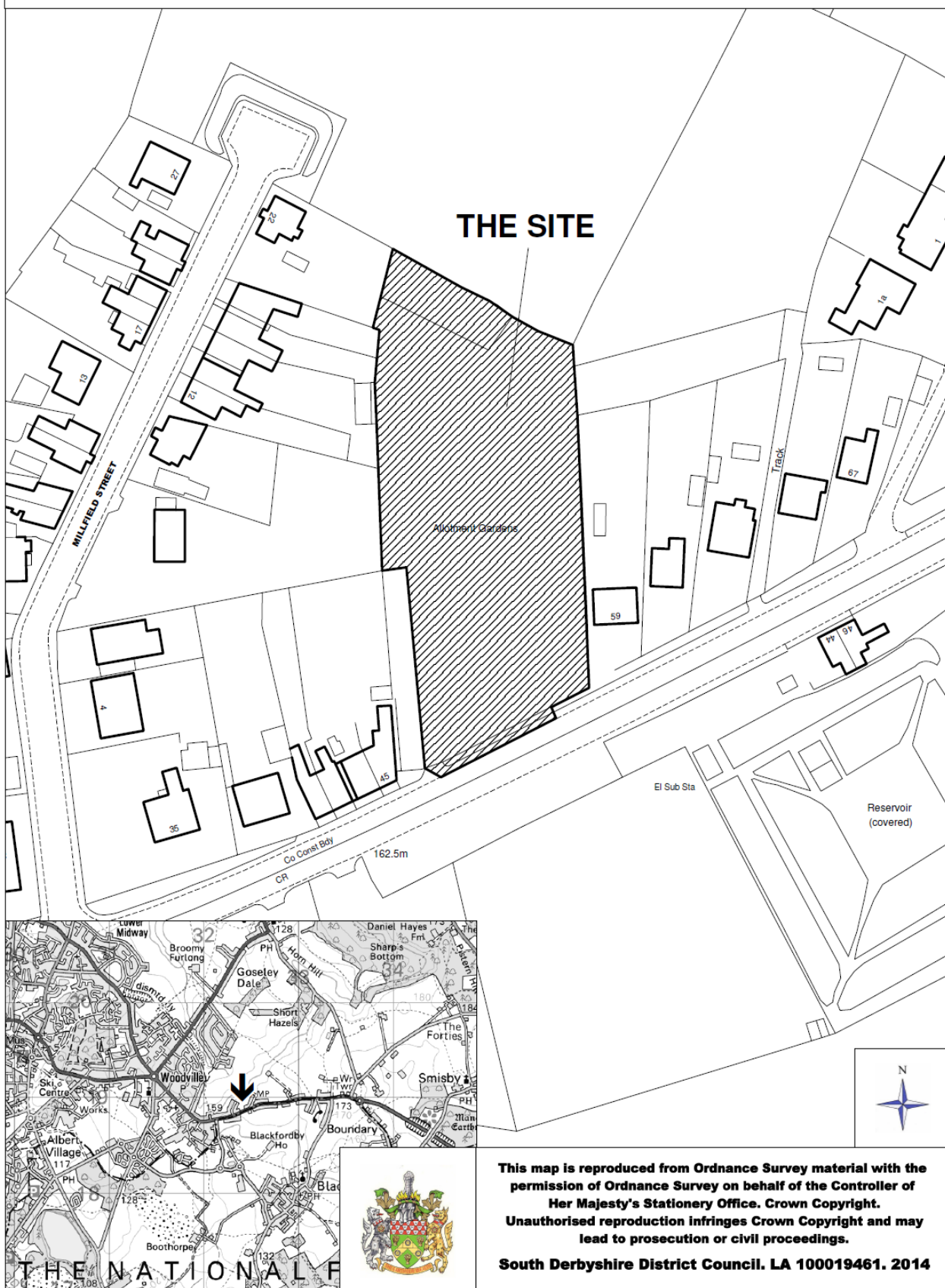
The site comprises a parcel of land, some 0.38 hectares in area. Planning permission has been granted for the combined site under references 9/2013/0885 for approval of reserved matters following the granting of outline permission for the erection of two dwellings and 9/2014/0189 for residential development - outline (all matters reserved).

The site was previously used as allotments and is bound to the east by the property and rear garden of 59 Ashby Road, to the west by property and rear gardens of properties on Ashby Road and Millfield Street and to the north by open land.

Proposal

It is proposed to provide 10 dwellings and associated garages on the land with access off Ashby Road. The scheme provides a mix of dwelling types consisting of terrace and detached properties with a range of 3 and 4 bedroomed units.

**9/2015/0976 - Land adjacent to 59 Ashby Road, Woodville, Swadlincote
DE11 7BZ**



Amended plans have been received since the original submissions which introduce further detailing and minor adjustments to plots to improve the overall design and access of the scheme.

Applicant's supporting information

A Design and Access Statement notes that the layout has been designed to enhance the appearance of the schemes previously approved.

A Coal Mining Risk Assessment states that there are recorded coal workings below the site (40-50m for fireclay and 50-60m for Eureka Coal). Borehole records in the local area suggest that there are 3 coal seams in the area with one outcropping on site (Stockings Coal) and the Eureka outcropping 50m to the east. There are no recorded coal mine shafts located within 20m of the site. The potential risks associated with unrecorded workings at the site (Stockings Coal) means that further intrusive investigations are warranted to prove the depth of competent rock cover above the worked seam and the status of the coal seams beneath the site. If remedial measures are necessary these can be designed based on the findings of the investigation.

A Shallow Mining Investigation advises that a Phase 1 CMRA has been completed and investigations into the risks have been carried out. No evidence for the presence of coal seams/shallow coal workings were recorded within any of the exploratory holes formed and concludes that no further action (e.g. consolidation of shallow workings) need to be undertaken with respect to shallow mining prior to development works proceeding.

Planning History

- 9/2002/1266 Residential development (Outline – all matters reserved except access) – Refused 22/01/2003 and dismissed at Appeal February 2004
- 9/2010/0792 Erection of two dwellings (Outline- all matters reserved) – Approved 28/10/2010
- 9/2013/0885 Approval of reserved matters following outline permission 9/2010/0792 for the erection of two dwellings – Approved 10/01/2014
- 9/2014/0189 Residential development (Outline – all matters reserved) - Approved 08/09/2014

Responses to Consultations

The Coal Authority does not object to the proposed development and no specific mitigation measures are required.

The Council's Environmental Protection Officer (Contamination) recommends a condition to prevent ground gas ingress.

The County Archaeologist has no objection subject to conditions.

The County Highway Authority has no objection subject to conditions.

The County Flood Risk Team has no objection subject to conditions.

The County Education Authority has requested a total of £22,798.02 for education requirements and comment on other infrastructure requirements.

Southern Derbyshire CCG advises that Woodville Surgery has spare capacity to manage increased patient demand on this scale therefore no request for contribution is made.

Derbyshire Wildlife Trust requests the imposition on an informative for site clearance.

Woodville Parish Council objects to the application on access and highway safety grounds and number of houses.

Responses to Publicity

One letter has been received objecting on the grounds of overlooking from plot 8 and the impact of existing trees overhanging adjoining property.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 4 and 11; Transport Policy 6 and Environment Policies 1, 9 and 10.

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: Policy S1 (Sustainable Growth Strategy); Policy S2 (Presumption in Favour of Sustainable Development); Policy S4 (Housing Strategy); Policy S6 (Sustainable Access); Policy H1 (Settlement Hierarchy); Policy SD1 (Amenity and Environmental Quality); Policy SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); Policy SD4 (Contaminated Land and Mining Legacy Issues); Policy BNE1 (Design Excellence)

National Guidance

- National Planning Policy Framework (NPPF) paragraphs 6, 7, 8, 11, 12, 14, 17, 32, 39, 47, 58, 61, 69, 70, 74, 96, 109, 118, 120, 121, 186, 187, 196, 197, 203, 204, 206, 215 and 216
- National Planning Policy Guidance (NPPG)

Local Guidance

- Housing Design and Layout Supplementary Planning Guidance (SPG)

Planning Considerations

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

- The Principle
- Access
- Layout and Design
- Developer contributions
- Other matters (Land stability and drainage)

Planning Assessment

The Principle

The principle for residential development has been established on this site under the combined planning permissions 9/2013/0885 and 9/2014/0189. Given that there have been no material changes to policy it is therefore not considered necessary to look at the principle of development in detail again.

Access

Transport Policy 6 states that provision should be made for adequate access, parking, and manoeuvring and off street provision. Amended plans have been provided which address the initial concerns in relation to individual access. The County Highway Authority, whilst raising no objection in principle, raised initial concerns with regard to the parking and manoeuvring. Amended plans have been received addressing those concerns and as such has no objection to the scheme subject to the imposition of conditions.

Layout and Design

Good design encompasses: improving the quality of the area for the lifetime of the development, establishing a strong sense of place, incorporating a mix of uses such as public open space, responding to local character through design and materials, creating safe and accessible environments with a good level of natural surveillance and are visually attractive. Housing Policy 4 states that residential development within the urban area is acceptable provided it is of a suitable scale and character. Similarly, paragraph 17 of the NPPF seeks to secure high quality design and good standards of amenity. In this case the key principles of Building for Life (as a useful generic measure) have been achieved in creating affordable, functional and sustainable homes thus complying with these policies.

The layout of the development ensures that properties all face the public realm and private gardens have sufficient amenity value. The layout and design accords with the criteria within Housing Policy 11 and the additional tree planting proposed is in recognition of its National Forest location. The proposed design and layout of the site would be sympathetic to the neighbouring residential development by retaining existing boundary hedgerows and introducing 1.8 metre high boundary fences. The

amended house plans have addressed initial concerns in respect of design detail. A strong hard and soft landscaping scheme that includes walls enclosing front/rear gardens and hedge and tree planting to provide a street character has been provided. The scheme achieves an overall BfL score of 14.

The proposal has also been assessed in relation to the Council's space about dwellings guidance (SPG) which seeks to protect the occupiers of the existing dwellings from overlooking and to protect their privacy. With suitable conditions, the proposal is in conformity with the minimum distances required as set out in this guidance and as such the proposed dwellings would not have a significant impact on the amenity of existing properties on Millfield Street or Ashby Road.

The existing hedgerow on part of the western and eastern boundaries of the site (which extends along the rear boundaries to Plots 8-10 and adjacent to the rear garden on No. 59 Ashby Road) would be retained and enhanced and 1.8 metre high close boarded fencing erected to the remainder of the western and eastern boundaries is proposed to be erected to ensure that sufficient screening reduces the impact on existing residents.

Developer contributions

Paragraphs 203 to 205 of the NPPF relate specifically to planning obligations and advise that these should only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development, and
- Fairly and reasonably related in scale and kind to the development.

DCC request a contribution of £11,399.01 for the provision of 1 primary pupil place at Woodville Infant School to be used towards the creation of an additional classroom and £11,399.01 for the provision of 1 primary pupil place at Woodville CE Junior School to be used towards the creation of additional pupil support accommodation. No contribution is required for Local Authority Collected Waste. Southern Derbyshire CCG advises that Woodville Surgery has spare capacity to manage the increased patient demand on this scale therefore no contribution is required in respect of health. Public Open Space Contributions (based on 10 dwellings) are required in accordance with the Council's adopted guidance. No on-site open space is proposed to be provided within the scheme. The previous outline planning permission (9/2014/0189) for part of the land was given subject to a Unilateral Undertaking (under Section 106) to secure the transfer of the whole of the new allotment land to the Parish Council within 40 days of the issue of the permission. Land to the north of the site has been transferred to the Parish, which equates to approximately 6,111 sq. m of land. The previous allotments equate to approx. 3,838 sq. m of land resulting in an increase in allotment provision therefore this should be considered as a surplus in comparison to the former provision and reflected in the calculations for the overall requirements of Public Open Space contributions.

In establishing a reasonable fall back as to what could be achieved on site without the need for any requirement for contributions regard has been given to the existing permissions and specifically detailed and indicative layouts. It is considered that 6 dwellings is the reasonable fall-back position and contributions should be made on

the balance of 4 additional dwellings. On this basis contributions should be sought pro-rata in respect of education, outdoor sports facilities and built facilities.

Biodiversity impacts

The application is accompanied by an ecological survey/protected species appraisal. Derbyshire Wildlife Trust notes that planning permission has been granted for the site and requests the imposition of an informative in respect of best practice for site clearance.

The site falls outside of the watershed in respect of the hydraulic catchment of the River Mease and therefore poses no pollution risk to the SAC. As such, given that foul water is not imported into the catchment and surface water will flow away from the catchment, this scheme does not require an assessment against the Habitat Regulations.

Other matters (Land stability and drainage)

A Coal Mining Risk Assessment has been submitted with the application and the Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment Report and the Shallow Mining Investigation Report. No specific mitigation measures are required as part of the development.

Conclusion

The principle of development of the site has been established through the granting of two extant planning permissions. The above assessment identifies that there is compliance with policy with no technical matters which cannot be addressed by the imposition of conditions or planning obligations. The site is sustainably located close to a main urban centre therefore the presumption in favour of development applies.

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

Recommendation

- A.** That delegated authority be granted to the Planning Services Manager to secure the appropriate level of contributions for mitigation of the impact of the development under Section 106 of the Town and Country Planning Act 1990;
- B.** Subject to A, **GRANT** permission subject to the following conditions:
 - 1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
 - 2. Notwithstanding the originally submitted details, this permission shall relate to the submitted plans: Proposed Site Plan drawing number 215-46.02 B, Plots

1-3 Terraced 3 Bedroom Dwellings drawing number 215-46.03 A, Plot 4
 Detached 4 Bedroom Dwelling drawing number 215-46.04 Nil, Plots 5-7 inc
 Detached 3 Bedroom Dwellings drawing number 215-46.05 A, Plot 8
 Detached 4 Bedroom Dwelling drawing number 215-46.06 Nil, Plot 9
 Detached 4 Bedroom Dwelling drawing number 215-46.07 Nil, Plot 10
 Detached 4 Bedroom Dwelling drawing number 215-46.08 Nil, Elevational
 Detail drawing number 215-46.09 A and Garage Detail plots 1-3 drawing
 number 215-46.10 Nil 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, the original submission being considered unacceptable.

3. a) No development within Plots 8 and 9 (as shown on the 'proposed site plan' - drawing number 215-46.02 B) shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
 1. The programme and methodology of site investigation and recording
 2. The programme for post investigation assessment
 3. Provision to be made for analysis of the site investigation and recording
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 5. Provision to be made for archive deposition of the analysis and records of the site investigation
 6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"
- b) No development within Plots 8 and 9 shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).
- c) The development within Plots 8 and 9 shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

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

4. Prior to any other works commencing, the new access shall be formed to Ashby Road, the access shall be laid out in accordance with the application drawing (215-46.02 B), having a minimum width of 4.8m, be provided with 2m x 2m x 45° pedestrian intervisibility splays and visibility sightlines of 2.4m x 65

in the westerly direction and 2.4m x 90m to the east, the area forward of which shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge. The access shall be constructed as a splayed vehicular crossover in accordance with Derbyshire County Council's specification for works within the public highway.

Reason: In the interests of highway safety.

5. Before any other operations are commenced, space shall be provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

6. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

7. Prior to the first occupation of any dwelling, the existing access into the site shall be permanently closed and the footway reinstated in accordance with Derbyshire County Council's specifications for works in the adopted highway.

Reason: In the interests of highway safety

8. Prior to the first occupation of any dwelling, the access, parking and manoeuvring space shall be provided in accordance with the revised application drawing (215-46.02 B) and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interests of highway safety.

9. The bin stores identified on drawing number 215-46.02 B shall be provided prior to the first occupation of Plots 8-10 and shall be retained thereafter free from any impediment to its designated use.

Reason: To prevent refuse bins and collection vehicles standing on the busy classified Ashby Road for longer than necessary causing an obstruction or inconvenience for other road users, in the interests of highway safety.

10. No development shall commence until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority. Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the Local Planning Authority. Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development hereby permitted.

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

11. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015), has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detained designs prior to the first occupation of the dwellings hereby permitted.

Reason: to ensure that the principle of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided to the Local Planning Authority in advance of full planning consent being granted.

12. No development shall commence until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- a. into the ground (infiltration);
- b. to a surface water body;
- c. to a surface water sewer, highway drain, or other drainage system;
- d. to a combined sewer.

13. No dwelling shall be erected above damp proof course until details/samples (as appropriate) of the:-

- i. external facing materials (including boundary walls)
- ii. roofing materials
- iii. rain water goods
- iv. windows and doors (including heads and cills)
- v. porches and door surrounds
- vi. chimneys
- vii. eaves and verges

have been submitted to and agreed in writing by the Local Planning Authority. Thereafter, the works shall be executed in accordance with that agreement.

Reason: To safeguard the appearance of the locality generally.

14. No dwelling shall be occupied until the associated boundary treatment related to the dwelling has been completed in accordance with the approved plan 215-46.02 B.

Reason: In the interests of the appearance of the area and to protect residential amenity.

15. Notwithstanding the submitted plans no dwelling shall be occupied until such time as a landscaping scheme has been submitted to and agreed in writing with the Local Planning Authority. The approved scheme shall be implemented in the first planting and seeding season following either the first occupation or the bringing into use of the development hereby approved unless an alternative implementation programme is first agreed in writing with the Local Planning Authority.

Reason - To ensure satisfactory landscaping is provided within a reasonable period.

16. Any tree or shrub which may die, be removed or become seriously damaged shall be replaced in the first available planting season thereafter and during a period of 5 years from the first implementation of the approved landscaping scheme or relevant phase of the scheme, unless a variation to the landscaping scheme is agreed in writing with the Local Planning Authority.

Reason: To provide a reasonable period for the replacement of any trees.

17. Notwithstanding the provisions of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order), none of the dwellings hereby approved shall be enlarged, improved or altered, nor shall any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouses be provided unless planning permission has first been granted by the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain control over future development in view of the form and density of the development proposed.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the window hereby approved serving bedroom 1 in the south elevation of Plot 7 shall be glazed in obscure glass and permanently maintained thereafter as such.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website
http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehi

cular_access/default.asp , email ETENetmanadmin@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.

Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Department of Economy, Transport and Environment at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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

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

For the avoidance of doubt, the proposed access road shall remain private. The Highway Authority would not seek to adopt the road/private drive into the site. However, pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting a new road the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The road can subsequently be exempt from the requirements and Highway Authority proposes to proceed in this manner.

The site is affected by a Building Line, prescribed under the Roads Improvement Act 1925. The line will need to be revoked before any building works can commence. The applicant should contact the Department of Economy, Transport and Environment (ask for Debbie Spencer) at County Hall, Matlock and be advised that there is a fee payable for this service to cover legal and administration costs.

In respect of condition No. 10 above for assistance in complying with the planning condition and other legal requirements applicants should consult ""Developing Land

within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp. The administration of this application may be expedited if completion or verification evidence is also submitted to the Environmental Protection Officer (Contaminated Land) in the Environmental Health department: thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:-

- CIRIA C665: Assessing the risks posed by hazardous ground gases into buildings.
- CLR 11: Model Procedures for the Management of Contaminated Land.
- CLR guidance notes on Soil Guideline Values, DEFRA and EA.
- Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency. ISBN 0113101775.
- BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and volatile Organic Compounds (VOCs).

In respect of conditions 11 and 12 above the applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 3.3 of the CIRIA SuDS Manual C697. This type of development usually requires .2 treatment stages before outfall into surface water system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status.

To discharge the conditions the applicant should ensure all of the below parameters have been satisfied:

1. The production and submission of a scheme design demonstrating full compliance with DEFRA's Non-statutory technical standards for sustainable drainage systems:

- limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to comply with S7 & S8.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.
- Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.

