

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 1995 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

Reference	Item	Place	Ward	Page
9/2014/0275	1.1	Findern	Willington & Findern	1
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9/2014/0574	1.3	Dalbury Lees	Etwall	60
9/2014/0702	1.4	Netherseal	Seales	66
9/2014/0742	1.5	Ticknall	Repton	77

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.

18/11/2014

Item 1.1

Reg. No. 9/2014/0275/RM

Applicant:
David Wilson Homes Ltd
Miller Homes Ltd,
Taylor Wimpey Developments
c/o Agent

Agent:
Mr Mark Rose
Define Planning & Design Ltd
Unit 6
133-137 Newhall Street
Birmingham
B3 1SF

Proposal: APPROVAL OF RESERVED MATTERS ON LAND
SUBJECT TO OUTLINE PERMISSION 9/2011/0640 FOR
979 DWELLINGS AND ASSOCIATED
INFRASTRUCTURE, INCLUDING NEW ROADS AND
JUNCTIONS, FOOTPATHS AND CYCLEWAYS,
DRAINAGE AND PUBLIC OPEN SPACE INCLUDING
PLAY AREAS, PITCHES AND STRATEGIC
LANDSCAPING ON LAND TO THE SOUTH AND EAST
OF HOLLYBROOK WAY, PORTICO ROAD AND
BOWBANK CLOSE, HIGHFIELDS FARM DERBY

Ward: WILLINGTON & FINDERN

Valid Date: 20/03/2014

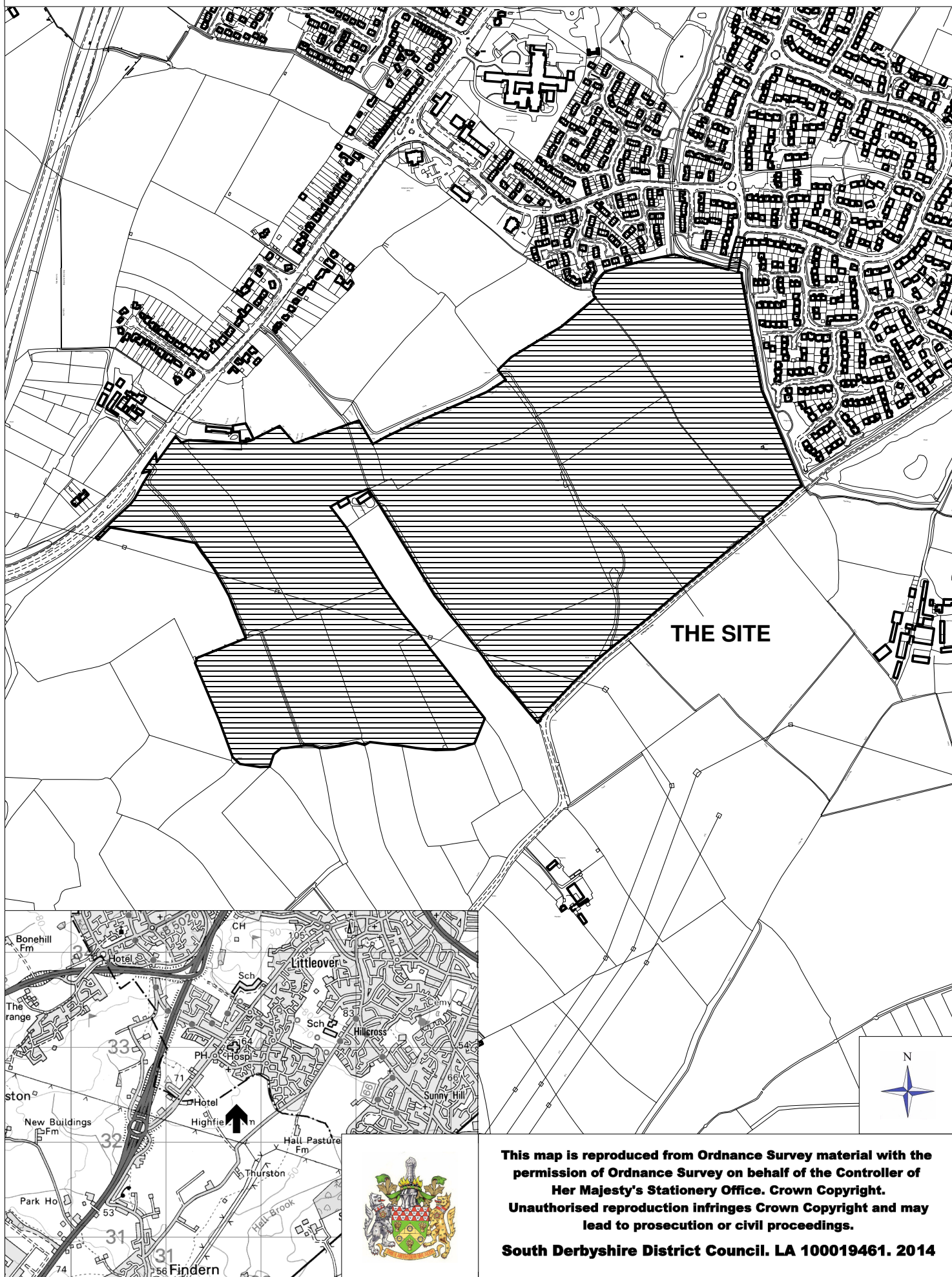
Reason for committee determination

This application is reported to Committee as it is a major application subject to more than two letters of objection from neighbours, and at the discretion of the Planning Services Manager with it necessary for Members to consider the changes to the Section 106 "package" arising as a result of viability assessment.

Site Description

The site currently comprises both pasture and arable agricultural fields. Virtually all the fields are clearly demarcated by hedgerows with a number of mature trees within, a number of which are coincidental with the alignment of drainage ditches and watercourses. Highfields Farm is the only building on the site and stands towards the mid to western end of the site along with associated hard standings and an agricultural outbuilding. A hotel complex directly adjoins the north-western corner of the site where it abuts Rykneld

9/2014/0275 - Land at Highfields Farm, Derby (DE23 4AN)



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South Derbyshire District Council. LA 100019461. 2014

Road. The fields directly to the north of the site (and to the other side of Rykneld Road) are allocated for mixed-use development (but predominately residential) under the adopted Derby City Local Plan. This land is known as the 'H9' development site. The north eastern end of the site is bounded by existing residential development with the remainder of the site being bounded by open countryside or Bakeacre Lane, which partially runs along the south-eastern site boundary.

The north-eastern end of the site is also bounded by Hell Brook which runs south out of Littleover and then east after leaving the eastern most tip of the site. A further water course joins the brook at this point and this part of the site is subject to fluvial flooding with it identified on Environment Agency mapping to fall in Flood Zones 2 and 3. Findern lies some 1 to 1.5km to the south; the Rykneld Road connects with the A38 close to the proposed access, and there is an existing local centre just north of H9 on Hollybrook Way. The centre of Derby is some 5 to 5.5km distant.

Proposal

The application seeks approval of Reserved Matters for access, layout, scale, appearance and landscaping for 981 dwellings and associated infrastructure such as roads, play areas, sustainable urban drainage systems (SuDS) and open space. The application relates to outline permission originally granted by the Secretary of State gained through a conjoined inquiry and later extended, but does not incorporate all of the land under that permission. A finger of land extending south-east from Highfields Farmhouse is excluded. In addition the information provided does not give layout or design of the primary school or the local centre to be provided as part of the Section 106 obligations under the outline permission.

Applicants' supporting information

A Design Statement explores the development concept and masterplan approved at the outline stage. It finds that built form and landscape character, the creation of special places and use of key buildings and same surface squares animate this masterplan. From this the Statement considers that Highfields Farm should respond to the opportunities (whilst working with or around a number of constraints) by accentuating the contrast between the future 'urban' (predominantly northern) part of the site with the rural southern edge; utilise and accentuate the existing north/south hedgerow and drainage corridors and topography, in particular as key character influences and movement routes; create a more central community hub in the heart of the development by relocating the local centre to the north of, and primary school to the south of, the main road; creating a central tree lined main road linking through the site; facilitating links to existing cycle routes and footpaths at the site edges and providing safe and permeable pedestrian and cycle routes throughout the site; and creating a series of 'Special Places' located on the convergence of primary movement routes and notable features.

It is intended to exploit existing hedgerows as key movement routes, sustainable urban drainage corridors and green fingers that slice through the built form to provide strong visual links to the open countryside, accentuating the rural aspect to the south; create a central community hub that acts as an 'integrator' for the proposed community, encouraging social cohesion and activity at the heart of the development; create a central tree lined avenue that forms the primary movement route through the development with traffic calming features carefully integrated into the route to retain the integrity of a traditional 'avenue', whilst reducing vehicle speeds at regular intervals; connect to the existing bus and cycle network and facilitate new links to the proposed development to the north; create distinctive built form character areas that make reference to the local vernacular and promote a clear movement hierarchy and aid legibility; and create distinctive landscape character areas that maximise existing site conditions and embody the function and location of the open space.

A set of Proposed Character Typologies and Special Places, or "design rules" are set out for various areas of the development, giving a hierarchy of roads namely:

- The Main Avenue – lined by trees and consistent built form and boundary treatments to provide rhythm;
- Streets – with deeper front gardens and a greater variety of units providing a less formal frontage pattern;
- Mews and Lanes – creating more intimate space with shared surfaces and parking in the street domain; and
- Rural Edge – larger properties fronting onto adjacent open space with irregular arrangement to reinforce a sense of informality and reflecting an organic and rural appearance.

The Urban Green Corridors and Rural Green Corridors are subject to similar rules as are the "Special Places" (focal junctions and squares). A similar set of rules are proposed for landscaping including the same Corridors, Highfields Park – where the approach is to integrate the typical recreational facilities of a community park (play, passive recreation, sport and dog walking) into a natural environment, the site entrances, retained hedgerows and the play/recreation strategy with a village green and two equipped areas for play – a Local Equipped Area for Play (LEAP) and a Neighbourhood Equipped Area for Play (NEAP). The Statement also reviews the surrounding area for positive features that could guide the character and appearance of the proposed development at Highfields Farm in a way that responds positively to its context.

An Ecology Report is provided. The site was subject to a wide range of ecological surveys in 2005 and 2006, and an updated assessment in 2011. This report provides an updated assessment of the site to determine whether the habitats present at the time of the previous assessment in 2011 have remained unchanged. The report initially found that the ecological baseline condition has not significantly changed since 2011 such that the proposals are unlikely to result in any further adverse effect on any protected species than

envisaged at the time of the original application. However further survey work has since added to this Report identifying the presence of a bat roost in a single tree and recommending that a Natural England European Protected Species Licence be obtained prior to its removal. Further precautionary checks on 4 other trees would also be undertaken immediately prior to their removal to re-confirm that bat roosts are absent. The further surveys also identify the presence of colonies of the White-letter Hairstreak butterfly, a UK BAP priority species, within four of the Elm trees on the site; as well as a single hole outlier badger sett which would need to be closed in order to facilitate the development. A badger sett would also be retained in its current location and protected from disturbance during development. All these matters are to be mitigated for.

An Ecological Mitigation, Management & Monitoring Plan is submitted in respect of addressing condition 36 of the Outline permission and the outlining and appending the findings of the additional Ecological Surveys. It proposes mitigation, compensation and enhancement for bats, badgers, nesting birds and invertebrates (the butterflies). The plan also sets out a scheme for habitat creation, retention and management.

An Arboricultural Assessment presents the results of an assessment of the existing trees' arboricultural value, based on their current condition and quality. The survey has also focused on any trees bordering the site that may potentially be affected by the future proposals or will pose a constraint to any proposed development. The majority of high quality mature tree cover on the site is at the southern and eastern boundaries and consisted mainly of English oak and common ash. The majority of the existing trees are to be retained and incorporated into the proposed development with only a small number of tree losses being required to facilitate the proposed layout. Of those trees shown to be removed the vast majority consist of areas of small sporadic self-set specimens and linear sections of hedgerow to create the necessary openings for the internal road network. Specialist construction techniques in the form of no dig construction will be required to retain a number of trees on site, as well as suitable permanent and temporary protection measures. Despite a small number of tree losses the development provides an opportunity to significantly increase the number of trees present on the site whilst retaining trees where appropriate to offer long term suitability of trees in relation to the proposed development.

An Archaeological Written Scheme of Investigation (WSI) is provided setting out the methodology for addressing the potential for the survival, and attempt to define further the character and extent of Romano-British remains which have previously been identified in the south-west of the development area. The desk-based assessment provided tentative evidence for possible prehistoric and Roman activity along with evidence for medieval agriculture the form of ridge and furrow. The WSI sets out intentions to address the elevated status of interest following trenching and fieldwork in 2007.

Planning History

9/2011/0640: Extension of time allowed for submission of reserved matters and implementation of 9/2006/0775 – Approved January 2012.

9/2006/0775: Outline application (all matters to be reserved) for up to 1200 residential units, a new primary school, community facilities and local centre, associated infrastructure and landscaping including the provision of a new country park – Not determined but allowed at Appeal January 2009.

Responses to Consultations

Natural England does not consider that this application poses any likely or significant risk to those features of the natural environment and so does not wish to make specific comment on the details of this consultation. However they guide the Council to assess and consider the possible impacts on protected species and point towards their Standing Advice. They also urge awareness in respect of proximity to Local wildlife sites and consider the site could benefit from enhanced green infrastructure (GI) provision (such as multi-functional spaces or corridors to improve flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement). It is also noted that the site lies adjacent to registered areas of deciduous woodland priority habitat and urge contributing further towards the creation of this priority habitat in accordance with local priorities such as the Biodiversity Action Plan for Derbyshire.

The Environment Agency has no objection as it appears that sufficient space has been provided for Sustainable Drainage Systems (SuDS). However it is noted that drainage calculations and detailed drawings will still be required in support of an application to discharge conditions 15 and 16 of outline permission relating to surface water drainage.

The County Flood Risk Management Team comment that the Environment Agency's updated Flood Maps for Surface Water indicate that the area to the south of Hell Brook (east of the site) is likely to be subject to surface water flooding for the 1 in 100 year rainfall event and development of the site for residential purposes will add a considerable area of impermeable surfacing to the existing greenfield site which is likely to exacerbate surface water flood risk. Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy are strongly recommended in order to promote betterment or meet current greenfield runoff rates. In order to achieve this, excess surface water runoff should be retained on site by means of storage. The developer should ensure that the proposed ponds have appropriate capacity to attenuate surface water so as to restrict runoff to the greenfield runoff rate, and that maintenance plans are agreed to ensure the ponds do so in perpetuity. They comment further that there has been a recorded incidence of surface water flooding nearby as a result of a blockage in a tributary of Hell Brook, and that as the field to the south of the Hell Brook is much lower it provides a vital exceedence flood route. Any raising of ground levels in this area could therefore have a substantial impact of the flood resilience of the upstream area and must therefore be given very careful consideration. The

subsurface is mostly classified as potentially suitable for infiltration SuDS although the design will be influenced by the ground conditions. The groundwater may be vulnerable to contamination although the site does not sit within a groundwater Source Protection Zone (SPZ) and ground instability problems may be present or anticipated. It is therefore recommended that a site specific ground investigation is undertaken for the site based on the review of the BGS data. Hell Brook is currently classified as of moderate potential under the Water Framework Directive and no activities or works should deteriorate the ecological status of any watercourses. Deterioration of any watercourses can be prevented by implementing a suitable SuDS management train.

The County Archaeologist notes the outline consent includes a condition relating to below-ground archaeology. This condition was attached because of the evidence for a Romano-British settlement (2nd-3rd century AD) encountered in the very limited pre-application evaluation trenching undertaken for the original planning application.

Since granting of the outline consent, a further phase of archaeological evaluation has taken place to define the extent of the remains on the site and to inform a final mitigation strategy for excavation of these remains before the commencement of development. This further evaluation has been successful in that it is now possible to define the area of Romano-British activity and an adjacent earlier phase of probable Iron Age date, and to discount the archaeological potential of the remainder of the site. The prehistoric and Romano-British remains on the site are of regional importance and should be fully excavated and recorded before the development takes place, with the results properly analysed, reported and archived in line with NPPF paragraph 141. It is advised the archaeological requirement therefore still stands, and the outline consent condition should remain in place until submission of the archaeological written scheme of investigation (WSI) dealing with excavation and recording of the remains, and completion of any pre-commencement phase of archaeological works set out in the approved WSI. It is noted that the WSI submitted as part of this application relates to a phase of the evaluation already carried out and is of no relevance against the condition.

The County Highway Authority initially raised objection on the basis that swept paths for refuse vehicles were required along with revisions to the layout of the estate roads and footways away from the main spine road. They also noted the proposed bus link should be excluded until it connects to the adjacent development (although land should be retained for this). It was also advised the chicanes on the spine road outside the proposed school and local centre required further thought, whilst as some cul-de-sacs had a mix of footways either side, a footway on one side only or intermittent footways, some form of design ethos needed to be carried through the whole site. They also advised that the verge and footway running along the main spine road would be best swapped to place the footway adjacent to the carriageway in order to aid construction and on-going maintenance. There was particular concern as to the arrangement of parking in the urban square with potential for reversing vehicle/passing traffic conflict. Revisions to the plans have accommodated most of these points, although the carriageway > verge >

footway arrangement remains as it is a key design ethos for the main spine road to create an avenue effect. Further advice on the acceptability and adoptability of pressed aggregate for surfacing and 25mm kerb up-stands to some roads has also been received. However detailed comments on the final revisions has not been received at the time of writing and any further comments and conditions not pre-empted will be reported at the meeting.

Derbyshire Wildlife Trust initially advised on new information which had come to light since the outline permission was renewed in that a number of the elm trees within the hedgerows support colonies of white letter hairstreak butterfly. White letter hairstreak is a Section 41 (NERC Act) Species of Principal Importance and a UK Biodiversity Action Plan species. It was also noted that one of the trees proposed for removal was not subject to a detailed bat inspection due to health and safety concerns. Whilst supporting the recommendation for a further targeted bat survey of the tree, they advised the survey needed to be undertaken prior to determination to enable the Council to discharge its duties in respect of the requirements of the Habitats Regulations. The presence of a single outlier badger sett was also noted and the Trust recommended the retention of the sett within a minimum 20m standoff between the sett entrance and the working area of the development. In addressing these initial comments the additional surveys are considered adequate. They note the presence of a bat roost associated with the surveyed tree is identified and a Natural England European Protected Species Licence is recommended prior to the removal of the tree. They advise the proposed mitigation measures including the erection of three bat boxes on other nearby trees prior to the felling operation are suitable to maintain the favourable conservation status of the local bat population. They welcome the proposed retention and protection of the four elm trees supporting the butterfly colonies together with proposed planting of Wych Elm within the landscaping scheme. They also note that the single hole outlier badger sett will need to be surveyed immediately prior to any works on the relevant phase of the development to ascertain the current status of the sett and inform appropriate mitigation, including the need for the granting of a licence from Natural England. An up to date check for badger setts should also be undertaken prior to the commencement of works on each phase of the development. The Trust highlight the need to evidence that the derogation tests set out in the Habitat Regulations 2010 have been taken into account, along with stating the evidence for conclusions drawn on each test as to whether the test can be met. Finally the Trust advise that the submitted Ecological Mitigation, Management and Monitoring Plan is acceptable for the purpose of discharging condition 36 of the outline consent and should be implemented in full as part of the reserved matters development. It is particularly important that the avoidance measures in respect of nesting birds as outlined in section 3.3 is strictly adhered to and that all retained habitats including hedgerows, trees, ponds and areas of species-rich grassland are protected from damage during site clearance and construction by the erection of adequate temporary fencing.

The Police Crime Prevention Design Adviser comments for the great majority of the site outlook is good, layout arranged in well defined building blocks and

graduated boundary treatment between public and semi-public space well specified; the peripheral and central footpath routes are well faced by development; and in cases where clipped hedges define public from private space, provision should be made in an ongoing maintenance plan for trimming to avoid visually separating footpath routes from the passive supervision of adjacent house fronts. Comments are then concentrated on a few residual concerns, those being surveillance of some parking courts and positions of gates to communal rear garden access.

Severn Trent Water Ltd raises no objection subject to condition.

The Environmental Protection Officer (Noise) raises no objection.

Responses to Publicity

Objections from 9 neighbouring residents have been received as a result of the initial consultation and re-consultation on revisions, raising the following comments:

- a) Rykneld Road, Pastures Hill and Burton Road are already at saturation point with the number of vehicles, and further housing will only exacerbate this problem;
- b) the grade separated junctions must be in place on the A38 first;
- c) traffic should not be directed onto the already overcrowded streets of Derby;
- d) access should be from Rykneld Road only with the proposed bridge across the Brook unacceptable in terms of capacity and safety;
- e) plans relating to the bridge (under application 9/2014/0351) are vague;
- f) this will increase the volume of traffic on Callow Hill Way and surrounding estate roads;
- g) danger to children with increased traffic in the area;
- h) impact on residential amenity from noise, pollution and traffic – including from construction activities;
- i) loss of hedgerow, wildlife and grassland;
- j) the only secondary school in the area (Littleover Community School) is already oversubscribed;
- k) the development will inevitably change school catchments;
- l) the number of schools in such a small area is unheard of;
- m) the proposal will cause a huge strain on the doctors surgery;
- n) social housing causes community cohesion problems;
- o) how many of the homes will be affordable to first-time buyers;
- p) there appears to be no consideration for or provision of bungalows, failing to accommodating an aging population;
- q) it will totally change the character of Heatherton village;
- r) loss of agricultural land and green space;
- s) using too much land now will compromise future development in this area later on;
- t) building 2 houses together with 3 floors will use less land space and enable the buyer to change the house into flats; and
- u) decrease in property value.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policy 11 (H11); Transport Policies 6, 7 and 8 (T6, T7 and T8); Environment Policies 9, 11 and 14 (EV9, EV11 and EV14); Recreation & Tourism Policy 4 (RT4); and Community Facilities Policy 1 (CF1).

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan 2014 (as modified): Policies S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H12 (Highfields Farm), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), and BNE4 (Landscape Character and Local Distinctiveness).

National Guidance

- National Planning Policy Framework (NPPF): with particular reference to paragraphs 6, 7, 8, 14, 17, 32, 39, 58, 61, 69, 70, 96, 109, 118, 120, 139, 173, 203, 204, 206, 215 and 216.
- National Planning Practice Guidance (NPPG).

Local Guidance

- Housing Design and Layout Supplementary Planning Guidance (SPG).

