

13/07/2004

**Item** 1.6**Reg. No.** 92004 0626L**Applicant:**

Pathfinder Pubs  
Albany House  
Albany Road  
Wolverhampton  
WV14JT

**Agent:**

Paul Koren  
4  
Stone  
Staffordshire  
ST158JL

**Proposal:** Retention of two external lanterns to the north and south elevation at Crewe & Harpur Arms Derby Road Swarkestone Derby

**Ward:** Aston

**Valid Date:** 19/05/2004

See report 9/2004/0625/F on this agenda. This application relates only to the lights that are affixed to the listed building.

Issues of amenity and highway safety associated with illumination are addressed within the scope of the planning application 9/2004/0625/F.

**Recommendation**

**GRANT** consent.

13/07/2004

**Item** 1.7**Reg. No.** 92004 0669TP**Applicant:**

Roger Bullivant Ltd  
Walton Road  
Drakelow  
Burton-on-Trent  
Staffordshire  
DE15 9UA

**Agent:**

Roger Bullivant Ltd  
Drakelow  
Burton-on-trent  
Staffordshire  
DE15 9UA

**Proposal:** **The felling of trees protected under South Derbyshire District Councils Tree Preservation Order Number 122 at Roger Bullivant Ltd Walton Road Drakelow Burton-on-Trent**

**Ward:** **Linton**

**Valid Date:** **27/05/2004**

**Site Description**

The site is part of Woodland 1 of TPO 122, which is located within the applicant company's industrial site at Walton Road, Drakelow. The site for the proposed felling of trees is the widest part of the tree belt and therefore a significant distance from Walton Road. The site is close to existing industrial buildings.

**Proposal**

The proposal is to fell 14 trees which are contained within the TPO, 11 ash trees, 1 beech tree and 2 oak trees.

**Applicants' supporting information**

The application site is at the rear of TPO 122, at the furthest point from Walton Road. It is screened on its remaining edges by existing industrial buildings and is therefore well hidden from public view into the property from the boundaries of the site.

In addition, as a result of the recent consent to extend the industrial building Express 1 and following the subsequent erection of the building, the limited circulation space around the extension gives the company genuine and serious concerns regarding Health and Safety. These concerns relate to both vehicular and pedestrian traffic movements around the edge of the building and its environs. The area to be released under this application is considered the minimum necessary in balancing our desire to allay these concerns with the company's wish to minimise disruption to the value, setting and character of the woodland.

The trees the subject of this application are poor specimens of their type, being either forked, crown heavy due to the pattern of growth of the woodland or rotting in the upper areas of the trunks. These traits have been seen and identified by the Council's Arborist. The Company intends to plant 42 additional trees in another location by way of replacement for those which are proposed for removal and to re-locate any whips or saplings from within this area.

### **Planning History**

There have been several applications in the past for pruning and felling works within the TPO which is made up of four areas of woodland.

### **Responses to Publicity**

None received.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: Environment Policy 16

Local Plan: Environment Policy 9

### **Planning Considerations**

The main issues central to the determination of this application are the impact of the felling of the trees on the amenity value of the woodland.

### **Planning Assessment**

The application proposes the felling of 14 trees which are part of a woodland TPO. The TPO woodland is approximately 160 metres wide at the point where the trees are to be felled, the trees are adjacent to industrial buildings and at the furthest point of the TPO into the site away from Walton Road, which is the nearest public vantage point. It is considered that the loss of these 14 trees and this small portion of the woodland will not have a significant adverse impact on the public amenity value of the woodland. As stated above this part of the woodland is approximately 160 metres from the nearest public highway and the loss of these few trees will not be significant, particularly as the Applicant is to 42 trees as way of replacements in an alternative location. These 42 trees can be planted in positions closer to the public highway where there are gaps in the woodland, which will enhance the public amenity value of the woodland.

### **Recommendation**

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

1. The work shall be carried out in accordance with BS3998: 1989 - Tree Work.

Reason: To ensure that the work is carried out to a satisfactory standard in the interests of the protection of the trees.

2. Within one month of the date of this decision a planting scheme indicating the positions, species and sizes of the 42 replacement trees shall be submitted to and agreed in writing by the Local Planning Authority. This planting scheme shall then be implemented during the first planting season following the felling of the trees.