- Where reasonably practicable demonstrate that the runoff volume of the site reflects the requirements of S4.

Information to indicate that the surface water can, in principle, be disposed of sustainably in compliance with Approved Document H of the Building Regulations 2000. In particular, the following information should be provided to the Local Planning Authority for review:

- Soakaway/ground investigation conducted in compliance with BRE Digest 365 methodology or similar submitted information to demonstrate the feasibility of infiltration alone to manage surface water on the site.
- If infiltration is found to be feasible, an alternative option for surface water disposal should be proposed. In order of preference this should be to:
 - i. an adjacent watercourse with detailed evidence of the feasibility of this option given the existing site constraints;
 - ii. a surface water public sewer, with appropriate evidence that the relevant Water and Sewerage Company (WaSC) deems this acceptable, or
 - iii. a combined public sewer, with appropriate evidence that the relevant WaSC deems this acceptable

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

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at:
www.coal.gov.uk/services/permissions/index.cfm.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

During construction you are requested to ensure that your or any other contractors' vehicles are parked legally and in a manner that shows consideration to the occupiers of adjacent and nearby properties. Thank you for your co-operation.

22/03/2016

Item **1.3**

Reg. No. **9/2015/1176/FH**

Applicant:
Mr Mark Swift
Cherry Tree Cottage
18 Sutton Lane
Hilton
Derby
DE65 5FB

Agent:
Mr Richard Roberts
Green Farm
Green Lane
Burnaston
DE65 6LH

Proposal: **THE ERECTION OF AN EXTENSION INCORPORATING
A GARAGE (SUPERSEDING THE DETACHED GARAGE
APPROVED AS PART OF APPLICATION 9/2015/0567)
AND CREATION OF A NEW VEHICULAR ACCESS AT
CHERRY TREE COTTAGE 18 SUTTON LANE HILTON
DERBY**

Ward: **HILTON**

Valid Date: **11/12/2015**

Reason for committee determination

This item is reported to the Committee at the request of Councillor Mrs Plenderleith on the grounds there are issues in this case which are very finely balanced.

Site Description

Cherry Tree Cottage is one of the older properties in the street. It is two- storey in form, finished with painted rendered walls and plain clay tiles on the roof. The site (and its surrounds) is generally flat.

Proposal

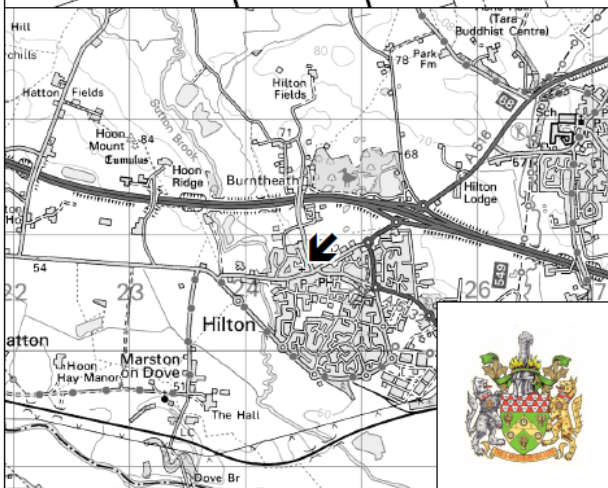
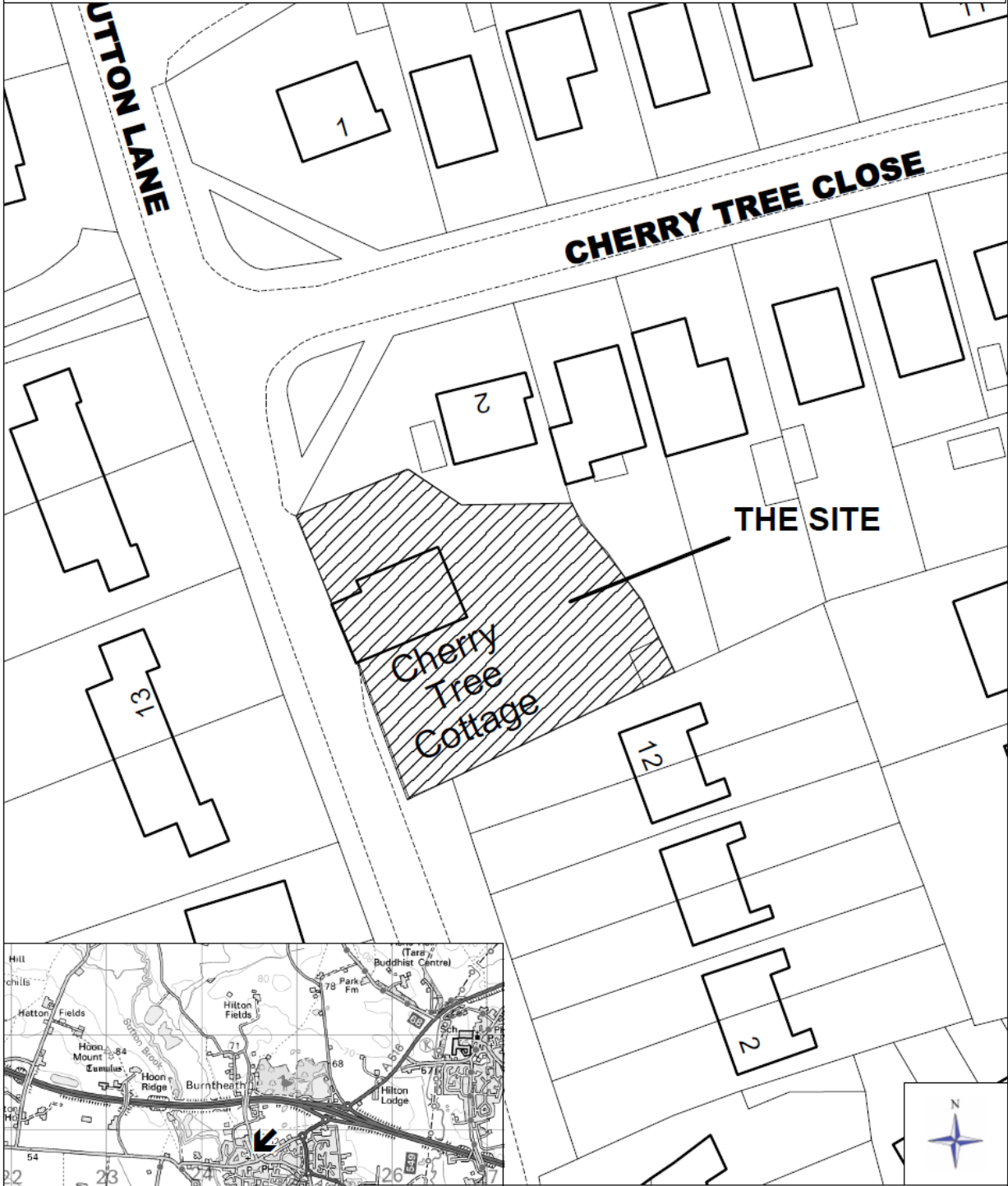
The proposal is to extend the existing dwelling on its northern wall adding a garage structure (with study over). The garage would be attached to the house by way of a narrow link providing some utility space, stair well to the 'over the garage' space. Plans additionally show the creation of a new vehicular access to the highway.

Applicants' supporting information

None

Planning History

9/2015/1176- 18 Cherry Tree Cottage, Sutton Lane, Hilton
DE65 5FB



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461. 2014

A detached double garage was recently approved on this site – see application 9/2015/0567. It is understood however that only one garage building would be constructed and this application (if approved) would supersede the other permission.

Responses to Consultations

The principle of a new access is considered acceptable in highway terms, subject to appropriate conditions being place on any decision notice

Responses to Publicity

One neighbour has concerns that the extension is not in scale with host and thus is out of character. The objection continues that the development would alter the host's relationship with neighbouring forms whilst additionally causing a loss of privacy and a reduction in amenity to his garden space, reducing outlook and light to a point where the garden would be overshadowed.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policy 13, Transport Policy 6, Built & Natural Environment 1 and Sustainable Development 1.

Local Guidance

Extending your home – Supplementary Planning Guidance (SPG).

National Guidance

- National Planning Policy Framework (NPPF) 11-14, 17, 58, 196, 197.
- National Planning Policy Guidance (NPPG) ID21b, ID26.

Planning Considerations

The main issues central to the determination of this application is the effect on the appearance of the property in the street and the impact on neighbouring properties in terms of general amenity.

Planning Assessment

As detailed above, this house is one of the older properties in the village. Sitting side-on to Sutton Lane, it is more bespoke in its design than the more regimented buildings that surround it.

Given its bespoke form though there is no orthodox way to extend the house, although as presented, the extension would be to the rear, set back from the road/building line and continues the pattern of eaves and ridge heights being 'varied', with the link element helping to break up the roof ranges.

In regards the loss of privacy claim, plans have been altered to remove the offending gable window that would indeed have caused a loss of privacy. In terms of loss of aspect, SPG is clear in its guidance that two storey forms should not breach a protected splay set from the middle of the nearest ground floor primary window. Whilst it is arguable whether the bulk of new mass is truly two-storey, the garage part (and thus the taller part) falls outside of the protected splay, specifically the kitchen window at No2 Cherry Tree Close. Land levels are additionally favourable with No18 slightly lower than the site to the north east thus the mass would be approximately 0.5 lower than indicated on the plans.

SPG does not specifically look to protect gardens and any impact on such is judged on the merits of the situation. Here the new massing of the garage should be far enough away from the 'main' garden space at No2 (that to the rear that affords a generally open southern aspect) as to not be visually oppressive. The 'side' garden referred to at present does not appear to be used as the main garden space, reinforced by the fact that there are no doors or windows from the house looking out onto it. Its present appearance as such is that of a 'secondary' space. Admittedly this garage would have some impact on that side space causing some shading but would be unlikely to adversely affect the health of the existing trees.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission shall relate to the amended drawings received 5th February 2016 showing in particular: the removal of the rear gable window, replaced with two high level rooflights.
Reason: For the avoidance of doubt.
3. Notwithstanding the submitted drawing, no part of the rooflights in the east facing roof slope of the garage shall be lower than 1.7 metre above the floor level of the room that they serve.
Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.
4. All external materials used in the development to which this permission relates shall accord with those detailed in the application. Render and roofing tiles (where roof tiles are shown) shall match those used in the existing building in colour, coursing and texture unless prior to their incorporation into

the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the existing building and the locality generally.

5. Unless otherwise agreed in writing with the Local Planning Authority, the eaves and verge details shall match precisely those to the existing dwellinghouse.

Reason: To safeguard the appearance of the existing building and the locality generally.

6. Prior to any other works commencing, the new access shall be formed to Sutton Road. The access, limited though it will be within the public highway, shall be constructed in accordance with Derbyshire County Council's specifications for splayed vehicular crossovers with the highway boundary clearly demarked in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

7. Prior to the access being taken into use, the entire site frontage between the dwelling and the northern boundary shall be cleared and maintained throughout the life of the development free of any obstruction exceeding 600mm in height relative to the nearside carriageway edge for a distance of 2m into the site from the highway boundary in order to maximise visibility available to a driver emerging from both the new access and Cherry Tree Close.

Reason: In the interests of highway safety.

8. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

9. Unless otherwise agreed in writing with the local Planning Authority, the existing access shall be closed with a permanent barrier and the highway reinstated as full face kerb and hard surfaced margin in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website

http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp , email ETENetmanadmin@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

22/03/2016

Item **1.4**

Reg. No. **9/2016/0041/TP**

Applicant:
Mr Martin Buckley
SDDC
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Agent:
Mr Martin Buckley
SDDC
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: **THE PRUNING OF A TREE COVERED BY SOUTH**
 DERBYSHIRE DISTRICT COUNCIL TREE
 PRESERVATION ORDER NUMBER 360 AT
 GRAVEYARD MAIN STREET NETHERSEAL
 SWADLINCOTE

Ward: **SEALES**

Valid Date: **14/01/2016**

Reason for committee determination

The applicant is the Council so the case must be determined by committee.

Site Description

The application site is a graveyard in the village of Netherseal. There are several protected trees present here. The southern boundary abuts tennis courts and the school.

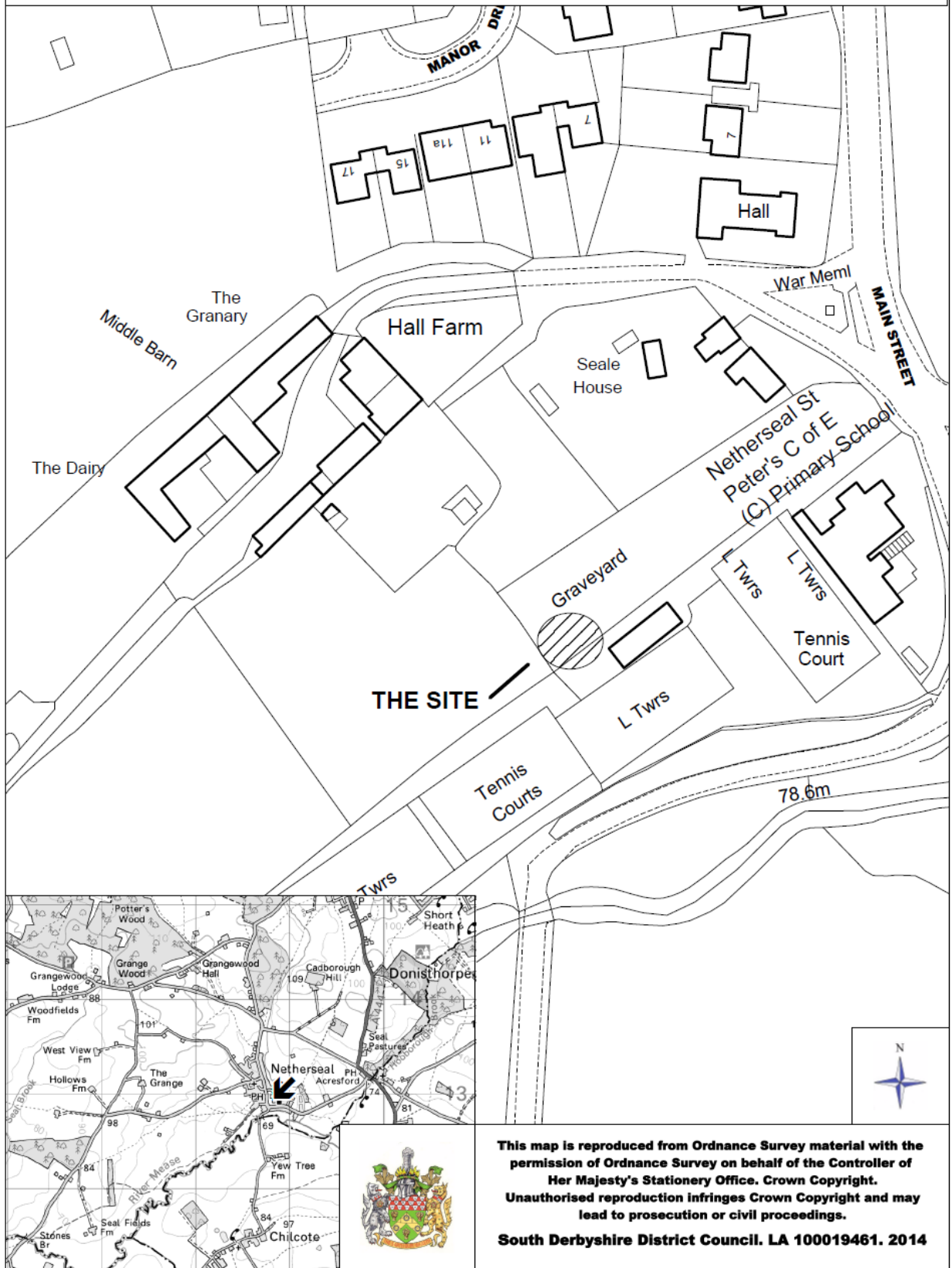
Proposal

The application proposes the pruning of an oak tree along the southern boundary which is TPO protected (TPO360). The works include deadwood removal, crown cleaning, cleaning out of interlocking branches and removal of hung-up branches. The pruning would provide clearance of the neighbouring tennis court lighting.

Planning History

None.

**9/2016/0041 Netherseal Graveyard, Main Street, Netherseal.
DE12 8DB**



Responses to Consultations

None.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are: N/A

National Guidance

None relevant.

Planning Considerations

The main issue central to the determination of this application is the suitability of the proposed works in terms of the impact upon the health of the tree and the effect the tree is having on neighbouring land.

Planning Assessment

The proposed works are considered acceptable and necessary to mitigate the adverse effect the tree is having upon the neighbouring tennis court lighting whilst also carrying out general tree maintenance, with no adverse impact to the trees health.

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).

Item **1.5**

Reg. No. **9/2016/0042/FH**

Applicant:
Mr & Mrs Clements
c/o S G Design Studio
202 Woodville Road
Hartshorne
Swadlincote
DE11 7EX

Agent:
Mr Stephen Greaves
S G Design Studio Limited
202 Woodville Road
Hartshorne
Swadlincote
DE11 7EX

Proposal: **THE ERECTION OF EXTENSIONS AT 203 OVERSETTS**
 ROAD NEWHALL SWADLINCOTE

Ward: **NEWHALL & STANTON**

Valid Date: **14/01/2016**

Reason for committee determination

The item is presented to Committee as the applicant is an employee of the Council.

Site Description

The property is a detached dwelling in a mainly residential street. House types in this very urban locality however are more typically semi-detached.

No 203 has been extended to the side already, single storey with a pitched roof. A flat roofed electric substation sits between 203 and 201.

There are some consistencies in the street, more so a fairly regimented building line and the spacing and gaps of the 'built' blocks. That rhythm, it could be argued, is one of the stronger characteristics of this part of the street scene. All properties here sit behind small areas of front garden used predominantly for off road car parking.

This particular property is finished in buff facing brick.

Proposal

The proposal seeks to gain consent to extend both over the existing single storey side part (creating first floor accommodation) and more modestly to the rear in the form of a single storey extension.

Applicant's supporting information

9/2016/0042 - 203 Oversetts Road, Newhall
DE11 0SW



None.

Planning History

2003/0827 – permission gained for the single storey side extension.

Responses to Consultations

None

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

- Housing Policy 13 of the Adopted Local Plan; Built & Natural Environment 1 and Sustainable Development 1 of the Emerging Local Plan

National Guidance

- National Planning Policy Framework (NPPF) 11-14, 17, 58, 196, 197.
- National Planning Policy Guidance (NPPG) ID21b, ID26.

Local Guidance

- SPG 'Extending Your Home'.

Planning Considerations

The main issues central to the determination of this application is the effect on the appearance of the property in the street and the impact on neighbouring properties in terms of general amenity.

Planning Assessment

The main issue here for consideration is the extensions massing in terms of how it works visually, firstly with the host but equally with the general character of the area. In terms of testing whether the proposal would overbear or cause a significant reduction of privacy, the design accords with the basic requirements of SPG, not breaching the 45 degree splay in respect of the new two storey part, or conflicting with the 'sector of view' which guards against allowing one primary window to be overlooked by another primary window.

In general design terms, SPG advises that whilst in the bulk of circumstances side extensions should look like the smaller part of the main dwelling, in some cases the best design solution may be to add an extension at the same height and width.

Whilst the example provided in SPG refers more to 'terraced' situations, that advice holds true here where this house by whatever means is the odd one out, outnumbered by semi-detached forms. In regards the first floor extension, to attempt the standard setback and lower eaves and ridge on that part would create something alien to the street. By allowing a larger mass than would normally be the case, the end result actually creates some balance and symmetry and maintains some rhythm that outweighs any perceived disadvantages.