Environmental Impact Assessment (EIA)

The original outline application was accompanied by an Environmental Statement (ES) covering the scope for up to 1,200 dwellings along with the associated infrastructure and services (such as the primary school, local centre, roads, drainage and so forth). The 2011 renewal of this permission did not involve any changes to this scope of development such that, following an update to the ecology work to address the passage of time since the initial surveys; the ES was regarded as sufficient and suitable to enable determination. As part of this Reserved Matters application a further Screening Opinion was sought under Regulation 5 of the EIA Regulations 2011 for the same quantum and scope of development. The proposal is considered to fall within paragraph 10b of Schedule 2 to those Regulations, being an infrastructure project. However having taken into account the criteria of Schedule 3 to the Regulations, and the ES including the updated ecology study; the proposal is not considered to provide any fundamental change to

the conclusion previously reached. Accordingly the wider environmental impacts of this development remain appropriately considered under the previous ES and ecological addendum, and this application is not accompanied by a further ES.

Planning Considerations

Planning legislation requires that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The saved policies of the SDLP presently form the Development Plan (and are supported where relevant by the SPG) although the NPPF is a significant material consideration. The emerging Plan is also gathering weight whilst replies from consultees, third parties and the applicant are also material considerations. All these will carry varying degrees of weight.

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

- Overview of the Section 106 package;
- Outline Conditions;
- Viability and the resulting effect on the Section 106 package;
- Highway layout, access and movement and overall design;
- Play and open space; and
- Drainage and biodiversity.

Planning Assessment

The principle of development of this site has been long established, with the Secretary of State's decision in 2009 finding that the site was sustainable in principle and the impacts arising from the development could be made acceptable through conditions or planning obligations for off-site works or commuted sums. The 2011 renewal of the outline permission considered there had been no material change in these circumstances. Notwithstanding this, the applicant is now seeking to vary the Section 106 agreement on the grounds of viability such that alongside consideration of the reserved matters – namely access, layout, scale, appearance and landscaping – attention is given to whether the proposed changes to the Section 106 package compromise the suitability and sustainability of the development as originally proposed and envisaged.

Overview of the Section 106 package

For ease of reference, the original and proposed obligations are set side to facilitate comparison on that originally agreed and that now proposed:

	Existing	Proposed
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1	Affordable housing to comprise 40% of total number of dwellings, based on a 50:50 split between rent and shared ownership and in maximum clusters of 20 for houses and 30 for flats.	Affordable housing to comprise <u>14%</u> of total number of dwellings, based on a <u>75:25</u> split between rent and shared ownership and in maximum clusters of 20 for houses and 30 for flats.
2	Formal and informal open space, including children's play areas, a country park, and footpaths and cycleways.	No change
3	Bus service into the site, including £22,100 per annum for the first 5 years and a 33-seater bus.	No change
4	<p>Highways contribution of £1,327,000 towards:</p> <ul style="list-style-type: none"> a. the provision of a new bus lane on sections of the A520 Burton Road to provide bus priority at the Chain Lane/Pastures Hill roundabout and at the A5111 Outer Ring Road/A5250 Burton Road junction, along with provision of anti-skid surfaces on the southbound approaches to Hollybrook Way and Callow Hill Way roundabouts; b. improvements of the cycle time of the traffic signals at the City Hospital Gyratory; and c. upgrading of the Chain Lane/Pastures Hill roundabout in the provision of signal controls. 	<p>Highways contribution of £1,327,000 towards:</p> <ul style="list-style-type: none"> a. the provision of a new bus lane on sections of the A520 Burton Road to provide bus priority at the Chain Lane/Pastures Hill roundabout and at the A5111 Outer Ring Road/A5250 Burton Road junction, along with provision of anti-skid surfaces on the southbound approaches to Hollybrook Way and Callow Hill Way roundabouts; b. improvements of the cycle time of the traffic signals at the City Hospital Gyratory; and c. upgrading of the Chain Lane/Pastures Hill roundabout in the provision of signal controls.
5	Park & ride contribution of £150,000 towards a park & ride facility within Derby City.	No change
6	Construction of a primary school prior to the occupation of the 500 th dwelling, or a contribution of £3,300,000 in lieu of its provision.	No change

7	<p>Secondary school contribution towards:</p> <ul style="list-style-type: none"> a. the extension of an existing secondary school(s) (presently calculated to be circa £2.08m); <u>or</u> b. the construction of a new secondary school (presently calculated to be circa £2.65m) 	No change
8	Reservation of land for a Local Centre (comprising a mixed A1, A3, A4 and C3 use) and marketing of that land for such development.	No change
9	Healthcare contribution based on the number of dwellings eventually constructed. This is presently calculated to be circa £540,000.	No change
10	<p>Strategic highways contribution of circa £483,500 towards improvements of</p> <ul style="list-style-type: none"> a. the A50/A514 junction; b. the A50/A515 junction; c. the A50/A38 junction; and d. the A38/A5132 junction. 	No change
12	Ramp metering contribution of £196,500 towards metering measures on the A38/A52 slip roads.	No change
13	Travel plan including the appointment of a co-ordinator, a sustainable transport plan, a public transport plan, a vehicular and cycle plan and a construction traffic management and routing plan; along with payment of a monitoring contribution of £50,000.	No change
14	Travel plan supplementary measures fund of £50,000.	Travel plan supplementary measures fund of £50,000.

All commuted sums are index linked since the original agreement was signed, so would actually result in greater amounts to those stated above. The 2011 permission carried forward these provisions without material change.

Outline Conditions

The 2011 permission carried forward the same conditions originally drafted for and eventually attached to the Secretary of State's decision notice. Alongside the more familiar requirements for details of levels; drainage, hard and soft landscaping, boundary treatments, archaeological investigation, and ecological and landscape management plans for instance; these conditions include the requirement for dwellings to achieve at least Level 3 of the Code for Sustainable Homes, for 10% of predicted energy requirements of the whole development to be provided by on-site renewables; provision of the spine road prior to any other development commencing; prevention of associated construction traffic through the existing estate; and provision of details for off-site highway works on Burton Road and Chain Lane. There are no proposed changes to these existing conditions, but their relevance becomes pertinent in the discussion below.

Viability and the resulting effect on the Section 106 package

The original outline application was made in 2006 in a completely different economic setting with national planning policy objectives also pursuing a slightly different agenda – particularly with reference to climate change and energy consumption. In addition no viability work was undertaken then. The conditions and Section 106 package are therefore somewhat out of kilter with the prevailing situation, with the last 8 years having seen a significant economic downturn. This has ultimately resulted in a shift in focus for national planning policy as well as a less liberal development finance environment.

Consequently the whole scheme has been subjected to viability assessment. The District Valuer has accounted for indexation of the commuted sums whilst accommodating the “savings” found as outlined above, alongside changes in land value and build costs. In addition the demand and desire for flats has declined meaning the overall quantum of dwellings has dropped from the envisaged 1,200 to 979. These changes alone have significantly compromised the ability for the development to turn a profit whilst delivering the entire Section 106 package as originally envisaged. The up-front requirement for the spine road further compounds this (through imposing a significant early cost and thus increased finance requirements), as does the ongoing requirement for dwellings to achieve at least Code Level 3 and for 10% of overall predicted energy requirements to be provided (most likely through micro-renewables). In brief the quantum available for mitigation funding is limited and with other requirements having increased, the residual amount must be split differently. The aim remains to ensure that the overall development remains sustainable. The balance is therefore one of achieving the desired gains from the development whilst ensuring that environmental and socio-economic impacts are appropriately mitigated.

The impact on the surrounding highway network and sustainable modes of transport remains a key concern from local residents. It is material that the principle of a connection to the existing estate was considered and established through the outline permission. The impacts arising from this connection were therefore considered to be satisfactory subject to conditions and (in-part) the off-site highway improvements. The bridge connection therefore follows this principle and has been granted on its own merits as such. As to off-site works, the requirement for improvements at the City Hospital Gyratory are to be deleted since these are now complete; and the upgrading of the Chain Lane/Pastures Hill roundabout is a duplication of the requirements under condition 27, which remains in force. The only residual change is the funding of the Travel Plan co-ordinator. Nevertheless the developer remains under the obligation to provide the Travel Plan and its relevant components as well as facilitate a co-ordinator for this. As such there is no discernable change to highway congestion and safety impacts, nor to sustainable transport objectives, arising from the proposed changes to the Section 106 package.

The provisions towards primary and secondary school education also remain unchanged, and given the present issue with capacity in the sub-Derby area these provisions have been strongly protected during negotiations. Healthcare and public open spaces provisions also remain unaltered. The focus therefore falls on the proportion of affordable housing. At the time of the original agreement, the most up to date Strategic Housing Market Assessment (SHMA) pointed towards a 50:50 split between rent and shared ownership. The latest SHMA steers this towards a 75:25 inevitably having a considerable impact on viability from the outset. The Strategic Housing Manager is comfortable with this change in direction as well as the overall mix proposed which in broad terms is not too dissimilar to the mix originally envisaged. When factoring in all the above commuted sums and fixed costs towards off-site works, renewables, a high quality of design and materials, etc; the overall proportion of affordable housing falls from 40% to 14%.

Whilst acknowledging that this represents a significant reduction since 2009, it should be noted that the developer has willingly committed to absorbing a “flexing” deficit in order to prevent a further drop below 14%. Whilst final checks on viability are ongoing at the time of writing, this deficit is likely to be in the order of some £6-7m. However it is clear that it will not reach the “break even” mark such that 14% must be regarded as a maximum. This is due to the fact that the build programme is likely to span some 8 years by which time property values and build costs may provide a balance of some or all of this deficit. In anticipation of this the amended Section 106 agreement now carries a review mechanism at the occupation of 500 dwellings or 4 years from the date of commencement (whichever occurs first) where any surplus can be identified and used towards increasing the proportion of affordable units in the later phases. This is the same approach taken at the Stenson Fields Farm development, although the trigger point is sooner. Further regard has been had to the effect of the conditional requirements for Code Level 3 and renewables and what might be achieved if such requirements were later removed. Further viability work demonstrates that the proportion of affordable

housing could rise to 18% and further clauses have been inserted in the proposed amendment to ensure this can be secured.

When considering the overall sustainability balance, whilst 14% presently represents a considerable drop, it must be considered in the context of the emerging Plan which points to a more viable starting point of 30% and the NPPF which strenuously reasserts the need to significantly boost the supply of housing (i.e. in the short term instead of waiting and hoping that higher aspirations can be delivered). In this context and on the basis of the rigorously tested viability evidence by the District Valuer, and review mechanism to enable reasonable “claw back” of surplus funds in time, 14% is not considered to be unreasonable nor is it felt to compromise the overall sustainability of the development.

Highway layout, access and movement and overall design

The necessity of off-site works to support this development has already been discussed above, with the impact on existing congestion hotspots and surrounding roads appropriately mitigated for. The accesses from Callow Hill Road and Rykneld Road have already been assessed as acceptable in principle; with it not understood there is an objection from the Highway Authority to the detailed access onto Rykneld Road given it is presently subject to a Section 278 application. As to the layout of internal roads, adequate emerging and forward visibility to both the spine road and surrounding estate roads is considered to be acceptable with specific changes accommodated under recent revisions. Whilst the presence of street trees and raised carriageways (on cul-de-sacs) has raised some concern with the Highway Authority, there are wider design objectives for these such that these have been designed to meet published and adoption standards.

A range of surfacing materials is proposed for the different vehicular routes. The main spine road comprises a traditional highway construction although with tree lined verges segregating pedestrian, cycle and vehicular traffic. There are a number of locations where natural colour block paving is used to provide a sense of place and to lower vehicle speeds. This same ethos then extends into parts of the estate roads which branch off from the spine road. Cul-de-sacs leading to green corridors or edges step up to charcoal colour block paving whilst private or shared drives are treated with resin bound gravel. This approach has worked well at Stenson Fields in improving legibility for the destination of users and is a “quality mark” which should be encouraged. This approach has been further extended under the proposed designs to include pressed red aggregate into tarmac on some circular routes in the site. Courtyard parking is also to be block paved but in a buff colour. Away from the vehicular domain cycle and footpath routes run along existing green corridors and edges where possible, again to provide a sense of segregation and to elevate enjoyment and preference for such modes of transport. Potential for road and cycleway connections to the Derby City site to the north (known as H9) is provided by the proposed layout, whilst one of these would also facilitate a bus route connection to H9.

A set of Proposed Character Typologies and Special Places, or “design rules” are set out for various areas of the development, giving the hierarchy of roads as outlined briefly above:

- The Main Avenue – grassed verge and tree lined avenue with feature gables in the frontage and consistent railings and hedgerow boundary treatments providing rhythm;
- Streets – with deeper front gardens framed by low hedgerows and parking to the front with a less formal frontage pattern with a greater variety of units;
- Mews and Lanes – More intimate space with shared surface and on street parking and private boundaries demarcated by a change of paving materials and/or banding or a shallow planted edge;
- Rural Edge – Larger properties fronting onto adjacent open space with irregular arrangement and spacing and varied setbacks to reinforce the sense of informality and reflecting an organic and rural appearance, whilst vegetation is used to help break up the built edge;
- Urban Green Corridors – More formal building arrangement to green corridor edge Strong sense of enclosure to reinforce “urban” character Greater continuity of built form
- Rural Green Corridors – More fragmented and varied building edge to reinforce “rural” character Make feature of existing hedgerow Informal building arrangement
- “Special Places” (focal junctions and squares) – more distinctive areas either focussed towards an urban square feel or ensuring a dominant landscape feel, with a range of building and surfacing materials and built form and patterns along with boundary treatments to delineate the entering of such places.

A similar set of rules are proposed for landscaping:

- Highfields Park – the approach is to integrate the typical recreational facilities of a community park (play, passive recreation, sport and dog walking) into a natural environment, with existing hedgerows and trees retained, and wildflower areas contrasting mown amenity grassland;
- Urban Green Corridor – existing hedgerows and trees are maintained with additional, formally laid out specimen tree planting supplementing these; mown grass areas, formal hedge and ornamental planting to building frontages, and shared footpath/cycleways and surfacing at road crossings;
- Rural Green Corridor – existing hedgerows and trees are maintained with additional groups of specimen tree planting, shrub planting to building frontages, meadow grass and wildflower areas, and shared footpath/cycleways;
- Entrances – ornamental trees announcing the entrance, along with hedgerow and wildflower planting;
- Play strategy – two 400m² equipped areas for play (a LEAP and a NEAP);
- Retained Hedgerows – minimal adopted road breaking existing hedgerows with intention to retain trees within.

House types have been subject to a great deal of scrutiny given the three developers involved in this site. There has been a conscious effort to ensure minimum roof pitches across all designs to reflect the local vernacular, along with ensuring a range of cill and lintel details, eaves and verge details, and porch and chimney treatments. The placing of house types has led to numerous revisions to the current set of designs presented so to ensure active frontages to public areas, ensuring natural surveillance and attractive elevations. The principles and position of boundary treatments have been closely shaped although at the present time there is a need to secure further details of the relevant heights and materials, including position of gates, through condition. Hard and soft landscaping is considered to complement the setting of the dwellings positively with “greening” of the street and courtyards wherever possible.

In terms of overlooking and overshadowing there is generally no concern with a good standard of amenity for occupiers of the proposed development whilst existing neighbours are generally beyond the minimum distances specified in the SPG. In terms of Secured by Design principles, there remains some residual concerns following consultation, but these are either adequately mitigated for by way of the conditions below or on balance are not considered to be so severe to warrant either further whole scale re-design of parts of the site or even refusal.

Drawing all the design considerations together the scheme achieves the target of 14 out of 20 under Building for Life criteria (i.e. a ‘good’ rating) subject to the conditions below being attached and satisfactorily executed.

Play and open space

The provision and treatment of natural open space is welcomed, with the tree and planting species mix across this area, balancing ponds and supplementing routes through the site all appropriate. There are a number of existing trees, often along hedgerow corridors, within these areas, some subject to a Tree Preservation Order, which are to be retained and protected during construction. These would add considerable visual value to the overall scheme. The Open Space & Facilities Development Manager and Tree Officer endorse the proposals. In terms of play equipment, the locations for the proposed play areas are considered suitable to serve occupants across the development, with details of the play equipment and Country Park already secured under the terms of the Section 106 agreement.

Drainage and biodiversity

Part of the site to the eastern corner is subject to flooding, as is the Hell Brook which passes down the north-eastern edge. However, proposed dwellings and hard surfaces are located outside of such risk, with a number of dry and permanently wet ponds placed throughout the country park, along with the existing hedgerow drainage courses through the site. These are designed to accommodate flows from the site whilst ensuring existing flood plain capacity

and greenfield discharge rates to the Hell Brook are not compromised. These features, along with the wider country park, would also offer a net biodiversity enhancement through the transfer of agricultural land to meadows, the creation and enhancement of permanently wet water bodies and margins, and considerable tree planting.

It is necessary to evidence that the Habitat Regulations 2010 have been taken into account, along with stating the evidence for conclusions drawn on each test as to whether the test can be met. The three tests are as follows:

- (i) The action will be undertaken for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (ii) That there is no satisfactory alternative; and
- (iii) That the action will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range.

The Trust has advised the third test can be met and this is agreed given the proposed mitigation and enhancement strategy. In looking at the other tests there is no other satisfactory alternative to the actions proposed given the need to develop the site in a manner which affords connectivity. The removal of some existing habitat features is therefore the only solution, whilst overall the action would be undertaken for other imperative reasons of overriding public interest through meeting a district, regional and national housing need. The mitigation, compensation and enhancement measures proposed in the Ecological Management Plan would be secured by condition, along with the Trust's specific recommendations in respect of protecting species and habitats.

Summary

This assessment identifies that it is the reduction in affordable housing provision which is the main change to the scheme originally envisaged. The ecological, highway, visual and amenity impacts all remain well within the scope of the ES when it was originally presented, with the masterplan of the time largely retained – even when working around the finger of land excluded. This fall to 14% affordable housing provision is a direct result of the reduction in the number of dwellings on the site, extensive viability work and a material change in the prevailing economic and planning policy circumstances to date. It is not considered to turn the principle of development on its head. Indeed with a precautionary approach written into the revised Section 106 agreement, it is quite possible that this 14% provision would result in a significant increase by the end of the build out programme, some 8 to 10 years from now. In terms of design, with the scheme scoring 14 out of 20 under the Building for Life criteria, and considering the layout and house types now proposed; a high quality development is now likely to ensue and one which can be presented as an exemplar for design principles for future large scale developments in the District.

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 completion of the amended Section 106 agreement and 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:
 - a. (Highway and Drainage Plans) 11285/SK01 Rev U, 11285/SK07 Rev E, 11285-255 Rev D, 11285-256 Rev C, 11285/1000 Rev M and 11285/SK10 Rev B;
 - b. (Layout Plans) HGHFDS/DWHA1 Rev S, HGHFDS/BRTA2 Rev N, HGHFDS/DWHA3 Rev S, HGHFDS/BRTA4 Rev R, HGHFDS/BRTA5 Rev S, 2910/PL-B1 Rev L, 2910/PL-B2 Rev P, 2910/PL-B3 Rev T, 2910/PL-B4 Rev R, 105-HF/PL/C1 Rev E, 105-HF/PL/C3 Rev F, 105-HF/PL/C4 Rev E and 105-HF/PL/C5 Rev H;
 - c. (Barratt & David Wilson Housetypes) 2010-ALN-C-01 HF Rev C, HF-ALN1-01, RHF-ALN-01 Rev A, WHF-ALN-01, 2010-BARS-C-01 Rev NM01-A, 597---5 Rev G Elev - H Plan, 2010-CAM-C-01 HF Rev G, HF-CAM-01, 2010-CHE-C-01 HF Rev G, 2010-CEM-C-01 HF Rev A, HF-CEM-C-01, 433---5 Rev H Elev - K Plan, 485FR---5 Rev A, 485FR---5 Rev A (1 of 2 & 2 of 2), 485GWB---5, 485RG---5 Rev A, Special 485---5 Rev A, HF-FAV-C-01 Rev A, 2010-FIN-C-01 HF Rev C, HF-FIN-S-01 Rev A, WHF-FIN-S-01 Rev A, 2010-DET-A-159, 2010-DET-C-136 Rev A, G2AW, GH2M, 2010-DET-C-135 Rev A, GH1A, HF-HNL-01 HF, WHF-HNL-01 Rev B, 341-E Rev H Elev - J Plan, 2010-HAL-C-01 HF, RHF-HAL-C-01 Rev A, 588---5, 588FR---5 Rev A, 588SR---5 Rev A, 2010-HEX-C-01 HF, HF-HEX-C-01, HGHFDS-A1-06-02 Rev A, HGHFDS-A2-06-02 Rev A, HGHFDS-A3-06-02 Rev A, HGHFDS-A4-06-02 Rev A, HGHFDS-A5-06-02 Rev A, HGHFDS-BRTA2 Rev N, HGHFDS-BRTA4 Rev R, HGHFDS-BRTA5 Rev S, HGHFDS-DWHA1 Rev S, HGHFDS-DWHA3 Rev S, HXXXX-SWFD-01, 2010-KND-C-01 HF Rev A, WHF-KND-01 Rev A, 2010-LIN-C-01 HF Rev D, HF-LIN-01, RHF-LIN-01 Rev A, WHF-LIN-01 Rev A, 411---5 Rev E Elev - I Plan, 2010-MOR-C-01 HF Rev B, 2010-MOR-C-01 HFS Rev E, HF-MOR2-01, N105TE-5/N105TI-5 Rev A, 2010-ROC-C-01 HF Rev G, HF-ROC-02 Rev A (1 of 2 & 2 of 2), MSTB-3C, MSTD--3C, 2010-H331-C-01 HF, 2010-H332-C-01 HF, H469---5 Rev F Elev - J Plan, P382W-EB5 Rev K, 421---5

Rev F Elev - H Plan, 421SR---5 Rev F Elev - H Plan, 421W---5
Rev F Elev - H Plan and 421W---5 Rev F Elev - H Plan;