Reason: To ensure that the trees are replaced in the interests of the amenity value of the woodland.

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

Reason: To enable the authority to assess any future proposals beyond this time period.

13/07/2004

**Item** 2.1**Reg. No.** 92003 1268R

**Applicant:**  
 Dobir Hussain  
 7 Albert Road  
 Aston  
 Birmingham  
 B6 5DP

**Agent:**  
 Ralps & Janes Chartered Surveyors  
 Makepeace House  
 136-137 Digbeth  
 Birmingham  
 B5 6DR

**Proposal:** **The variations of conditions two and three of planning permission 9/1096/0507/U to allow sale of food for take away or home delivery and to allow the frying of food during the whole of permitted hours at Repton Tandoori 42 42b High Street Repton Derby**

**Ward:** **Repton**

**Valid Date:** **17/10/2003**

#### **Site Description**

Repton Tandoori is on the west side of High Street opposite Brook House and some 20m from The Pastures 'T' junction and is within the Repton Conservation Area.

#### **Proposal**

Planning permission was granted in January 1997 to use the premises as a restaurant. It is proposed to vary condition 2 of that permission and remove condition 3. Condition 2 states that:

“Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 the premises shall not be used for the sale of hot food for consumption off the premises”

Condition 3 states that:

“Frying of food on the premises shall only be undertaken between 09:00 hours and 17:00 hours.”

With respect to condition 2 it is proposed to vary the condition to allow sale of food for takeaway and home delivery from 7pm onwards.

It is proposed to remove condition 3 to allow the frying of food during the whole of the permitted hours and for the chimney flue to be extended in height to avoid the potential of nuisance from fumes. The chimney would be of brick construction and would extend 1m above the highest eaves level of the building

## **Applicants' supporting information**

The applicant's agent has provided a supporting statement, the main points of which are as follows:

- The Repton Tandoori is first and foremost an 'eat in' restaurant accommodating up to 70 table covers. The restaurant will always be primarily for dining on the premises, however, enquiries from existing customers indicate that there is a demand for a home delivery service and a takeaway facility.
- Such a use would be very ancillary to the main business of "eat in" trade and it is further anticipated that any food sold for consumption off the premises would be majority for home delivery, with a very small proportion actually collected by the customer from the premises.
- The applicant is aware that the Highways Authority expressed concerns about the movement of traffic generated by a take-away facility and the impact it would have in terms of increased noise to the local residents. The applicant is confident that the number of persons visiting the premises for the purposes of acquiring a take away meal will be minimal between 10 and 15 visits on a busy weekend evening.
- There is already a certain level of existing noise generated by the adjoining Chinese take away and considers that any additional traffic attributable to the Repton Tandoori would be negligible.
- In respect of the condition prohibiting frying of food after 5pm the applicant states that a condition of this nature is normally applied to fish and chip shops which operate with a range of deep fat fryers and where the vast majority of food products are fried. In the case of Repton Tandoori most dishes such as samosas and bhages that are best prepared by deep fat frying in a pan on the stove.
- The kitchen is fitted with extractor hoods and removable washable grease filters. The proprietor removes the filters and washes them in caustic soda on a weekly basis, so that they remain efficient at removing grease and odours from the fumes.
- The purpose of the varying in condition of frying food is so that the proprietor can prepare authentic Indian cuisine. The applicant has been advised that the small amount of food that would be prepared in this way would not give rise to any odours that would affect the neighbouring residents.
- Many of the residents living very close to the restaurant have signed the petition in support of the home delivery service.

The applicant has submitted a traffic report from a highway consultant and the concluding summary is as follows:

- The traffic survey indicates that the heaviest flow of traffic is between about 5.00pm and 6.30pm after which it will become quieter returning to a more normal flow from about 6:45pm onwards.
- Parking does take place outside the applicant's premises and the Chinese Takeaway, the majority using the eastern side of the High Street and also on occasions the western side. The majority of such parking is short term with the Chinese Takeaway attracting most visitors during the earliest part of the evening.
- The parking situation generally along the High Street causes vehicles to slow or stop to allow the passing of opposing vehicles, and the parking outside the applicant premises makes no difference to the overall flow along the High Street. Where the situation arises

that there are no vehicles parked on the same side as the applicant premises then the flow is improved over that of the rest of the High Street in that the road is wider at this point allowing easily two vehicles travelling in opposing directions to pass each other.