A condition requiring a minimum of two off road car parking spaces to be provided and retained whilst not meeting SPG's maximum standard for a becomes a four bedroomed house is sufficient for the locality with some space on the immediate highway.

Recommendation

GRANT permission subject to the following condition

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing number 215-78.01A; 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, the original submission being considered unacceptable.
3. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, each space measuring a minimum of 2.4m x 5m, shall be retained for that purpose within the curtilage of the site.
Reason: To ensure that adequate site based parking provision is available.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com. If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

22/03/2016

Item **1.6**

Reg. No. **9/2016/0112/FH**

Applicant:
Mr B O'Connell
15 Acacia Avenue
Midway
Swadlincote
DE11 0HE

Agent:
Mr Andrew Bennett
South Derbyshire District Council
Housing Adaptations
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: **THE ERECTION OF AN EXTENSION AT 15 ACACIA AVENUE MIDWAY SWADLINCOTE**

Ward: **MIDWAY**

Valid Date: **01/02/2016**

Reason for committee determination

The Council is the applicant, acting on behalf of the home owner. The works are part of a disabled adaptation project (disabled facilities grant) through which the Housing Department of the Council plays a leading role in its funding and design.

Site Description

The property is the end one of a terrace of four, two storey dwellings. Properties in the locality are of similar form and finish. The property affords modest front and rear garden space; the space to the rear mostly laid to grass and enclosed by 1.8m high fencing. The 2m high privet hedge (that runs along the southern boundary of No 38 Limetree Avenue) additionally screens views into this site from the road.

Proposal

The application proposes the erection of a part side, part rear single storey extension to provide a ground floor bedroom for a disabled occupant.

Applicants' supporting information

None.

Planning History

9/2016/0112 - 15 Acacia Avenue, Midway
DE11 0HE



None

Responses to Consultations

None.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are: Housing Policy 13; and emerging policies Sustainable Development 1 and Built and Natural Environment 1.

National Guidance

National Planning Policy Framework (NPPF) in particular paragraph 58
National Planning Policy Guidance (NPPG) ID21b, ID26

Local Guidance

Supplementary Planning Guidance 'Extending your Home'.

Planning Considerations

The main issues central to the determination of this application are the design of the proposed extension and the impact it would have on neighbouring properties.

Planning Assessment

The proposal seeks to gain consent for a single storey extension to create a bedroom for a disabled occupant.

The form presented is undoubtedly subservient, finished with a pitched roof. Situated away from the boundary with No13 Acacia Avenue (the closest neighbour) it is not felt to impinge on the primary space there in terms of causing a significant reduction of light or aspect. By virtue of the distances involved to other neighbours (those on Lime Tree Avenue) the harm caused by virtue of the new mass is equally not unreasonable.

The new space would have windows in it, the main window to be situated on the eastern wall. Existing 1.8m high boundary fencing reduces views of the ground floor windows and immediate garden space, specifically to No13 Acacia Avenue whereas in respect of 'upstairs' windows there, there is no breach of the 'sector of view' especially given the closest window is a bathroom window, fitted with obscure glazing. The new window in the north facing wall does afford a limited view towards windows on Limetree Avenue but at a distance deemed not to cause significant harm. As such it is considered that the extension would not cause harm in respect of

a loss of privacy.

A condition that ensures the use of matching materials would ensure sympathetic execution of the development.

The addition of one new bedroom here is not felt to cause a significant change to parking habits in the locality with the bulk of people relying on on-street parking.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with drawing ref 4545 AMB, drawing no: 02 received on 1st February 2016 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.
3. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.

Informatives:

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries. Any intrusive activities which disturb or enter any coal seams, coal

mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com. If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

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

22/03/2016

Item **2.1**

Reg. No. **9/2015/0876/OS**

Applicant:
Ms Sarah Milward
c/o agent

Agent:
Mr Russell Crow
Barton Willmore
Regent House
4 Homer Road
Solihull
B91 3QQ

Proposal: **OUTLINE PLANNING APPLICATION WITH MEANS OF SITE ACCESS FROM EGGINTON ROAD TO BE DETERMINED (ALL OTHER MATTERS RESERVED FOR SUBSEQUENT APPROVAL), FOR THE ERECTION OF UP TO 120 DWELLINGS (CLASS C3); EARTHWORKS; DRAINAGE WORKS; STRUCTURAL LANDSCAPING; FORMAL AND INFORMAL OPEN SPACE; CAR PARKING; SITE REMEDIATION; AND ALL OTHER ANCILLARY AND ENABLING WORKS AT LAND AT SK2631 6820 EGGINTON ROAD ETWALL DERBY**

Ward: **ETWALL**

Valid Date: **25/09/2015**

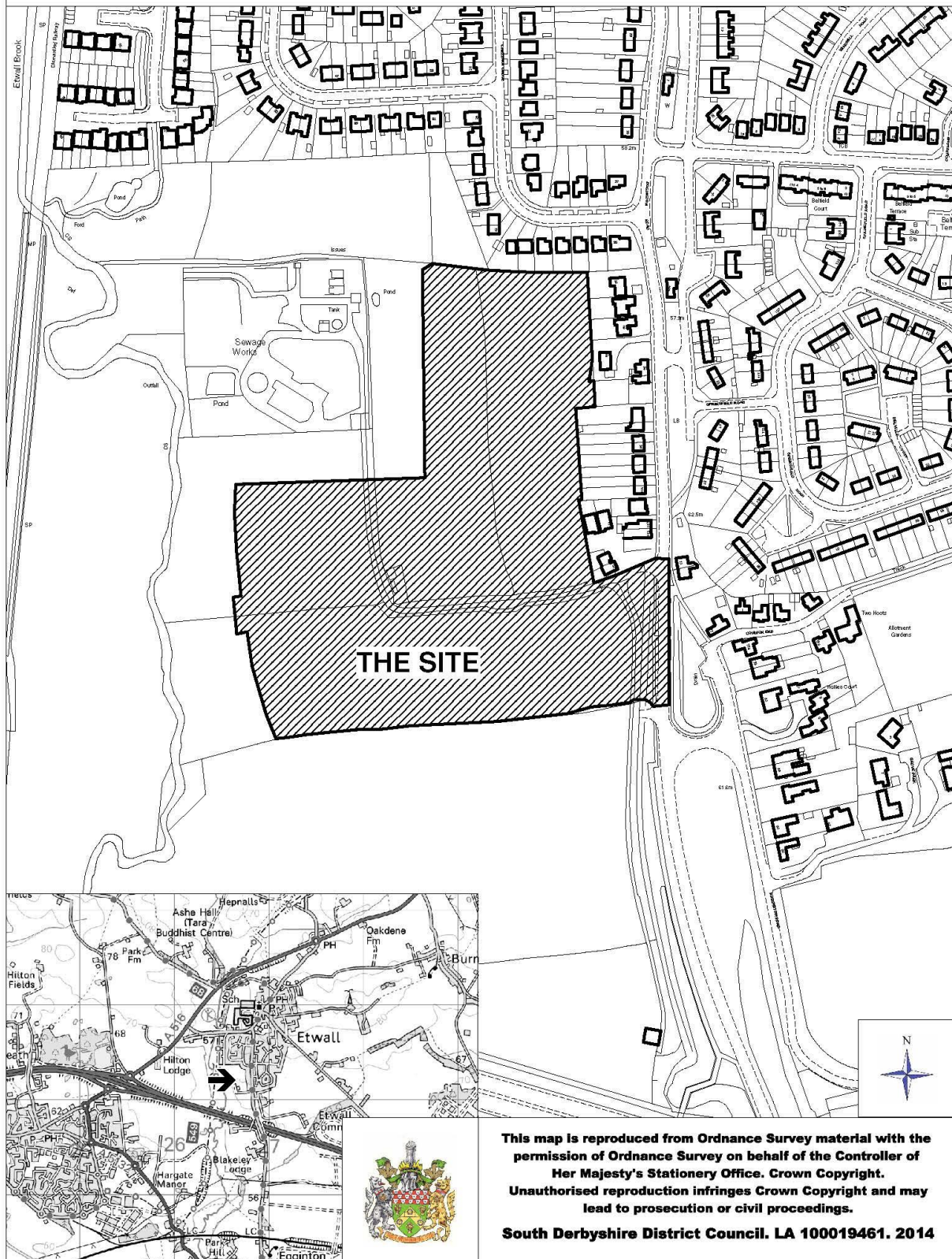
Reason for committee determination

This application is brought before the Committee as it is a major application which is a departure from the development plan where more than two objections have been received.

Site Description

This 7.95 hectare site in total is located to the south-west of Etwall village and is bounded to the north by existing housing, to the east with housing and the main Egginton Road, to the south by an agricultural field with the A50 beyond and the west with Etwall Brook and the Sustrans Route 54 beyond. The site is grassland with hedges and trees to the west between the site and the brook. Part of the west of the site falls within Flood Zone 3 and the sewerage treatment works lies immediately adjacent to the site to the west. The site gently slopes down west towards the Etwall Brook and north towards The Bancroft although there are localised sloping areas in

9/2015/0876 - Land at SK2631 6820 Egginton Road, Etwall Derby (DE65 6NP)



the north-eastern corner. Two vehicular accesses currently exist, one serving Severn Trent Water Sewerage Treatment Works and a second for agricultural purposes.

Proposal

The proposals consist of two planning applications both of which make up the overall scheme, application reference 9/2015/0876 the housing proposal, and 9/2015/0877 the accompanying application for drainage, landscaping, open space and ancillary works.

The main housing application, 9/2015/0876, is an outline application with all matters except access reserved for future approval therefore permission is sought for the principle of developing the site for residential purposes of up to 120 dwellings accessed via a new junction with Egginton Road. The precise number of dwellings and density would be determined at the reserved matters stage but capacity for up to 120 dwellings is sought. Areas of formal and informal public open space (POS) would be incorporated within the development and a range of dwelling sizes and tenures would be accommodated on the site. A mix of parking solutions would be provided throughout the site. The indicative layout is also structured so that dwellings address the new streets to maximise surveillance of public areas and the orientation of buildings is used to create a clear demarcation between the private and public realm.

The accompanying application, 9/2015/0877, is in outline form only with all matters reserved for future approval and is for earthworks; drainage works including balancing ponds and a pumping station; structural landscaping; informal open space including pedestrian linkages; site remediation; and all other ancillary and enabling works. The indicative layout shows a substantial landscaping buffer around the sewerage treatment works, the provision of a surface water attenuation pond to the south-west of the housing element, open space on the northern part of the site linking the development to the brook south of the rear of the properties on The Bancroft.

In addition to the above a substantial 30m deep off-site planting buffer is proposed to the south of the site.

Applicants' supporting information

An Arboricultural Report examines trees and hedgerows on the sites and states that the proposed development area contains relatively few trees; which are of variable age and condition. The largest trees with the highest retention value are located along the Etwall Brook as well as two mature sycamores on the western boundary of the development area.

An Archaeology and Cultural Heritage Assessment Baseline sets out that the applicant has gathered information from the Historic Environment Record held by Derbyshire County Council, the Derbyshire Record Office and Historic England data sets. A geophysical survey of the site was also undertaken and ground investigations were monitored by an archaeologist. It has been established that no statutory designations would be physically impacted upon by the proposals. It has also been

established that subject to proposed development proposals being in keeping (in height and massing) with adjacent residential development, that there would be no impact to the significance of nearby heritage designations. In respect of buried archaeological remains it states that a staged programme of archaeological fieldwork would be required in respect of a planning application. Consequently a geophysical survey of the land within the site boundary has been undertaken at the predetermination stage. Due to the results of the geophysical survey, which do not indicate the presence of remains of high importance, it suggests that trial trenching could be undertaken as a condition to outline planning consent, probably alongside an earthwork survey of the extant ridge and furrow earthworks. A supplementary letter examined ridge and furrow both on-site and elsewhere stating that the nature of the other examples around Etwall and within the Parish details a more widespread presence of ridge and furrow locally and consequently, the weight given to this non-designated feature in the planning balance should be appropriately reduced. They concluded that the proposed development would not cause the total loss of the ridge and furrow earthworks present within the fields in which the site is located. Neither, would it cause the total loss of comparative ridge and furrow earthworks present within the Parish of Etwall as a whole.

A Bat Survey advises that a minimum of four bat species have been recorded or observed to be present within the site throughout the surveys and as expected associated with the Etwall Brook corridor and hedgerows within the site, and were recorded predominantly foraging and commuting continually within the site for a number of hours after sunset and throughout the night, particularly in September when a larger number of bat passes were recorded but this is likely to be a number of bats constantly foraging up and down the same hedgerows each evening. The level of activity indicates the likely presence of bat roosts within close proximity to the site and are likely to be either in the residential properties within the village of Etwall, or potentially within such features as disused railway bridges known to be in the local area. It suggests measures to ensure that no adverse effects occur for bats as the site provides good foraging and commuting habitat for bats. However, there are extensive areas of surrounding farmland habitat outside the site that provide good foraging and commuting habitat for bats. No bats roosts are known to be present within the site boundary. Most of the linear features within the site are to be retained and enhanced as shown in the proposed masterplan for the site. Consequently, it is likely that the impact of the development on the bat species present in the local area is considered to be no more than of low impact.

A Design and Access Statement (DAS) sets out the benefits to Etwall such as a range of new, predominantly family, houses situated in a sustainable location close to key village services and facilities; provision of a proportion of affordable dwellings; a scheme that naturally rounds-off and provides a positive southern settlement edge for the village; an environmentally sensitive development that considers and utilises natural features to enrich the function and setting of the built environment, as well as responding to existing site constraints such as noise; maintenance and enhancement of existing trees and hedgerows where possible safeguarding biodiversity. Providing new footpath links to improve accessibility between the strategic footway and cycle networks in and around Etwall and provision of new publicly accessible open spaces to meeting amenity requirements and potentially delivering new areas of children's play, benefiting both new and existing

residents. It describes the location of the site and its context and how the two applications work together. It explains the site features and development constraints an analysis of the landscape and built character, the planning policy background to the proposal, public consultation and design evolution. It describes the proposals as submitted including layout and appearance principles; landscape, ecology and drainage and sustainable development. It provides a Building for Life (BFL) Checklist which in summary, and acknowledging the limitations of the BFL tool at this outline application stage, the proposed development has potential to score 12 Greens at a reserved matters stage, bringing it into contention to receive Diamond Status if implemented accordingly.

A Drainage Strategy Plan demonstrates the use of SUDS with surface water directed through the site, utilising existing ditches where possible and discharging to Etwall Brook via attenuation ponds in a westerly direction at the northern and southern ends of the site.

A Flood Risk Assessment explains that the Environment Agency flood maps show that majority of the total site is located within Flood Zone 1 and therefore has an annual probability of fluvial and tidal flooding of less than 1 in 1000 (<0.1%). However areas to the west and north of the site are affected by Flood Zones 2 and 3 associated with the Etwall Brook. These areas have an annual probability of flooding of between 1 in 100 (1%) and 1 in 1000 (0.1%) and 1 in 100 or greater (>1%) respectively. The proposals show the built development located within Flood Zone 1 with the water compatible uses located in areas of Flood Zone 1, 2 and 3. It also states that the development would be designed so that the surface water discharge rate will be limited so that run off arising from the developed site will be managed in a sustainable manner to mimic the surface water flows from the undeveloped site, including attenuation to restrict run-off to pre-development rates for storms up to the 1 in 100 year (+30% allowance for climate change) return period event. The buildings are located away from Etwall Brook and Flood Zone 3 and would be set so as not to be at risk from flooding. The development layout, drainage network and levels of the proposed development will be designed to direct overland flow through the development and away from proposed buildings. It states that the proposed on site foul and surface water drainage systems would be designed in accordance with Sewers for Adoption standards and offered to STW for future adoption and maintenance. The SUDS scheme will be offered to the District Council or other local bodies such as the Parish Council for adoption and future maintenance. But if none of the above will adopt and maintain the SUDS features and suitable written confirmation is provided, then a Management Company will be offered the adoption of the SUDS features however a bond must be agreed with the District Council in order to provide STW with comfort so that they adopt the sewer network. Supplementary information was produced to address concerns of the Environment Agency and that report provided a hydraulic assessment of the ordinary watercourse running along the eastern boundary of the application site, including consideration of a culvert blockage scenario as well as a 20% and -20% sensitivity analysis on the boundary conditions, inflows and blockage of the Etwall/Egginton Brook hydraulic model. The supplementary information concludes that the watercourse has sufficient capacity to cater for the estimated flows draining from Egginton Road and adjacent verge areas upstream of the 150mm diameter culvert beneath the field entrance just to the south of the application site boundary.

A Great Crested Newt Survey (GCN) Report advises that both desk top and fields studies were undertaken. It states that it is unlikely that the proposal would have any negative long-term impact on the local population status of GCNs. The habitat loss would be minimal and would constitute only a small percentage of the available terrestrial habitat within 500 metres of the confirmed breeding ponds. Given the above factors, the development activities are considered to be of such a type, scale and location that it is considered reasonably unlikely that an offence would be committed. As a consequence, therefore, reasonable precautionary methods to minimise the risk of killing or injuring GCN, or significant disturbance, removal or severance of breeding/terrestrial habitat are considered appropriate in this case.

A Landscape and Visual Impact Assessment (LVIA) states that the Landscape Character of Derbyshire produced by Derbyshire County Council formed the baseline for the landscape character of the study area but that the scheme may affect the landscape character of the wider study area. Extracts of the relevant Landscape Character Areas (CA) from The Character Types within the Study Area that will potentially be affected are: Trent Valley Washlands (Character Area CA69), Landscape Type: Lowland Village Farmlands; Trent Valley Washlands (CA 69), Landscape Type: Riverside Meadows; and Needwood and South Derbyshire Claylands (CA 68), Landscape Type: Settled Farmlands. It states that the sensitivity of the landscape character within the Study Area has shown it be of low-medium sensitivity to this type of development and the magnitude of landscape effect as low-medium. Therefore, Slight-Moderate adverse effects on the landscape would be generated by the scheme. These effects are adverse due to the loss of agricultural land and the introduction of development on previously undeveloped land. These impacts are localised and do not affect the wider landscape character within the Study Area.

In terms of the visual impacts on Public Rights of Way (PROW), roads and residential properties occur in close proximity to the site. There are no long distance views of the site from public vantage points. These are screened by existing topography, mature vegetation and existing development. Consequently the four photo views illustrate views from locations where visual impacts are likely to be most pronounced. It is anticipated that visual impacts would range from Moderate to Substantial Adverse. Three properties were identified to have more long distance views from the edge of Hilton. The impact upon the properties would likely have an impact of Slight-Moderate Adverse. A Children's Recreational Activity area was identified to have views of the proposed development. Owing to the nature of the visual receptor activity in this area it is anticipated that the visual impact would be Slight Adverse. In terms of mitigation, where possible, existing hedgerow and hedgerow trees would be incorporated within the proposed development layout. The introduction of new hedgerow and hedgerow trees along the boundary will help to reduce the localised landscape and visual impact. A supplementary report was also submitted in order to try and address concerns from the Council's Consultant stating that he had not undertaken sufficient analysis to assess the level of adverse visual and landscape effects and that the landscape of the site is not considered to be 'valued', and it appears that the Council's Consultant has reached this conclusion by employing a methodology which skews the overall level of value. They add that the applicant is willing to provide a 30m landscape buffer to the south of the application

boundary, as recommended by the Council's Consultant and that the creation of this buffer will reduce adverse visual impacts, and provide beneficial landscape impacts by creating a strong, vegetated edge to the settlement.