- d. (Taylor Wimpey Housetypes) LAV-01, LAV-V1 Rev C, LAV-V2 Rev C, LAV-V3 Rev C, ALT-01 Rev A, ALT-V1 Rev C, ALT-V2 Rev C, ALT-V3, STAN-01 Rev B, STAN-V1 Rev C, STAN-V2 Rev C, STAN-V3 Rev B, STAN-V4 Rev C, WILT-01 Rev A, WILT-V1 Rev C, WILT-V2 Rev B, WILT-V3 Rev C, WILT-V4 Rev C, ADR-V1 Rev D, ADR-V2 Rev D, ADR-V3 Rev D, HADD-V1 Rev C, HADD-V2 Rev C, HADD-V3 Rev D, HADD-V4 Rev C, EAS-V1 Rev B, EAS-V2 Rev D, EAS-V3 Rev C, EAS-V4 Rev C, EAS-V5 Rev B, LANG-01, LANG-V1 Rev B, LANG-V2 Rev B, LANG-V3 Rev B, AA11-V1 Rev D, AA21-V1 Rev D, AA31-V1 Rev D, AA41-V1 Rev C, APP-V1 Rev D, APP-V2 Rev C, BEL-V1 Rev C, BEL-V2 Rev B, DEN-V1 Rev D, DEN-V2 Rev C, DEN-V3 Rev B, LYD-V1 Rev E, LYD-V2 Rev E, MONK-V1 Rev E, MONK-V2 Rev E, MONK-V3 Rev E, FLAT-V1 Rev C, FLAT-V2 Rev C, MILL-BEL-01, MILL-BEL-02 Rev B, MILL-FLAT-01 Rev A, MILL-FLAT-02 Rev C, MILL-DEN-01 Rev A, MILL-DEN-02 Rev C, DOV-V1 Rev C, DOV-V2, KENT-V1, KENT-V2, 2910 G-01, 2910 G-02 and 2910 G-03;
- e. (Miller Housetypes) 105-AUD-PD-E-02, 105-AUD-PD-E-01, 105-AUD-PD-P-01, 105-AUD-PD-P-02, 105-CHI-PD-01 Rev A, 105-CHI-PD-01 Rev A, 105-CHI-PD-01 Rev A, 105-CRO-PD-01, 105-CRO-PD-02, 105-DAR -PD-01 Rev B, 105-DAR-DA-PD-02 Rev B, 105-DAR-DA-PD-03 Rev B, 3078013 Rev A, 105-DAR-DA-PD-01 Rev B, 105-ESK-PD-01 Rev B, 105-ESK-PD-02, 105-ETW-PD-E-01 Rev A, 105-ETW-PD-E-01, 105-EVE-PD-01 Rev A, 105-EVE-PD-02, 105-HQI1-A-PD-01 Rev A, 105-DG-PD-01, 105-SSG-PD-01, 105-TG-PD-01, 105-GLE-PD-01, 105-GLE-PD-02, 105-GLE-PD-03, 105-HARD-3B-PD-01 Rev A, 105-HARD-4-PD-01 Rev A, 105-HAW-PD-01 Rev A, 105-HAW-PD-02, 105-HQI1-A-PD-01 B, 105-HQI2-A/P956, 105-HQI2-A-PD-01, 105-HQI2-PD-01, 105-HQI2-PD-02, 105-HQI3-A-903, 105-HQI3-A-PD-01 Rev A, 105-HQI3-PD-01 Rev A, 105-HQI3-PD-02 Rev A, 105-HQI3-PD-03, 105-HQI4-PD-881-2, 105-HUX-PD-E-01, 105-HUX-PD-P-01, 105-MIT-PD-01 Rev A, 105-MIT-PD-02 Rev A, 105-MIT-PD-02 Rev A, 105-NEV-PD-02, 105-NEV-PD-01, 105-PUS-PD-01, 105-PUS-PD-02, 105-REP-PD-02 Rev B, 105-REP-PD-04 Rev B, 105-REP-PD-01 Rev B, 105-REP-PD-01 Rev B, 105-ROS-PD-01 Rev B, 105-ROS-PD-02, 105-RYD-PD-01 Rev A, 105-RYD-PD-02 Rev A, 2028011 Rev A, 105-WA-PD-01, 105-WEL-PD-01, 105-WEL-PD-02, 105-WIL-PD-E-01 Rev A and 105-WIL-PD-P-01;
- f. (Hard and Soft Landscaping Plans) DE_081_L_001 Rev F, DE_081_L_002 Rev F, DE_081_L_003 Rev F, DE_081_L_004 Rev F, DE_081_L_005 Rev F, DE_081_L_006 Rev F and DE_081_L_007 Rev F;

- g. (Ecological Mitigation, Management and Monitoring Plan) 1957.03_R_APPR_250614; and
 - h. (Landscape Management Plan) DE_081_LMP October 2014 Rev A
- 2. Notwithstanding the approved drawings/plans, no development 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. facing and detailing bricks, including clear specification of where different bricks (above DPC) to the main facing brick and/or render are to be used to emphasise cills, lintels, corbelling, verges or string courses (such as blue brick);
 - b. render type, finish and colour, which shall also be shown on revised material layout plans to those submitted with the application;
 - c. roof and ridge tiles, including clear specification of the type and shade/colour;
 - d. colour of fascia boards and mortar for verges; which shall also be shown on revised material layout plans to those submitted with the application;
 - e. chimneys, roof lights and dormers;
 - f. utility cupboard colours (both wall and ground mounted);
 - g. highway kerb styles to all road typographies and special places;
 - h. block paving types and colours/shades (to be in line with the approved landscaping plans); and
 - i. resin bound gravel and pressed aggregate colours/shades (to be in line with the approved landscaping plans).

Thereafter the dwellings/highways/driveways shall be constructed 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.

- 3. Notwithstanding the approved drawings/plans, no development shall commence until revised drawings detailing the location and surfacing for bin collection points off shared private drives and parking courtyards overlooked by dwellings have been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt shared private drives are defined as those which are shown on the approved landscaping plans as to be finished in a resin bound gravel

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

- 4. Gutters and downpipes shall have a black finish.

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

5. Notwithstanding the approved drawings/plans, no development shall commence until revised drawings detailing the height, types and materials of boundary fences and walls and the positions of associated pedestrian gates have been submitted to and approved in writing by the Local Planning Authority. Such drawings shall be based on the positions of boundary fences and walls shown on layout plans hereby approved and be supplemented with elevational plans to show the typical heights and materials of such fences and walls. The fences, walls and pedestrian gates shall thereafter be constructed in accordance with the approved details and thereafter, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no further boundary walls or fences shall be erected forward of such walls or fences.

Reason: The plans submitted remain unsatisfactory in this nature and in the interests of the appearance of adjoining dwellings and the overall character of the area, and in order to maintain the character of public spaces as secured under the plans hereby approved.

6. Notwithstanding the approved drawings/plans, no development 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.

7. Notwithstanding the approved drawings/plans, pond 1 forming part of the surface water drainage system shall be constructed with a permanent pool and aquatic bench designed within the current pond 1 base layout in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. Such details shall include cross sectional drawings and an aquatic planting scheme. The approved planting scheme shall be implemented prior to the first use of the pond in receiving flows from the development.

Reason: In the interests of enhancing biodiversity and to recognise the design value in such a solution.

8. No development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management

Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of “biodiversity protection zones”;
- c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction;
- d) the location and timing of sensitive works to avoid harm to biodiversity features, including checking for badger setts and pre-felling survey of the tree supporting a bat roost;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication;
- g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- h) use of protective fences, exclusion barriers and warning signs (particularly in respect of the elm trees supporting the butterfly colonies).

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: To safeguard protected species and in the interests of maintaining and enhancing biodiversity across the site.

9. Prior to the occupation of each dwelling, the garage accommodation/parking space to be provided in connection with that respective dwelling shall be laid out, surfaced (where external) and thereafter made available for the parking of residents/visitors vehicles.

Reason: To ensure adequate parking and turning provision for each dwelling.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no less than 2 of the parking spaces to be provided in connection with each dwelling provided by way of garage accommodation or parking bays shall not be used other than for the parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure adequate parking and turning provision for each dwelling.

11. There shall be no gates or other barriers within 5m of the nearside highway boundary (proposed highway boundary) at any of the private driveways or vehicular accesses within the site. Any gates beyond 5m from the highway boundary (proposed highway boundary) shall open inwards only.

Reason: In the interests of safety on the public highway.

12. The proposed private driveways or vehicular accesses within the site shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary (proposed highway boundary).

Reason: In the interests of safety on the public highway.

13. Notwithstanding any approved plans, accesses onto private drives and shared parking areas shall be constructed as splayed vehicular crossovers in order to maintain pedestrian priority.

Reason: In the interests of highway safety.

14. Where dwellings are fronted by 650mm maintenance margins (rather than footways) the entire frontage shall be maintained clear of any obstruction exceeding 600mm relative to road level, for a distance of 2.4m from the carriageway edge or such other distance as may be agreed in writing by the Local Planning Authority, in order to maximise visibility for emerging drivers.

Reason: In the interests of highway safety.

Informatives

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, meetings and negotiations, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of an Agreement under Section 106 of the Town and Country Planning Act 1990 revising and securing obligations contained in the original Agreement (as modified).
- c. This decision is considered to adequately address the pre-commencement requirements of conditions 10 and 36 of outline planning permission ref: 9/2011/0640. For the avoidance of doubt, whilst details submitted under this application have been considered in respect of conditions 7, 8, 14, 15, 16, 17, 22 and 35 of the same outline permission, these are not considered to be satisfactory or complete such that these conditions remain outstanding and/or are reasserted under this permission to ensure further details are submitted prior to development commencing.

- d. When submitting details required under condition 5, consideration should be given to reducing the height of plot to plot side boundary fences (e.g. to 1.2 or 1.5 metres) in order to encourage social cohesion, whilst walls should be shown with typical architectural detailing (such as capping or buttresses).
- e. 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.
- f. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway (new estate streets) 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.
- g. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works.
- h. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email – es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- i. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- j. Highway surface water shall be disposed of via a positive, gravity fed system (i.e: not pumped) discharging to an approved point of outfall (e.g: existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority

or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

- k. 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 (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- l. Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway (including public Rights of Way), at least 6 weeks prior notification should be given to the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the New Roads and Streetworks Section).

18/11/2014

Item 1.2

Reg. No. 9/2014/0431/SMD

Applicant:
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Agent:
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LE19 1WZ

Proposal: **THE ERECTION OF RESIDENTIAL DEVELOPMENT OF
64 UNITS WITH ACCESS PROVIDED OFF LAND AT
SK2915 3206 VALLEY ROAD OVERSEAL
SWADLINCOTE**

Ward: **SEALES**

Valid Date: **13/05/2014**

Members will recall this application was deferred from the October committee in order to obtain further explanations from both the County Highway Authority and the County Education Authority with regard to their original consultation responses. The report remains as it appeared on the agenda for the October committee; however, where additional information has been received both as a result of these requests and the amended plans, this appears within the report in *italics*.

The report also refers to a recent appeal decision for High Street, Linton, (also attached to this agenda in Part 2) which has a strong bearing on the arguments contained in the Planning Assessment chapter of the report and which Members should bear in mind when making their final decision on the application.

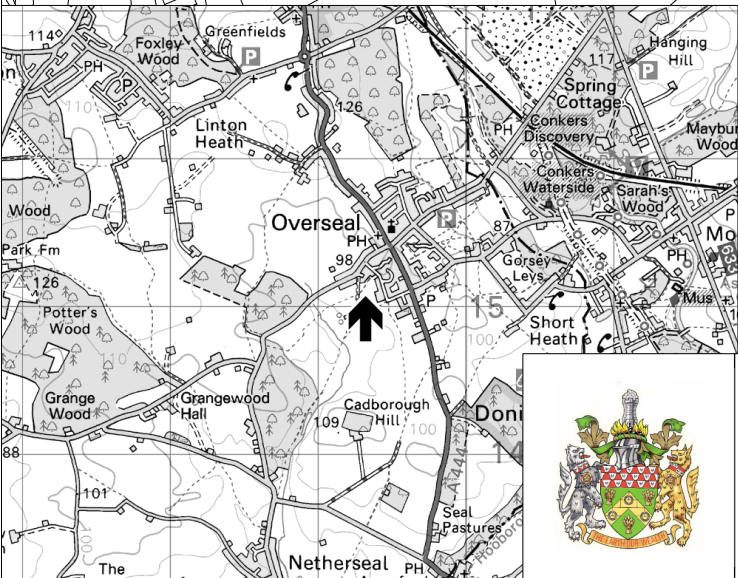
Reason for committee determination

The application is for a major development that is contrary to the development plan and has attracted more than two letters of objection.

Site Description

The application site measures some 2.05ha and lies to the southwest of the village. It is enclosed on two sides by residential development to the north and east and open farmland to the south, southwest and west, although there

9/2014/0431 - Land at SK2915 3206, Valley Road, Overseal, Swadlincote
(DE12 6NL)



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is a sewage treatment works immediately to the southwest. The site has a short section of frontage to Valley Road to the northeast from which pedestrian access is currently gained. The route of Public Footpath No.13 enters the site at this point and runs south-westwards crossing Public Footpath No. 9 outside the western boundary. Vehicular access into the site would be taken from this point. There are existing trees within the hedgerows along the western and south-eastern boundaries of the site. The site lies outside but adjacent to the settlement boundary of Overseal and is within the River Mease SAC. It is formed by a single field of horse-grazed pasture with an historic ridge and furrow field pattern.

Proposal

This is a detailed (full) application for the erection of 64 dwellings (amended from 61 originally proposed), together with the provision of estate roads, garages, landscaping, public open space, an equipped play area and the retention of a public right of way. The top section of the estate road would end at a turning head adjacent to the proposed LEAP. A private drive leading off the turning head would serve a further 5 properties. The public footpath would run parallel to the top section of the estate road. The lower section of the road would serve the remaining properties, terminating at a turning circle. A private drive would also lead off the turning circle and serve three further properties. The balancing (attenuation) pond would be located in the southern-most corner of the site. A footpath would link the pond to the LEAP.

A mix of one, two, three and four bedroom properties are proposed as follows:

8 x 1-bedroom flats
7 x 2-bedroom dwellings
29 x 3- bedroom dwellings
20 x 4-bedroom dwellings

A Screening Opinion under the EIA Regulations has been undertaken and a view taken that the proposed scheme is not EIA development and will not require the submission of an Environmental Statement in support of the proposed scheme.

Similarly, a Habitats Regulations Assessment has been carried out which concludes that the proposed development would have no likely significant effect on the River Mease SAC and therefore there is no requirement to undertake an appropriate assessment.

Applicants' supporting information

The application is supported by a number of documents, all of which are available to view on the Council's website. For ease of reference, these are listed below and a short summary of each is provided.

- Design and Access Statement
- Arboricultural Assessment

- Planning Statement
- Flood risk Assessment
- Transport Statement
- Landscape and Visual Impact Appraisal
- Ecological Appraisal
- Archaeological Desk-based Assessment
- River Mease SAC Impact Statement

Design and Access Statement

The document includes a character assessment of the area, a sustainability appraisal of the site and discusses how the proposal relates to planning policy. It also evaluates the proposal against the constraints of the site and provides information on key vistas, the design concept and the principles of appearance and character. A Building for Life 12 Assessment is also included, which concludes by stating that the proposed development would score 12 out of 12.

Arboricultural Assessment

This includes an arboricultural impact assessment of the existing trees, details of those that would be retained and details of the proposed tree protection measures for the retained trees.

Planning Statement

This concludes by stating that the key material considerations in relation to the provision of additional housing justify the site's release for development. The development of the site represents an opportunity to secure economic, social and environmental gains in accordance with paragraphs 14 and 47 of the NPPF and is therefore in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Flood Risk Assessment

The document includes site details, flood risk, surface water run-off and flood mitigation measures. It concludes by stating:

- The site lies in an area of Zone 1 Flood Risk
- Finished levels would ensure flows within the boundary ditch system would be conveyed along the boundary and beyond
- Surface water drainage would connect into the existing surface water system to the south of the site
- Drainage would be designed to accommodate a 1 in 30 year event and be put forward for adoption by Severn Trent Water
- The system would connect into the attenuation pond and would accommodate flows generated by up to the 1 in 100 year event plus allowance for climate change

- Development proposals would include measures with respect to the River Mease SAC
- The development would not be at risk from flooding from external sources, would not increase flood risk associated with the development and its environment and would therefore be appropriate.

Transport Statement

This is summarised by outlining the existing facilities within the village and the distances between those facilities and the proposed development. The nearest bus stops are around 300m from the site, on Main Street and Lullington Road, and therefore within the recommended maximum distance. Bus services operate regularly and include the provision of services to local schools. Existing traffic flows on Valley Road are minimal and 85th percentile vehicle speeds are well within the 30mph speed limit. Vehicular access to the site would be provided via a new, simple priority junction onto Valley Road designed in accordance with the 6Cs Design Guide. The estimated traffic impact is minimal and not considered to have a significant impact on the existing highway network. Based on the findings of the Transport Statement it is considered that the proposed development would be acceptable in transport terms.

Landscape and Visual Impact

This concludes as follows:

- The character of the site is influenced by the existing residential edge of Overseal
- The site is well contained by existing built development and established vegetation and has a strong defensible boundary with the open countryside
- Tree and hedgerow features would be retained
- The proposed layout would ensure that built development would be adjacent to existing residential edges with public open space and drainage attenuation adjacent to the open countryside and therefore not out of scale or context with the nature of the landscape
- No significant effects on the National Forest; moreover it has potential to benefit the local area through the proposed landscaping
- Visual receptors include relatively few existing residential properties (mainly those bordering the site), public rights of way (mainly limited to the public footpath crossing the site and those adjacent to the southern and western boundaries) and local roads (limited to fleeting views from short sections along Valley Road. There would be no views from Lullington Road or Burton Road.
- Overall the site comprises a single field with little landscape or ecological value and the proposed development would relate well to the existing residential edge of Overseal. It is considered that the proposed residential development is a relatively modest size and density of up to 64 dwellings with a robust green infrastructure and is the type and scale of development which can successfully be

assimilated into the local landscape without any unacceptable landscape or visual effects.

Ecological Appraisal

This concludes by stating that:

- The site is heavily grazed semi-improved neutral grassland which would be lost as a result of the development
- As the site is within the River Mease SAC and SSSI catchment there will be a requirement for a financial contribution towards the improvement of water quality in accordance with the River Mease Developer Contribution Scheme (DCS)
- Hedgerows along the site boundaries should be retained wherever possible, one in particular (H2) which is of high value to wildlife
- Removal of vegetation should avoid bird nesting season (March to September). If this is not possible vegetation removal should be preceded by precautionary checks for nesting birds
- Mature trees could be utilised by roosting bats and if they are to be lost further surveys would be required. If retained external lighting should ensure the potential roosts are not affected by light pollution
- Great Crested Newts may be present within the application site and access to offsite ponds should be sought to undertake further survey work. Otherwise terrestrial trapping of the site would be required
- Planting schemes should involve native species with an emphasis on species bearing nectar, berries, fruit and nuts to enhance the foraging opportunities
- Further opportunities to enhance the site include the provision of native trees, shrubs and climbing plants, both in rear gardens and throughout the site's green infrastructure together with bat and bird boxes, dead wood piles and insect houses.

Archaeological Assessment

The Historic Environment Record for Derbyshire indicates there are few known archaeological sites in the vicinity of the assessment area. The area was once part of Leicestershire and is largely industrial in nature and was dominated by mining and clay workings for bricks and pipeworks. The land contained well-defined medieval ridge and furrow earthworks, which may need recording before any new development is commenced. The preservation of any underlying archaeological remains, if present, may be good although there may be some minimal disturbance close to where the sports grounds were situated and there may be some evidence of a pavilion on the northern part of the site.

River Mease SAC Impact Statement

This concludes that, following discussions with the Environment Agency and Natural England, the impacts on the River Mease have been adequately considered as part of the proposals. The development would not adversely

affect either the quality and ecology of surface watercourses or the quality and quantity of groundwater. Satisfactory arrangements could be made for the disposal of foul sewage and the control of surface water flows and water quality. It is therefore possible to conclude there would be no likely significant effect.

Planning History

None

Responses to Consultations

Natural England (NE) initially submitted a holding objection based on concerns relating to the impact of the development on the River Mease SSSI and SAC. However, NE is now satisfied that the specific issues that were raised in previous correspondence have now been met and has no objections subject to conditions with regard to developer contributions, details of the private drainage scheme, further plans and details of the attenuation pond, details of the planting and seeding scheme, the submission of a statement of construction and mitigation, ongoing management of the attenuation pond and gullies and detailed designs of the attenuation pond, including appropriate planting, the agreement of water quality outflow parameters, monitoring of the effectiveness of the attenuation pond and the submission of details of the capture and filtering out of road run-off.

Derbyshire Wildlife Trust initially raised concerns with regard to the loss of trees that offer potential bat roosts and the loss of semi-natural grassland. Following further discussions with the developer it is now intended to retain the two trees in question, protect all retained trees and hedgerows in accordance with BS 5837:2012 'Trees in relation to design, demolition and construction' and agree to pay a contribution of £6,000 towards the restoration and subsequent management of over 2ha of flower rich grassland. DWT recommends that this is secured through a Section 106 Agreement and that the contribution is made specific to grassland restoration and management at Swadlincote Woods.

The Environment Agency considers that the proposed development would be acceptable provided that a condition is included that requires the submission and approval of drainage details in order to prevent the increased risk of flooding, both on and off site, together with informatics relating to pollution, waste and water efficiency.

The local County Councillor has commented with regard to wildlife and archaeology; has requested contributions towards local infrastructure, particularly school places and public transport and that consideration should be given to health, shopping facilities, broadband and sprinkler systems.

Derbyshire County Council has set out its requirements, based on the revised number of 64 dwellings, as follows:

- £1,831.04 (£28.61 per dwelling x 64 dwellings) towards the provision of a new Household Waste Recycling Centre
- £99,470 towards developing a Greenway link (£36,750 land acquisition and £62,720 construction costs)
- £125,389 towards 11 primary school places at Overseal Primary School
- £137,408 towards 8 secondary school places at The William Allitt School
- £55,881 towards 3 post 16 places
- Access to high speed broadband services for future residents in conjunction with service providers
- New homes designed to Lifetime Homes standards
- The possible diversion of Public Right of Way Overseal Footpath 13.

The County Education Department has reiterated its requirements for financial contributions towards education provision as outlined above. The re-calculations have not resulted in any change. However, in response to the concern that there is no space at Overseal Primary School to expand, the County Council makes the following statement:

‘When undertaking an assessment of pupil places, one of the considerations is whether a school building and site has the potential to accommodate the scale of growth indicated. Thus, the Development Contact Officer for Overseal Primary School has reviewed existing accommodation and layout, as well as looking at the overall site area and potential for an extension to the building. This review indicated that the primary school could accommodate expansion of pupil places and support areas (for example toilets, group spaces, resource room). Similarly, there is an on-going discussion with the Premises Manager at The William Allitt School about potential for expansion of places at that school; this is more complex but not impossible’.