- The effect that legally parked vehicles in the High Street have, is the general slowing down of through traffic and the creation of gaps in its flow. Overall this has a positive effect, when considering the opinion of the residents that the speed of vehicles using the High Street is excessive and dangerous.
- The section of road immediately outside the applicant premises is the widest point of the High Street allowing a further 1.22m (4ft) to the normal width. Cars parked on both sides at this point make no difference to the general flow of traffic along the High Street, and if vehicles are only parked on one side, which often is the case especially earlier in the evening, then the flow is improved in comparison with the rest of the High Street.
- Reconsideration of road markings in respect of parking bays and continuous yellow lines would further assist the immediate area outside these commercial properties.
- Parking considerations in respect of this application only appertain to the applicant premises and the Chinese Takeaway from 5.30pm to 11.30pm on weekdays. The parking of visitor's cars during this period makes no difference to the general traffic flow along the High Street, because there are parked cars for most of its northern length, which already results in slightly lower progress being made along this length. The number of cars parking as a result of these two commercial premises are relatively low during the period observed and he says he has some difficulty in understanding how the addition of a few more cars over a full evening will have any effect on the overall traffic flow of the High Street as at present. There may be a minor argument that could be forwarded in respect of the busiest period which when these two premises are open between 5.30pm and 6.30pm, but in respect of the applicant premises he says the status quo will not change as the Chinese Takeaway presently operates from 5.30pm and is by far the most popular during this early evening time.
- It is suggested that Repton High Street cannot be considered as a congestion hazard and that any inconvenience to vehicle drivers is extremely short in duration, not dangerous in nature, causes no extended tailback of traffic and occurs at varying points along the High Street. Customers wishing to use the applicant premises will make no difference in neither a negative or positive way to this situation.
- It is concluded that parking outside the applicant premises is not an issue that should have any direct bearing on the decision in respect of this application.

### **Responses to Consultations**

In view of the proposal to increase the chimney height the Environmental Health Manager comments that condition 3 may be relaxed and replaced with a condition in relation to the flue and odour control system.

He states that as far as the traffic levels are concerned, the report would appear to illustrate that this would not perhaps be as much of a problem as first thought. Traffic levels generally appear high enough to mask any additional traffic to the restaurant for takeaway purposes. He states,

however, that the report did only survey during and just after the rush hour period and that takeaway traffic may be more of an issue later in the evening when normal traffic levels have died down (e.g. 10pm on a Saturday). He considers that it is also likely that the takeaway element of the business would be minor in comparison with the restaurant side. As such, he would be willing to accept the removal of condition 2 on a temporary basis, to assess the impact, perhaps for 12 months.

Having considered the traffic report the Highway Authority comments that it appreciates that the applicant is trying to demonstrate that the number of vehicle movements along High Street reduces after 7.00pm and that it is prepared to accept a condition restricting takeaways until after this time. However, it maintains that approval of the proposal would result in an increase in on-street parking and vehicles manoeuvring within the classified highway to the detriment of highway safety.

The Parish Council comments that it is not prepared to withdraw its objections because there is still concern about the smell and the parking as an issue. It says that the measures put forward are not sufficient to withdraw the objection.

Repton Village Society comments that if the traffic survey were to the satisfaction of the Highway Authority it would withdraw its objection to a takeaway use and subject to it being operated during the evening when the traffic is lightest. With regards to hours for frying it asks assurance that any change of equipment or change of hours should give full protection from nuisance and smells to the neighbouring properties.

### **Responses to Publicity**

Nine letters of objection have been received and a letter from the managing agent of Brook House has objected on behalf of twenty-three residents. The objections are summarised as follows:

- During the period the restaurant was being used as an unauthorised takeaway congestion including double parking occurred in the evenings resulting in near accidents.
- Parking on the street is already at a premium and vehicles are using private drives for parking and turning.
- There is already severe congestion on the High Street caused by the Chinese takeaway and another would make matters much worse.
- The proposal would result in increase in litter, noise and disturbance.
- The proposal would result in unwanted cooking odours
- The proposal could be seriously detrimental to the recognised route for emergency services.