A Noise Assessment states that the proposed site is bound by the A50 dual carriageway to the south and by Egginton Road to the east and that it seeks to establish the existing sound environment at the site and determine any mitigation requirements by using a combination of on-site noise survey and noise modelling software. The report states the modelled noise levels against BS8233:2014 and WHO guideline values indicate that in some areas of the site, existing sound levels are above the recommended internal and external sound levels for new dwellings. Mitigation will therefore be required to reduce noise levels at the proposed development to meet the internal and external guideline values.

An Odour Assessment states that it seeks to subjectively determine whether odour from Etwall Sewage Treatment Works (STW), located adjacent to the north western area of the site, may be a constraint to the residential development. The scope and methodology of this Odour Assessment was discussed with the Council to ensure that the assessment meets their requirements and is referenced to Odour Guidance for Local Authorities, published by Defra in March 2010, and H4 Odour Management Guidance, published by the Environment Agency in March 2011. It states that Severn Trent Water (STW) advised that the plant uses Activated Sludge Plant (ASP), which is more modern and generally less odorous than traditional plant and that the emptying of sludge tanks is the only operation likely to produce significant odour. The sludge tanks are emptied up to a maximum of 3 or 4 times per week during busy periods and that during summer this operation is expected to take half a day, and a full day during busier periods. The report states that during survey, odour was detected at three locations directly adjacent to the STW Sewerage Treatment Work, and at 20m from the STW boundary, within the suggested 35m standoff from the proposed residential area. Odour was not detected at any other location, including proposed residential areas, during survey or site walkover. It states that, based on the field odour survey results above, the lack of complaints from local residents and with the implementation of the standoff area, it is unlikely that an unacceptable odour impact from the STW will occur at the proposed site during normal operating and maintenance conditions.

A Planning Statement describes the site and surroundings, the planning history, describes the proposals, discusses planning policies as well as other planning issues. It also provides a Statement of Community Engagement consisting of over 750 leaflets being posted to local residents including residents along Egginton Road as well as the adjoining areas of housing to the north. A publicity event itself was held at the Frank Wickham Hall on 8th June 2015. The statement sets out their view on five year housing land supply, stating that the latest published five year supply document from South Derbyshire District Council indicates that they can only demonstrate 4.48 years of supply. As such, in accordance with paragraph 49 of the NPPF, the proposals should be considered in the context of the presumption in favour of sustainable development. With this in mind the site is considered to be a suitable and sustainable location for residential development which will provide much needed market and affordable housing. Moreover, there are no environmental constraints which would preclude development and the scheme will integrate well

into the existing built-form of Etwall. The proposals are therefore considered to accord with the economic, social and environmental roles of sustainable development as set out within the NPPF (Paragraph 7). It is considered imperative for the Council to bring sites forward for residential development in the intervening period until the Local Plan (Parts 1 and 2) are formally adopted. Even in the event that the Council could demonstrate a five year housing land supply, the Site accords with the strategic objectives of the emerging Local Plan (Part 1) and would contribute to the Council's annual housing requirement in a sustainable manner. Overall, it concludes that the application should be approved on the grounds that the proposals accord with national planning policy and adopted and emerging local guidance.

A Preliminary Ecological Appraisal states that a Desk Study and Extended Phase 1 Habitat Survey were undertaken and discusses findings relative to protected species.

A Site Appraisal Report shows that the site is suitable for the proposed development, assuming compliance with all the recommendations contained within that report.

A Soils and Agricultural Land Classification Report states that the proposed development would result in the permanent loss of moderate quality, non- 'best and most versatile' (BMV)/Subgrade 3b agricultural land. There would be the potential to affect drainage on adjacent land. Mitigation measures have been identified and, subject to the implementation of these measures during construction, the residual effects of the development on soil resources and agricultural land is a minor effect and, therefore, not significant.

A Travel Plan discusses options for reducing reliance on the private car and specifies measures to achieve this.

A Utilities Report examines matters of foul drainage; clean water supply; gas; electricity and telecommunications and concludes that the requirements in connection with these can be achieved.

A Waste Audit Statement states that the development is capable of meeting all policy requirements in that regard and once constructed will accord with the local authority's Refuse and Recycling Collection Policy.

Planning History

None relevant.

Responses to Consultations

The Open Space and Facilities Manager advises that off-site contributions for Recreation - Built Facilities and Outdoor Facilities will be required as well as a contribution towards Recreation – Open Space to compensate for a shortfall in the amount of accessible on-site open space. In addition, a contribution of £10k to facilitate the link from the development site to the Sustrans route. In terms of on-site facilities, one LEAP would be required, the preferred location being along Egginton Road.

Severn Trent Water raises no objections subject to a condition relating to the submission of drainage plans prior to commencement.

The Environment Agency advises that following the submission of additional information it has no objection subject to conditions.

The Environmental Health Officer has no objections to the scheme subject to suitable condition relating to noise.

The County Highway Authority raise no objections to the proposal subject to conditions relating to, amongst other things, a construction management plan; the provision of temporary access during construction and layout to be in accordance with DCC design guide. In addition bin stores need to be provided within private land at the entrance of private drives; the provision of details of swept path analysis; amendments to the Travel Plan addressing issues raised.

Derbyshire Wildlife Trust (DWT) has considered the ecological appraisal and associated bat and great crested newt surveys and, though they have some concerns, raise no specific objections to the application.

The Strategic Housing Manager requests a 30% affordable housing contribution which equates to 36 dwellings and a tenure split of 68% minimum for rent (24 dwellings) and 32% maximum for Intermediate (12 dwellings).

The County Planning Policy Officer seeks contributions through the Section 106 Agreement consisting of £273,576.24 for the provision of 24 primary school places to be used towards the construction of a new classroom block at Etwall Primary School (Etwall Primary School Classroom Project A); £439,566.36 towards the provision of 18 secondary pupil places at John Port School and £130,395.30 towards 7 post-16 pupil places at John Port School. This would be used towards the adaptation of classrooms at John Port School (John Port School Classroom Project B). They also seek informatives regarding high speed broadband and designing to Lifetime Homes standards. John Port School advises that the school is operating at capacity in science, technology and IT. The additional secondary school places generated by this development can only be accommodated by additional capital investment in order to facilitate expansion and refurbishment of the school facilities.

The Contaminated Land Officer raises no objection but notes that the proposal is within influencing distance of three sites of unknown filled ground. He recommends conditions relating to the identification and control of any contamination.

The County Archaeologist considered the supporting information relating to this proposal and confirms that this information meets with the requirements of para 128 of the NPPF. The results of the study conclude that the site has a high level of local significance in terms of historic landscape and development would mean the total loss of this historic landscape. Should the Council feel that the impacts to the historic landscape are justified, conditions relating to the investigation and recording of the historic features are recommended.

The Derbyshire Police and Crime Prevention Officer notes the indicative masterplan and confirms that he has no objection to the principle of the development but questions the need for the existing water treatment route given a new and improved access to the south. It is considered that the route would be better absorbed into private space for the new housing plots adjacent.

The County Flood Risk Management Team has reviewed the Flood Risk Assessment (FRA) and confirms that subject to compliance with the recommendations of the FRA they have no objections.

The NHS Southern Derbyshire CCG states that the GP practice at Hilton does not have any spare capacity currently to manage the increased patient demand calculated to be 300 additional patients. However, Hilton GP practice is looking to expand its practice to provide additional capacity. A contribution of £45,648 is requested to contribute towards this expansion.

Responses to Publicity

Etwall Parish Council objects to the proposal on the following grounds:

- the proposal is not in accordance with the emerging SDDC Local Plan Part 1;
- proximity of the site to the sewage treatment works preventing expansion of the works;
- proximity of the proposal to existing development in Egginton;
- errors in the Travel Plan and Noise assessment relating to bus information and noise readings at peak times;
- proposed levels of the site not shown resulting in drainage concerns;
- infrastructure capacity not able to cope with additional demand and the cumulative impact of the this proposal with others must be considered when determining this application.

37 letters of objection were received on the original housing application (9/2015/0876) with an additional 8 letters following a reconsultation. 18 letters of objection were received on the accompanying landscape and drainage application (9/2015/0877) with an additional 7 letters following a reconsultation. These can be summarised as follows:-

- a) How can comments be lodged to object to the application?
- b) The proposed site was identified as SHLAA site S0005 but was not selected for the Local Plan Part 1 due to its proximity to the sewage works. To permit the application would show a lack of consistency with this.
- c) In the absence of a five year supply of housing, development that is unsuitable can still be resisted and upheld at appeal.
- d) The proposed development has not been consulted upon, whereas policy H10 has been consulted upon through the local plan process.
- e) The proposed 120 dwellings are in addition to two other developments off the Willington Road all the way down to Jacksons Lane off the Egginton Road.
- f) There are up to 500 dwellings to be built within the village, this would change the village for the worse. The cumulative effect of all the planning applications within the village should amplify the reasons for refusal for this application.

- g) Piecemeal section 106 agreements do not address underlying and ever increasing village infrastructure concerns. It is not possible to accurately predict or assess the expected traffic flows when multiple developments are considered in isolation and some of those developments do not exist yet.
- h) The approval of this development would destroy the village character of Etwall for both existing and future generations to come; this would not be sustainable development.
- i) There are no primary or secondary school places for the children that will occupy these dwellings.
- j) Class sizes are already at capacity, people in the village have to send their children to school in neighbouring Church Broughton.
- k) The local doctor's surgery and health centre is already full to capacity. Hilton is approaching capacity and Hilton is expanding, the Wellbrook Medical Centre could not accommodate an additional 480 patients, working on the ratio of four people living in each dwelling.
- l) Egginton Road, heading into the village is already busy and cannot support further traffic. This suffers from on street parking at peak times and visibility is not good. Especially at the start of the school day which is already dangerous and an accident will eventually happen.
- m) People speed down this road, with the speed indicator signs triggering well over 60% of the traffic. Traffic accelerates 500 metres inside the speed limit signs, reaching the 50 limit at that speed or above.
- n) The situation will only become worse with further development unless improvements are made including speed control installations and a roundabout to be installed to link the road to the roundabouts at the Derby Road/A50 interchange midway between Hilton and Etwall.
- o) There are up to five or six coaches that use Egginton Road at speed.
- p) To add to the volume of traffic on this road would be inconsiderate to the school children walking to and from the school and the local nursery. The walk is already very hazardous with some areas of the pathway being very narrow. The development could hopefully address these issues with robust solutions.
- q) The side roads off Egginton Road would become heavily congested as a result of the development.
- r) Irresponsible parking around school times has caused considerable concern for the safety of the children. The development would also greatly increase this risk.
- s) If the development is permitted, then all construction traffic should be barred from Etwall village centre, especially at school times. There is insufficient space for buses to pass construction lorries which would be going in the opposite direction. The main access to the site would be through a residential area, is it considered safe for HGV's and lorries to pass through this area?
- t) Egginton Road is a National Cycle Route but with no separated cycle lane. There is very limited viewing distance looking out of the village, all those additional vehicles emerging and entering the sites both sides of the Egginton Road will inevitably add to the danger.
- u) The proposed exit onto Egginton Road would cause a road safety hazard due the 50mph speed limit reducing to 50mph, which is frequently ignored. Traffic speeds up on the approach into the village; the access would therefore fail to provide a "safe and suitable access".

- v) Flood risk could only be increased by the number of proposed houses, roads and driveways. Flooding has occurred in Station Road and in and around the village, the situation will be exacerbated by the development.
- w) It could not be argued that the development is essential for regeneration or provides wider sustainability objectives that would outweigh the proposed flood risk.
- x) It is not right that a village such as Etwall has been developed out of all proportion to its present size.
- y) Housing needs to be developed sensitively with existing communities spread over towns, villages and cities.
- z) There is no infrastructure to support the development.
- aa) The proposed location of the development would seek to build on yet more open fields which provides an important green lung for the village.
- bb) The outward spread of housing will have a serious detrimental effect on the village and would amount to urban sprawl to the south of the village. The development would be out of character with village and its surroundings.
- cc) The village feel is being eroded due to the proposed poorly designed modern homes with little to no front gardens which are not in keeping with the rest of the village.
- dd) Given the rest of the applications that have been submitted, it will increase the village by a third in size.
- ee) The proposed development is located outside of the existing settlement boundary (boundary of the village) and the proposed development is not included in the current local plan.
- ff) Etwall has the largest secondary school in the country, which creates significant traffic and parking issues in the village. The erection of 120 dwellings would create an addition 240 cars more, creating additional traffic through the village.
- gg) Both John Port School and Etwall Primary School are already at capacity, existing schools would be unable to accommodate this number of children.
- hh) The existing drainage system is not sufficient to manage the waste of additional households.
- ii) Taking into consideration that Etwall has John Port School, has had one hundred dwellings approved to be built including the Local Plan Part 1 application, the Severn Trent Railhead and with six hundred dwellings allocated across South Derbyshire in the Local Plan Part 2; Etwall is already fulfilling its contribution to the areas development and it would not be fair to develop the village further.
- jj) The proposal to discharge water to the Etwall Brook may safeguard the development from the risk of flooding but will increase the risk of flooding for the houses in Old Station Close and elsewhere. These properties already suffer flooding and sewage problems and the proposed development will exacerbate this.
- kk) There must be health concerns with building family homes close to a sewage works.
- ll) The north east of the site suffers from slow surface water drainage for most of the year.
- mm) The proximity of the development to the nature reserve at the end of Old Station Close would have an adverse effect on the area.

- nn) This is an opportunistic application taking advantage of the lack of a local plan. The application should be rejected until the local plan is in place.
- oo) Adequate boundary treatment is required with neighbouring properties as the current fencing is not sufficient for effective privacy and security for residents.
- pp) The proposed development would result in the loss of premium agricultural land.
- qq) The submitted noise survey has concluded that there will be an issue with the level of noise, with existing noise levels above those where “serious annoyance” will be experienced due to the close proximity of the site to the A50. With this in mind, it would be expected that the issue of Road Traffic Noise would be central to the decision of the application. Compensation was paid to residents when the A50 was opened, the proposed development is nearer so the noise levels would be higher. When was the noise assessment carried out? Could it have been carried out at a time when the traffic levels were low so that an acceptable noise level was recorded?
- rr) It is difficult to see how quality housing can be accommodated when it would be subject to continuous high levels of noise transmitted from the A50.
- ss) The proposed housing has moved from the south of the site to the north east of the site, which differs from the presentation made by Barton Willmore earlier in the year.
- tt) There is an anticipated application from Providence Land for a development which could include a road connecting Willington Road to Egginton Road in the area of the proposed access to this site. In view of the extra traffic, will there be safe access.
- uu) The odour assessment indicates that only a small area of the site would be affected. The southern area of Chestnut Grove would also be affected and the proposed houses on the west of the site will also be affected considering that the prevailing winds are south westerly.
- vv) Neighbouring properties would be overlooked and overshadowed by the proposed development.
- ww) The proposed development would have an adverse effect on the privacy and amenity of number 84 Egginton Road. There is a low level fence around the property and the property is currently not overlooked, this should be taken into consideration when assessing the application.
- xx) The proposed 5m buffer would not address the effects to privacy of number 84 Egginton Road and the trees can take up to ten to fifteen years to mature. It does not appear to have been amended due to the public consultation of the Design and Access Statement, a buffer of 10-20 metres would be more suitable. With the first 5m retained at 1.5m in height with the remaining 5m planted with semi-mature trees for instant screening.
- yy) It is recommended that buildings of one storey are situated on the north eastern corner adjacent to Egginton Road to avoid overbearing with all upper storey windows facing 84 Egginton Road to be frosted.
- zz) The side elevations of the proposed dwellings would face number 84 Egginton Road, can there be no side facing windows installed to assist with privacy issues? The proposed two storey building height would allow up to seven dwellings to overlook the amenity of number 84 Egginton Road.
- aaa) There will be a significant level of visual intrusion to number 84 Egginton Road, which has not been sufficiently addressed in the submitted Landscape and Visual Impact Assessment.

- bbb) Concerns have been raised that the likely flooding to the north east of the site has not been sufficiently identified and the surface water run-off will run into neighbouring properties.
- ccc) Previous reports have only identified a need of fifty new dwellings in the village which has already been met.
- ddd) The use of two applications under references 9/2015/0876 and 9/2015/0877 seeks to mislead; one application for residential development without flood risk and a second application as the drainage plan for the residential site. This seeks to avoid planning guidance with regard to flooding.
- eee) The proposal in combination with other applications seeks to create 500 dwellings within Etwall which will equate to a 45% increase in the number of dwellings. This is beyond the sustainability of the village.
- fff) The small area of land at Bancroft should be allocated as an extension to the existing nature reserve.
- ggg) The people that will live in the proposed dwellings would not be working within Etwall and this will generate a lot of commuter traffic.
- hhh) In terms of visual amenity, the proposal would adversely affect the visual quality and diversity of the landscape in the area. The site has a number of mature trees, hedgerows and topographical features which add greatly to the rural aspect and the character of the village. The loss of this would result in the loss of the last remaining fields and visual green space along Egginton Road.
- iii) The site contains species such as badgers, kingfishers, herons, sparrows, hawks, buzzards, sparrow hawks, rabbits, hedgehogs and foxes, voles, water rats, stickleback and newts.
- jjj) There are insufficient facilities within the village i.e. no shops and no ATM located within the village.
- kkk) The site is dissected by a major waste pipe and is situated adjacent to a major industrial/warehouse site.
- lll) The Noise Report has been undertaken during 13:21 and 16:21 on a Friday afternoon, where a large number of local industries finish at lunchtime on Friday. This needs to be taken into consideration as this is not a true reflection of commuter traffic.
- mmm) The focus of the flood risk reports are the proposed new properties. It is necessary to demonstrate to the residents of Bancroft how the calculations by the consultants proves that existing properties will not be flooded. No information regarding properties at the bottom of the hill.
- nnn) There is a desire to change the appearance of the development from Egginton Road, moving the dwellings away from the road the approach to the village is relatively unaltered once planting is mature.
- ooo) Land at the top of the hill remains undeveloped but housing is crammed in at the bottom of the hill. If noise mitigation is possible on the site, why can it not be used at other parts? Would buildings dwellings on the hill make it susceptible for a challenge that may be upheld by the Planning Inspectorate.
- ppp) There is an area of water that collects to the rear of Chestnut Grove whenever Etwall Brook floods and recedes at the same time. Therefore, the provision of a balance pond to capture rain water run-off would not prevent future flooding of the field behind Chestnut Grove. Where will the water run-off from roads and roofs go?

- qqq) The main sewer from Egginton Road passes behind Chestnut Grove houses and is at a higher level than the field so how will the foul drains from the new houses drain towards the sewage works?
- rrr) The buffer between the development and number 84 Egginton Road would need to be extended to 10m to allow for 5m of higher planting and 5m of 1.5m planting to avoid an unacceptable impact to the neighbouring habitable rooms.
- sss) If the development is to be permitted, there needs to be an extension to the 30mph zone as the creation of the new access would exacerbate the existing situation.
- ttt) The site access should be moved further south along Egginton Road and a roundabout created that will service existing dwellings to Egginton Road/the Grove and Jacksons Lane as well as the proposed site. An island would reduce traffic speeds in both directions into and out of the village.
- uuu) Their heritage reports are biased, the ridge and furrow will be lost and the others nearby not as good examples.
- vvv) The landscape is "valued" by Etwall residents.
- www) The Travel Plan is marvellous theory, in practise there will be 200 vehicles leaving each day.
- xxx) Egginton Road will be extremely busy especially at the junction with Main Street and if other schemes go ahead it will be even worse.
- yyy) Who will look after hedges etc. in between houses?
- zzz) We will be overlooked.
- aaaa) It will increase noise, dirt, disruption affecting us.
- bbbb) The amendments do address anyone's concerns: it will still alter the character of the area, particularly the south; local services are already overburdened (I cannot get an appointment at the medical centre); traffic will still increase and the access unsafe; the odour surveys are not representative and there is a problem with odour and flies; noise is a problem.
- cccc) The site has a high amenity value and adds to the character, identity and visual amenity of the village.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 5, 8, 9, 11 and 14 Environment Policy 1, Transport Policy 6, Recreation and Tourism Policy 4, Community Facilities Policy 1

Emerging Development Plan Policies:

Policy S1: Sustainable Growth Strategy

Policy S2: Presumption in Favour of Sustainable Development

Policy S4: Housing Need

Policy S6: Sustainable Access

Policy H1: Settlement Hierarchy

Policy H20: Affordable Housing

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3: Delivering Sustainable Water Supply, Drainage and Sewerage

Policy SD4: Contaminated Land and Mining Legacy issues
Policy BNE1: Design Excellence
Policy BNE2: Heritage Assets
Policy BNE3: Biodiversity
Policy BNE4: Landscape Character and Local Distinctiveness
Policy INF1: Infrastructure and Developer Contributions
Policy INF2: Sustainable Transport
Policy INF7: Green Infrastructure
Policy INF9: Open Space, Sport and Recreation

National Guidance

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

Local Guidance

SPGs - Housing Design and Layout, Developer Contributions, Better Design for South Derbyshire.