The National Forest Company (NFC) has no objections subject to the detailed pond design incorporating further planting and a natural play approach being adopted for the LEAP, the NFC considers that the expectations within the planting guidelines to accommodate 20% of the site area as National Forest planting have been met and therefore there is no requirement for an off-site contribution towards NF planting.

The County Archaeologist considers that the site contains fairly well-preserved earthwork ridge and furrow, which are of undoubted landscape and historic landscape value and their loss would therefore be weighed as a material concern when considering the landscape and visual landscape impacts of the development. From an archaeological point of view, however, they possess little or no evidential value beyond confirming that the site lay outside the bounds of the medieval village and their isolation means that they can be considered of low significance only. Given the small size of the site and the absolute lack of any other indicators nearby, the very low level of probability of encountering archaeological remains does not, in this case, justify placing a further planning requirement on the applicant.

Severn Trent Water has no objections subject to a condition with regard to the submission of drainage details.

In its original response to the Transport Statement the County Highway Authority (CHA) stated:

- A topographical survey of the access is required with details of land ownership as the submitted plan does not accurately show the actual layout on the ground. The proposed visibility splays to the south of the access appears to cross third party land (probably owned by SDDC).
- The traffic flows cited in the Transport Statement indicate that the development would result in a significant increase in the number of vehicle movements at the junctions of Valley Road/Lullington Road and Valley Road/A444 both of which are substandard in terms of visibility.
- A more detailed drawing which clearly indicates the parking provision within the site is required.

In response to the above the applicant submitted further information; however the CHA remained concerned and subsequently commented as follows:

The submitted document demonstrates the shortfalls of the junctions of Valley Road, with both Lullington Road and the A444. The CHA's final comments are yet to be received but it has indicated that the scheme is acceptable in principle (this position will be updated at the committee). Notwithstanding this, the junctions are existing and it does not follow that the CHA would accept a new junction with substandard visibility. Visibility sightlines of 2.4m x 43m are required at a new access onto a road subject to a 30mph speed limit. Speed surveys have been carried out on both Lullington Road and A444 but not on Valley Road and no evidence has been submitted to substantiate the fact that visibility sightlines below that required standard are indicated on the plans. The developer responded by detailing speed readings for Valley Road which concluded that 2.4m x 33m visibility splays would be required for the site access junction and that these could be achieved. A drawing showing swept path details were also submitted.

The County Highway Authority has submitted a further response which is as follows: 'The applicant has submitted further information including additional traffic counts and speed readings, accident data and junction surveys in order to address [earlier] concerns. With regard to the junction of Valley Road with Main Street/Acresford Road (A444), the applicant has demonstrated that the visibility splays, to accord with actual vehicle speeds, can be satisfactorily achieved to the south and achieved in the northerly direction albeit with a slightly reduced minor road stop distance.

The junction of Valley Road and Lullington Road is considered to be satisfactory in the south westerly direction in terms of visibility although below the recommended standard to the north east, relative to posted and actual vehicle speeds.

However, these are both existing junctions and the accident data available for the past five years has shown no accident record associated with turning movement to and from these junctions. Furthermore, the traffic counts and projected increase in peak period movements at the junctions relative to existing movements is such that it would be difficult to demonstrate an impact which would justify an objection on highway safety grounds.

In respect of the proposed junction into the application site, it has been designed in accordance with current standards in terms of layout, geometry and visibility relative to actual measured vehicle speeds and the land required to provide this is all controlled.

On the basis of the above, there are no objections to the proposal from the highway viewpoint, subject to conditions and notes being included in any consent'.

In addition to the above response a further letter has been received from the CHA which endeavours to explain further the CHA's reasoning behind its recommendation. This is as follows:

- The posted speed limit on Main Street/Acresford Road is 30mph. However, speed readings were taken in the vicinity of its junction with Valley Road which showed that southbound vehicles slightly exceeded the 30mph limit. The applicant has demonstrated that, from a minor road distance of 2m, sightlines of 54m to the north and 43m to the south can be achieved with turning movements to or from this junction.*
- The posted speed limit on Lullington Road is also 30mph. However, speed readings were taken in the vicinity of the Valley Road junction which actual vehicles speeds to be below 25mph in each direction. The visibility available in the south westerly direction at the Valley Road/Lullington Road junction exceeds the 33m which would normally be required for this speed but was below 33m in the northern easterly direction. However, in view of the fact that this is an existing junction, the limited increase in traffic generated by the development relative to the actual number of vehicle movements recorded in this location and the lack of any accidents recorded, the Highway Authority does not consider that an objection could be sustained.*
- The proposed junction onto Valley Road has been designed in accordance with current standards in terms of geometry and visibility sightlines which accord with the speed survey submitted.*
- It is understood that the developer has made reference to providing traffic calming features on Valley Road. The Highway Authority does not accept such measures to facilitate development and would have raised objections if a suitable junction into the site, which complied with the CHA's standards, could not be provided.*

- *The Highway Authority has given serious consideration to the proposal and concluded that harm to highway safety could not be demonstrated such that an objection could be sustained.*

In terms of the internal layout the CHA considers the requested revisions are now acceptable, other than the issue of surface materials which remains unresolved. In order that the application can proceed the CHA is satisfied that a pre-commencement condition would overcome this issue.

The County Footpaths Officer advises that Overseal Public Footpath 13 crosses through the northern part of the site and advises that:

- the route should remain open and unobstructed and on its legal alignment at all times
- there should be no disturbance to the surface of the route without prior authorisation
- consideration should be given to members of the public using the route at all times
- a temporary closure of the route may be granted to facilitate public safety subject to certain conditions
- if a structure is to be erected adjacent to the right of way it should be installed within the site boundary so that the width of the right of way is not encroached upon.

The Environmental Protection Officer (contaminated land) requires conditions in respect of contaminated land hazards.

The Crime Prevention Design Adviser has provided advice with regard to footpath links, the need for secure gates, the treatment of some house types with regard to views and the inclusion of windows to provide outlook.

Following further discussions with regard to the affordable housing mix and tenure, the Strategic Housing Manager has now agreed the level, mix and tenure of the affordable housing to be provided within the development.

Responses to Publicity

Overseal Parish Council strongly objects to the proposal on the following grounds:

- Unsuitable access
- Increased traffic
- Outside the village boundary
- Brownfield sites should be considered first
- Bus services have been changed and no longer exist
- Lack of capacity at the local school and doctor's surgery
- Impact on the character of the village
- Noise and disturbance to nearby elderly people and impact on privacy
- Impact on historical landform (ridge and furrow) and presence of a geological fault near to Valley Road

- Impact on protected species (bats roost in trees within adjacent site)
- Traffic count has not been agreed by the County Council
- Development should not be considered in isolation but as part of the next stage of the Local Plan
- A site visit should be made by members of the Planning Committee so that they can witness the problems before making a decision.

In a subsequent letter to the developers, Overseal Parish Council confirms it is not prepared to lift its objections to the proposal. However, if the planning committee were minded to approve the scheme, the Parish Council would welcome Section 106 contributions from the developer as follows:

*£15,000 for the reinstatement of changing room facilities in the village,
£15,000 as a start in providing outdoor fitness equipment in the village.*

Netherseal Parish Council objects to the proposal on two grounds:

- Overseal School is at capacity and therefore the development could result in children travelling to Netherseal, which would cause traffic problems for Netherseal.
- Problems caused by additional traffic accessing the development via Valley Road which is narrow and contains several senior citizen properties.

The Peak and Northern Footpaths Society is pleased that the revised plan shows the route of Public Footpath 13 retained and incorporated into the development as the Society would have objected to any application to divert it. The Society also considers that there should be contributions to the off-site improvements of adjacent footpaths as these are likely to be used more frequently if the development goes ahead. Safeguards, such as changes in surface colour, should be put in place to ensure the safety of walkers where vehicles will need to drive over the public footpath to reach houses to the northwest of the path. The footpath links shown on the original plan should be re-introduced.

The Derby and South Derbyshire Ramblers strongly object to the development as it considers the proposal is the start of further encroachment into the rural nature of the area. There are sufficient environmental, biodiversity and access constraints that support a refusal of the application. If the application were to go ahead a kissing gate would be the preferred access to public footpath No.9 as a stile or wicket gate would allow access to the footpath by prohibited persons.

The Overseal Footpath Volunteer Group has asked to be notified when the development starts as it wishes to re-use the wicket gate at the eastern end of public footpath 13 where it enters the site. A kissing gate is essential at the western end of the footpath as this would prohibit cyclists and horses riders from accessing the lane to the sewage works. Bus services have been reduced since May and consequently the information is out of date. All secondary schools in the Swadlincote urban area are full beyond capacity as

is the village primary school. A considerable sum will be necessary to accommodate the increase in pupil numbers. What are the safeguards to ensure the money is not used in other areas? The junction of Valley Road and Lullington Road is dangerous, particularly when turning right and an increase of 59+ cars cannot be called a modest increase. The application should be refused on safety grounds. Earlier concerns with regard to biodiversity still stand.

A total of 159 letters, emails and standard letters have been received all of which object to the proposal. These objections can be summarised as follows:

- a. Inadequate access into the site from Valley Road, being on a blind bend on the brow of a hill and hampered by parked cars owing to its narrow width – death trap waiting to happen
- b. Detrimental significant impact and harm on the surrounding countryside, the National Forest and the River Mease SAC
- c. Increased traffic and congestion on a road already used by tractors and other farm machinery during the summer months – potential to increase accidents to the elderly
- d. Site is outside the built-up area of the village – loss of another green field and overdevelopment of Swadlincote – use brownfield sites first
- e. Difficulties getting onto Lullington Road and the A444 from Valley Road owing to poor visibility caused by on-street parking and bends in the road and gridlock at the traffic lights on the A444
- f. Increased likelihood of accidents as Valley Road is used as a cut through to avoid traffic lights on the A444
- g. Insufficient local amenities to support the development and strain on existing facilities, such as schools and doctors with some children travelling many miles to school – future residents likely to commute and not contribute anything to the village – impact of waste collections and water pressure, telephone and broadband
- h. Pollution and noise from construction traffic and subsequent residents' vehicles could affect the health of many elderly people living on Valley Road by way of stress and lack of sleep (general health) – noise caused by car doors banging, children and pets, parties, barbecues and fireworks
- i. Existing junctions unable to cope with the additional dwellings
- j. Limited parking affecting existing businesses
- k. Amended plans are less obtrusive but no consideration given to the existing geological fault
- l. Possible overlooking and loss of privacy, loss of natural light, overdevelopment, greed
- m. The site should be inspected regularly during construction to ensure the development is being built correctly
- n. Evidence of badger activity via boundary hedges and possibility of a sett to the rear of properties on Valley Road – destruction of natural habitats
- o. Exacerbation of problems with flooding both ends of Valley Road
- p. Impact on wildlife on the site and within the hedgerows

- q. Loss of peace and tranquillity
- r. Location of play area close to existing rear garden
- s. Inadequate sewerage system to serve the development
- t. Concept of developing the field is ridiculous
- u. Loss of view and overshadowing
- v. Urban sprawl and loss of community identity
- w. Devaluation of property prices
- x. Increased use of the A444 by commuter traffic will make it unusable by locals
- y. Impact on existing tourism if more countryside is built on – no longer safe to cycle and walk – impact on public footpath
- z. Sections of Valley Road would benefit from improvements to allow two cars to pass
- aa. Proposed location of social housing and play area – they should be re-located elsewhere within the development
- bb. Impact of the proposed access on existing driveways
- cc. Loss of ridge and furrow which is part of our shared cultural heritage
- dd. Traffic reviews by the developer are selective and do not reflect the current problems – an independent survey should be undertaken
- ee. UK has gone mad with health and safety – Government should know that the development would ruin the village
- ff. Potential smell from the nearby sewage works
- gg. Proposed parking within the development appears inadequate , resulting in further on-street parking on Valley Road
- hh. Not a sustainable site on many levels and therefore contrary to the NPPF and NPPG – premature insofar as Part 2 of the Local Plan is concerned
- ii. Cumulative impact given that there is another site in Overseal that is in the SHLAA
- jj. Too many villages disappearing
- kk. Essential that all Members should visit the site before they vote on the application

The Local Planning Authority has also received a solicitor's letter of objection which has been sent on behalf of the Valley Road Action Group. This can be summarised as follows:

- *Applicant's Planning Statement is inaccurate*
- *Proposal will result in large releases of green field sites at Overseal*
- *Overseal falls within the plan sub-area 'Southern Village Area' (SVA) where allocations are intended to be delivered through Part 2 of the Local Plan. Pursuing development in SVA villages just outside the SAC catchment including Overseal must be subject to certain surface water mitigation.*
- *This does not change the overriding conclusion that SVA villages perform "poorly in respect of biodiversity and in terms of objectives to make best use of existing infrastructure and reduce pollution".*
- *According to the LPA, no strategic development has been identified in the southern villages at all, and the largest sites proposed around Overseal and Neverseal [Netherseal] are deemed unacceptable.*

- *Considerable benefits need to come forward as a result of the development in order to overcome the significant and demonstrable harm as defined by NPPF, para 14.*
- *NPPG emphasises the importance of brownfield first.*
- *Principal locations for new development must be in or adjacent to existing established cities and towns rather than villages.*
- *There are significant sustainable settlements north of Overseal and across the border where there are considerable expanses of brownfield sites.*
- *Greenfield sites perform badly.*
- *A site that is not sustainable remains so regardless of land supply shortfall. Presumption in favour only applies to sustainable development. Crucial difference.*
- *Other issues associated with the application and why it does not achieve compliance with the environmental role of sustainable development.*
- *Notwithstanding two serious accidents occurring at the entrance to the site, Highway Authority's view is that "on balance" the application is satisfactory. Applicant's transport consultant must have misgivings given the proposed access is both on a rise in the lane and on the inside rather than the outside of the bend. Whilst the sightlines would not be obstructed by physical features beyond the applicant's control this may not remain the case as the adjoining occupiers may allow vegetation to grow including hedging that would obscure these minimum sightlines.*
- *Applicant acknowledges that "a payment will need to be made to upgrade the sewage works". This puts the cart before the horse in sustainability terms and in terms of the NPPF, paras 8 and 14.*
- *Para 9 of the NPPF requires development to seek positive improvements to the quality of the built and natural environment as well as improving people's quality of life, making it easier for jobs to be created in cities, towns and villages, moving to a net gain in biodiversity, improving the conditions in which people live, work, travel and take leisure.*
- *Nothing of significance to commend the development – doesn't come close to satisfying the sustainability test, hampered by being a greenfield site, affecting the River Mease, in one of the least sustainable locations in the District as a whole. Overseal is not a centre of employment and those living on the new development will commute to Ashby, Derby and other built up areas.*
- *Pressure to release other land will be impossible to resist.*
- *Development of site will significantly undermine LPA's strategy.*
- *NPPF is about "development in the right place". A greenfield site in the poorest sub area shouldn't leapfrog purely as a matter of expediency and timing, particularly as the Local Plan is making substantial progress.*
- *NPPG gives the LPA support in respect of "prematurity".*

- *Recent appeal (landmark decision) William Davies v SSCLG 2013 concludes that NPPF 14 only applies to a scheme found to be sustainable development.*
- *Council must determine what is sustainable and the weight that should be given to various material considerations and is urged to firmly apply NPPF and NPPG; and give very little weight to the volume of matters the applicant asserts supports the case.*

Development Plan Policies

The relevant policies are:

Adopted Local Plan: Housing Policies 5, 8, 9, 11; Environment Policies 1, 9, 10; Transport Policies 6, 7; Recreation & Tourism Policies 4, 8; Community Facilities Policy 1

Emerging Local Plan (Submission version March 2014) S2, S4, S6, H1, SD1, SD2, SD3, SD4, BNE1, BNE3, BNE4, INF1, INF2, INF6, INF7, INF8, INF9

Housing Design and Layout SPG

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 14, 17, 32, 34, 36, 38, 47, 49, 50, 56, 57, 58, 59, 69, 75, 103, 109, 118, 121, 186, 187.

National Planning Practice Guidance (NPPG)

Planning Considerations

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

- The principle and general sustainability
- Highway Impacts
- Affordable Housing
- Impact on the character of the area
- Urban design and Open Space
- Impact on River Mease SSSI/SAC, Ecology and Archaeology
- Public Rights of Way
- Section 106 obligations
- Miscellaneous issues

Planning Assessment

The principle and general sustainability

The Council has submitted its Local Plan Part 1 to the Secretary of State and an Examination in Public is expected during November 2014. Until such time

as the Examination takes place only limited weight can be given to it, although the more advanced the Plan the greater the weight that can be accorded to it, according to the NPPF. The site has been identified in the Strategic Housing Land Availability Assessment (SHLAA) as a site suitable and achievable for an estimated capacity of 41 dwellings. The proposed development is for a total of 64 dwellings, providing a mix of 1, 2, 3 and 4 bedroom properties, 19 of which would be affordable (30% of the total number), which is in accord with the emerging Local Plan.

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

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

- **‘any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; or**
- **specific policies in this NPPF indicate development should be restricted’.**

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

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

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that

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

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

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

In terms of housing policies in the current adopted 1998 Local Plan the site lies outside but adjacent to the existing western edge of the village confine boundary of Overseal. Policy H5 of the adopted Local Plan only supports new housing developments that can be accommodated within the village confines, which, clearly, is not the case here. However, recent appeal decisions have made it abundantly clear that where the local planning authority does not have a five year housing land supply, such policies should be considered to be out-of-date and currently should not be used as a reason for refusal, particularly where the site is in a sustainable location where a range of services and facilities are available. Overseal has been designated as a Key Service Village in the Settlement Hierarchy Policy of the emerging Local Plan (Policy H1) and therefore capable of accommodating this level of development. The site also forms part of the Council's Strategic Housing Land Availability Assessment (Site 0022) with an estimated capacity 41 dwellings (using a generic method of calculation at that time). The proposed erection of 64 dwellings is achievable without adversely affecting the amenities of existing residents and therefore is not considered to be overdevelopment of the site. It is considered that the proposed 64 dwellings would make a valuable contribution towards the Council's five year housing land supply, as well as contributing towards the need for social housing in the District.

The recent appeal decision relating to High Street, Linton has a significant bearing on the current proposal. Both sites are similar in that they are adjacent to existing confine boundaries, are in agricultural use and are affected by public footpaths. The Inspector states in Paragraphs 40 and 41 of the appeal decision:

"I therefore conclude that the lack of a five year supply of housing land carries significant weight in favour of the proposal. Although the proposal is contrary to ALP [Adopted Local Plan] policies EV1 and H5, these have little weight; they are out of date both in their age and also because the housing provision in the ALP has long been used up. As 'blanket ban' policies they patently fail to address the current issue of housing need in South Derbyshire, and the South Northamptonshire HCJ along with several appeal decisions, confirm my conclusion that such out-of-date policies should be given little weight. I have also found that the untested eLP [emerging Local Plan] should be given little weight.

Neither of the appeal cases submitted by the Council in support of its ALP policies outweigh my conclusion that these policies should be given little weight. The presumption in paragraph 49 of the Framework in favour of sustainable development therefore applies'

Many of the residents' objections relate to the lack of capacity at the local school and doctor's surgery. The developer has agreed to make contributions towards primary and secondary schools as requested by the County Education Authority *and has confirmed that there is space available at both Overseal Primary School and The William Allitt School for expansion.* The NHS for Southern Derbyshire has confirmed that the Overseal Surgery is not currently at capacity and would welcome any new patients that the development would bring.

Highway Impacts

Discussions have been ongoing between the CHA and the developer since the submission of the application and further information has been submitted and approved on the impact of the proposed development on the junctions. Speed readings for Valley Road were presented in Appendix B of the Transport Statement which demonstrates 85th percentile speeds of 24.5mph northbound and 26.1mph southbound. A 'wet weather' reduction was applied in accordance with the guidelines in TA/22/81 of the Design Manual for Roads and Bridges with the result of 85th percentile speeds of 22.0mph northbound and 23.6mph southbound. According to the 6Cs Design Guide, visibility splays of 2.4m x 33m would be appropriate. Further discussions resulted in the CHA confirming that the proposal is now acceptable in principle in highway safety terms, i.e. there were no highway safety reasons for refusal, subject to consideration of the internal road layout. This has subsequently been agreed subject to conditions. On this basis it was concluded that no mitigation measures would be required at the A444 and Lullington Road junctions, as the additional information demonstrated that there would be a minimal traffic impact.

As already reported above the official response from the CHA has now been received which confirms that, following the receipt of additional traffic counts, speed readings, accident data and junction surveys, there remain no objections on highway grounds. It is considered, therefore, that a reason for refusal based on highway safety grounds would not have a sound basis at

appeal, would therefore be unreasonable and likely to result in an award of costs against the Council.

Affordable Housing

The SHMA suggests, over the period of 2012 – 2017, there is a housing need for 1,723 affordable homes (345 affordable homes per year) across South Derbyshire. The housing mix should reflect both the demand for houses registered on the current District housing waiting list and projected demand.

The SHMA recommends a mix of houses for rent as follows:

10% - 15% 1 bed, 2 persons flats/houses
35% - 40% 2 bed 4 persons family houses
35% - 40% 3 bed 5 persons family houses
10% - 15% 4+ bed 7 persons family houses

and houses for shared ownership as follows:

Suggested 66% x bed 4 persons family houses
Suggested 34% 3 bed 5 persons family houses

This current layout plan shows the provision of 19, one- bedroom, two-bedroom and three-bedroom affordable dwellings. The number equates to 30% in line with Council policy, and, following detailed discussions, the mix and tenure reflects the current need in accordance with the Housing Needs Survey. This would be provided as follows:

14 (75% of 19) social rented units comprising

- 8 x 1 bedroom flats
- 3 x 2 bedroom houses
- 3 x 3 bedroom houses

5 (25% of 19) shared ownership units comprising

- 2 x 2 bedroom houses
- 3 x 3 bedroom houses

The revised affordable housing mix has resulted in a slight revision to the proposed layout in terms of the location of the affordable housing and the submission of elevation drawings of the proposed flats. The proposed flats would be in the form of two, two-storey blocks and located towards the western side of the site close to and overlooking the LEAP. Each flat would have a single car parking space to the front of the building. Two visitor parking spaces would also be provided.