Two letters of support have been received along with a petition in support with 107 signatures, 98 of which were from Repton. Comments raised include:

- The chip shop has no car park, parking is on the street, the Chinese has a car park but is seldom used and the Bulls Head has a car park, which is used.
- There have been no complaints about cooking smells
- Rejection of the application would be a restriction on trade without justification, and at worst discriminatory.



## **Structure/Local Plan Policies**

The relevant policies are:

Adopted Local Plan: Shopping Policy 3.

Emerging Local Plan: Policy S10, T1.

## **Planning Considerations**

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

- The impact a takeaway use would have on highway safety.
- The impact a takeaway use and extension of frying times would have on the amenity of the area.

## **Planning Assessment**

Policy set out in the emerging Local Plan favour proposals for food and drink uses in villages centres (in serviced villages) but emphasises that weight will be given to the need to protect residential amenity and highway safety.

The Highway Authority remains concerned about the detrimental impact a takeaway use would have on highway safety. During the period that the unauthorised takeaway use was operating, anecdotal reports from local residents appears to bear this out that unacceptable on-street parking and manoeuvring was occurring within the classified highway. The Highway Authority provides the Council with expert advice on matters of highway safety and despite the evidence supplied by the applicant it continues to object to the proposal.

Members may wish to consider the following alternative to refusing on highway safety grounds: limiting the takeaway facility to after 7pm, which is at a time when general traffic levels are lower, and also relying on the takeaway business becoming more settled over a period of time. To this end members may consider a temporary permission of say two years or less, after which time the matter can be reassessed. This would also serve the requirements of the Environmental Health Manager, to enable him to reassess the impact of the takeaway on local amenity.

With regards to the extension to frying times, this matter has now been resolved to the satisfaction of the Environmental Health Manager, subject to the provision of an appropriate flue and odour control system.

Notwithstanding this, the issue remains that the highway authority is unconvinced that the proposed change to the operation of the business would be acceptable, hence the recommendation.

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** planning permission for the following reason:

Approval of the proposal to provide for the sale of hot food for consumption off the premises would result in an increase in on-street parking and vehicles manoeuvring within the classified highway to the detriment of highway safety and contrary to Transport Policy 6 of the Local Plan and T1 of the emerging Local Plan.

13/07/2004

**Item** 2.2**Reg. No.** 92004 0374TP**Applicant:**The Harpur Crewe Estate  
C/O Mather Jamie**Agent:**Mather Jamie  
Rectory Place  
Loughborough  
Leicestershire  
LE111UR**Proposal:** The felling of two Corsican Pine trees covered by South Derbyshire District Council Tree Preservation Order Number 77 at 20 High Street Ticknall Derby**Ward:** Hartshorne/Ticknall**Valid Date:** 30/03/2004**Site Description**

These two mature Corsican pine trees are in the front garden of 20 High Street either side of the stone well. They are to the rear of the front stone boundary retaining wall to the property and nearly opposite the Chequers Public House. They are in the Conservation Area and are protected by Tree Preservation Order 77 which was confirmed in October 1989.

**Applicants supporting information**

The applicant has submitted a report from a qualified tree consultant who makes the following comments:

- The first tree is about 13m tall and has a stem diameter of about 50cm. There are some dead branches and dead foliage. Several of the main branches are fairly long. The adjacent retaining wall is slightly cracked.
- The second tree is also about 13m tall and has a stem diameter of 62cm. There are many more dead branches on this tree, and much dead foliage. It is estimated that within the last five years about 50% of the foliage on this tree has died, and the tree does not look well. There appears to be no obvious pathogen, and it may be that the tree is simply suffering from old age and the 2003 dry weather, but with this amount of die-back there must be a suspicion that the root system has, or soon will have, problems and that the tree will therefore become unstable.