Planning Considerations

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

- Principle of development and weight afforded to policy
- Traffic and transport
- Ecology
- Urban design
- Residential amenity
- Flood risk and drainage
- Archaeology
- Landscape and visual impacts
- Affordable housing
- S106 contributions
- Planning balance and overall conclusion

Planning Assessment

Principle of development and weight afforded to policy

The site lies outside the settlement confines for Etwall, not catered for by way of saved policy H5 and beyond the scope and intentions of saved policy H8. H5 can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing, whilst H8 does not align with a proposal of this nature and thus the policy is not considered applicable. The proposal therefore conflicts with saved policy EV1. EV1 is not intended as a housing policy but as it has the effect of restraining delivery; it is a policy for the supply of housing in the eyes of the NPPF (paragraph 49). Recent appeal decisions have confirmed the policy falls into this category, aligning with recent case law. The presumption in favour of sustainable

development is therefore engaged.

Notwithstanding this, the policy does accept that some development in the countryside is unavoidable, and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing, such that it can be afforded some weight in principle. The policy also goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide further consistency with the core principles and sections 6 (design) and 11 (natural environment) of the NPPF. The development would thus be contrary to criterion (iii) of EV1 which seeks to safeguard and protect the character of the countryside, the landscape quality, and wildlife and historic features. In so far as it seeks to ensure that new development outside settlements protects the character of the countryside and landscape quality. This criterion aligns with the core planning principle of the Framework to recognise the intrinsic character and beauty of the countryside.

The decision rests on the application of the 'planning balance' when considering the above policies and the merits of the proposal. This test aims to strike the right balance between housing delivery and ensuring the environmental, social and economic dimensions, including meeting the needs of occupants and the existing community, which should be mutually beneficial. Whilst a lack of a 5-year supply might engage the presumption in favour of sustainable development, it does not automatically "stand down" local plan policies – merely challenges the weight which may be afforded to them. For the presumption in favour to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

Traffic and transport

The details of the proposed means of access to the site is for approval at this stage and as such the highway safety implications of the access must be assessed. The proposals include the creation of a new junction to Egginton Road along with the provision of a cycle/pedestrian link to the existing public open space to the north-west of the site.

It is acknowledged that at certain times the local roads are busy however, there is no evidence to show that the proposed development would have any undue impact on the highway network and thus the potential to affect the wider transport infrastructure. The NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

Local Plan Transport Policy 6 states that planning permission will not be granted for development which interferes with the free and safe flow of traffic and that policy is relevant as it echoes the NPPF at paragraph 32. Having considered the advice of the County Highway Authority as well as the information accompanying the application it is considered that the proposal would not lead to such an adverse degradation of highway safety to be reasonably considered to be contrary to the advice contained on Local Transport Policy 6 as well as paragraph 32 of the NPPF. In this case there is no evidence that the cumulative impact would be severe and as such, notwithstanding the comments received, in highway safety terms the proposal is considered to be acceptable.

Ecology

The ecological evidence submitted with the application included an extended Phase 1 Habitat Survey and this was supplemented by surveys specifically relating to bats and Great Crested Newts. The report states that the proposals intend to retain hedgerows where possible but where hedgerow removal cannot be avoided, it recommends that any losses should be compensated for by the provision of a new hedgerow elsewhere on site of at least equivalent length recommends the retention of hedgerows, provision of a wildflower meadow surrounding the balancing pond and the provision of roosting opportunities for bats. Checks for active bird nests prior to clearance if this would be in nesting seasons are recommended. The proposals will have no adverse impacts on any statutory or non-statutory designated sites and as such the proposal accords with national and local planning policy for ecology and nature conservation.

With regards to wildlife on site, surveys found no significant constraints in this respect and the submitted reports were assessed by Derbyshire Wildlife Trust who considers that the ecological works have generally been undertaken appropriately. Whilst they have some concern over the evaluation of and impacts on grassland they accept that compensation for the loss of the semi-improved grassland could be achieved within the proposed informal open space provision. Subject to the recommended conditions of Derbyshire Wildlife Trust biodiversity at the site would be adequately accommodated.

Urban design

The application is in outline form only and all matters except access reserved for future approval therefore it is not possible to carry out a full Building for Life assessment at this stage. Looking at the illustrative Masterplan in itself, and setting aside the in principle objection in terms of impact on the countryside, the proposal would otherwise present some key aspects that would form the basis of a reasonable scheme in urban design terms. It is reasonably well served by the public transport and within an acceptable distance of numerous facilities within the village, including educational, commercial and community facilities that help to make it a sustainable development. The illustrative Masterplan provides a reasonable basis on which the development can be planned and evolve from. Issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions,

although the principle objectives for these can be secured by conditions at this stage. Whilst opportunities for some of the areas of landscaping proposed to be publicly accessible have not been taken, e.g. creating access to the significant buffer around the sewerage treatment works and the surface water attenuation feature, it is considered that concern in those respects could not reasonable form the basis of an objection to the scheme. In view of the urban design and open space matters considered above the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policy 4 of the Local Plan and BNE1 of the emerging Local Plan

Residential amenity

In terms of the amenity of future occupiers of the proposed dwellings a sewage treatment plant lies adjacent to the site therefore clearly there is a potential for odours etc. to impact on the future occupiers of the development. However, it is noted that Severn Trent Water and the Council's Environmental Health Officer raise no objection to the development of the site in terms of the impact of that facility and as a result it is not considered that justification exists to refuse the proposals on that issue. The site is immediately adjacent to the established residential properties on Egginton Road and Chestnut Grove and the development of the site will clearly have a significant impact on the nearest of those properties. However, the proposals show that adequate separation could be achieved to deliver the development, even taking into account site levels, to ensure that occupiers of those dwellings would not be unduly affected by the proposal although the interrelationship between the new homes and the existing ones will be properly assessed at reserved matters stage. A layout and design that accords with the Council's adopted residential space guidelines and the internal arrangements of individual dwellings would be assessed at reserved matters stage and the site therefore provides ample scope for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11.

Flood risk and drainage

The site has a reasonable slope, with levels falling from Egginton Road down towards Etwall Brook to the west. Whilst small parts of the accompanying landscape application site do fall within flood zone 3a, the housing element of the proposals are outside the defined flood risk areas as defined by the flood risk mapping published by the Environment Agency. As such the proposed housing would be safe from flooding from the brook and the main focus therefore lies on surface water drainage arising from the development and it is noted that there have been issues with regards to the flooding of properties in the village and therefore this issue is of particular importance. Sustainable Urban Drainage Scheme (SUDS) are to be incorporated within the scheme, as shown on the illustrative Masterplan in the form of a surface water attenuation pond to the south-west corner of the housing site, within the site of the accompanying landscaping application. The applicant is proposing to then discharge from the pond to the brook to the west. The Environment Agency as well as the County Flood Risk team have stated that they raise no objection to the proposal subject to conditions. Notwithstanding the

comments submitted, in terms of flood risk the proposal is therefore considered to be acceptable.

As to foul water, despite concerns from neighbours, Severn Trent Water raises no objection subject to a condition. They do not raise concern either regarding capacity at the Etwall Sewage Treatment Works.

Notwithstanding the submitted comments, subject to the recommended conditions, the development would be in accord with Chapter 10 of the NPPF and the NPPG.

Archaeology

The application is accompanied by an Archaeological Assessment which has been examined by the Development Control Archaeologist who states that this submission meets the information requirements of NPPF para 128 with regard to archaeological assets.

He advises that the site contains remains of earthwork ridge-and-furrow, of medieval date (HER 19804); part of this area is included within a SHINE record (Selected Heritage Inventory for Natural England), which confirms that well-preserved upstanding earthworks are present. The cultural heritage document provides photographs showing the levels of preservation in different areas of the site. This appears to be the only SHINE record for medieval ridge and furrow within Etwall parish, suggesting that this might be the best preserved area of earthworks in the immediate vicinity.

He advises that the site has a high level of local significance in terms of an area of high historic landscape value retaining the best-preserved area of medieval ridge and furrow in Etwall parish, and historically 'important' hedgerows deriving from the boundaries of medieval strip fields. The proposed development would therefore represent a total loss of this undesignated heritage asset of local value, and this loss should be weighed against the benefits of development (NPPF para 135). The surviving historic landscape features also contribute to the overall landscape value of the site, and the local planning authority should consider their proposed loss when assessing impacts to landscape value under NPPF chapter 11.

The applicant has provided the results of geophysical survey to advise on the potential for below-ground archaeological remains. This has identified three main strands of probable features within the site: palaeochannel and other possible features beneath alluvium on the eastern side of the site; probable remains associated with post-medieval brick-making in certain parts of the site; remains of a possible field system in the northern parts of the site. These features are likely to be of local/regional significance and would not raise an objection to development. However, they would be subject to NPPF para 141, requiring archaeological recording in advance of development, secured by planning conditions. This archaeological work would involve a programme of trial trenching to assess character and significance, followed by targeted excavation of those areas identified to be archaeological significant.

The applicant has identified other areas of ridge and furrow elsewhere on the periphery of the village between Willington Road and Sandypits Lane. In view of this the weight to be given to this feature should be significantly reduced and as such in terms of archaeology it would be most appropriate for this to be recorded, through a conditioned scheme in line with NPPF para 141. This approach is considered to be appropriate and proportionate and as such would be compliant with Saved Environment Policy 14 and NPPF Chapter 12.

Landscape and visual impacts

The site carries no statutory or local landscape designations. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by appeal decisions, is to first determine what value the landscape has before reaching a balanced response to the proposals. A recent high court ruling has also shed light on this approach, and it is necessary for the site to have some physical feature or association which elevates it above being just open countryside.

The site is located to the south-west of the existing settlement of Etwall and comprises of a series of fields with species rich meadows and a series of mature hedgerows and the occasional mature trees. It contains an access road to the Severn Trent Water Treatment Works running through it. The site is considered to contribute greatly to the open countryside character of the local area.

The application is supported by a Landscape and Visual Impact Assessment (LVIA), which has already been summarised elsewhere in this report. However, in order to fully assess the contents and conclusions of the LVIA, the Local Planning Authority has engaged the services of a Landscape, Architecture and Environmental Planning Consultant who has undertaken a review of the LVIA and has provided advice by way of a report setting out his findings. He starts by stating that whilst the Landscape and Visual Impact Assessment (LVIA) appears to correctly indicate the 'zone of visual influence' and the five viewpoints chosen give a fair impression of the potential impact of this housing development. However, the report considers that it downplays some of the adverse effects of the extension of the settlement boundary into what is open countryside - of relatively high landscape quality - on the edge of Etwall village and that the site greatly contributes to the open countryside character of the local area. He states that the loss of this site to housing would mean not only the site would be lost as a valued landscape, but the views which can be enjoyed from public footpaths and cycleway to the west of the site would be lost. These views would now be of an urban housing estate with relatively manicured green landscaped areas rather than the current vistas of relatively picturesque open countryside.

He states that the current edge of the village is clearly delineated by the southern edge of the linear residential development on the western side of Egginton Road. On exiting the village southwards by car, there are rural open aspects and hedgerows to your right and landscape planting to your left, providing the experience of quickly moving from urban settlement into 'green and open countryside'. The new development will move the village entrance out further into the open countryside and

although the frontage of the new housing units buildings have been set back, there will be clear views of urban settlement behind what is planned to be a children's play area alongside the road frontage - rather than the current view of green hedgerow and occasional glimpses of an open field behind.

He states that the site has a well-used network of informal local footpaths that link from the cycleway to the Egginton Road, giving residents of Etwall ample opportunities to walk and enjoy views of open countryside within a few minutes' walk of their homes.

He considers the development would harm the views of open countryside from the cycleway/footpath to the west along the old railway line, that the informal footpath network system within the site would be adversely harmed in terms of visual amenity and tranquillity and that the new development will be clearly visible as an extension of the urban settlement rather than as open countryside, as it is now. In his opinion the new development will change these views to one of urban settlement – however well 'landscaped' it may be. He recommends that the development is refused based on the landscape issues related to adverse visual impact, harmful change to landscape character and loss of valued landscape and open countryside.

The applicant provided a further response to the review of the Council's consultant and revised the Masterplan to include a 30m off-site landscaped buffer zone beyond the southern boundary in addition to the landscaping scheme which forms part of the separate but accompanying landscape application (9/2015/0877) that complements this proposal. They have stated that they do not consider this to constitute a 'valued' landscape and that there are no designated public rights of way, or other publically accessible areas, within the site and therefore it does not constitute a recreation amenity. They consider that the Council's consultant has incorrectly assessed the sensitivity of the receptors and has not considered sufficient factors to adequately assess the magnitude of change. They reiterate that the level of effect is, in their opinion, slight adverse, as per the submitted LVIA and that in addition, the provision of a landscape buffer to the south of the proposed development will further reduce these impacts over time and that the proposed development would actually be beneficial in regards to this aspect, as the landscape buffers to the west (as proposed within the LVIA) and south of the site will create a vegetated edge to the settlement.

The Council's consultant has stated in his final reply that in this case, the impacts and adverse effects will be harmful to the landscape and open countryside that is currently enjoyed, directly and indirectly, by the local community and passing public but concludes that even with the proposed southern landscaped buffer he still recommends a refusal.

Looking at the evidence in the round it is considered that the opinion of the Council's consultant is the most appropriate in terms of conclusions. It is considered that the LVIA demonstrates that for the five sample viewpoints, even with mitigation measures planned, the effects will mostly be 'substantial adverse' and 'moderate adverse' visual effects. This shows that the development will, in overall terms, have a harmful visual impact. The harmful change of landscape character and adverse visual impacts leads to the conclusion that the development will have a significant

adverse and harmful effect on the appearance and character of the landscape. It is considered that the proposal would, therefore, be in conflict with Saved Environment Policy 1 of the adopted Local Plan, one of the core principles of the NPPF as set out in paragraph 17, the advice in paragraph 109 of the NPPF relating to the protection and enhancement of valued landscapes and the advice in section ID 8-001-20140306 of the NPPG.

Affordable housing

Emerging policy sets a starting point of 30% of the dwellings to be for affordable housing purposes, whilst the NPPF advocates a need to provide a range of housing options. The SHMA also evidences such a need. There is an intention to provide 30% of the dwellings for affordable purposes giving rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision. Provision would be for 68% for rent with 32% intermediate housing in line with the request from the Council's Housing Strategy, Development & Regeneration Manager, secured through a S106 Agreement. This latter point is highly material and recent appeal decisions in the District have seen Inspectors afford significant weight to this element of housing provision alone.

S106 contributions

As referred to above the Council's Housing Strategy, Development & Regeneration Manager advises that there is a need for affordable housing in Etwall and her request for 30% on site affordable housing with a split of 68% for rent and 32% for intermediate housing is appropriate.

The Planning Policy Officer at the County Council has advised that whilst Etwall Primary School currently has 279 pupils on its roll, with a capacity of 280, projections indicate that the number of pupils on roll will remain at 280 during the next 5 years and as such it has insufficient capacity to accommodate the pupils arising from the development.

John Port School has a current net capacity of 2,070 pupils and currently has 1,957 on roll. Projections indicate that the number of pupils will increase to 2,058 over the next 5 years.

They advise that developments within the normal catchments areas of both schools would take both schools over capacity and there would be no further capacity to accommodate the additional pupils generated by the current proposals.

In view of this they have also requested that the developer pay a financial contribution towards the following:-

£273,576.24 for the provision of 24 primary pupil places at Etwall Primary School.

£439,566.36 for the provision of 18 secondary pupil places at John Port School.

£130,395.30 towards the provision of 7 post-16 places at John Port School.

A S106 contribution towards built and outdoor facilities is required towards improvements in the area in line with the Council's adopted standards which is formula based depending on the number of bedrooms. As this is unknown at this outline stage it would be reasonable to assume an average number of bedrooms of 2.5 per dwelling, thus equating to £36,600 for built facilities as well as £66,000 for outdoor facilities. However, the application is in outline the final layout and housing mix has yet to be confirmed. Consequently the Section106 agreement (S106) should be worded to reflect this scenario and refer to the relevant formula. The S106 should also secure the provision of a quantum of public open space on site in line with the provision shown on the illustrative Masterplan, suitably equipped, However, in line with the comments of the Council's Open Space & Facilities Development Manager the overall quantum of open space that is accessible and usable is not adequate and as a result there would be a need for this shortfall to be off-set with the developer paying a contribution for off-site open space in line with the Council's adopted standard.

In terms of ensuring appropriate connectivity there is a need to secure the provision of a pedestrian/cycle link between the site and the Sustrans route to the west by way of a financial contribution of £10,000 in line with the request from the Council's Open Space & Facilities Development Manager.

NHS England requested a financial contribution of £45,648 towards additional capacity for healthcare provision at the Wellbrook Medical Centre in Hilton.

From a planning point of view legislation states that there are legal tests for when a S106 agreement can be utilised and these are set out in regulation 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended (and as set out in para. 204 of the NPPF). S106 agreements, in terms of developer contributions, need to address the specific mitigation required by the new development. The tests are that they must be:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

In this case it is considered that the provision of the affordable housing, contributions towards education, healthcare, provision of on-site open space and equipment as well financial contributions for off-site built and outdoor facilities and off-site open space are compliant in principle.

Planning balance and overall conclusion

The above assessment demonstrates that all the 'technical' issues associated with the proposed development would be acceptable, subject to conditions or obligations, where necessary. The provision of up to 120 dwellings towards the Council's housing needs must be afforded significant weight especially in light of the current shortfall in the five year housing supply. The provision of 30% affordable housing would help meet affordable housing needs and also adds further weight in favour of the proposal. The provision of planting within the site in terms of biodiversity would

also contribute in favour to a degree. The applicant has also advised that in terms of the planning balance the following benefits will result from the development:

1. Delivering a supply of housing.
2. Delivery of affordable housing.
3. Delivering housing to meet existing needs in a settlement that SDDC have agreed is one of the most sustainable for residential growth in the emerging Local Plan (Part 1) – a benefit which should be afforded significant weight.
4. Retention of existing key hedgerows and extensive additional planting as part of the development and net biodiversity gains.
5. Construction jobs throughout the development and in the supply sector linked to the development industry.
6. Increased expenditure in the local area which would increase the viability of local services and facilities.
7. The provision of Council Tax payments and New Homes Bonus payments to the Council.
8. Supporting growth by ensuring sufficient land of the right type is available in the right place at the right time.
9. The provision of appropriate planning contributions to ensure the on-going provision of services and facilities.
10. The provision of open space, including play provision within the development, which will benefit both existing and future residents.
11. The ability to deliver the proposals in full within 5 years and thus make an immediate contribution to housing need.