Although there would be no 4-bedroom affordable houses within the site, the Council's Strategic Housing Manager is satisfied with the revised housing mix and tenure. The requirement for 4-bedroom affordable homes would be met within the Council's development in Lullington Road that was granted planning permission earlier this year. Overall, no more than nine affordable dwellings

would be clustered together within the site, which, again, is in line with Council policy.

Impact on the character of the area

Given the location of the site outside the Overseal village confine boundary and the proximity of the public right of way, there would, inevitably, be an impact on the character of the area. Whilst there are no buildings within the site, its character is influenced by the built form of existing housing on Valley Road and Clifton Close as well as being influenced by Valley Road itself. The public footpath crosses the northern part of the site and connects to the footpath beyond the site's western edge (No.9). It is proposed to incorporate the route of the footpath into the development by way of a green corridor that would run parallel to the northern-most estate road rather than taking walkers along the road itself. This is preferred by the footpath groups and the County Council. As such the footpath would remain on its definitive route thereby mitigating any likely harmful impact.

Urban design and Open Space

The application is for full planning permission and the layout has undergone considerable change during the life of the application with the total number of dwellings being increased from 61 to 64, in order to accommodate appropriate street widths, better street elevations and an acceptable affordable housing mix. Small clusters of affordable dwellings would be distributed throughout the site. The layout has been designed so that there would be no loss of privacy for existing dwellings on Valley Road and Clifton Close through overlooking. The minimum distances, as stipulated in the Housing Design and Layout SPG, would be met.

Access would be taken from the existing pedestrian access off Valley Road, which is also where the route of public footpath No.13 starts. A balancing pond would be created in the southern corner of the site to provide sustainable drainage for the development. An equipped play area (LEAP) would also be provided at the western end of the site, just to the north of the point where public footpath No.13 leaves the site and joins with public footpath No. 9, which also forms an existing vehicular access serving the Severn Trent Sewage Treatment Works. The balancing pond and the LEAP would be connected by a pedestrian pathway that would run along the western boundary. The entire area along the western boundary would be landscaped, and a drawing to show the proposed soft landscaping proposals has been submitted. It is noted that The National Forest Company is satisfied that the required 20% of the site could be planted and therefore no off-site contribution is required. The route of public footpath No.13 would be separated from the northern estate road by a row of street trees and a landscaped buffer would be provided between plots 1 to 8 and the rear gardens of Nos. 55 to 73 Valley Road. In terms of urban design the layout scores 14/20 using the 2008 Building for Life criteria and is therefore considered acceptable.

Impact on the River Mease SSSI and SAC, Ecology and Archeology

Following an initial objection from Natural England with regard to the likely impact of the proposal on the River Mease SAC further information was submitted and it was confirmed that additional measures would need to be put in place to mitigate any effects. Following further discussion between the Local Planning Authority, Natural England and the developer, Natural England has since lifted its holding objection and a Habitats Regulations Assessment has now been carried out. This concludes that the proposed development would have no likely significant effect on the River Mease SSSI and SAC and as such there is no requirement to undertake an appropriate assessment for the proposed development. A developer contribution would be required under the River Mease DCS (see paragraphs on Section 106 contributions below).

The application site is the potential Local Wildlife Site SD R6375 known as Valley Road Field, noted for semi-improved natural grassland. Although the site was briefly viewed in 1999 by the Derbyshire Wildlife Trust (DWT) no detailed surveys were undertaken. However, based on current information the grassland vegetation is not considered to be of sufficient quality to meet Local Wildlife Site selection guidelines and as such should be considered as being of local interest only. However, DWT recommends that the developer compensates for the loss of the grassland by (a) providing areas of wild flower grassland within the green infrastructure of the site and (b) assisting in the management of grassland habitats elsewhere within the District. For example grassland habitats within Swadlincote Woodlands require active management urgently in order maintain their current diversity. It suggests that the developer could make a financial contribution to meet the cost of this management and a figure of £6,000 has been agreed as part of the Section 106 Agreement.

The Ecology Appraisal has identified that that at least two trees on the site have the potential to provide bat roosts. Initially it was intended to fell the trees; however the developer has since decided to retain the trees and therefore there will not be a requirement to carry out further bat survey work prior to the application being determined.

There are no known badger setts within the site and DWT has not provided evidence to the contrary. Provided that the existing habitat creation is implemented as part of the landscape plan and the proposed off-site compensation measures are secured DWT considers that the development would have no net loss of biodiversity and as such would be in accordance with the NPPF.

Public Rights of Way

Public footpath No.13 is fairly well used and as such it is considered important to retain it on its definitive line. This has been achieved by re-designing the layout to accommodate the route. After following the access road into the site, the footpath would 'split' from the estate road and cut across the front of plots 60 to 63 and to the side of one of blocks of flats. The route would be

delineated by trees where possible and surfaced in a material to be approved by the Local Planning Authority. Following initial concerns from the County Council with regard to the original layout, an amended response was received which requires the applicant to be made aware of the public footpath and any possible future obstruction. The retention and incorporation of the public footpath into the layout contributes towards the provision of facilities for the wider area and therefore helps to make it a sustainable development.

Section 106 obligations

A development of the size proposed triggers financial contributions in line with the Council's matrix. Based on a development of 64 dwellings (189 persons) the following contributions have been agreed with the developers:

New Household Waste Recycling Facility £1,831.04

Education

- £125,389 towards primary school places
- £137,408 towards secondary school places
- £55,881 towards post-16 school places

Recreation

- open space - £70,308
- outdoor facilities - £41,580
- built facilities - £23,058

Commuted sum towards maintenance of p.o.s. £23,475 for 10 years

Commuted sum for maintenance of attenuation pond = £44,000 for 10 years

River Mease contribution £16,742

Grassland restoration (offsetting grassland losses) £6,000

In addition to the above and notwithstanding its objection to the proposal, Overseal Parish Council has requested a financial contribution of circa £60,000 (roughly equating to £1,000 per dwelling) should the application be approved. This would be put towards outdoor fitness equipment and the repair/refurbishment of sports changing rooms in the village. The developer has agreed to contribute £30,000 towards this with the balance being taken from the outdoor recreation facilities contribution. The District Council is working on the basis that the developer contributions are put towards specific projects rather than into an area pot and therefore the full recreation allocation (open space, sports pitches and built facilities) should go towards the improvement of recreation facilities in Overseal including, but not exclusively:

- change room repairs
- football pitch drainage
- new play equipment
- outdoor gym

~~Other than the developer contribution of £30,000 [this has been deleted following the Inspector's decision below regarding a similar offer of payment by the appellant at the Linton Appeal]~~ it is considered that the above contributions are compliant with the Community Infrastructure Levy (CIL) Regulations as they are reasonable and necessary in order to make the proposed development acceptable.

Miscellaneous Issues

Many of the objections points have already been addressed as part of this report. However, the following comments are relevant to the remaining points:

- Devaluation of property and loss of view – these are not material planning considerations
- Issues relating to pollution, odour and noise would be covered by environmental health legislation
- There is no evidence to suggest that tourism in the area would be adversely affected

Conclusions

The application relates to one of the SHLAA sites put forward for residential development. The development is likely to be able to contribute to the early delivery of homes, helping the Council to meet its requirement for five year supply of deliverable housing. By reference to the NPPF's three sustainability dimensions (economic, social and environmental) the provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire's economically active population as well as helping to support the vitality and viability of the area. Construction jobs would be created and retail trade in the area is likely to benefit from the influx of new residents. The local schools would benefit from the substantial financial contribution. On balance, it is considered that development of the site would appear as a logical extension to the Overseal.

As confirmed by the Inspector in the Linton appeal, the lack of a five year housing land supply is a material consideration to which significant weight must be attached. Furthermore, the provision of 30% affordable homes in an area which has delivered an insufficient quantity in relation to its serious need is a further significant material consideration in support of the proposed development. The appeal site is in a sustainable location based on local facilities and services within the village. Although the impact of the proposal on the character and appearance of the landscape and setting of the village would result in limited visual harm it would fail by some distance to significantly and demonstrably outweigh the material considerations in favour of the proposal.

The proposed scheme would have a positive impact on local communities by providing new homes (market and affordable). In terms of healthy communities, there would be a good level of green infrastructure, open space

and recreation. Pedestrian links would be retained and incorporated into the layout which would assist in supporting active lifestyles and encourage alternatives to the car for accessing local facilities.

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

Revised layout drawings have been received whilst compiling this report. As a result of the overall numbers increasing, neighbours have been re-notified and certain consultees have been re-consulted. *Feedback on the revised plans was previously reported verbally at the October Committee.*

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

Recommendation

GRANT permission subject to the applicant entering into a Section 106 Agreement with the Council to secure the contributions referred to in the planning assessment of the report (as may be updated at Committee); and 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 amended drawing no. SL/01 Revision E, received by the Local Planning Authority on 14th October 2014 showing the introduction of eight, one-bedroom flats, and a change in house types for plots 1, 3 and 4
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and samples of the facing materials to be used in the construction of the external walls and roof of the dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the area.

4. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no dwelling shall be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development 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 character and appearance of the area.

5. Prior to the commencement of the erection of the dwelling to which they relate, details of all eaves, window headers, ventilation infill panels within windows, wet verge details without cloaking tiles, eaves and verge projections, block paving types and colours, and footpath/pavement materials and colours shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved details.

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

6. Prior to the first occupation of any of the dwellings, details of the design and equipment for the LEAP, including the materials of the proposed equipment, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in accordance with the approved details.

Reason: To safeguard the character and appearance of the area and to ensure the LEAP equipment is appropriate.

7. The soft landscaping for the development shall be carried out in accordance with the details shown on Drawing No. GL0267 01E received on 6th October 2014 unless otherwise agreed in writing by the Local Planning Authority.

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

8. Notwithstanding the submitted details, prior to the commencement of development in the adjacent areas, details of the measures for the protection of all trees and hedgerows to be retained shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the commencement of the development on the adjacent areas and retained in position until all building works on the site have been completed unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the trees and hedgerows from undue disturbance.

9. Prior to the commencement the planting scheme for the street trees, details of the tree pit design shall be submitted to and approved in writing by the Local Planning Authority and the works shall be carried out in accordance with the approved details.

Reason: To ensure the long-term health of the street trees and in the interests of the character and appearance of the area.

10. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the completed development and the appearance of the area.

11. No development shall take place until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the Local Planning Authority. The surface water drainage scheme shall be based on sustainable drainage principles and include an assessment of the hydrological and hydrogeological context of the development. The drainage scheme shall demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The submitted scheme shall demonstrate how the drainage will discharge into the attenuation pond. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason: In the interests of on and off site flood protection and pollution control.

12. In accordance with Condition 10 above the surface water drainage system(s) shall include:
 - * the design to be in accordance with either the National SuDS Standards or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
 - * Limiting the run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
 - * 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;
 - * Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details of 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 long-term operation to design parameters.

Reason: For the avoidance of doubt and in order to prevent the increased risk of flooding both on and off site.

13. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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.

14. 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.

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.

15. Prior to the commencement of the dwellings to which they relate, details of the finished floor levels 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 level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

16. Prior to the first occupation of any dwelling on the site, full detailed drawings of the attenuation pond, including depth, construction, Water

Quality outflow parameters, materials and planting, shall be submitted to and approved in writing by the Local Planning Authority. The pond shall be designed to capture and filter out surface water run-off from the estate roads. The development shall be completed in accordance with the approved details.

Reason: In the interests of the completed development and to ensure there will be no adverse impact on the integrity of the River Mease SSSI and SAC.

17. Prior to the commencement of development a construction and mitigation statement shall be completed and submitted for approval in writing by the Local Planning Authority and the development shall be carried out strictly in accordance with the approved statement.

Reason: To ensure the integrity of the River Mease SSSI and SAC is safeguarded.

18. Prior to the occupation of the first dwelling on the site, details for the monitoring of the effectiveness of the attenuation pond shall be submitted to and approved in writing by the Local Planning Authority and the works shall be carried out in accordance with the approved details.

Reason: To ensure the attenuation pond is fit for purpose and a monitoring protocol is agreed with appropriate trigger points,

19. No development shall commence until a scheme for the provision of the affordable housing hereby permitted, as detailed on approved plan SL/01 Revision E, 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 of the NPPF or any future guidance that replaces it. The scheme shall include:

- * the tenure of the affordable housing provision to be made which shall consist of not less than 19 dwellings;

- * the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved);

- * the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

- * the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Reason: To ensure the provision of affordable housing.

20. Prior to the first occupation on site, details of the surface materials to be used in all areas of proposed public highway shall be submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority. All such materials shall conform to approved standards for use in the public highway within Derbyshire.

Reason: In the interests of highway safety.

21. Before any other operations are commenced (excluding demolition / site clearance) 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 and constructed in accordance with detailed designs to be submitted in advance to the Local Planning Authority for written approval 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.

22. Throughout the period of construction 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 or other extraneous material on the public highway.

Reason: In the interests of highway safety.

23. Before any other operations are commenced the new estate street junction shall be formed to Valley Road in accordance with the application drawings, laid out, constructed to base level and provided with 2.4m x 33m visibility splays in each direction, the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.

Reason: In the interests of highway safety.

24. No dwelling shall be occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with the application drawings to conform to the County Council's Estate Road design guide, constructed to binder course level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

25. No dwelling shall be occupied until space has been provided within the site in accordance with the application drawings for the parking and manoeuvring of residents' and visitors' vehicles, laid out and surfaced. Once provided any such facility shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the garage accommodation/parking space to be provided in connection with the development shall not be used other than for the above stated purpose except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure that adequate parking/garaging provision is available.

27. No gates or other barriers to any dwelling shall be erected within 5m. of the proposed nearside highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

28. The proposed access drive to each dwelling shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary.

Reason: In the interests of highway safety.

29. Prior to the occupation of the first dwelling on the site, details shall be submitted to the Local Planning Authority to show how bat boxes and bat tiles will be incorporated into the development and the works shall be carried out in accordance with the details that have been approved in writing by the Local Planning Authority.

Reason: In the interests of protecting the ecology of the area.

30. The development hereby approved shall be carried out in accordance with the Ecological Appraisal dated April 2014 unless otherwise agreed in writing by the Local Planning Authority.

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

Informatives:

The applicant is advised to consider and act upon as necessary the contents of the letter from the Environment Agency dated 29th May with regard to the Land Drainage Act 1991, the Control of Pollution (Oil Storage) (England) Regulations 2001, the Water Framework Directive, Waste and Water Efficiency

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 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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (tel: 01629 533190). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.

Highway surface water shall be disposed of via a positive, gravity fed system (ie; not pumped) discharging to an approved point of outfall (eg; existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soak-aways for highway purposes is generally not sanctioned.

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.

The application site is affected by a public Right of Way (Footpath number 13 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 advice can be obtained by calling 01629 533190 and asking for the Rights of Way Duty Officer.

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

" If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

" If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.

" Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the planning authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

" To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.

Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway (including public Rights of Way), at least 6 weeks prior

notification should be given to the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the New Roads and Streetworks Section).

Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets 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 developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.

Construction works are likely to require Traffic Management and advice regarding procedures should be sought from Dave Bailey, Traffic Management, 01629 538686. All road closure and temporary traffic signal applications will have to be submitted via the County Councils web-site; relevant forms are available via the following link - http://www.derbyshire.gov.uk/transport_roads/roads_traffic/roadworks/default.asp

It is an offence to kill or damage or disturb bats or their roosts. If bats are found you are advised to inform Natural England, Block 7, Government Buildings, Chalfont Drive, Nottingham, NG8 3SN. Practical advice on how to protect/relocate any bats may be obtained from Malcolm Hopton, Derbyshire Bat Group, 9 Ashton Close, Mickleover, Derby, DE3 5QD, (Tel. 01332 511427).

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 August inclusive. If you are in doubt as to requirements of the law in this regard you should contact Natural England or the Derbyshire Wildlife Trust.

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.

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

In dealing with this application, 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 and suggesting amendments to improve the quality of the proposal and negotiations and by determining the application as promptly as possible. 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.

18/11/2014

Item 1.3

Reg. No. 9/2014/0574/NO

Applicant:
John Bowler Farms LLP
Badger Farm
Willowpit Lane
Hilton
Derby
DE65 5FN

Agent:
Miss Claire Harness
Bowler Energy LLP
Badger Farm
Willowpit Lane
Hilton
Derby
DE65 5FN

Proposal: **THE INSTALLATION OF 40KW GROUND MOUNTED
PHOTOVOLTAIC ARRAY ON LAND AT SK2637 2341
OFF MAIN STREET DALBURY LEES ASHBOURNE**

Ward: **ETWALL**

Valid Date: **13/07/2014**

Reason for committee determination

The application is reported to Committee at the request of Councillor Brown because local concern has been expressed about a particular issue.

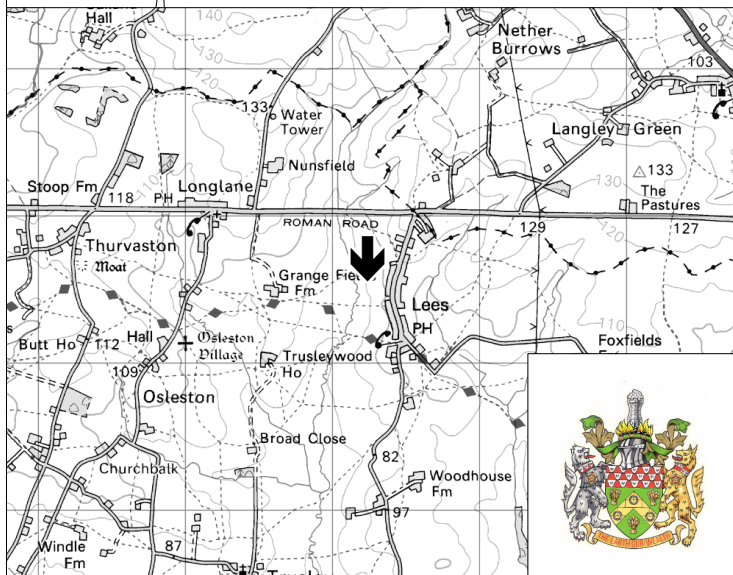
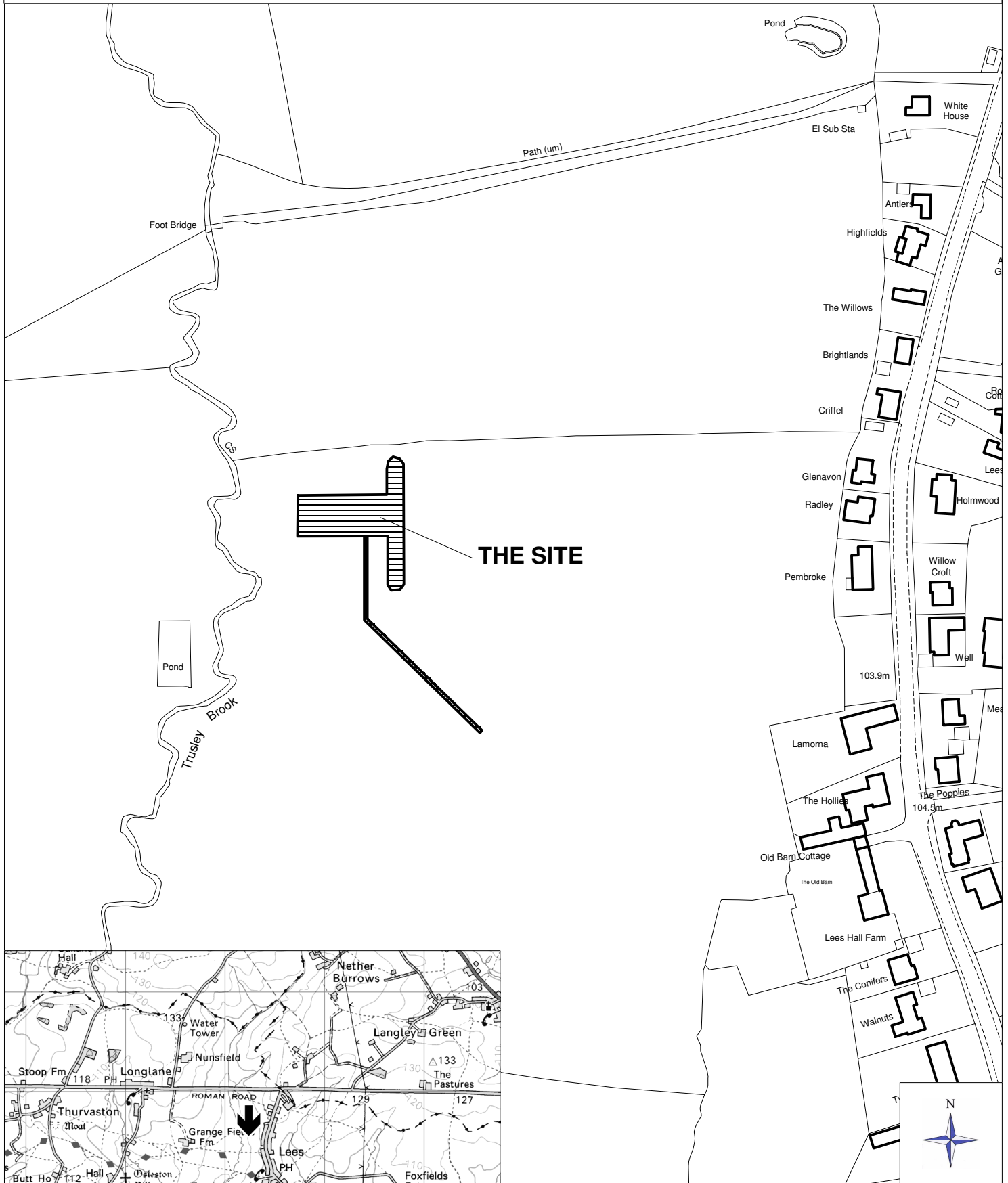
Site Description

The application site is an area of open countryside in agricultural use located to the west of Main Street. The site is at a considerably lower level than Main Street and there are public rights of way that cross east-west to the north, known as Dalbury Lees footpath 15, and in the same direction to the south runs Dalbury Lees Footpath 14. Immediately to the north of the site is a mature hedge with Trusley Brook running north-south to the west of the site. The site shows ridge and furrow features.