- The wall between this tree and the public highway appears to have been pushed outwards about 15 to 18cm.
- These two trees would need to be treated as one unit, in managerial terms, as any extensive pruning, or the removal of one tree, would open up the other to the wind to an extent that might cause branches to break off or the whole tree to be unstable.

He makes the following recommendations:

- Both of the pine trees at 20 High Street should be removed, as the southern one of this pair appears to be in poor condition, and it would not be safe to leave the other tree suddenly exposed.
- The planting of two replacement trees, planted about 1.5m further from the road (these could be Corsican pines).

### **Responses to Consultations**

The Council's retained arboriculturist comments as follows:

- All dead wood be removed. This would help reduce the sail area/ wind resistance.
- Careful selective thinning of 20% of the crown would also reduce wind resistance.
- The applicants' consultant's report was written on 16<sup>th</sup> march 2004. On Saturday 20<sup>th</sup> March 2004 the East Midlands experienced very strong gale force winds of 50mph up to 70mph in certain areas. This could be looked at as a wind-loading test. These pines were not affected as they are well down and protected by buildings and not in an exposed situation. Elsewhere in the region numerous trees failed. Therefore the Harpur Crewe estate should first dead wood, and lightly thin these important roadside trees to improve safety. The trees can be routinely monitored and the position reassessed.
- It is likely that the dying foliage is adjustment for the very dry summer of 2003, however, these trees are typically used to the much drier conditions of Corsica. The trees show no sign of any infection.

Ticknall Parish Council makes the following comments that it would like the Corsican Pine trees covered by tree preservation orders in Ticknall retained because of their historic and aesthetic qualities. However, it recognises that from time to time, individual trees either because of their condition or position, can pose a threat to people and to property. Therefore the Parish Council has decided to respond to applications concerning the trees on an individual basis and will support applications if it is thought that the trees pose a risk. However the Parish Council is not expert and the decision on whether trees are safe should remain with those who are.

In this case the trees involved are poor specimens and the Parish Council supports the application but requests some replacement planting.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: Environment Policy 16  
 Adopted Local Plan: Environment Policy 9

## Planning Considerations

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

- The amenity value of the trees and the likely impact of the proposal on the amenity of the area;
- In the light of the above, to consider whether or not the proposal is justified, having regard to the reason put forward in support of it.

## Planning Assessment

These mature highly prominent trees are of great amenity value being close to the public highway and also being within the conservation area contribute significantly to its character. Singles and pairs of Corsican pines can be seen in prominent positions throughout the village, planted to celebrate the marriage of the estate owner, Sir Vauncey Harpur Crewe to Isabel Adderley in 1876. The connection of the trees to this locally important historical event is unique to Ticknall and thus contributes to their amenity value.

The applicant's tree consultant estimates that within the last five years about 50% of the foliage on the southern tree of the pair has died, and that it does not look well. He adds that with this amount of die-back there must be a suspicion that the root system has, or will soon have, problems and that the tree will therefore become unstable.

The Council's retained tree consultant recommends that despite high winds in March, the trees are faring relatively well and the work at this stage should be limited to dead wooding and selective thinning and the trees then to be periodically reassessed.

A clear case has not been made as to why the tree has suffered from recent die back and neither consultant has identified a pathogen. In the absence of more convincing evidence to justify felling and in view of the trees' obvious amenity value, the favoured approach is to give the trees the benefit of the doubt for the time being and limit the work to dead wooding and if necessary selective thinning.

Members should be aware that this tree preservation order makes provision for the payment of compensation in respect of loss and damage caused by a refusal of consent under the order. The planning authority, however, can issue an Article 5 certificate for these trees and the entitlement to compensation would not then apply. To qualify, it would need to be demonstrated that the trees have an outstanding or special amenity value that is something out of the ordinary. Recent Government guidance has stressed that planning authorities should use Article 5 certificates with discretion, and not merely as a means of avoiding the potential liability to pay compensation. To back that up, there is a right of appeal against a certificate.

It is considered that a case can be made to justify the issuing of an Article 5 certificate in this instance on the basis that they have outstanding amenity value due to the fact that they form part of a deliberate composition of Corsican pines planted throughout the village by the estate owners, and, as intended, due to their scale in a domestic setting are prominent and unusual to Ticknall marking a locally important historic event.