However, in environmental terms it is the landscape and visual impacts that cause the greatest concern. The very character of this site and environs draws its strength from the existing robust settlement boundary between rural and urban created by the existing properties on Egginton Road with the village beyond. The existing approach from the south would be severely undermined and the proposal would be extremely dominant and adversely affect the rural character of this area fundamentally from a wholly rural perception to one of urban character. The overall appreciation and resulting value of the site would be adversely impacted with the strong affinity the site has with the rural area. Whilst the mitigation put forward could go some way to alleviate the impact it is not considered sufficient to redress this loss of value. In addition, the very nature of the development as set out in the illustrative Masterplan would result in properties being highly visible on this main route into and out of the village, from within the village, from the surrounding countryside and cycle route as well as views from any informal users within or adjacent to the site, eroding the pleasant, essentially rural approach to the village.

It is also important to consider the loss of the earthwork ridge-and-furrow that is located on the site. Whilst in terms of their archaeological importance there are alternative ridge and furrow locations around the village which means that their loss in historical and archaeological terms does not justify refusal, their presence on the site makes a positive contribution to the character of this part of the countryside, adding weight to landscape and visual impacts referred to above.

The Minister for State for Housing and Planning has recently written to the Planning Inspectorate stating that harm to landscape character is an important consideration

and recently dismissed appeal cases serve as a reminder of one of the twelve core principles at paragraph 17 of the NPPF. It is noted that whilst statutorily designated landscapes quite rightly enjoy the highest degree of protection, outside of these designated areas the impact of development on the landscape can be an important material consideration. It is also noted that recent cases also reflect the wider emphasis within the NPPF on delivering sustainable outcomes, which means taking full account of the environmental as well as the economic and social dimensions of development proposals. Hence, irrespective of whether the development is unavoidable or not, the secondary 'test' under saved Environment Policy 1 is still of considerable relevance in this assessment whilst paragraph 109 of the NPPF also holds considerable weight.

The absence of a five year housing land supply does not mean an automatic approval must follow. It also does not mean that no regard should be had to the principle of protecting and enhancing valued landscapes. The absence of a five year supply merely affects the weight which may be afforded to the Development Plan, but the NPPF must still be considered in the round and in the eyes of sustainable development, as set out in paragraphs 6 to 8. Hence, when considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered the environmental dimension suffers a significant adverse impact. There is, therefore, reasonable doubt over the overall sustainability and in this light it is considered that the benefits of the development outlined above are clearly and demonstrably outweighed by the adverse impacts of the proposal on the visual landscape character and as such the development is considered to be unacceptable.

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

REFUSE permission for the following reason:

1. The character of this site is defined by its strong relationship to the rural area to the south and west and exhibits many of the typical and pleasing features of the local and national landscape character area descriptions, with hedgerows and trees, gently sloping landform and strong ridge and furrow land features all providing a strongly appreciated value to those passing the site along public routes and anyone using the site for informal recreation or access. In addition Egginton Road at this point holds a wholly rural character reflecting the above landscape characteristics limiting its current intrusion. Furthermore, the very character of this site and environs draws strength from the robust delineation between rural and urban as the settlement is approached from the south. Additionally when leaving the village centre the impression is that one is leaving a distinct rural village character and heading straight into the open countryside which helps define the rural character of the village on what is one of the principal route into the centre of the village.

The proposed urban streetscape and clear views into the development site would detract from the current impression of a rural village. When considering the three dimensions of sustainable development and the mutual balance required, it is considered the proposal is unbalanced by way of the environmental dimension suffering disproportionately against the economic and social gains identified. It is considered thus that the benefits arising from the development, including the delivery of housing including affordable housing that meets local need; the additional planting as part of the development and net biodiversity gains; construction jobs throughout the development and in the supply sector linked to the development industry; increased expenditure in the local area which would increase the viability of local services and facilities; the provision of Council Tax payments and New Homes Bonus payments to the Council; supporting growth by ensuring land of the right type is available; the provision of open space, including play provision within the development, which will benefit both existing and future residents; the ability to deliver the proposals in full within 5 years and thus make an immediate contribution to housing need as well as any ancillary gains, are clearly and demonstrably outweighed by the adverse impacts of the proposal. The proposal is therefore considered to be contrary to Saved Environment Policy 1 of the adopted Local Plan, and Policy BNE1 of the emerging Local Plan Part 1 and conflicts with paragraphs 6 to 8, 17 and 109 of the National Planning Policy Framework.

Informative:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues, by agreeing to meetings and entering into negotiations. However, despite such efforts the planning objections and issues have not been able to be satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

22/03/2016

Item **2.2**

Reg. No. **9/2015/0877/SSO**

Applicant:
Ms Sarah Milward
c/o agent

Agent:
Mr Russell Crow
Barton Willmore
Regent House
4 Homer Road
Solihull
B91 3QQ

Proposal: **OUTLINE PLANNING APPLICATION WITH ALL
MATTERS RESERVED FOR SUBSEQUENT APPROVAL
FOR THE PROVISION OF: EARTHWORKS; DRAINAGE
WORKS INCLUDING BALANCING PONDS AND A
PUMPING STATION; STRUCTURAL LANDSCAPING;
INFORMAL OPEN SPACE INCLUDING PEDESTRIAN
LINKAGES; SITE REMEDIATION; AND ALL OTHER
ANCILLARY AND ENABLING WORKS AT LAND AT
SK2631 6820 EGGINTON ROAD ETWALL DERBY**

Ward: **ETWALL**

Valid Date: **25/09/2015**

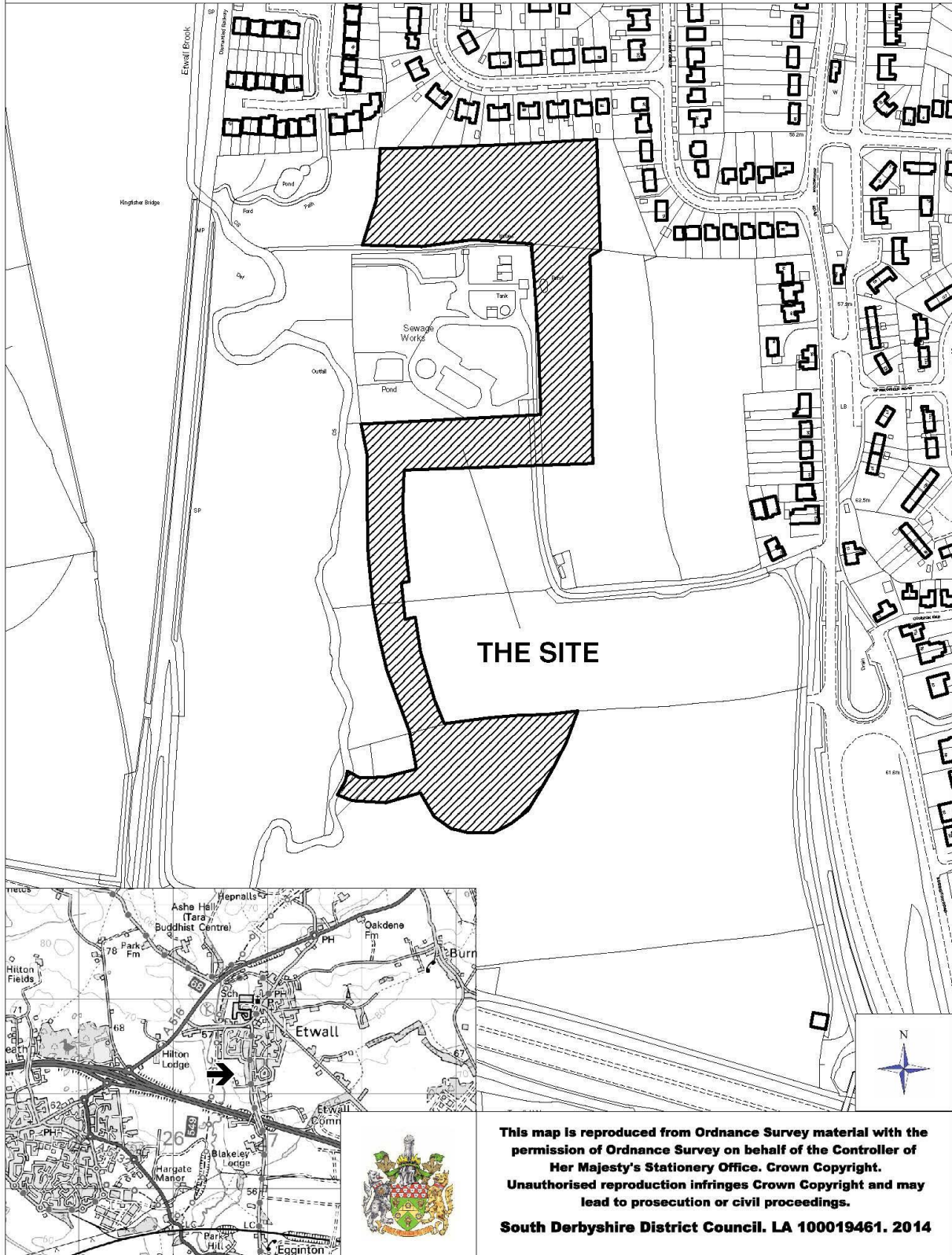
This application has been submitted in parallel to the main housing application reference 9/2015/0876 which this compliments. The report relating to this application is set out in the report for planning application 9/2015/0876.

Recommendation

REFUSE permission for the following reason:

1. In the absence of approval for the accompanying housing development contained in application reference 9/2015/0876, the proposed works and in particular the surface water attenuation and pumping station features, are considered to be unnecessary alien features which would adversely affect the character of this part of the countryside in what is a very prominent location. As such the proposals are considered to be contrary to Saved Environment Policy 1 of the adopted Local Plan, and Policy BNE1 of the emerging Local Plan Part 1 and conflicts with paragraphs 6 to 8, 17 and 109 of the National Planning Policy Framework.

9/2015/0877 - Land at SK2631 6820 Egginton Road, Etwall Derby (DE65 6NP)



Informative:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues, by agreeing to meetings and entering into negotiations. However, despite such efforts the planning objections and issues have not been able to be satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

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
9/2015/0071 & Enforcement	Findern	Will'n & Findern	Allowed	Committee	89
9/2015/0426	Linton	Linton	Allowed	Committee	95
Enforcement	Barrow	Aston	Dismissed	Delegated	106

Appeal Decisions

Site visit made on 2 February 2016

by **Phil Grainger BA(Hons) MRTPI**

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

Decision date: 24 February 2016

Appeal A Ref: APP/F1040/C/15/3130879

Appeal B Ref: APP/F1040/C/15/3130880

land known as Blakemere Farm, Bakeacre Lane, Findern, Derby DE65 6BH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by South Derbyshire District Council.
- Appeal A is made by Lawton Lowndes Plant Hire.
- Appeal B is made by Mr David Lowndes.
- The notice was issued on 17 July 2015.
- The breach of planning control as alleged in the notice is:
the material change of use of land from use for agricultural land to use for the operation of a plant hire business, along with the erection of a building.
- The requirements of the notice are:
 - 1) *cease the use of the land for the operation of a plant hire business;*
 - 2) *remove all associated plant and equipment from the land;*
 - 3) *remove the building and compound fencing from the land; and*
 - 4) *remove all building materials and rubble arising from compliance with 3) above from the land.*
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) & (g) of the Town and Country Planning Act 1990 (the Act) as amended.

Summary of Decision: the appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision

Appeal C Ref: APP/F1040/W/15/3130653

Blakemere Farm, Bakeacre Lane, Findern, Derby DE65 6BH

- 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 Lawton Lowndes Plant Hire Ltd against the decision of South Derbyshire District Council.
- The application ref: 9/2015/0071, dated 27 January 2015, was refused by notice dated 4 June 2015.
- The development for which permission was sought is the continued use of land for the operation of a plant hire business.

Summary of Decision: the appeal is allowed, and planning permission granted subject to the conditions set out below in the Formal Decision.

Main Issues

1. These are, in respect of Appeals A & B:
 - i. whether the notice was properly authorised and served;
 - ii. if so, (in respect of Appeal A only) whether planning permission should be granted, having regard to the policy context; any effect that the development has on the character and appearance of the area; and any effect on the safety of highway users; and
-

- iii. if the ground (a) appeal fails, whether the purpose of the notice could be achieved by steps less than those specified and/or whether the period allowed for compliance is sufficient
2. In respect of Appeal C only issue (ii) is relevant.

Preliminary Matter

3. The planning application that gave rise to Appeal C, related only to the use of the land, not the building that has been erected on it. (The appellants' intention was to make a further application relating to the building if the change of use was permitted.) However, the allegation in the enforcement notice includes the building as well as the use.
4. The deemed application and the ground (a) appeal that fall to be considered under Appeal A would normally be defined by the allegation. However, the appellants had not appreciated that the allegation included the building and their representations have been made on the basis that it did not. Indeed, in their grounds of appeal they draw attention to the (in their view) inappropriate inclusion of a requirement to remove the building in a 'change of use' notice. In addition, the Council's representations do not deal with the building in any meaningful way and I have no evidence to suggest that a fee sufficient to cover the building was ever paid.
5. At the site visit, both parties confirmed that they were content for the deemed planning application to be dealt with as relating to the change of use only. Given these unusual circumstances and as I am satisfied that no one's interests will be prejudiced by my doing so I have therefore dealt with the ground (a) appeal on that basis.

Inspector's Reasoning

The ground (e) appeal

6. The basis for a ground (e) appeal is that copies of the notice were not served in the manner set out in s172 of the Act. In this case the appellants' main concern seems to be whether issuing of the notice was properly authorised in accordance with the Council's procedures. These are not matters that are referred to in s172 and would more properly be explored, if that is the appellants' wish, through the courts rather than the appeal process.
7. In any event, the explanation that the Council have given regarding the delegation scheme seems satisfactory and even if it would have been more normal for action to have been authorised by the Committee, nothing that I have seen indicates that this was essential. In addition, the appellants' objection to the inclusion of a requirement to demolish the building in what they understood to be a 'change of use' notice was ill-founded as set out above. The ground (e) appeal therefore fails and I have proceeded on the basis that a valid notice exists.

Planning policy

8. A new Local Plan reflecting current national guidance and practice is still emerging and for the time being the most relevant development plan policies are those saved from the South Derbyshire Local Plan adopted in 1998. There are policies dealing with the environment and transportation matters, which I deal with mainly in later sections. Here, I have concentrated on the policies relating to employment development within rural areas such as the one in which the appeal site is located.

9. The Council have drawn attention to Employment Policy 4 (Policy E4), 'Promoting the Rural Economy' and Policy E5, 'Industrial and Business Development in Rural Areas'. Policy E4B deals with the reuse of existing buildings and is not relevant to this appeal. As for Policy E4A, it indicates that proposals for the diversification of the rural economy will be permitted provided they do not conflict with other policies.
10. Amongst those policies Environment Policy 1 (Policy EV1) indicates that outside settlements new development will not be permitted unless, amongst other things, it is essential to a rural based activity or unavoidable in the countryside. Despite the appellants' arguments I am far from convinced that their business falls within the scope of these criteria. It is not an integral part of the adjoining farm, though no doubt the farmer finds the rental income beneficial (and Policy E4 refers to diversification of the rural economy generally, not a specific enterprise). Nor does it expand an existing lawful use.
11. Furthermore, whilst plant hire businesses are not, in my experience, always welcome on the more up market industrial estates and business parks, most large settlements have more down market areas and the appeal site is not far from Derby. In addition, the information available does not clearly indicate that the business primarily serves the rural area and the Council's evidence suggests a range of alternative sites may be available. I conclude that the development conflicts with Policy EV1 (and thus Policy E4).
12. As for Policy E5, insofar as it is relevant to these appeals, it permits (subject to specified criteria) industrial and business development within or on the edge of villages (and some other specified sites) but indicates that elsewhere it will not be permitted. Moreover, whatever doubts may exist as to whether plant hire falls within the use classes specified, if it does not it would not be permitted anyway. I conclude that the appeal development conflicts with this policy also.
13. In short I share the Council's view that the development is contrary to development plan policy insofar as it relates to the general distribution of this type of use. This has to be my starting point.
14. That said, it is not clear that the policies that the development conflicts with are fully compliant with current national policy as set out in the National Planning Policy Framework (the NPPF). This can be seen as giving higher priority to supporting economic growth in rural areas and promoting a strong and prosperous rural economy. Paragraph 28 indicates that local plans should support the sustainable growth and expansion of all types of business and enterprise in rural areas.
15. The appellants consider that Local Plan Policies E4 and E5, together with Policy EV1, are markedly more restrictive in their approach. They also suggest that there is no intention to include anything as restrictive in the emerging Local Plan. Nevertheless, Policy E2 of that Plan, as it currently stands, still does not seem to support the appeal development. Even so, the conflict with local policy needs to be considered in the context of current national policy, and other material considerations, and may not always be decisive in itself. I return to this after considering the other issues.

Effect on the character and appearance of the area

16. The appeal site is in the open countryside between the built up area of Derby and the village of Findern. The appellants dispute that, in the words of the NPPF, it is 'valued landscape' that should be protected and enhanced. However, I found it pleasant enough. I have no doubt that it is appreciated by local

- people or that it in its relatively unspoilt state it provides welcome relief from the urban area to the north and serves a useful function in separating Derby from the surrounding villages.
17. That said, the appeal site is not isolated from all built development. It adjoins, and is seen in the context of, a large farm complex that includes several substantial and not especially attractive agricultural buildings. The yard used for the plant hire business is set back from the road, next to these buildings. Moreover, at the time of my visit there was a farm vehicle parked in the area between the yard and the road, and this did not appear to be unusual.
 18. In these circumstances I do not share the Council's view that the yard (as opposed to the building on it which, as stated earlier, I am not considering) stands out as a prominent feature, distinct from the farm complex. Nor does it harmfully extend the developed area. On the contrary for the most part there seemed little to distinguish the plant and vehicles on it from the agricultural vehicles and machinery that would not be at all unusual in such a location.
 19. I have taken into account that, as the Council's photographs show, there will be times when more vehicles and equipment are present and some of these may appear more incongruous and intrusive. Nevertheless I am satisfied that subject to some planting to further restrict views from the road, any effect that this modest development has on the character and appearance of the area would be within acceptable limits. Accordingly there would be no conflict with Local Plan policy relating to such matters, including Policy EV1A(iii).
 20. The appellants have not suggested that a condition requiring such planting would be unacceptable or that it could not be accommodated within the site. I am satisfied that such a condition could be worded to comply with national advice and that, as is common in these cases, there could be provision for the use to cease if the planting is not carried out in the timescale allowed.
 21. Highway safety matters
 22. Turning to the safety of highway users, visibility to the northeast at the access onto Bakeacre Lane is restricted, as I saw for myself. Visibility in the other direction is also said by the Council and the Highway Authority to be less than would normally be expected. However, that is on the basis of vehicles passing the site at 50-60mph (the road is subject only to the national 60mph limit). No actual measurements of speeds have been undertaken and, whilst I do not doubt that this assessment was made conscientiously on the basis of what officers saw and reconstructed, it does not fully accord with my own observations. Many of the vehicles I saw when driving and walking along the road seemed to be travelling significantly more slowly. In any event, I consider that visibility to the southwest is not so poor as to give rise to serious risks.
 23. Visibility to the northeast is more problematic, even given the lower speeds that I observed. Moreover, whilst traffic flows were modest at the time of my visit, I do not doubt that they are greater in the morning and evening peaks which are the very times that vehicles are most likely to be entering or leaving the site. The number of vehicles involved may be relatively low. However, they would be in addition to those generated by the lawful agricultural use and, judging by the limited activity I saw at the farmyard, are likely to result in a noticeable increase in turning manoeuvres at this access, even if the total numbers remain low.
 24. That said, the most serious restriction to visibility is the roadside hedge in front of Blakemere farmhouse. The appellants do not have control over this hedge

but I am told that it is owned by their landlords who, it is suggested, may be willing to allow work to it. Even so I do not consider that I could impose a condition requiring the hedge to be removed or cut back. However in these circumstances I consider that a condition of a 'Grampian-like' nature could be imposed, requiring a scheme of visibility improvements to be submitted for approval and for the plant hire use to cease if the improvements were not implemented within an agreed timescale. Subject to this, and taking into account that there is no evidence of accidents occurring to date, I consider that there would be no harm to highway safety and no conflict with saved Local Plan Policy T6. I am also satisfied that removal of a modest length of hedge would not be seriously harmful to the character and appearance of the area.