Proposal

The application is in full and is to install a solar array on the ground consisting of two rows of panels which would be connected to an existing transformer in the same field. Each array would have a length of 39.76m with the lower edge of the panels set 1m above ground with a face depth of 3.28m. The arrays would be mounted on the ground and the overall height of the upper part of the panels being approximately 2.64m above existing ground level and the rows would be set 10m apart. Following negotiations with the applicant the

**9/2014/0574 - Land at SK2637 2341, off Main Street, Dalbury Lees,
Ashbourne (DE6 5BE)**



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South Derbyshire District Council. LA 100019461. 2014

installations were moved closer to the hedge to the north and a landscaping bund to screen the panels from the properties on Main Street to the east has been omitted and instead an area of landscaping indicated in its place. The orientation of the panels is such that they would face south with the side profile facing Main Street.

Planning History

None relevant.

Responses to Consultations

The County Archaeologist raises no objection to the proposal subject to a condition relating to the method of the installation.

Responses to Publicity

Dalbury Lees Parish Council strongly objects to the proposal as it has been submitted by a private company and it is commercial. They consider it to be an unwarranted intrusion onto the countryside contrary to Environment Policy 1 of the Local Plan and the NPPF as it will be detrimental to the unspoilt character of the countryside which seeks to protect the intrinsic character and beauty of the countryside. Whilst loss of view is not normally material in this case it should be as it would serve the two new residents of the dwellings under construction who are related to the company submitting it. The proposal has not been sited behind their properties but others. They are also concerned it will set a precedent for others.

Commenting on the revised plans the Parish Council added that the planting does little or nothing to address its concerns and all original comments still stand, opposing the proposal strongly.

Eight objections have been received on the original scheme and a further four following consultation on the amended plans, which can be summarised by the following points:

- a) It will be detrimental to the aesthetics and vistas of the village.
- b) It is an industrial scale with a huge bund which will change the intrinsic beauty and character of the countryside contrary to the NPPF and Local Plan Environment Policy 1.
- c) It will damage views from footpaths including the Bonnie Prince Charlie Walk.
- d) It will change the use from agriculture to industrial.
- e) The village electric supply is poor and is experiences cuts and the intermittent nature of the proposal will compound this – Western Power have raised concerns that such feed-ins may be detrimental to such a fragile supply.
- f) It will not benefit the community, only the company, and this should not take precedence over the community.

- g) The bund is an unnatural dump on the landscape and will take years to meld into the view.
- h) They will set a precedent for expansion.
- i) It will be alien to the countryside.
- j) There should be consistency – a breeze hut in the village was refused due to impact on the countryside.
- k) It will be visible from Footpath 14.
- l) The scale far exceeds domestic use.
- m) It is an inappropriate, industrial intrusion into the countryside.
- n) There is a discrepancy with the drawings – the bund dimensions are inconsistent.
- o) We bought our home four years ago for a rural view and paid a premium for it – these will damage that outlook and reduce the value of our home.
- p) Why can these panels not be placed on the roof?
- q) The siting of the panels some 200m+ will be an anomaly in the landscape.
- r) The bund height and width are excessive.
- s) With regard to the changes the only discernible one is the bund on which we did not comment.

Development Plan Policies

The relevant policies are:

Local Plan:

Environment Policies 1 and 14.

National Guidance

The NPPF, particularly relevant at paragraphs 17, 93, 98 and 141 as well as the NPPG.

Planning Considerations

In assessing the merits of the proposal the main issues are considered to be:

- The need to encourage renewable energy projects and impact on the countryside.
- Impact on neighbours.
- Impact on archaeology.

Planning Assessment

The need to encourage renewable energy projects and impact on the countryside

One of the core principles of the NPPF is to support the transition to a low carbon future in a changing climate and encourage the use of renewable

resources (for example, by the development of renewable energy). Para. 93 states that Local Planning Authorities should support the delivery of renewable and low carbon energy and associated infrastructure and that this is central to the economic, social and environmental dimensions of sustainable development. Para. 98 states that when determining planning applications, Local Planning Authorities should not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions and approve the application if its impacts are (or can be made) acceptable.

Whilst there is this general supportive approach for renewable energy contained within the NPPF it has to be noted that the site is located within the open countryside and that another core principle of the NPPF at Para.17 is to recognise the intrinsic character and beauty of the countryside. Environment Policy 1 of the Local Plan states that outside settlements, in locations such as this, new development will not be permitted unless it is essential to a rural based activity or unavoidable in the countryside and the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. It also states that if development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. The NPPF is a material consideration with significant weight and is markedly more permissive in terms of renewable energy infrastructure. The NPPG at Para. 013 relates to large scale solar installations but even that states there is potential for adverse impacts on landscape but that the visual impact of well-planned and well-screened solar installations can be appropriate if planned sensitively and consideration of matters of preference being given to the use of previously developed and non-agricultural land; it is greenfield land, whether (i) the use of agricultural land is necessary and poorer quality land has been used in preference to higher quality land; and (ii) it allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays; planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use; the proposal's visual impact, the effect on landscape of glint and glare and on neighbouring uses and aircraft safety; the extent to which there may be additional impacts if solar arrays follow the daily movement of the sun; the need for, and impact of, security measures and ensure heritage assets are conserved.

Examining these points, whilst the scale of the solar installation proposed is reasonably large it is proposed to be located within a corner of a field and animals would still be able to cross the site around the bases. It is not considered that the proposal would have any significant adverse impact on residential amenity (see below) or conflict with adjacent land uses, including public rights of way, and whilst there is potential for reflection the scale of the installation is not of such magnitude that would lead to a withholding of a permission being justified. Conditions can be imposed to secure the removal of the panels once they are redundant.

Whilst the proposal would be visible from public vantage points they would not be so out of keeping in this rural landscape to warrant refusal. The topography of the land is such that they would be at a lower level than Main Street and they would be sited in front of mature hedges that would form the backdrop to the development. Notwithstanding the comments received and taking the policies into account in this case, it is considered that benefits that would arise from the creation of this renewable energy source outweigh the adverse impacts that would arise in terms of detriment to the character and appearance of the countryside.

Impact on neighbours

Whilst the proposal would be visible from the rear of the properties on Main Street to the east the installation would be a considerable distance from those properties (greater than 160m) and set at a lower level. Private views are not material to the consideration of the application and the choice of siting is a matter for the applicant - it is the appropriateness of that location that needs to be considered. It should be noted that a screen bund was removed from the proposals and replaced by an indicative planting area which would help shield views of the sides of the installation. Notwithstanding the comments made in the letters submitted, it is considered that the proposal would not have any undue effect in terms of neighbour impacts to reasonably justify refusal of the proposal.

Impact on archaeology

On the advice of the County Archaeologist the applicant was requested to provide details of the method of their installation in order to assess the impact on the ridge and furrow on the field. The applicant submitted information which states that they are installed on single leg piles driven 1.6m in to the ground with 18 supports. The cable run would be in a trench 1m deep and 0.3m in width over approximately 105m. They also state that the installation would be undertaken in a manner that does not result in the levelling of the ridge and furrow. The County Archaeologist states that he has no objection provided a condition is imposed to ensure it is installed in accordance with the submitted information and this approach is considered to be appropriate and proportionate and as such would be compliant with Saved Environment Policy 14 and NPPF Chapter 12.

Conclusion

The proposal is considered to strike a reasonable balance between the need to protect the character and appearance of the countryside and provide renewable energy and as such the proposal is considered to be acceptable. None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development shall be undertaken strictly in accordance with the details contained within the "Addendum to Design and Access Statement" as well as the amended plans received by the Local Planning Authority on 26th September 2014, unless otherwise agreed in writing.

Reason: To protect the historic environment.

3. Prior to the solar array hereby approved being brought into use, full details of landscape works to aid with the screening of the installation, including a programme for their implementation shall be submitted to, and approved in writing by, the Local Planning Authority. The works shall be carried out as approved. Any trees or plants which, within a period of 5 years from the completion of the development or the approved scheme (whichever is the later) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that satisfactory landscaping is provided within a reasonable period in the interests of visual amenity.

4. Following the decommissioning of the solar array hereby permitted and unless it is to be replaced with an updated array within the same supporting structure, the array, its supporting structures and any electrical equipment shall be removed from the land and the land shall be restored to its current agricultural use within 3 months of the solar array being decommissioned.

Reason: Government advice is that such installations should be removed in the event that they are no longer required in the interests of restoring the site to its previous use and prevent any detrimental impact on the countryside.

Informative:

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

Item **1.4**

Reg. No. **9/2014/0702/RX**

Applicant:
Mr John Poultney
J.W. Poultney & Son
Gunby Farm
Gunby Hill
Netherseal
Swadlincote
DE12 8AS

Agent:
Mr John Poultney
J.W. Poultney & Son
Gunby Farm
Gunby Hill
Netherseal
Swadlincote
DE12 8AS

Proposal: **APPROVAL OF RESERVED MATTERS OF PREVIOUSLY
APPROVED 9/2010/0468 FOR CHANGE USE OF PART
AGRICULTURAL FIELD AREA TO PROVIDE 8 LOG
CABIN STYLE HOLIDAY LETS WITH PARKING AT
GUNBY HILL NETHERSEAL SWADLINCOTE**

Ward: **SEALES**

Valid Date: **24/07/2014**

Reason for committee determination

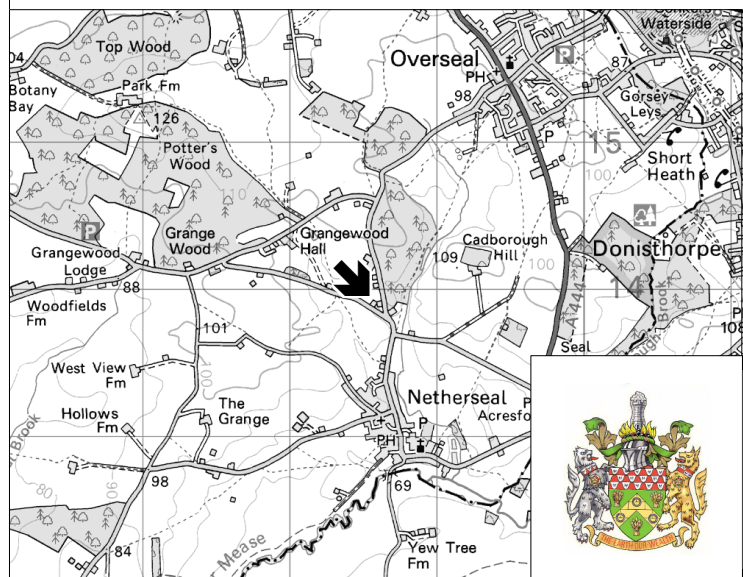
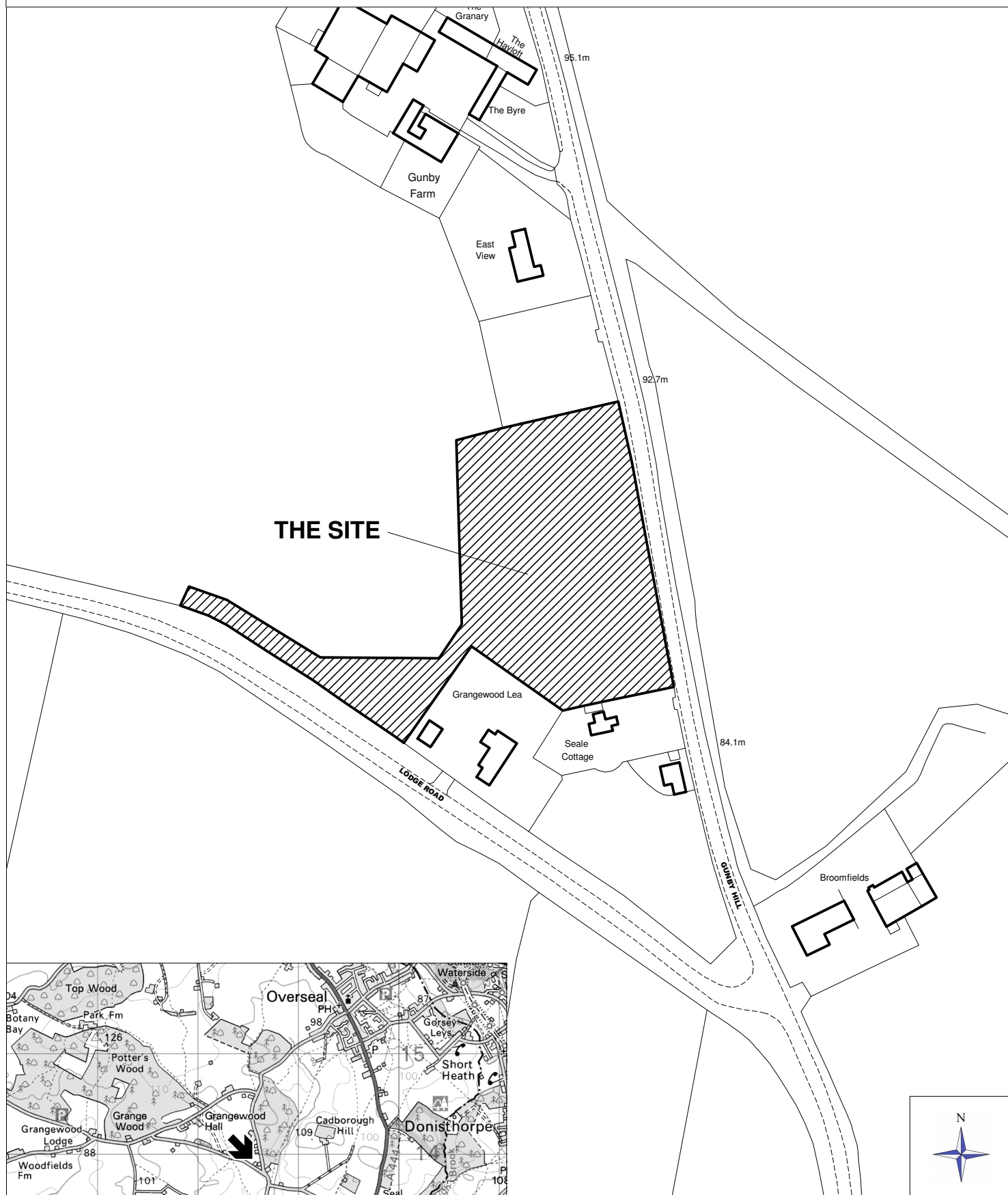
The application is brought to committee at the request of Councillor Frost as there are likely to be controversial issues to discuss.

Site Description

The site lies in open countryside about 900m to the north of the centre of the village of Netherseal and about 500m from its northern edge. It slopes to the south and west and there are clear public views from Lodge Lane and Public footpath No.6 to the west. Transient public views are available from Gunby Hill, partially screened by the existing roadside hedge. More distant views of the site are available from the south. There are two dwellings adjacent to the southern boundary of the site (Seale Cottage and Grangewood Lea). Another property, Sandhurst, abutting the northern boundary has been demolished and replaced with a new two-storey dwelling. East View and Gunby Farm complete the group of buildings in the immediate locality.

A hedge defines the eastern boundary with Gunby Hill. The western boundary is undefined, the site presently forming part of a larger field. The adjoining neighbour at Seale Cottage has planted a row of Leylandii along the common boundary with part of the application site.

9/2014/0702 - Gunby Hill, Netherseal, Swadlincote DE12 8AS



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The nearest surfaced footway into the village of Netherseal starts at the junction of Gunby Hill/Main Street with Gorsey Lane, where there is also a bus stop. There is an hourly bus service from Monday to Saturday. There is also access to public footpaths some 150m to the west of the site access.

The local landscape is rolling fields defined by hedges and trees and the site lies within the National Forest.

The site also lies within the catchment of the River Mease. The river is a designated Site of Special Scientific Interest and is also a Special Area of Conservation.

Proposal

This is a Reserved Matters application for details of layout, scale, appearance, access and landscaping relating to an outline planning consent for the provision of 8 log cabin-style holiday lets that was approved by Members on 10th April 2013 following a site visit. The details are as follows:

- The log cabins would be arranged in a crescent to the east of the site close to the existing hedgeline on the eastern boundary and, in effect, filling the gap between Sandhurst to the north and Seale Cottage and Grangewood Lea to the south. The larger, three-bedroom cabins would be to the south where the land slopes down towards the southern boundary, with the smaller, one-bedroom cabins positioned towards the top of the site. The cabins would all be of similar design with a verandah to the front. The largest (three-bedroom) cabin would measure 12.3m x 6.1m x 3.7m high; the two-bedroom cabin would measure 9.24m x 6.1m x 3.7m high; and the one-bedroom cabin would measure 6.8m x 6.1m x 3.7m high. The cabins would be constructed from timber shiplap cladding and glass fibre reinforced bituminised slates and sit on concrete slabs and foundations. The most southerly cabin would be approximately 11m from the boundary with Seale Cottage and the most northerly cabin would be approximately 5m from the boundary with Sandhurst.
- Access into the site would be taken off Lodge Lane, the internal route of which would run along the southwest boundary for approximately 15m before turning eastwards for a further 19m and then north eastwards for approximately 9m. The internal roadway would then separate to form two accesses, with each in turn separating again to form individual accesses to each cabin. The internal roadway would be surfaced using compressed rustic roadstone with hardbound black tarmac at the entrance from Lodge Lane. The access roadway would incorporate speed reduction humps to ensure traffic speeds are kept to a minimum. The roadway would also incorporate a security barrier which would require a key code in order to enter the site. The code pad would be located at a height so that it is easily accessible for people with disabilities.
- A sealed waste tank to serve the development would be positioned underground to the east of the southern-most cabin the area of which would be screen fenced. A full specification has been submitted which includes details of installation, the alarm system, maintenance and record keeping, a management plan including emergency procedures and surface water separation, which would then be disposed to a soakaway constructed using attenuation cells (soakaway

modules) following the carrying out of the necessary percolation tests. The sealed tank would be emptied by tankers for off-site disposal.

- With regard to the proposed landscaping, a small bund would be created next to the adjoining boundaries which would assist in establishing young trees by providing deeper topsoil free from competitive roots from the adjacent boundary. Once completed the planting area would be cultivated and seeded with wildlife grass mix and planted with a mix of native broadleaved trees such as silver birch, oak, rowan, wild cherry and holly; coniferous species such as Scots pine and native shrubs such as hawthorn, spindle, field maple and dogwood. The planting blocks would comprise two narrow shelterbelts with a maximum width of 4m (2 or 3 rows of trees at 1.5m spacing between the rows and 1.5m spacing along the rows). The first row of trees would be planted 2m from the boundaries of adjacent dwellings. The rows would be offset in order to create a more natural appearance.
- The space between the cabins would be planted with a row of native broadleaved shrubs, such as Hawthorn, Spindle, Field Maple and Dogwood and it is proposed to plant Wild Cherry trees to the rear. The route of the access road into the site would also be planted with Wild Cherry trees.

Applicants' supporting information

None other than that described above and that submitted as part of the original outline application.

Planning History

9/2010/0468 – Outline application with all matters reserved for the change of use of part agricultural field to provide 8 log cabin-style holiday lets with associated parking – approved 10/04/2013. Some matters such as foul drainage (sealed cess tanks) have been approved through the discharge of conditions attached to the outline permission.

There are no other applications affecting this particular site, although outbuildings at Gunby Farm have been converted to residential and business units, with the latter remaining under the applicant's control.

Responses to Consultations

The County Highway Authority has no objections subject to conditions in respect of the creation of the access in accordance with amended plans, the provision of 6m radii for the access, sole means of access to be taken from Lodge Lane, closure of existing access to Gunby Hill, the provision of parking and manoeuvring space and the position of any gates.

Derbyshire Wildlife Trust advises that the proposed tree species is appropriate but it does not see the point of providing wildflower grassland within the areas of tree planting. Specifications of new hedgerow planting to compensate for any hedgerow loss as a result of the new access road should be submitted.

Natural England does not consider that the proposal poses any likely or significant risk to features of the natural environment for which it would otherwise provide a more detailed response and so does not wish to make specific comment on the details of the consultation.

The Environment Agency has no comments to make on the proposal given that the application is for reserved matters only.

The National Forest Company is satisfied with the species mix and the fact that there will be more tree planting than originally proposed and the re-introduction of the tree-lined access.

Responses to Publicity

One neighbouring resident has sent in two letters, one in response to the original application and one in response to the amended landscaping details. He makes the following points:

- a. The 2m drip line of the trees on the boundary of the site as indicated on the submitted details is incorrect – it is 7.5m
- b. Placement of the northerly log cabin 3m inside the drip line of existing trees – location of cabin should be moved to comply with the statement in the planting specification
- c. New tree planting would not thrive owing to lack of light and competition from existing trees – submitted plans are ‘wrong’ and cannot be acceptable to planning
- d. Block plan refers to a septic tank not a sealed tank – there is a big difference between the two. Condition 8 of the outline permission specifically requires foul waste to drain to a sealed cesspool
- e. Ridge height of the cabins (3.7m above ground level) will result in an overwhelmingly visual appearance from Seale Cottage and Grangewood Lea and from Gunby Hill.
- f. Maximum occupation for the cabins should be in weeks rather than months
- g. Surface materials for the driveway
- h. Application does not answer many of the conditions on the outline consent. How will the remaining conditions be met?
- i. Lack of information on the Council’s website

Another neighbouring resident has employed the services of a landscape architect who has commented on the amended landscaping scheme as follows:

- Scots Pine is a tree that grows to a maximum height of 36m with a crown width of up to 10m and a trunk size of 1.5m. The nearest row of Scots Pine to Seale Cottage is approximately 3.5m from the property and 2m from the boundary. Such a large species is considered to be entirely unsuitable and no consideration to the mature height has been included. As the trees mature Seale Cottage has the potential to be damaged by branches interspersing directly with the property.
- Root system of Scots Pine is relatively shallow and extends to a radius similar to the crown. Therefore there is potential for damage to existing hard landscaping to the north of Seale Cottage and to the underground structure of the building.
- The existing boundary hedgerow would not be able to compete for water, nutrients and light and would ultimately die. An important visual barrier would be lost.
- Visual impact of the Scots Pine as a screen would be short-lived as the trunk grows and the crown would be located towards the top of the tree.

- Scots Pines are likely to outgrow the height of the other species – possibility of danger caused by falling tree in the future.
- Proposed spacing of Scots Pine of 1.5m would not work – more suited to smaller hedgerow and shrub species.