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. To issue a Certificate under Article 5 of South Derbyshire District Council Tree Preservation Order No. 77 (1988) (for reasons set out in the report above);**

**B. Subject to A., REFUSE permission for the following reason:**

These mature highly prominent trees are of great amenity value being close to the public highway and also being within the conservation area contribute significantly to its character. Singles and pairs of Corsican pines can be seen in prominent positions throughout the village, planted to celebrate the marriage of the estate owner, Sir Vauncey Harpur Crewe to Isabel Adderley in 1876. The connection of the trees to this locally important historical event is unique to Ticknall and this also contributes to their amenity value.

A clear case has not been made as to why the tree has suffered from recent die back and neither consultant has identified a pathogen. In the absence of more convincing evidence to justify felling and in view of the trees' obvious amenity value, the favoured approach is to give the trees the benefit of the doubt for the time being and limit the work to dead wooding and if necessary selective thinning.

## APPEAL DISMISSED

Appeal by Hamlet New Homes

Outline application for the erection of four detached houses at Grotto Farm Main Street Overseal Swadlincote (9/2003/0323)

The application was refused permission for the following reason(s):

- 1. The site is not identified for residential development in either the current or draft Local Plan and is a windfall site. The site has been used as a nursery and is not previously developed land under the definition of such land contained in Annex C of PPG3. The site is therefore a greenfield windfall site and as such its development is contrary to the provisions of PPG3 and Policy H1 of the Revised Deposit Draft Local Plan.*
- 2. Development of the site for four detached dwellings does not comply with the minimum density requirements of new residential development as outlined in PPG3 and therefore the proposed development is contrary to guidance contained in PPG3.*
- 3. Insufficient information has been submitted to enable the potential traffic movements generated by residential development to be compared with that generated by existing uses on the site. Further, although it is indicated that improvements will be made to the existing access no details have been provided in this respect.*

The Inspector considered two appeals together, on land contained within the same planning unit, for the construction of four dwellings with access from Main Street and for ten dwellings with access from Moira Road (see appeal report reference 9/2003/0324)

The Inspector considered that the main issues for determination were whether the proposal would undermine national and local policy to secure sustainable development by re-using previously developed land in preference to developing greenfield sites and whether the proposed development could be accessed without prejudice to highway safety.

The Inspector concluded that around half the smaller site was previously developed and estimated that 4 dwellings would satisfy the lower end of the density range of 30 dwellings per hectare. He considered that given the small size of the site and its partially developed nature the proposal would not undermine national and local policy by re-using previously developed land in preference to developing greenfield sites.

With respect to the access the Inspector considered that a width of 5.5 metres for some distance from the main road would be needed to ensure easy passing and to avoid vehicles entering being unable to complete the manoeuvre and that the access would not meet the advice in Places, Streets and Movement. The Inspector considered that traffic figures put forward by the Appellant concerning the previous use of the access were conflicting and he came to the view that there is a strong possibility that the proposal might generate an increase in traffic. He concluded that in view of the conflicting information, that in principle, the proposed development could not be accessed without prejudice to highway safety.

## APPEAL DISMISSED

### Appeal by Hamlet New Homes

### Outline application for the erection of ten detached houses at Grotto Farm Main Street Overseal Swadlincote (9/2003/0324)

The application was refused permission for the following reason(s):

- 1. The site is not identified for residential development in either the current or draft Local Plan and is a windfall site. The site has been used as a nursery and is not previously developed land under the definition of such land contained in Annex C of PPG3. The site is therefore a greenfield windfall site and as such its development is contrary to the provisions of PPG3 and Policy H1 of the Revised Deposit Draft Local Plan.*
- 2. Development of the site for ten detached dwellings does not comply with the minimum density requirements of new residential development as outlined in PPG3 and therefore this proposal is contrary to guidance contained in PPG3.*
- 3. There is insufficient controlled frontage to provide an acceptable new street junction. The introduction of vehicle turning movements at this location would be prejudicial to highway safety on the classified road.*

The Inspector considered two appeals together, on land contained within the same planning unit, for the construction of 10 dwellings with access from Moira Road and for four dwellings with access from Main Street (see appeal report reference 9/2003/0324).