Overall conclusions

25. The development conflicts with saved Local Plan policies on development in the countryside. However, these policies do not seem fully compliant with current national policy which appears to place greater emphasis on supporting a prosperous rural economy. The development has a positive, if modest, effect in this respect, including provision of a small number of jobs. Moreover, I have concluded that, subject to appropriate conditions, the specific use that is occurring causes no material harm to the character and appearance of the area or the safety of highway users. Accordingly I am satisfied that its benefits, though modest, outweigh any harm and that in the specific circumstances of this case the degree of conflict with local policy is not an overriding objection.
26. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted to use the land for a plant hire business. The enforcement notice will be quashed and the appeals on grounds (f) and (g) do not therefore need to be considered. Appeal C will also be allowed. As for Appeal B, quashing the notice means that no further action is required. (These decisions need not preclude further action in respect of the building on the land if the Council consider this to be expedient.)

Formal Decisions

Appeal A Ref: APP/F1040/C/15/3130879

27. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of land at Blakemere Farm, Bakeacre Lane, Findern, Derby DE65 6BH, as shown on the plan attached to the notice, from agriculture to the operation of a plant hire business subject to the conditions set out in schedule 1.

Appeal B (APP/F1040/C/15/3130880)

28. No action is taken.

Appeal C Ref: APP/F1040/W/15/3130653

29. The appeal is allowed and planning permission is granted for the operation of a plant hire business at Blakemere Farm, Bakeacre lane, Findern, Derby DE65 6BH in accordance with the terms of the application, ref: 9/2015/0071, dated 27 January 2015, and the plan submitted with it, subject to the conditions set out in schedule 1.

P Grainger
INSPECTOR

Schedule 1

Conditions imposed on the planning permissions granted pursuant to Appeal A and Appeal C

- 1) The premises shall be used for the operation of a plant hire business and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 2) Within 3 months of the date of this decision, a landscaping scheme shall be submitted in writing for approval by the local planning authority. This scheme shall include provision for tree and hedgerow planting to the southern edge of the site. The approved scheme shall be implemented during the first planting season following its approval and any trees or plants which within a period of 5 years from their planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 3) Within 3 months of the date of this decision detailed proposals for the permanent improvement of the visibility splay to the northeast of the access onto Bakeacre Lane shall be submitted in writing for approval by the local planning authority together with a timetable for implementing the works.
- 4) Unless the schemes required by conditions 2 and 3 are submitted in writing to the local planning authority within the 3 month period allowed, and unless the approved schemes are implemented within the periods agreed or specified, and thereafter retained, the use of the site for the operation of a plant hire business shall cease until such time as schemes are approved and implemented.

Appeal Decision

Site visit made on 6 January 2016

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

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

Decision date: 22 February 2016

Appeal Ref: APP/F1040/W/15/3134873

Land at SK2816 1036 Linton Heath, Linton, Swadlincote DE12 6PE

- 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 and Mrs N Gulliver against the decision of South Derbyshire District Council.
 - The application Ref 9/2015/0426, dated 12 May 2015, was refused by notice dated 5 August 2015.
 - The development proposed is outline application for residential development.
-

Decision

1. The appeal is allowed and outline planning permission is granted for residential development on land at SK2816 1036 Linton Heath, Linton, Swadlincote DE12 6PE in accordance with the terms of the application, Ref 9/2015/0426, dated 12 May 2015 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The application was submitted in outline with all matters except for access reserved for future determination. I have considered the appeal on this basis, although I note the illustrative housing layout plan provided.
3. For succinctness I have only included the first part of the development description as set out on the application form.
4. I have used the site address as set out within the appeal form, decision notice and the description of development on the application form. For reasons of clarity I have also used the postcode referred to on the application form.

Main Issues

5. The main issues are:
 - whether the development would accord with national and local policies relating to the location of development in the District; and
 - the effect of the development on the character and appearance of the surrounding area.
-

Reasons

Whether the development would accord with policies relating to the location of development

6. Planning legislation states that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. However, the weight to be attached to policies in the existing development plan must be assessed in accordance to their degree of consistency with the National Planning Policy Framework (the Framework), which sets out the Government's planning policies and is a material consideration. The Framework also seeks to boost significantly the supply of housing and requires local planning authorities to demonstrate a five year supply of housing land.
7. Whilst the *South Derbyshire Local Plan 1998* (LP) policies H5, H6, H7 and H8 are referred to in the reason for refusal, the Council contends that the proposal is 'beyond the scope' of these policies. I concur with the Council that Policies H6, H7 and H8 are not applicable to the proposal. For reasons set out below I consider LP Policy H5 as the Council in its appeal statement contends that this should carry reduced weight. LP Policy EV1 and the Framework are also specified in the reason for refusal and I consider the appeal on this basis.
8. The site is outside but adjacent to the defined village boundary of Linton as identified in the LP. Accordingly the development would conflict with Policy H5 which restricts new housing development to within village boundaries and Policy EV1 which does not permit development outside settlements unless it is essential to a rural based activity or unavoidable in the countryside and safeguards and protects countryside and landscape character.
9. However, the Council acknowledges in its appeal statement that in the absence of a five year housing land supply (5YHLS), adopted local plan policies relevant to the supply of housing are considered to be out of date and planning decisions on housing development must therefore be made in the context of Paragraph 14 of the Framework. As such the Council considers that Policy H5 should carry reduced weight.
10. The Council also states that following recent appeal decisions, Policy EV1 has an indirect effect of restraining delivery and for the purposes of paragraph 49 of the Framework is a policy for the supply of housing. However whilst the Council accepts that the first part of Policy EV1 must be assigned reduced weight, it considers that the rest of the policy has a degree of consistency with the Framework as it safeguards character and landscape quality.
11. Whilst I recognise that Policy EV1 seeks to protect the character of local landscapes, I consider it significantly restricts development which is at odds with the Framework's more balanced approach on determining planning applications. On matters including landscape character and development in the countryside, the Framework accepts that development may be permitted unless adverse impacts would significantly and demonstrably outweigh the benefits or specific policies within the Framework indicate that development should be restricted. On this basis I consider that Policy EV1 is not consistent with the Framework and consequently I give it limited weight.
12. Furthermore, although each application must be based on its own individual merits, in considering the status of the LP policies and the amount of weight I

can give them, I have considered the findings and conclusions of other Inspector decisions which have been drawn to my attention. I particularly note that the Inspector for an appeal decision¹ for a larger site for residential development within Linton concluded that LP Policies H5 and EV1 failed to address the current issue of housing need within the District and therefore were considered to be policies relevant to the supply of housing and gave them little weight. I have no reasons before me to conclude otherwise and therefore concur with this view.

13. However notwithstanding this, character and appearance and the effect of development on the countryside remain important considerations in the determination of applications and appeals, having regard to the policies in the Framework as a whole. I am mindful in this regard, of relevant Ministerial Statements and the Framework's requirement to recognise the intrinsic character and beauty of the countryside and consider this issue next.

Character and appearance

14. The appeal site is currently a vacant, overgrown area of fairly level land last used as allotment gardens around 1997. It is located within the countryside but directly adjoins the settlement boundary of Linton Heath and the surrounding area is characterised to some degree by the existing dense urban form which extends along Linton Heath. The site is surrounded on three sides by existing development, with a row of terraced houses opposite which directly adjoin the pavement, a detached property to the south west and school playing fields to the rear.
15. There is a field to the east of the site with open countryside and woodland that forms part of the National Forest beyond to the north east. To the east of the field is further residential development. The site comprises approximately 0.9 hectares of land and although the number of proposed dwellings would be determined through reserved matters, the appellant considers the site could deliver around 24 houses.
16. The site is not covered by any statutory landscape designation. In addition although the Council refers to the site as being part of a landscape that is valued by local residents, it has not been suggested that the site forms part of a valued landscape. Nevertheless I have no substantive evidence to demonstrate that it is a valued landscape for the purposes of paragraph 109 of the Framework.
17. On my site visit I saw that the established hedgerows along the site's boundaries provide significant enclosure, which physically and visually separates it from the wider countryside. There are also limited views into and out of the site. In comparison the adjacent field is open and provides views to the woodland beyond. Apart from the existing hedgerow landscape features, the site is rather unremarkable in terms of character and appearance, being predominantly covered by brambles and scrub.
18. Whilst landscaping matters would be considered further at the reserved matters stage and the layout plan is illustrative only, it does demonstrate that an acceptable detailed scheme could be advanced which would retain the majority of the prominent boundary hedgerows and there would be the

¹ Appeal Ref: APP/F1040/A/14/2214428

opportunity for additional new landscaping within the site. I therefore have given the layout plan some weight.

19. Nevertheless I acknowledge that the proposal would clearly introduce urban development on to what is currently an undeveloped site which locally would inevitably cause some adverse impact to the character and appearance of the area. However taking account of such factors as the site's location adjacent to existing urban development, its enclosed nature, the proposed retention of landscape features and the provision of additional planting, I consider that the visual impact of the development would be limited when viewed in the context of the wider streetscene. I also consider that in terms of scale, the proposal would be seen as a proportionate extension to the present built up area.
20. Therefore taking the above matters in to account I conclude that the development would not be unduly intrusive within the locality and there would be limited harm to the character and appearance of the surrounding area.

Other Matters

21. The Inspector for the appeal decision² previously referred to above, concluded that as Linton has been classed as a Key Service Village within the emerging Local Plan, it is a sustainable settlement and can accommodate a certain scale of growth up to and including small strategic sites. Whilst I recognise that the emerging Local Plan at this time only has limited weight, based on the evidence before me and my observations on site I concur with the previous Inspector on this matter.
22. I also saw on my site visit that the appeal site is within walking and cycling distance of existing facilities and services within the village and bus stops are also in close proximity with one immediately in front of the site. This latter factor provides opportunities to access other settlements including the nearby town of Swadlincote, by means other than the private car. On this basis I therefore consider the site is within a sustainable location.
23. As regards the social aspects of sustainable development that are before me, I have already confirmed that the Framework aims to boost significantly the supply of housing and that there is no dispute that the Council does not have a 5YHLS. Consequently the contribution that this site would make to the supply of housing land within the District weighs substantially in support of this appeal. I also consider that the future occupiers of the development would be likely to support and help sustain the provision of existing services and facilities within the village. Overall I consider that the social benefits of the development would weigh significantly in support of the proposal.
24. Economically, both parties consider that the development would be likely to boost the local economy by providing construction jobs and supporting local building trades, albeit that this would be for a temporary period. I also acknowledge that the future occupants of the development would be likely to support businesses within the village and local area. I consider such economic benefits would weigh in support of the appeal.
25. The appellants unilateral undertaking includes a range of contributions that would be provided were the proposal to be successful. This includes contributions towards the provision of primary education, built facilities, open

² Appeal Ref: APP/F1040/A/14/2214428

space, outdoor sports and the National Forest. It sets out the specific details of what the different contributions would provide. None of these contributions are in dispute between the main parties. It is clear from the information provided by the Council in its statement of case that these contributions are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development proposed, which satisfies the tests in the Framework and Regulation 122 of the Community Infrastructure Levy 2010.

26. Concerns have been raised about the effect of the development on existing car parking problems within the area and traffic levels. The Highway Authority has not raised any of these concerns or objected to the proposal. Furthermore I note that the development would be adjacent to local facilities and bus stops which would promote sustainable travel and the provision of adequate car parking and visibility splays to appropriate standards could be secured through conditions. As such I see no reason to conclude contrary to the Highway Authority on these matters.
27. I also note that the statutory agencies and the Council have not objected to the proposal on drainage grounds. I have no reason to suggest that adequate drainage could not be provided by a suitably imposed condition as suggested by Severn Trent Water.
28. In relation to concerns raised about wildlife, living conditions for existing residents and the capacity of local infrastructure such as schools and health facilities, the Council does not object on these grounds and I have no substantive evidence to indicate that the proposal would cause significant harm in these respects.

Planning balance

29. Whilst I have found that the development would be contrary to LP policies H5 and EV1, for the reasons set out above, these policies have limited weight. I acknowledge that there would be some adverse impact to the character and appearance of the surrounding area, but overall have concluded that this would be minimal and the weight applied to this is therefore limited. I have found that the development would be within a sustainable location and other environmental matters raised would not weigh against the proposal.
30. The Council accepts that it is unable to demonstrate a 5YHLS and as relevant policies for the supply of housing are out of date the presumption in favour of sustainable development applies. The development would contribute around 24 dwellings to the shortfall in housing land supply and significantly boost the supply of housing, including affordable homes, within the locality. This weighs heavily in support of the proposal. Other social and economic benefits also carry weight in the appeal's favour. In addition the appellants' unilateral undertaking would provide a range of contributions which would benefit the local community.
31. Consequently given all these factors and my conclusions on the main issues, in accordance with paragraph 14 of the Framework I conclude that the adverse impact would not significantly or demonstrably outweigh the benefits of the development.

Conditions

32. I have considered the conditions suggested by the Council in the light of the advice given in the Planning Practice Guidance (PPG). As such I do not impose all of them, combine some and amend the wording of others, in the interests of precision and enforceability. I am satisfied that the conditions set out in my decision meet the tests within the PPG.
33. Conditions on setting reasonable time limits and the provision of details on reserved matters are necessary as the application made is for outline permission.
34. Whilst layout is a reserved matter, in the interests of highway safety I impose conditions on internal layout design including the estate road and footways, gates, vehicle car parking spaces, bin storage and emergency service vehicle access. Conditions requiring the construction of a suitable vehicular site access, the provision of facilities to prevent mud and debris on the highway are also imposed to ensure there is safe access to and from the site and highway safety is maintained. A condition requiring the submission and implementation of a Travel Plan is also necessary in the interests of highway safety.
35. In the interests of flood protection and pollution control I impose conditions on foul and surface water drainage and a sustainable drainage system. However I do not find it necessary to include a separate condition on the disposal of surface water to the highway drainage ditch to the front of the site as this can be included in the drainage scheme for the site and I therefore do not impose this.
36. In order to protect the living conditions of neighbouring residents and the character of the area I attach a slab levels condition. I also include a standard precautionary contamination condition in the interests of public health and the environment. To ensure the delivery of affordable housing within the site I impose a relevant condition.
37. As appearance and landscaping are reserved matters I do not find it necessary to include conditions on landscaping or requiring the submission of samples of external materials and as such I do not attach them. However I do attach a condition requiring that the development is carried out in accordance with the ecological appraisals and surveys submitted as part of the application, in the interests of protecting wildlife.

Conclusion

38. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be allowed.

Y. Wright

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Approval of the details of the layout, scale, appearance and landscaping, to include the replacement and enhanced hedgerow details, shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 4) No development shall take place until details of a scheme for the disposal of surface and foul water, together with a drainage strategy for the site, has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
- 5) Before any development commences details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels.
- 6) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.
- 7) No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy framework or any future guidance that replaces it. The scheme shall include:
 - i. no less than 30% of housing shall be Affordable Housing;
 - ii. the type, tenure and location of the Affordable Housing;
 - iii. no more than 80% of Market Housing units shall be occupied before completion and transfer of the Affordable Housing Units to an Affordable Housing Provider;
 - iv. the arrangements for the transfer of the Affordable Housing Units to an Affordable Housing Provider;
 - v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those households on the District Housing Waiting List; and

- vi. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation scheme or in such other form as may be proposed by the Local Authority and agreed with the Affordable Housing Provider.

The affordable housing shall be retained in accordance with the approved scheme.

- 8) Before any other operations are commenced on site, a temporary access shall be formed into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives' and visitors' vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
- 9) Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.
- 10) Before any development comprising the construction of a dwelling commences the new vehicular access shall be constructed in accordance with the application drawing F14004/01 Rev A, drained, lit, and constructed in accordance with Derbyshire County Council's specification for new estate streets, having a 5.5m carriageway, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction, the area forward of which shall be level, constructed as footway and not form any plot or other sub-division of the site.
- 11) Before any development comprising the construction of a dwelling commences a 2m wide footway shall be provided along the entire site frontage, laid out and constructed, drained and lit in accordance with Derbyshire County Council's specification for new housing development roads.
- 12) The internal layout of the site shall be in accordance with the 6C's Design Guide and Manual for Streets.
- 13) No dwelling shall be occupied until a sustainable drainage scheme for the site, including a management and maintenance plan, has been completed in accordance with details first submitted to and approved in writing by the Local Planning Authority. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.
- 14) A swept path diagram shall be submitted at reserved matters stage to demonstrate that emergency and service vehicles can adequately enter and manoeuvre within the site and leave in a forward gear.
- 15) No dwelling shall be occupied until the proposed new estate street between each respective plot and the existing public highway has been laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

- 16) Provision shall be made within the site for the parking of two vehicles per dwelling and maintained throughout the life of the development free from any impediment to their designated use.
- 17) No gates or other barriers shall be erected within 5m of the nearside highway boundary and any gates elsewhere shall open inwards only.
- 18) Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction on any of the dwellings, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary, causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.
- 19) No building on the site shall be occupied until a Travel Plan comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use has been prepared, submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan Targets.
- 20) The development hereby approved shall be carried out in accordance with the recommendations made within the Preliminary Ecological Appraisal, the Reptile Survey and the Mustelids Activity Survey submitted as part of the application, unless otherwise agreed in writing by the Local Planning Authority.