The same neighbour has commented personally on two aspects of the proposal – the distance of the log cabins from his property and the amended landscaping scheme. With regard to the issue of distance he refers to the Council's SPG Housing Design and Layout and comments:

- a. The lounge of Seale Cottage is just 2m from the boundary and the most southerly cabin would be 11m therefore it would be 13m from his lounge window, whereas the minimum distance in the SPG is 21m (8m short).
- b. Seale Cottage and Grangewood Lea are set a lower level than the application site and therefore the minimum standards set out in the SPG need to be increased to take account of the topography.

Three further letters have been received, also from neighbouring residents, which make the following points:

- a. Confirmation required on whether it is intended to install a sealed cesspool or septic tank
- b. Insufficient details of the water treatment plant as part of the application
- c. Location and design have fundamentally changed from the outline plan and therefore cannot be building regulations compliant
- d. Unacceptable to locate the tank next to his boundary
- e. Tank should be located underground
- f. Landscaping wholly inadequate particularly on the south side of Lodge Road and to the west of the site
- g. Objects to the siting of the refuse collection point with the risk of odours and vermin
- h. Internal road surface inadequate
- i. Many documents not available on the Council's website and many reserved matters not detailed in the application
- j. Impact on surface water drainage
- k. Light pollution from the site

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan: Recreation and Tourism Policy 1; Transport Policies 6 and 7; Environment Policies 1, 9, 10 and 11.

Emerging Local Plan: Policies S1, S2, S3, S6, SD1, SD3, BNE1, BNE3, BNE4, INF2, INF7, INF8, INF10.

Housing Design and Layout SPG.

National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6 – 10 (Achieving sustainable development)
Paras 11 – 14 (The presumption in favour of sustainable development)
Para 17 (Core principles)
Chapter 3 (Supporting a prosperous rural economy)
Chapter 4 (Promoting sustainable transport)
Chapter 7 (Requiring good design)
Chapter 10 (Meeting the challenge of climate change, flooding etc.)
Chapter 11 (Conserving and enhancing the natural environment)
Paras 186 & 187 (Decision-taking)
Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question)
Paras 196 & 197 (Determining applications)
Paras 203 – 206 (Planning conditions and obligations)
Annex 1 (Implementation)

National Planning Practice Guidance relating to tourism

Planning Considerations

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

- Design and layout
- Impact on the countryside and landscaping
- Impact on residential amenity
- Drainage
- Access and highway issues

Planning Assessment

Members will be aware that the principle of the proposed development was accepted when the outline application was approved in April 2013. That consent reserved matters of layout, scale, appearance, access and landscaping for future consideration and the current application is for the determination of those matters. All other matters have been approved or are subject to conditions attached at the outline stage.

Design and layout

The proposed layout of the log cabins is similar to the indicative plan that was submitted at the outline stage, providing a fairly loose, crescent-shaped arrangement, each served by its own short driveway leading off the main internal roadway and each having two parking spaces per cabin. Two larger, three-bedroom cabins would be located in the southern part of the site where the land is considerably lower. This, together with the shallow roof pitches, would result in the cabins being less obtrusive in the landscape. The cabins would be constructed using shiplap timber and would be of simple design, conducive to their rural setting. When viewed from the footpath network to the west the development would have a staggered, lowering appearance as it descended southwards towards Seale Cottage. It is proposed to leave the views open to the west in order to provide future occupiers with an attractive and uninterrupted aspect.

It is proposed to position the waste sealed tank approximately 17m to the west of the most southerly cabin, close to the internal road so that tankers would more easily be

able to gain access in order to empty it without needing to drive into the centre of the site. The site of the proposed sealed tank would be screened with fencing. This has already been approved under the conditions attached to the outline permission.

Impact on the countryside and landscaping

The topography of the site is such that the development would clearly be visible from the west, including the footpath network, in the period following development. However, the submitted landscaping scheme would help to mitigate the visual impact, which would reduce over a period of time such that the development would integrate with its surroundings. The proposed landscaping between each cabin, when matured, would provide a significant softening effect. The single storey log cabins would sit between existing two-storey development to the north and south of the site and it is considered therefore the proposal would not be dominant in the landscape when viewed in this context. There is an existing mature hedgerow to the east of the site which would reduce the impact of the development when viewed from Gunby Hill.

The neighbour's comments with regard to the drip line (canopy spread) of the trees have been assessed against the submitted landscape proposals. There are existing trees that overhang the northern boundary of the site which the applicant could, by right, cut back as far as his boundary, thereby reducing the canopies of the trees at this point. Therefore, any 'competition' between trees could be addressed quite easily. The closest part of the most northerly cabin would be approximately 5m from the boundary with two rows of native broadleaved trees and shrubs and Scots Pines planted between the cabin and the boundary.

Following receipt of objections to the proposed landscaping, advice has been sought from the Council's Tree Officer and Open Space & Facilities Manager with regard to the proposed mix of tree and shrub species. It is considered that as a native mix of broadleaf, coniferous and evergreen trees to create a visual and acoustic screen and wildlife habitat within a rural setting, they have no issues with the amended landscape proposals as submitted. The trees would provide an attractive backdrop to the (non-native) Leylandii hedge to the south of the development site which, in itself, has the potential to reach 30+m in height.

With regard to the neighbours' concerns on the intention to plant Scots Pine trees, it should be noted that the species grow at a moderate pace for around 50 years after which they slow, becoming a slow growing, evergreen conifer. They are widely used in parks, open spaces and gardens. There is no reason to suggest they would not fit in with the development.

Impact on residential amenity

The concerns of the neighbouring residents have been taken into consideration. With regard to privacy, the SPG states: *'In order to protect the occupiers of the existing dwelling from overlooking and to protect privacy, the primary windows of the existing dwelling should not fall within the minimum distance within the sector of view of the primary windows of the proposed dwelling.'*

There would be no windows within the rear elevation of the two southern-most cabins therefore there are no issues of privacy to address in this instance.

With regard to overbearing, the SPG states: *'In order to protect existing dwellings from overbearing and to protect outlook, the blank/non-habitable elevation of a proposed two-storey property should not breach the minimum distance within the sector view of the relevant ground floor primary windows of the existing property. New single storey dwellings will be considered, in terms of their effect on existing dwellings, on their own merits'.*

The proposed log cabins are all of single storey design with a maximum height of 3.7m. The proposed location of the two most southerly cabins is low lying and the objector has planted a row of Leylandii trees along his boundary which are likely to grow to a considerable height. The Leylandii trees are approximately 2m from his lounge windows which are more likely to affect his light in the short term than the proposed log cabins or the Scots Pines, which will take several years to mature. In light of the above, therefore, there is no sound reason to require a redesign of the proposal on the grounds of residential amenity.

Drainage

Condition 2 of the outline consent does not require the submission of drainage details as part of any reserved matters application. This is covered by condition 9 on the consent and details have been submitted separately to discharge this condition. However, owing to the sensitive nature of the development and its location within the River Mease SAC it is worth providing Members with some information in this regard.

Condition 9 requires the submission of a scheme for foul drainage to a sealed cesspool to BS Standard, to include full structural details, excavation and tank details, location, maintenance and record keeping of alerts, emptying and disposals, etc. The applicant has provided all the information, although the location of the proposed tank differs from that shown on the indicative layout submitted at outline stage. The information contains details of:

- Tank specification and installation
- High level alarm system
- Scheme maintenance and record keeping
- Management plan – normal and emergency conditions
- Surface water.

The Environment Agency has reviewed the information relating to foul drainage and is of the opinion that the proposed installation has due regard to the protection of the water environment and would not cause pollution to, or discharge either directly or indirectly to the River Mease catchment. The Agency therefore has no objections to the proposed sealed tank. It confirms that the responsibility for surface water drainage lies with the Local Planning Authority and consequently has no comments to make in this respect. Surface water drainage will be dealt with under the Building Regulations.

Condition 9 of the outline consent also requires that the siting of the installation to be at least 7 metres from habitable buildings and water supplies. The proposed location would be in excess of 30 metres from the closest dwelling (Grangewood Lea), which more than meets the requirements of the condition. It would be installed underground, a minimum of 2.3m deep. In light of the Environment Agency's response and the intended location of the installation, the details of the sealed tank have been approved.

Access and highway issues

The County Highway Authority (CHA) requires the provision of 2.4m x 150m visibility in the north westerly direction and 2.4m x 120m in the south easterly direction. These have been shown on an amended plan. The access would be taken off Lodge Road at the point indicated at outline stage and on the advice of the CHA would not give rise to unacceptable risk. The CHA considers the access off Lodge Road and the internal access layout, together with the parking/turning facilities for visitors and service delivery vehicles to be acceptable, subject to conditions. The proposed surface for the internal road (other than for the first 5m) would be of Derbyshire Gold rustic roadstone and constructed to a surface layer depth of approximately 50mm. All sub-base layers would be compacted and edged with kerbs to ensure there would be no movement. This is all considered to be acceptable.

Conclusion

It was considered at outline stage that the proposal would meet an identified need for tourist accommodation in the National Forest and would comply with the development plan and national guidance for tourism development. Being located between existing built development and by virtue of the low height of the cabins and the proposed landscaping, the layout is considered acceptable and the impact on the character of the countryside would not be harmful. Reasonable standards of amenity for neighbours would be protected. There would be no demonstrable harm to highway safety or ecological interest.

Given the economic benefits of the scheme, its role in providing a choice of overnight accommodation available to meet an identified need for visitors to the National Forest, its compliance with the development plan and lack of objections from consultees, when weighing the three sustainability criteria in paragraph 7 of the NPPF, the proposal represents, on balance, sustainable development.

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 of details subject to the following conditions:

1. This approval shall relate to the amended drawing No. 2227/1D dated 11/14 showing 6m radii and the northwest visibility splay increased to 150m, and also to the amended landscape drawings received on 24th October 2014 showing cross sections and species mix, numbers and sizes of planting.
Reason: For the avoidance of doubt and in order to ensure an acceptable form of development.
2. Notwithstanding the submitted details, prior to the commencement of development further details, including specifications, to show the new hedgerow planting to compensate for any hedgerow loss as a result of the new access road shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the completed development and the character of the surrounding area.

3. All planting as part of the new hedgerows planting under condition 2 above shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

4. Before any other operations are commenced the new vehicular and pedestrian access shall be created to Lodge Road in accordance with the revised application drawing No. 2227/1D, laid out, constructed and provided with 6m radii and visibility splays of 2.4m x 150m in the north western direction and 2.4x x 120m in the south eastern direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

5. The sole means of access shall be from the approved access to Lodge Road only with no means of access at any time (either vehicular or pedestrian) to Gunby Hill.

Reason: In the interests of highway safety.

6. Prior to the first occupation of any of the holiday lets, the existing vehicular access to Gunby Hill shall be permanently closed with a physical barrier and shall remain closed for the lifetime of the development unless the prior approval of the Local Planning Authority in consultation with the County Highway Authority has first been obtained in writing.

Reason: In the interests of highway safety.

7. None of the log cabins shall be occupied until space has been provided within the application site in accordance with the submitted application drawing No.2010.032-004 for the parking and manoeuvring of visitors', staff, service and delivery vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

8. No gates or other barriers shall be erected within 10m. of the nearside highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

9. No work shall take place on the site until details of a scheme for the disposal of surface water has been submitted to and agreed in writing by the Local Planning Authority, to include the design and location of the proposed soakaway. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protection.

10. Notwithstanding the submitted details, the orientation of all cabins shall be with veranda's facing inwards towards the main access. None shall have windows facing the north, east or southern boundaries.

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, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

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 applicant.

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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and by seeking to resolve planning objections and issues, suggesting amendments to improve the quality of the proposal, with meetings and negotiations and by determining the application as quickly as possible. 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.

The applicant is advised that, other than those conditions that have been formally discharged as part of the recent application, the remaining conditions and informatives as per the outline consent 9/2010/0468 remain relevant to this permission.

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.

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

Item **1.5**

Reg. No. **9/2014/0742/FH**

Applicant:
Miss Fiona Adams
Scaddows House
Scaddows Lane
Ticknall
Derby
DE73 7JP

Agent:
Mr Darryn Buttrill
Bi Design Architecture Ltd
79 High Street
Repton
Derby
DE65 6GF

Proposal: **THE ERECTION OF EXTENSIONS AND ALTERATIONS**
 AND THE ERECTION OF NEW BOUNDARY WALLS AT
 SCADDOWS FARM SCADDOWS LANE TICKNALL
 DERBY

Ward: **REPTON**

Valid Date: **15/08/2014**

Reason for committee determination

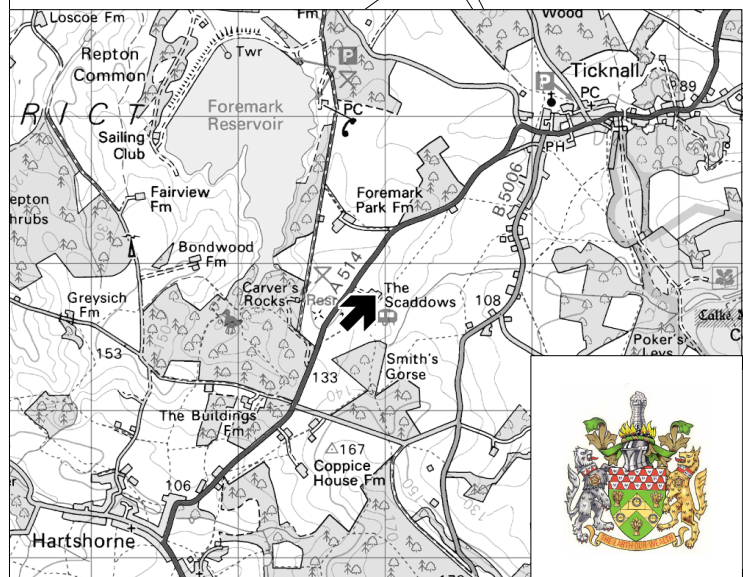
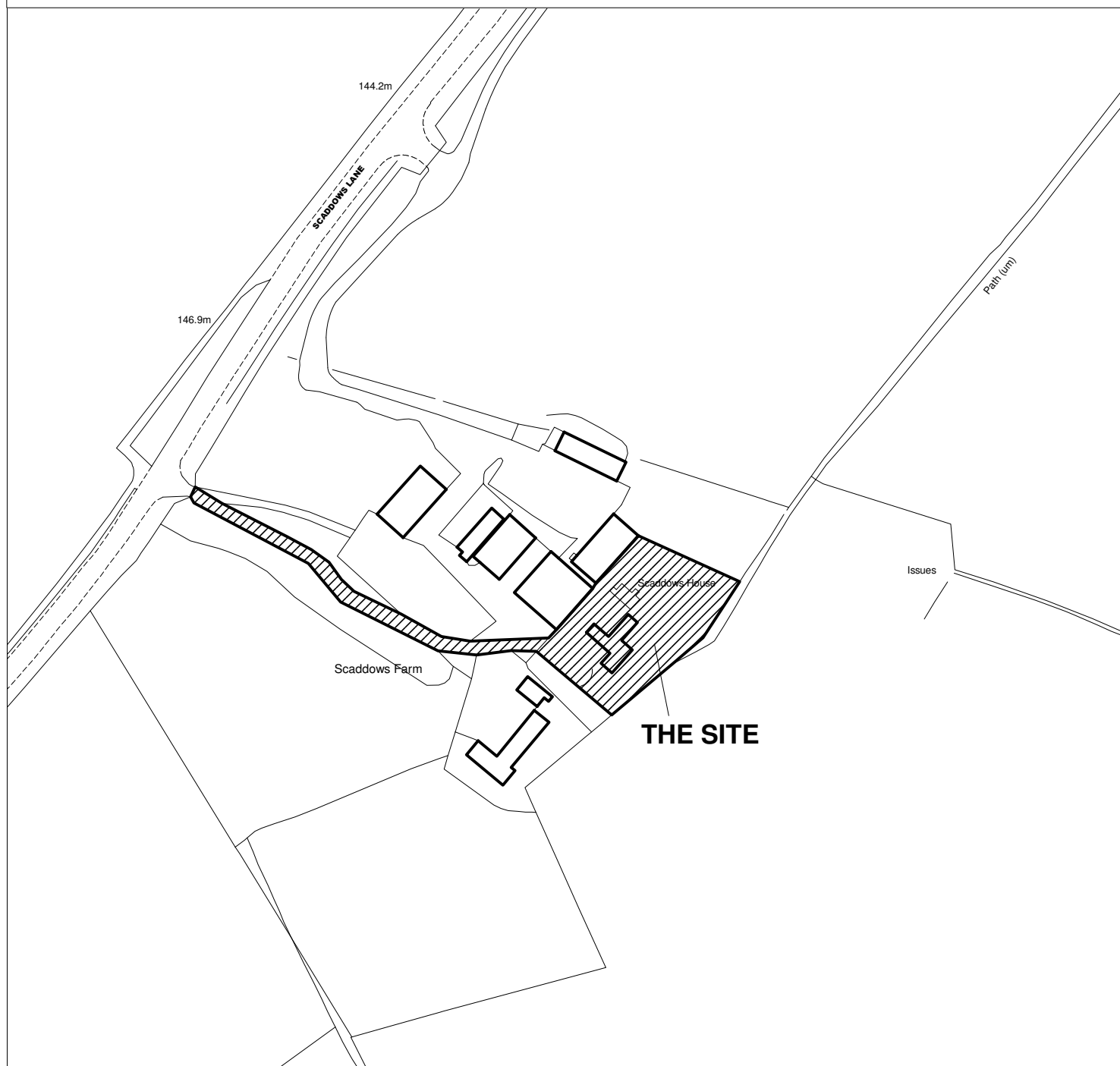
The item is presented to committee at the request of Councillor Stanton as local concern has been expressed about a particular issue and it is considered unusual site circumstances should be considered by the committee.

Site Description

The site comprises the original farmhouse formerly associated with Scaddows Farm. It was separated from the farm some time ago with the applicant taking on ownership of the property a number of years ago. It is accessed from Scaddows Lane, the A514 between Hartshorne and Ticknall via a separate access serving the dwelling and the adjacent bungalow to the south-west, Scaddows Cottage. The working farm and associated buildings remain to the north-west with two large contemporary agricultural buildings providing the immediate boundary.

The farmhouse is of Georgian appearance with what appears to be a Victorian two-storey addition to the rear. This forms a two-storey L-shaped footprint. A former detached single storey barn has been connected to the dwelling by way of a more contemporary aged single storey extension, with a detached garage with space above also erected adjacent recently. Throughout a traditional red brick is used with Staffordshire blue tiles to the roof. Stone cills (where apparent) are painted white and joinery is also painted white. Footings for a previously granted two-storey side extension were installed some time ago, removing a former timber portakabin style building in this position which also extended forward of the principal elevation.

9/2014/0742 - Scaddows Farm, Scaddows Lane, Ticknall, Derby DE73 7JP



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South Derbyshire District Council. LA 100019461. 2014

The land falls sharply to the south-east into pasture beyond the garden boundary, demarked by a timber post and rail fence and hedgerow in part. A public footpath runs along the hedgerow element before heading south across the field. A number of ornamental trees occupy the eastern corner of the site.

Proposal

It is proposed to extend and renovate the rear leg of the two-storey L-shaped part of the farmhouse, with the extension being of contemporary design. It would extend away from the south-east elevation at both floors, although at first floor this is limited. The extension overall would be considerably set back from the principal elevation. A further smaller extension to the north-west side would be added, sitting behind the main range of the farmhouse – retained as it presently stands although with the addition of an open flat-roof stone porch. A mix of render and glazing would provide the materials palette for the contemporary addition, with a flat roof form meeting the existing eaves and walls of the farmhouse. Solar shading would provide projecting eaves to the extension.

The existing principal elevation and associated main range of the farmhouse would be retained. Improvements to the parking and turning areas are also proposed, with sub-division of these areas to provide a private courtyard enclosed within 2.4 metre high brick or rendered walls, whilst the existing entrance to the forecourt would be framed with 1.2 metre high brick walls and timber 5-bar gates.

Applicant's supporting information

Aside from the usual plans and application form, isometric drawings of the proposal have been provided to illustrate the appearance of the proposals when viewed from the footpath (which is at a lower level to the existing and proposed floor levels) and the access drive towards the house.

Planning History

9/2002/1357: The erection of extensions and improvements – Approved March 2003.

9/2002/0358: Alterations, extensions and the erection of a detached garage – Approved May 2002.

Responses to Consultations

None.

Responses to Publicity

Ticknall Parish Council raises objection on the following grounds:

- a) It is over development;
- b) It is not in keeping with the area;
- c) It can be seen from the highway; and
- d) The boundary walls and gate are not in keeping with the area [Officer note: now amended since the Parish Council's response].

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policy 13 and Environment Policy 13 (Listed or Other Buildings of Architectural or Historic Importance)

The emerging policies are:

- Local Plan Part 1 (as modified at Submission): policies SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence) and BNE2 (Heritage Assets) and BNE4 (Landscape Character and Local Distinctiveness).

National Guidance

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

Local Guidance

- Extending Your Home SPG.

Planning Considerations

With the principle of extensions acceptable, the main issues central to the determination of this application are:

- The design of the extension; and
- The impact on existing heritage.

Planning Assessment

Design

There are two main considerations here – the scale and massing of the extensions, and the appearance with respect to the existing context.

Whilst the footprint of the south-eastern extension is considerable, it must be recognised that at first floor there is a limited further footprint. In addition there would be loss of an existing single storey extension which presently runs north-west towards the detached double garage. The extensions would also be of a flat roof nature. When combining these factors, the scale of the extensions is minimised in a perceptual sense such that the degree of harm arising is considerably reduced. Furthermore the extensive use of glazing provides a “lightweight” feel to the proposal considerably reducing the massing. The same applies to the north-west extension. In this respect it is not considered the proposal is “too much” for the existing dwelling to support.

Turning to the appearance, the extensions would appear as a clear contrast to the existing dwelling incorporating a two-storey flat roof – contrary to the usual objectives when designing extensions (referred to in the SPG). However, the absolute contrast between original and contemporary is felt to be of significant merit. It assists in demonstrating an evolution of the dwelling with very little change since its original construction to the addition now proposed. Interim changes would be reversed in

assisting this chronology. Furthermore the retention of the roof over the rear section of original dwelling draws the two parts together to ensure they clearly read as a single entity, opposed to reading as two buildings. The use of render between the glazing also draws on the cill and header detailing on the principal elevation as well as joinery colour elsewhere on the original part. Hence whilst not harmonising in the conventional sense, the proposed extensions are considered to following the objectives of good and high quality design.