The Inspector considered that the access strip to Moira Road falls within the definition of previously developed land in PPG3 by being garden land but that most of the main site is open and without permanent structures and he considered that the evidence available does not demonstrate that the land is a brownfield site. With respect to the density of the proposed development the Inspector concluded that 10 dwellings on a 0.68 hectare site would be significantly below the minimum of 30 dwellings per hectare sought by PPG3. He concluded that the site is not predominantly previously developed land and that the density would represent inefficient use of land.

With respect to the issue of access to the site the Inspector concluded that the evidence presented did not confirm that the necessary visibility and vehicle manoeuvring requirements could be met at the proposed access and that therefore the proposal may prejudice highway safety.



## APPEAL DISMISSED

Appeal by Messrs Edwards C/O Agent

Use of land for the storage of touring caravans at Seale Lodge Farm Burton Road Acresford Swadlincote (9/2003/0053)

The application was refused permission for the following reason(s):

- 1. The proposed use of the site would result in the creation of an unacceptable visual intrusion into the rural landscape contrary to General Development Strategy Policy 3 and Environment Policy 1 of the Joint Structure Plan, Environment Policy 1 of the Local Plan and Policy ENV 3 of the Revised Deposit Draft Local Plan which seek to ensure that the character of the rural landscape and the countryside is protected from inappropriate development.*
- 2. The development runs contrary to the principles of sustainable development in that it encourages trips by private motor vehicles to deliver and collect the caravans from urban areas. The proposal is therefore contrary to General Development Strategy Policy 1 of the Joint Structure Plan which seeks to ensure that new development respects the principles of sustainable development by contributing to the provision of opportunities for (inter alia) protecting and improving the natural environment and minimising pollution.*

The Inspector considered that the main issues in the case were the effect of the caravan storage on the character and appearance of the area and the Council's policy in respect of sustainable development.

The Inspector considered that the caravans would be prominent within the local landscape and look incongruous within the rural location, materially harming the character and appearance of the area. He felt that the significant visual harm likely to arise could not be overcome by the imposition of reasonable conditions and that the planting that has already taken place coupled with proposed planting may provide some degree of screening in the future but that the rows of caravans would be readily visible for many years hence. He considered that the scale of the harm on the character and appearance of the area was sufficient to justify dismissing the appeal.

With respect to the issue of sustainable development the Inspector accepted that caravan storage areas do not need to be sited in the countryside but considered that as the Council had granted permission for caravan storage on adjoining land in 2001 that it would be unreasonable to dismiss the current appeal on the basis that such a use in this location would run contrary to the principles of sustainable development.

## APPEAL DISMISSED

### Appeal by Mr Coaster

### The conversion into a dwelling of Outbuilding To South East Of Pinfold House Mill Street Cotton-in-the-Elms Swadlincote (9/2003/0711)

The application was refused permission for the following reason(s):

- 1. Insufficient information has been submitted with the application to demonstrate that a commercial re-use of the building is not viable or practical and the scheme therefore fails to comply with the provisions of policy H1 of the Revised Deposit Draft Local Plan.*
- 2. The building is of a very small scale and in a poor state of repair and is not considered suitable for conversion without extensive alteration and extension, the scheme proposes the increase in roof height on a significant proportion of the building and therefore the development does not comply with the provisions of Housing Policy 7 of the Local Plan or Policy ENV21 of the Revised Deposit Draft Local Plan.*

The Inspector considered two appeals at the site one for the conversion of the outbuilding to a dwelling and the other for the demolition of the outbuilding and erection of a dwelling (see appeal report reference 9/2002/1238).

The Inspector considered that conversion of the outbuilding would involve the rebuilding of much of the structure and the raising of much of the roof. He felt that these alterations would result in a design that would not reflect that of the original building or be compatible with the surrounding dwellings. He considered that the scheme would involve extensive alterations to the original building that would harm its character and be detrimental to the character of the settlement.