Costs Decision

Site visit made on 6 January 2016

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

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

Decision date: 22 February 2016

**Costs application in relation to Appeal Ref: APP/F1040/W/15/3134873
Land at SK2816 1036 Linton Heath, Linton, Swadlincote DE12 6PE**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs N Gulliver for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of approval for outline application for residential development.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matter

2. Reference is made within the application to Policy EP1. It is clear within the context of the submission that the reference should refer to Policy EV1 of the *South Derbyshire Local Plan 1998* (LP) and I deal with the application on this basis.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 4. The Planning Committee refused the application contrary to the advice of their professional officers, who had produced a committee report which assessed the effects of the proposal with reference to the evidence available. Authorities are not bound to accept the recommendations of their officers, but if their professional advice is not followed, there must be reasonable planning grounds for taking a contrary decision, supported by relevant evidence.
 5. However in this instance, I consider the Planning Committee had no additional information or analysis before them to form an objective basis for refusal. Whilst the planning system requires a 'human' input to exercise judgement and reasoning, decisions must be supported by clear evidence with all matters weighed in the balance. Whilst the Council in its reason for refusal has referred to the harm identified as outweighing the benefits of the proposal, no substantive evidence to support this view has been provided, other than it is based on a matter of judgement.
-

6. In assessing the application the Council had knowledge of recent appeal decisions in relation to the lack of a five year housing land supply (5YHLS) and the status and weight that had been given to policies relevant to the supply of housing, as these are clearly referred to in the Planning Officer's report to Committee as material considerations. Notwithstanding this the Council has relied on out-of-date development plan policies to refuse the application and no evidence to support this view has been provided. I consider this is unreasonable behaviour.
7. The appellants also contend that the Council did not take proper account of landscape character matters and instead made generalised assertions about the impact of the proposal on the landscape. As I have no substantive evidence to show that an objective analysis was carried out by the Council I consider this constitutes unreasonable behaviour in this respect.
8. In order to avoid taking the matter to appeal, I note that the appellant contacted the Council following the refusal of permission to ascertain if a further application would be more successful, particularly considering the recent appeal decisions. The appellants were informed that the Committee was unlikely to change its mind. It was on this basis the appellants submitted an appeal. This also raises concerns about consistency in the Council's decision making, as two similar cases¹ referred to by the appellant were approved, having regard to recent appeal decisions and the reduced weight of relevant policies including LP Policy EV1. Consequently this is unreasonable behaviour.
9. Based on the above, I therefore conclude that the Council has acted unreasonably by making unsupported assertions about the impact of the development, provided no evidence to substantiate the reasons for refusal and persisted in objecting to a scheme using out of date policies and thereby has shown a degree of inconsistency when making decisions. This has resulted in the Council preventing acceptable development from being permitted.
10. In this instance, and as I have no evidence to the contrary, I find that unreasonable behaviour resulting in unnecessary expense as described in the PPG has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Mr and Mrs N Gulliver the costs of the appeal proceedings.
12. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Y Wright

INSPECTOR

¹ Council Refs: 9/2015/0563/OX and 9/2015/0561/OX

Appeal Decisions

Site visit made on 2 February 2016

by **Phil Grainger BA(Hons) MRTPI**

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

Decision date: 26 February 2016

Appeal A Ref: APP/F1040/C/15/3130893

Appeal B Ref: APP/F1040/C/15/3130894

**land known as The Hill Lodge, Deep Dale Lane, Barrow on Trent,
Derbyshire DE73 7NH**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by South Derbyshire District Council.
- Appeal A is made by Mr Adrian David Dawson.
- Appeal B is made by Mrs Patricia Helen Dawson.
- The notice was issued on 3 July 2015.
- The breach of planning control as alleged in the notice is:
the carrying out of building operations consisting of the erection of a brick-built single-storey building (the building) on the south east corner of the land, shown edged in blue on the plan attached to the notice.
- The requirements of the notice are:
 - (1) *demolish the building, including the removal of any and all footings and services;*
and
 - (2) *permanently remove all the resultant material from the land, including any building materials and rubble.*
- The period for compliance with the requirements is 90 days.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) & (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on grounds (f) and (g) only.

Summary of Decision: the appeals are dismissed and the enforcement notice is upheld as varied.

Application for costs

1. An application for costs was made by the appellants against the Council. That application is the subject of a separate Decision.

Main Issues

2. In respect of Appeal A the main issues are:
 - (i) the effect, if any, that the building has on the character and appearance of this rural area;
 - (ii) whether, taking into account any fallback position, any harm caused is an overriding objection to the granting of planning permission;
 - (iii) if so, whether the purpose of the notice could be achieved by any measures less than the complete demolition of the building; and
 - (iv) if necessary, whether the time allowed for the required works to be carried out is sufficient.
 3. In respect of Appeal B, only issues (iii) and (iv) are relevant, though the existence of any fallback position will still need to be taken into account.
-

Inspector's Reasoning

Effect on the character and appearance of the area

4. The appeal site is well outside the built up area of the village of Barrow on Trent which lies to the south of the A5132. There are some sizeable commercial premises just north of the A5132 but these are separated from the appeal site by a railway line and the Trent and Mersey Canal. At this point these features are running in close proximity forming a very clear barrier. The area north of them, where the appeal site is located, is overwhelmingly rural.
5. The Hill Lodge occupies a sizeable and roughly square plot. It lies immediately north of Deep Dale Lane, a minor public highway, which having crossed the railway and canal turns sharply to the west alongside the waterway. Another minor road heads off to the east.
6. The original house is in the southwest corner of the plot. It is occupied by the appellants. Their 3 sons each occupy separate substantial outbuildings that now appear to serve as annexes to it. (The precise status of one seems to be in dispute, but no formal action is currently taking place.)
7. The appeal building constitutes a fifth sizeable structure on this plot. It is located towards the road frontage to the east of the original house and with the building of disputed status¹ in between.
8. In dealing with an earlier appeal to use the appeal building as two holiday lets, a previous Inspector commented that when combined with other buildings it gave the impression of a nearly completely built up frontage. I agree with that assessment and that this has a detrimental effect on the character and appearance of this area of countryside. Moreover, since the previous Inspector made his comments a further building, a garage, has been built between the appeal building and Deep Dale Lane adding further to the built up effect.
9. Indeed, whilst permitted development limits do not seem to have been reached (despite the removal of such rights from part of the plot), the site as a whole now has an unusually built up appearance. It is beginning to resemble a small cluster of houses (even though in planning terms only one may be a dwelling-house as such) to the detriment of the rural character of the area.
10. Like the previous Inspector I consider that screen planting could not satisfactorily mitigate these effects given the elevated views of the site that exist from the bridges over the railway and canal. Furthermore, I am not convinced by the appellants' suggestion that vehicles pass at relatively high speed and that highway users will be concentrating on negotiating the bridges. On the contrary, vehicles heading north over the bridges often come to a stop and wait for vehicles heading south (who have right of way) to pass. In this position their occupants are left facing the appeal site.
11. Taking all this into account, together with views from the canal and footpath alongside it, I consider that the built up nature that Hill Lodge has acquired, and to which the appeal building makes a significant contribution, is seriously harmful to the rural character of the area. Such harm is contrary to saved Policy EV1 of the South Derbyshire Local Plan, which, amongst other things, seeks to avoid harm to the character of the countryside and landscape quality. To this extent I consider this policy to be consistent with the National Planning

¹ For the avoidance of doubt, the dispute as I understand it concerns the use of this building as a residential annexe. I have no reason to doubt that the structure itself is immune from action and will remain.

Policy Framework (the NPPF) which advises that planning should recognise the intrinsic character and beauty of the countryside and protect and enhance valued landscapes².

12. I conclude that the appeal building causes significant harm to the character and appearance of the area and is contrary to those development plan and national policies that seek to avoid such harm. It is however necessary to consider whether there are any other material considerations that outweigh this harm and indicate that permission should nevertheless be granted.

The fallback position and its implications

13. The appellants argue that the building is only a little higher than could be built using 'permitted development' rights³ and that a building of the same footprint but 0.3m lower⁴ could be built without having to apply for planning permission. In their view, the effect of such a building would not be materially different to the appeal one and they consider that this has significant implications for both the ground (a) appeal, and, if it becomes relevant, that under ground (f). In addition, it is not clear that the Council would have taken enforcement action if all that could be achieved was a reduction in the height of the building.
14. This suggested fallback position was not considered, and did not need to be, by the previous Inspector. However, it is clearly relevant to the appeal before me and I have taken it into account.
15. That said, I do not share the view that a reduction in ridge height of 0.3m (or even 0.15m) would have a negligible effect. In forming that view I have taken into account that the existing screening along the site frontage, whilst by no means fully concealing the appeal building, does screen much of its lower part. Accordingly an unusually high proportion of the effect that the building has derives from its roof, especially given the complex form that this takes. It is not just a single ridge that rises above the permitted height. The building has no less than 9 different ridges all of which appear to be of the same height and would thus need to be lowered if the building were to be within permitted development height limits.
16. In short, considerably more of the roof is above the permitted height than would be the case if there was just one ridge. Moreover, the roof plays an unusually large part in the effect that this building has. In my view reducing all the ridges to permitted development height would have a significant and beneficial effect in terms of the bulk of the building and its impact on the rural environment. (There could be some adverse effect on the proportions of the building but that is insufficient to alter my conclusion.)
17. In any event, the Council consider that even if the building had been 0.3m lower it would not have been permitted by Class E as it was not built for purposes incidental to the enjoyment of the dwellinghouse as such. The appellants assert that it was. However, the early representations by their professional advisors refer to 'ancillary' not 'incidental'. Moreover, the distinction, though it might seem pedantic to the layman, is an important one, which I would have expected the professional advisors to appreciate.

² Other elements of Policy EV1 seem less in line with the approach that the NPPF takes to development in rural areas but they are not essential to my decision on this appeal.

³ Specifically the right to build outbuildings within the curtilage of a dwellinghouse granted by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order.

⁴ The figure of 0.15m has also been suggested. However, 0.3m is the figure that seems most favoured by the appellants in their later submissions.

18. What Class E allows are buildings that are required for purposes *incidental* to the enjoyment of the dwellinghouse as such [my emphasis]. Moreover, whilst 'incidental purposes' are capable of including a wide range of uses, the Courts have held that they do not include primary residential accommodation such as a kitchen or bedroom. These may be 'ancillary', provided they do not create a separate dwelling, but they are not 'incidental'.
19. A subsequent change from an incidental use to primary accommodation would not amount to a material change of use requiring planning permission. However, to be permitted by Class E a building needs to be built for an incidental purpose and to be initially occupied as such on more than a token basis. If the appellants' professional advisors were accurate in describing the building as 'ancillary' that would not support the appellants' arguments.
20. Moreover, that half of the appeal building that has been finished and fitted out internally⁵ includes a kitchen area complete with kitchen sink and built-in hob. There is also a room that, apart from the lack of a bed, looks like a bedroom and contains fitted wardrobes. In short, part of the accommodation that has been provided in this half of the building is fitted out in a manner that facilitates its use for primary residential purposes, which, even if they are ancillary, have been held in other cases not to be incidental.
21. I have taken into account the appellants' argument that these features were not an integral part of the initial design and that the building was intended and initially used for incidental purposes. However, there is little evidence for this apart from the appellants' own assertions. These are not supported by any information regarding the date by which the building was substantially complete or how long it was before the primary residential features were added. Nor is there any documentary evidence in the form of receipts for work carried out or for the purchase of items such as the sink, hob and wardrobe.
22. Furthermore, the design and layout of the building, which also includes a bathroom with shower and bath (albeit apparently not functional), is very reminiscent of a residential annexe⁶ and it seems to be built to habitable standards. In addition, even before the building was finished (internally at any rate) the appellants had made an application to use it for holiday lets. This adds to my doubts as to whether the building was genuinely intended for an incidental use or was initially put to such a use on more than a token basis (in terms of either duration or extent).
23. So too does the fact that, again before half of the building was finished internally, the whole site was advertised for sale with the appeal building being described as two dwellings. The appellants suggest that this was a mistake. However, it is hard to see why the agents would have described the building in this way unless that was what it looked like or the appellants had told them that that was what they were building. For the avoidance of doubt I do not suggest that the building was actually used as a dwelling, only that it seems, on the balance of probabilities, to have contained primary residential facilities from a very early date.
24. I have taken into account that parts of the building may have been used for genuinely incidental purposes up to the present time. In particular, that half that has not been fitted out internally is used for storage and maintenance of the appellants' collection of motorcycles. This is certainly capable of being a

⁵ Though mains drainage does not, as yet, appear to have been provided.

⁶ Or annexes - the building can broadly be regarded as having two halves with limited internal connection.

- genuinely incidental use (though the number involved and the presence of two 'friends' carrying out works on some of them is unusual). However, even on the basis that this is a genuine incidental use, the internal layout of the building and the size of the rooms strongly suggest that this was not the purpose for which it was designed and constructed. It seems far more likely that, not having been able to put this part of the building to other uses, it has been used in a way that was not intended rather than being left empty. In any event, the existing use of the building as a whole goes beyond the merely incidental.
25. I am aware that the Council indicated informally that an outbuilding in the position of the appeal structure would be permitted development; also that details of such a structure are said to have been submitted for Building Regulations approval (though there seems some dispute as to how far that application proceeded). However, what has been built is very different to that shown on the drawings provided to me and many of the facilities indicated, such as gymnasium and sun room, have not materialised.
26. I conclude therefore as follows. The building does not give the appearance of having been designed with purely incidental uses in mind. Moreover, there is no firm evidence to suggest that any initial wholly incidental use (predating the installation of a kitchen) was more than token in its duration and/or extent. Photographs submitted by the appellants' then agent in June 2014, which cover only part of the building, show only a very limited use for domestic storage with many of the items being building materials that might be expected in an unfinished building. In addition, before the building had been fully fitted out the appellants applied to use it for commercial purposes (holiday lets).
27. Taken together the evidence suggests very strongly that, as a matter of fact and degree, what has been built was, on the balance of probabilities, conceived and constructed with primary residential uses (if not necessarily commercial or independent ones) in mind. Moreover, that is consistent with what the Council say Mr Dawson told them during a site visit in May 2013. This evidence is so compelling that I do not consider the appeal procedure used has had any effect on the outcome. I conclude that the building would not have been permitted by Class E even if it had been 0.3m lower.
28. Taking this into account it is not obvious how the breach of control could be brought to an end satisfactorily without demolishing the building. Although I could grant permission for it, the harm that it causes would remain and would not have been justified by any clear evidence of a genuine need for a building of this size and form to accommodate truly 'incidental' uses.
29. That said the enforcement regime is intended to be remedial not punitive, and it may be that no real planning purpose would be served by requiring the building to be demolished if it was clear that the appellants could and would simply rebuild it or something like it. In this case, the appellants could, using permitted development rights, build a new structure in place of the appeal one. Moreover, given the appellants' means and apparent need for secure areas to store and work on motorcycles and other vehicles, I consider that the erection of a replacement structure is more than a theoretical possibility. Accordingly it is a material consideration and I have taken it into account⁷.

⁷ In contrast the appellants' comment that using permitted development rights they could fill up the whole of the site frontage seems more in the nature of theoretical speculation. I have seen nothing to suggest that they have any real need or intent to do this and I have accorded it very little weight.

30. That said, for a replacement building to be permitted development it would need to be lower and, for the reasons I have set out earlier, I consider that that would be a significant improvement in itself. Moreover, it would need to be clearly intended for genuinely incidental uses. As such it could not include primary residential facilities such as kitchens and bedrooms and it may also be prudent to avoid an overly residential layout and domestic-style windows. It therefore seems likely that any replacement structure would not only be lower but of a less residential appearance.
31. That seems especially so as the main incidental use for which a clear need has been identified is the storage and maintenance of motorcycles and other vehicles. Notwithstanding the garage that has recently been erected, a building designed for such purposes could reasonably be expected to be more subservient and look more like a garage and less like a house. In addition, having regard to the number of vehicles I saw, it is not clear that it would need to have as large a footprint as the existing structure.
32. In conclusion whilst I accept that there is a real likelihood that if the appeal building is demolished a replacement will be built in its place I also consider that, on the balance of probabilities, such a structure would be noticeably less harmful to the character and appearance of the area and is most unlikely to be any worse. In these circumstances, I conclude that the fallback position is not a matter of such weight or significance as to justify allowing the existing building to remain given the harm that it causes. Nor do any of the other considerations raised. The ground (a) appeal therefore fails.
- The appeals under grounds (f) and (g)
33. Turning to the ground (f) appeal, even if I had concluded that the only reason that the building did not comply with Class E was its height, a retrospective reduction to the permitted limit, would not, technically, have brought the breach of control to an end. However, if I was satisfied that that was an acceptable solution *Ahmed*⁶ suggests that I would need to consider granting planning permission for it and then varying the requirements of the notice to secure compliance with that permission.
34. That said, the resulting building would still be unsatisfactory in other respects including its rather domestic appearance. Moreover, the appellants themselves consider that its proportions would be less satisfactory than those of the existing structure and that it would if anything cause more harm. Without necessarily agreeing with that view, I consider that, despite the benefit of being lower and thus less intrusive, the building would still have a significant and harmful effect on its surroundings contrary to local and national policy.
35. Even so, requiring the building to be demolished would, as I have already noted, serve little purpose if it was clear that a very similar structure would be erected in its place. However, for the reasons given above, it seems reasonable to conclude that a replacement building would cause materially less harm than the appeal building reduced in height. I do not therefore consider that it would be appropriate to regularise the situation by granting permission for the building subject to it being reduced in height.
36. I conclude that the building needs to be demolished in order to bring the breach to an end and satisfactorily address the harm to amenity. Having taken

⁶ *Mahfooz Ahmed v SSCLG and LB of Hackney* [2014] EWCA Civ 566

into account all the relevant circumstances I am satisfied that that is reasonable and proportionate approach. The ground (f) appeal therefore fails.

37. As for ground (g), it is not clear why someone of Mr Dawson's stated means should wish to carry out the demolition himself or that this is necessary to ensure that the materials can be salvaged for reuse. That said, the Council have raised no serious objection to the compliance period being extended to 6 months and as this should help to reduce the cost and inconvenience to the appellants I shall do so.
38. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation to the compliance period and refuse to grant planning permission on the deemed application.

Decision

39. I direct that the enforcement notice be varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P Grainger

INSPECTOR

Costs Decision

Site visit made on 2 February 2016

by Phil Grainger BA(Hons) MRTPI

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

Decision date: 26 February 2016

Costs application in relation to Appeals Ref: APP/F1040/C/15/3130893 & 3130894

land known as The Hill Lodge, Deep Dale Lane, Barrow on Trent, Derbyshire DE73 7NH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Dawson for a full award of costs against South Derbyshire District Council.
 - The appeal was against an enforcement notice alleging the erection of a brick-built single-storey building.
-

Decision

1. The application for an award of costs is refused.

Inspector's Reasoning

2. The applications were made in writing and appear in full on the file. I have taken into account all the points raised but repeat them here only to the extent necessary to make the decision intelligible.
3. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. In this case the appellants consider that it was unreasonable for the Council to issue a notice in anticipation of a breach occurring and without investigating the actual use of the building sufficiently to establish that there had been no breach apart from the height of the building. It was also unreasonable to require the building to be demolished entirely when in line with *Ahmed* lesser steps requiring a reduction in height would have sufficed.
5. In my view, the reasons for issuing the notice could perhaps have been worded more clearly and simply with greater emphasis given to the actual breach and the harm that it was perceived as causing. However, the eighth bullet point clearly identifies concerns that the building was not completed or occupied for purposes incidental to the enjoyment of the dwellinghouse as such and therefore did not accord with the provisions of Class E of the Town and Country Planning (General Permitted Development) Order¹.
6. This seems to have been a key factor in the decision to take enforcement action and has certainly been important in my determination of the appeal. Moreover, it is a point on which I have, broadly, agreed with the Council.

¹ The notice specifies the 2015 version of the Order but the building would have been erected when the previous version was in force. However, the new Order made no changes relevant to this appeal and I am satisfied that this matter has not caused any waste of expense.

Despite the appellants' arguments the breach is not simply a product of the height of the building.

7. It follows that I do not consider that it was unreasonable for the Council to issue a notice on the basis that the building was not built for incidental purposes and was wholly unauthorised. If anything, it seems to me that is the appellants who have failed to appreciate the difference between 'incidental' and 'ancillary' and its significance.
8. Taking this into account, together with everything else that I have read, I am satisfied that the decision to initiate enforcement proceedings did not rely on an anticipated use that has not occurred and I have seen nothing to indicate that the investigations carried out were inadequate. Moreover, given that I have dismissed the appeal, it is evident that any shortcomings on the Council's part, if there were such, did not result in the serving of a notice that should not have been issued. Having regard to the appellants' own strongly held views I do not see how an appeal with its inevitable costs could have been avoided.
9. In addition, although I have had regard to the fallback position which exists as well as the principles established in the Ahmed case, I have concluded that nothing less than the demolition of the building would remedy the breach of control and the injury to amenity that it causes. Reducing its height would not achieve this; nor are there any other grounds for considering this to be the appropriate and proportionate way forward. It was not unreasonable therefore for the Council not to specify lesser steps along those lines. Accordingly even the costs of pursuing appeals under grounds (f) and (g) seem to have been unavoidable given the appellants' own stance.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

P Grainger
INSPECTOR