With respect to commercial re-use of the building the Inspector recognised that the appellant had failed to provide any information but considered that in this case the relatively modest size of the building and its location near to residential property would make most commercial uses not practical or viable, and any such use would not provide significant employment opportunities in the area. The Inspector also stated that the adopted policies do not place this restriction on the residential conversion of buildings within settlements and that he has attached limited weight to Policy H1.

## APPEAL ALLOWED

Appeal by Mr Coaster

The demolition of an outbuilding and the erection of a dwelling on Land To The South East Of Pinfold House Mill Street Coton-in-the-Elms Swadlincote (9/2002/1238)

The application was refused permission for the following reason(s):

*The proposed dwelling is to be located within Coton-in-the-Elms which has not been identified as a serviced village and where new residential development is unsustainable and inappropriate under the provisions of Policy H1 of the Revised Deposit Draft South Derbyshire Local Plan.*

The Inspector considered two appeals at the site one for the demolition of the outbuilding and erection of a dwelling and the other for the conversion of the outbuilding to a dwelling (see appeal report reference 9/2003/0711).

The appeal site lies within the village confines for Coton-in-the-Elms in the adopted Local Plan and the Inspector considered that the proposal would be in line with the provisions of Housing Policy 5; he considered that Policy H1 of the Draft Local Plan should be afforded little weight due to the outstanding objections to the policy. He accepted that Policy H1 is more in line with national guidance provided by PPG3, with respect to sustainability however considered that there was no material difference with respect to the effect on sustainability between the proposed dwelling and that permitted as infill development under the Policy. He considered that there were insufficient grounds in relation to sustainability objectives to justify refusal of planning permission for the proposed single dwelling within the village confines. Impact of the development on the character and appearance of the area was not considered to be an issue due to the fact that the proposal would replace an existing building in a similar location.

## APPEAL ALLOWED

### Appeal by 3G UK LTD

The erection of a 20 metre high mono telecommunications pole, three antennas, one dish and one equipment cabinet at Field Off Arleston Lane Stenson Fields Derby (9/2002/1350)

The application was refused permission for the following reason(s):

1. *The site lies within a narrow belt of open countryside lying between the urban area of Stenson Fields/Sinfin and the A50 trunk road. The erection of the proposed mast, along with its associated development, would be a visual intrusion into the countryside, harming its amenity and character, contrary to the following development plan policies: Derby and Derbyshire Joint Structure Plan General Development Strategy Policy 4; and South Derbyshire Local Plan Environment Policy 1 and Community Facilities Policy 4. The proposal is therefore contrary to the draft South Derbyshire Local Environment Policy 3 and Community facilities Policy 7.*

The inspector considered the main issues to be:

- i. The effect of the proposal on the character and appearance of the area
- ii. The effect, or perceived effect, on the health and well being of person living in, or resorting to, the area.

The inspector considered that the appellants had sought to minimise the visual impact in their choice of equipment and design and that alternative solutions to the siting had been considered and rejected.

In consideration of local objection regarding the locality of the site as valued countryside, the inspector viewed the site as "lying on the urban fringe land rather than being truly rural" with the rural character already being effected by the housing development to the north and the construction of the trunk road to the south and considered that sensitively designed and located equipment could be accommodated on such a site.

He considered that the view of the proposal from Wragley Way and Stenson Lane would largely be screened by local vegetation and that proposed planting would provide further screening on the exposed sides. He commented that the view of the top of the mast would be unavoidable due to required operating heights but use of a recessive colour would assist in reducing its prominence.

In conclusion on this matter the inspector viewed that the proposal would have limited visual harm and had been designed and positioned to minimise impact and was acceptable in terms of its effect on the character and appearance of the area.

The inspector acknowledged the health concerns expressed by local residents and the Parish Council and the perceived sensitivity of the site, close to homes. In consideration of the Stewart Report, he concluded that the fear of health was not a sufficient reason to reject the proposal.

In consideration of other matters raised, the inspector commented that there was no evidence to indicate the proposal would be harmful in the designation of the adjacent woodland as a wildlife site or that it would impede on recreational or conservation activities or future uses of the land.

In consideration of the above matters the appeal was allowed subject to conditions for the submission of a landscaping scheme, details of colour and paint type for external surfaces and the removal of the structure and apparatus after it is no longer required.