The implemented permission for the side extension would be compromised by the proposals preventing the completion of both to the detriment of the design principles discussed above. Indeed the “trade in” of the extant permission weighs in favour of the proposal with its form and appearance no longer considered to be in the best interests of the existing dwelling. Changes to create the private courtyard, along with boundary walls, are all considered to enhance the setting of the existing and proposed, whilst there is no identified conflict with minimum distances set out in the SPG.

Heritage

The existing dwelling is showing signs of its age. There are water and air ingress issues affecting the overall thermal envelope meaning that some works are ultimately necessary in due course. The proposal would facilitate these works ensuring the retention of the element felt to be of primary importance – the principal range and its elevations. Hence whilst there is a degree of harm arising to this undesignated heritage asset, this is less than substantial harm and the wider benefits are considered to outweigh this concern.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plans/drawings 967A-18 and 967A-19; unless as otherwise required by condition attached to this permission.
Reason: For the avoidance of doubt.
3. Notwithstanding the approved plans, no development shall commence until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the extensions and boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

4. No development shall commence until large scale drawings, to a minimum scale of 1:10, of the solar shading eaves and window/door reveals, including horizontal and vertical sections, shall be submitted to and approved in writing by the Local Planning Authority. The solar shading eaves and window/door reveals shall be constructed in accordance with the approved drawings.

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

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to improve the quality of the proposal, meetings and 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.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2013/0689	Linton	Linton	Allowed	Committee
9/2014/0111	Ticknall	Repton	Allowed	Delegated
9/2014/0331	Hatton	Hatton	Allowed	Delegated

Appeal Decision

Inquiry held on 9-12 September 2014

Site visit made on 12 September 2014

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 27 October 2014

Appeal Ref: APP/F1040/A/14/2214428

Land at 50 High Street, Linton, Swadlincote, Derbyshire, DE12 6QL

- 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 Gladman Developments Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2013/0689, dated 21 August 2013, was refused by notice dated 19 December 2013.
 - The development proposed is an outline application for 110 dwellings; access to be taken from High Street, Linton; 50 High Street to be demolished for access purposes.
-

Decision

1. The appeal is allowed and outline planning permission is granted for 110 dwellings; access to be taken from High Street, Linton; 50 High Street to be demolished for access purposes at land at 50 High Street, Linton, Swadlincote, Derbyshire, DE12 6QL in accordance with the terms of the application Ref 9/2013/0689, dated 21 August 2013, and the plans submitted with it, subject to the conditions set out in the attached schedule below.

Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Ltd against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural matters

3. All matters of detail except access have been reserved for future approval. In addition to a site location plan, and a plan showing the location and details of the proposed vehicular access, an indicative site layout was submitted¹, which together with the Design and Access Statement and a Landscape and Visual Appraisal, give a likely indication of the impact of the proposed development.
4. A Section 106 Unilateral Undertaking², dated 17 September 2014, has been signed by the landowners and Gladman Developments Ltd, to South Derbyshire District Council, to secure contributions towards community facilities for Linton, maintenance of residential open space, outdoor facilities and household waste management facilities, and the provision of an area of National Forest Planting

¹ Drawing Ref. 5536-L-01 Revision G, entitled Development Framework; dated August 2013.

² Inquiry Document 42.

comprising 20% of the area of the application site. I return to the Unilateral Undertaking later in my decision.

5. A Statement of Common Ground (SCG)³ sets out the issues that are in dispute between the main parties, which relate closely to the reason for refusal, i.e. whether the development would be in scale and keeping with the character of the settlement and whether it should be permitted outside the identified built confine; whether it would have an unacceptable impact on the character of the landscape and setting of Linton; and the degree to which Linton can be considered a sustainable location for additional housing growth.
6. Linton Village Action Group (LVAG) sought, and was granted, Rule 6 status under the Inquiry Procedure Rules and was duly represented at the Inquiry.
7. A significant number of planning appeal decisions was drawn to my attention, both in written evidence and during the Inquiry. In the interests of conciseness, I have been selective in those that I have specifically referred to in my decision, although I have taken all of them into account.
8. A formal site inspection took place during the afternoon of 12 September 2014, after the close of the Inquiry, which included several viewpoints as well as the appeal site. I also made an unaccompanied site visit to view the site in its context on the afternoon of 8 September, immediately prior to the start of the Inquiry.

Main Issues

9. From considering all the written evidence, the oral evidence given at the Inquiry and from my observations of the appeal site and its surroundings, I consider that the main issues are:
 - (1) Whether the proposal is necessary to meet the District's need for market and affordable housing.
 - (2) Whether the proposal would be a sustainable form of development.
 - (3) The effect of the proposed development on the character and appearance of the surrounding countryside and the setting of the village of Linton.

Reasons

10. The 4.74ha appeal site comprises a broadly rectangular, agricultural field, situated immediately to the west of the village of Linton. It is traversed by three public footpaths. The field gradually slopes down towards the south/south-west, with a slight drop from the back gardens of the properties of Warren Drive, to the east of the site, to the site itself. The established hedgerows and trees along its boundaries provide significant enclosure. It is also visually contained to the south-east by Long Close Wood, one of several tracts of woodland, some recently planted, in the surrounding area.
11. The site is located outside the 'village confine' boundary in the Adopted Local Plan (ALP)⁴. The only existing dwelling, on High Street on the southern edge of the site, would be demolished, to enable the visibility splays for the proposed

³ Statement of Common Ground (SCG) between South Derbyshire and Gladman Developments Ltd; August 2014.

⁴ South Derbyshire District Council: South Derbyshire Local Plan, Adopted Version; May 1998 – Inset 16 on the Proposals Map shows the boundary of the Linton Village Confine.

access to be implemented in accordance with highway safety standards. Linton is a free standing village in the countryside. It is clearly separated from the nearby village of High Cross to the north-east, which almost merges at its eastern edge with the outskirts of the town of Swadlincote. The centre of Linton lies about 4 kilometres from Swadlincote town centre.

Issue 1: Whether the proposal is necessary to meet the requirements of the District for market and affordable housing

The policy context

12. At the heart of national planning policy, the Government aims to boost significantly the supply of housing. To deliver this, the *Framework*⁵ (paragraph 47 [1] and [2]) requires local planning authorities to identify and update annually specific, deliverable sites sufficient to provide five years' supply of housing against their objectively assessed housing requirements. An additional 5% (moved forward from later in the plan period) is to ensure choice and competition, increased to 20% where there has been persistent under-delivery of housing.
13. The importance of meeting housing need is also highlighted in the emerging Local Plan (eLP) for South Derbyshire⁶. The eLP states (paragraph 2.1) that the District is "*currently one of the fastest growing areas in England*" and "*House prices remain unaffordable for many in the District and recent house price rises are likely to increase the number of people unable to afford to buy or rent a home in the District*". This is a ringing endorsement of the importance of responding to the need for more housing through a solutions based strategy rather than relying on a negative and restrictive approach.
14. There was agreement in the SCG that the Council does not have the minimum 5 year supply of housing land, and that South Derbyshire currently suffers from a significant deficiency in the supply of affordable housing. It was also demonstrated that the Council has persistently under-delivered on affordable housing, with only one year since 2005/06 where the number of completions has exceeded the annualised requirement set in the ALP⁷.
15. The Council's assessment of its housing provision over the period 2014-2019, published in May 2014, showed a supply figure of 2.98 years. LVAG (the Rule 6 Party) drew my attention to a housing supply update, dated August 2014, which increased the figure to 3.88 years. This is still significantly short of the 5 year requirement and has not been independently tested.
16. LVAG also contended that the need for a 5 year housing land supply is a temporary phenomenon, and as a consequence the weight given to this consideration should be reduced. LVAG's view, however, flies in the face of both the evidence, stemming from the Barker Review of ten years ago and a host of studies on housing need since then which have consistently pointed to the seriousness of national housing need; and also Government policy. For these reasons I cannot agree with LVAG's view.
17. The Council accepted in its decision notice that the authority lacked a 5 year supply of deliverable homes, but it stated that this was outweighed by other

⁵ Department of Communities and Local Government: National Planning Policy Framework (*the Framework*); March 2012.

⁶ South Derbyshire District Council: South Derbyshire Pre-Submission Local Plan Part 1; March 2014.

⁷ Proof of Evidence by Timothy Dean on behalf of the Appellant; August 2014 (Table 2, page 42).

considerations. The first of these was that the proposal was in conflict with ALP environment policy EV1, which does not permit new development outside settlements, unless it is essential to a rural based activity (which clearly does not apply here); or is unavoidable in the countryside; or safeguards and protects the character of the countryside, including landscape quality. The Council also stated that the proposal was in conflict with ALP housing policy H5, which requires that development is in scale and keeping with the character of the settlement and is within the built confine; and policy H8, which relates to long term rural activities.

18. The Appellant agreed that the proposal was contrary to the first two ALP policies. It questioned, however, the relevance of policy H8, which focuses on rural activities, such as farming or forestry. I agree with the Appellant's reasoning on policy H8 and I therefore consider that the only two relevant policies for me to consider are EV1 and H5.
19. It is therefore necessary to establish the status of these policies and how much weight they can be given. With this in mind, two paragraphs in *the Framework* come into play. Firstly, paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. The paragraph states: "*Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*".
20. If the presumption in favour of sustainable development does apply, then paragraph 14 sets out how this is to be done. It does this in terms of a planning balance, and I will return to this in the final section of my decision.

The status of the relevant Adopted Local Plan (ALP) policies

21. In this section I consider whether ALP policies EV1 and H5 are relevant in terms of housing supply and whether they are up-to-date, which determines what weight they are to be given.
22. *The Framework* makes it clear (paragraphs 2 and 12) that the development plan is the starting point for decision making. The Council's ALP is a saved Local Plan under the terms of the Secretary of State's Direction, as articulated in the Government's saving letter of 21 September 2007.⁸ The letter, however, makes it clear that the policies which are saved under this Direction are only included on the basis that they ensure continuity in the plan-led system and a stable planning framework locally and in particular, a continual supply of land for development (my underlining). The ALP, with a plan period ending in 2001, has failed to achieve these important objectives.
23. The Government's saving letter goes on to state that "*The exercise of extending saved policies is not an opportunity to delay DPD preparation. LPAs should make good progress with local development frameworks according to the timetables in their local development schemes....Where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national...policy and also new evidence, will be afforded considerable weight in decisions*".

⁸ Letter from Government Office for the East Midlands to South Derbyshire District Council; 21 September 2007 [Inquiry Document 20].

24. It is clear that where an authority has not made good progress in its development plan preparation, as in the case of South Derbyshire, especially in meeting the requirements of national housing policy, that saved policies such as EV1 and H5 can be only be given little weight. *The Framework* states (paragraph 215) that any weight that is given to (local plan) policies will depend on the degree of consistency with *the Framework*.
25. The Appellant considered that both policies EV1 and H5 were relevant to paragraph 49 of *the Framework*, as they were concerned with housing supply, albeit in a restrictive way. They were part of a local plan that was out-of-date, both in its plan period, which expired in 2001, and because all the housing provision had been taken up several years ago. It was therefore argued that the ALP now failed to address the current housing requirement of the District.
26. The Council argued that policy EV1 was not a housing supply policy, but was there to ensure that the countryside was protected, and therefore was not caught by the presumption of sustainable development in paragraph 49 of *the Framework*. However, the Council accepted in cross-examination (xx) that the District's housing needs cannot be met inside settlement boundaries, including the village confine of Linton, and that policy H5, which limits new development at Linton to within the village confines, is restrictive.
27. There has also been consideration in a number of appeal decisions as to whether EV1 type policies are housing supply policies or are confined to protecting the countryside. The Council pointed to the need for a balance between providing the necessary housing to meet the District's needs and protecting the countryside. It was unable, however, to point to any policy in the ALP which addressed the serious housing needs of South Derbyshire or where it was giving a policy lead to respond to the strategic aim in *the Framework* to boost significantly the supply of new housing.
28. I therefore consider that paragraph 49 of *the Framework* does apply in this appeal. This view accords with several recent appeal decisions relating to large housing developments where the relevant local plan policies were considered to be out-of-date in relation to national planning policy. One of these decisions⁹ concluded that local plan policies which in the absence of a 5 year supply of new housing, can provide no guidance for the amount of new housing that may be appropriate for any particular level of the identified hierarchy, can be ascribed very little weight.
29. In another recent appeal decision¹⁰ the Inspector stated that "*It seems to me that in the context of the NPPF's stated aim "to boost the supply of housing" (paragraph 47), the provisions of paragraph 49 are intended to ensure that, where existing Local Plan policies have failed to secure a five-year supply of housing sites, housing applications should be assessed not by reference to those policies but rather by using the approach set out in paragraph 14.*"
30. Another recent decision¹¹ concludes that a policy which was out of date (expiry date 2011) which limits development outside development boundaries "*is not designed to meet housing needs in 2014. It is out of date on its own terms*

⁹ Appeal Decision APP/G1630/A/13/2209001; development of 47 dwellings at land to the south of Beckford Road, Alderton, Tewksbury; allowed on 22 May 2014.

¹⁰ Appeal Decision APP/J1860/A/13/2197037; development of up to 50 houses at Lawn Farm, Drake Street, Welland, Malvern, WR13 6LP; allowed on 20 January 2014.

¹¹ Appeal Decision APP/H1840/A/13/2199085; development of 500 dwellings, etc. at Pulley Lane, etc., Droitwich Spa; allowed on 2 July 2014.

and in the context of today's changed policy, economic and legal context. It is not based on the full objectively assessed needs in 2014. It cannot therefore be afforded weight in the context of this case because it is no longer fit for purpose. In my view it should be given very little weight."

31. My attention was also drawn to the recent South Northamptonshire High Court Judgment (HCJ)¹² which stated that local plan policies which severely restrain development in the open countryside fall somewhere between policies that are not housing supply policies and those that are. In this HCJ, Mr Justice Ouseley stated (paragraph 47) that there is a test to determine whether such policies are caught by the presumption in favour of sustainable development in paragraph 49 of *the Framework*. He stated that these policies either amount to what I would term a 'blanket ban' on development in the countryside, or they protect the particular character of a village or a specific landscape designation, such as a green wedge. The Judge stated that these latter policies were not caught by paragraph 49 of *the Framework*, but the first category were.
32. The Appellant, in summarising the HCJ, stated that the 'blanket ban' type of policies are the very sort of policies that paragraph 49 has to neutralise if *the Framework* is to achieve the aim of significantly boosting housing supply. In my judgment, policy EV1 clearly falls into the 'blanket ban' category of countryside protection policies, for the reasons expressed in the HCJ. I therefore agree with the conclusions of the appeal decisions which I have quoted from above, that policies EV1 and H5 fail to address the current issue of housing need in South Derbyshire, which the eLP accepts is serious in the District. If the policies do not address housing supply, this also illustrates the seriousness of the omission, due mainly to the ALP being overtaken by events by several years; either way the ALP is not fit for purpose and can be given little weight in determining this appeal.

The Council's defence of the status of the Adopted Local Plan (ALP)

33. The Council referred me to two recent appeal decisions in support of its reliance on the ALP; one decision relied upon policies EV1 and H5 to justify the dismissal of housing in the countryside at Weston-on-Trent within South Derbyshire¹³; and a second decision refused a much larger development at Irchester, in a nearby District¹⁴ where the Inspector applied policies which were broadly equivalent to policies EV1 and H5. The Weston-on-Trent decision is silent on *the Framework's* aim to boost significantly the supply of housing, doubtless accounted for by the fact that the housing gain (just one dwelling) was minimal in relation to need, whilst the impact of the proposal on "*long range views of the Trent Valley*" was considered to be harmful. This decision is not comparable to the appeal before me and can be afforded little weight.
34. The Irchester appeal decision relates to a proposal for up to 124 dwellings. It addresses policy G6, which seeks to resist development of any kind in the countryside (albeit with a few provisos), which is broadly similar to policy EV1 before me. The decision accepts that the policy (and at least one other) may

¹² High Court Judgment between South Northamptonshire Council (claimant) and Secretary of State for Communities and Local Government and Barwood Land and Estates Ltd (defendants)-in particular paragraphs 43-47; 10 March 2014.

¹³ Appeal Decision APP/F1040/A/13/2202043; the development of a dwelling at The Field, Trent Lane, Weston-on-Trent, Derbyshire, DE72 2BT; dismissed on 3 January 2014.

¹⁴ Appeal Decision APP/H2835/A/12/2182431; erection of up to 124 dwellings (including affordable homes) and new medical centre, together with use of additional land for sport and recreation at land west of High Street, and off Alfred Street, Irchester, Northants; dismissed on 5 June 2013.

also have an effect on housing supply, although it states that this is not its primary purpose.

35. The Irchester Inspector concludes that Wellingborough Borough Council has a serious shortfall in relation to its 5 year housing land supply target, to which he gives substantial weight. It is clear in that decision, however, that the benefits of the proposal, for example addressing housing need, were outweighed by serious harm both to highway safety and visual impact on both the character of the countryside and the setting of the older part of the village. This decision is therefore not directly comparable to the appeal before me. Furthermore, the South Northamptonshire HCJ seems to override the Irchester decision's paragraph 64, i.e. that its countryside policy should not be regarded as out-of-date in relation to paragraph 49 of *the Framework*. This further limits any weight that I can give to this decision.

Status of the emerging Local Plan (eLP)

36. When the Council's planning witness was asked in xx whether the ALP said anything about meeting the District's housing needs post 2001, the answer given was that this was a matter for the eLP. Although the Council stated that the eLP should not be given much weight because it has not yet been examined, LVAG argued that it should be given significant weight on the grounds that it is procedurally well advanced to the point that it has been submitted to the Secretary of State for Examination (on 8 August 2014).
37. *The Framework* states (paragraph 216) that decision makers may also give weight to relevant policies in emerging plans according to three criteria, the first of which relates to the stage of preparation. Although the eLP has been submitted for Examination, the testing of the evidence at the Hearings has not yet taken place. Whether there have been many representations against the plan or few, the plan has not yet been tested, and at this time there is no guarantee that it will be found sound by an Inspector. I therefore agree with the Council and the SCG that the eLP should carry little weight in this appeal.
38. This means that there is currently a development plan policy vacuum in relation to the provision of housing in South Derbyshire based on the revocation of the East Midlands Regional Spatial Strategy, the demise of the Derbyshire Structure Plan, the antiquity of the ALP, and the early stage of the preparation of the eLP.

Affordable housing

39. The District has only achieved 9% of its housing completions over the period 2005/06 – 2013/14 as affordable homes. The Appellant's evidence, which was not challenged at the Inquiry, shows affordable housing provision declined significantly, from 90 dwellings completed in 2010/11, to 23 completions in 2013/14. This is significantly below the 30% completion rate being targeted in the eLP (policy H20), and the amount included in the proposal before me. There is clearly an urgent need to address affordable housing provision in the District, which the proposal would help to meet by delivering 33 units.

Conclusion

40. I therefore conclude that the lack of a 5 year supply of housing land carries significant weight in favour of the proposal. Although the proposal is contrary to ALP policies EV1 and H5, these have little weight; they are out of date both

in their age but also because the housing provision in the ALP has long been used up. As 'blanket ban' policies they patently fail to address the current issue of housing need in South Derbyshire, and the South Northamptonshire HCJ along with several appeal decisions, confirm my conclusion that such out-of-date policies should be given little weight. I have also found that the untested eLP should be given little weight.

41. Neither of the appeal cases submitted by the Council in support of its ALP policies outweigh my conclusion that these policies should be given little weight. The presumption in paragraph 49 of *the Framework* in favour of sustainable development therefore applies, and I will address paragraph 14 of *the Framework* in the final section of this decision, which sets out the considerations that I have to take into account in applying the presumption.
42. Finally I have found that the serious affordable housing need in the District combined with the significant under-provision over recent years is a significant material consideration in support of the proposal in its own right.

Issue 2: Whether the proposal would be a sustainable form of development

The three dimensions of sustainability

43. Paragraph 7 of *the Framework* sets out the three interdependent dimensions of sustainable development – economic, social and environmental. The Council accepted that in some respects, the proposal would address these dimensions. In xx, the Council's planning witness agreed that the proposal was supported in relation to its economic and social roles, as set out in the core planning principles in paragraph 17 [3]. The Council also accepted the importance of economic growth as central to national policy, as highlighted in paragraphs 18-21. This leaves the principal areas of disagreement between the main parties relating to the environmental role, which I address in my third issue below, and the sustainability of the village of Linton, both in terms of its access to services and facilities, and impacts on its existing community infrastructure, both of which I address below.

Locational sustainability

44. One of the reasons for refusal was based on the Council's view that Linton was an unsustainable location in relation to the scale of the proposal, because it was a Local Service Village, with a limited range of facilities and services; such settlements had a policy restriction of a maximum of 15 dwellings. The Council's recently published *Settlement Hierarchy*¹⁵ paper, as input to the eLP, sets out both the quantum of service provision for each level of the settlement hierarchy and the size of housing development that would be acceptable at each of these levels. The Council also submitted a map which identified the locations of the services currently operating in the village¹⁶.
45. The *Settlement Hierarchy* has re-evaluated the number of services in Linton, resulting in its reclassification as a Key Service Village; these villages are considered to be the most sustainable settlements outside urban areas, which can accommodate a scale of growth of up to and including strategic sites (100

¹⁵ South Derbyshire Local Development Framework: Core Strategy Topic Paper – *Settlement Hierarchy*; July 2014 [Inquiry Document 4].

¹⁶ Map showing Linton Services [Inquiry Document 17].

dwelling plus). It was also agreed by the main parties, following a joint scoping exercise, that there were sufficient employment sites within a 2 kilometre radius to further justify the sustainability credentials of Linton.

46. Additional support for the sustainability of Linton comes from the recent Council decision to grant planning permission for 23 dwellings at Coton Park. In so doing, it took account of its officer's statement that its location close to the village of Linton with its services and facilities is such that it was feasible to reach these on foot quite easily and therefore, on balance, the site was considered to be sustainable¹⁷.
47. I also agree with the Appellant that Linton's relationship to nearby higher order settlements, such as Swadlincote, is a material consideration. Linton has an adequate bus service to enable commuting and social trips both to Swadlincote and to the larger nearby town of Burton-on-Trent.

Impact on existing community facilities in the village of Linton

48. LVAG submitted evidence to show that the facilities in Linton were declining, and argued it was therefore inappropriate to allow a new development of the size of the appeal proposal. It seems to me, however, that if some shops are in danger of closing and interest is dwindling in some of the community activities, these are arguments for more families to move into the village.
49. Several residents and LVAG also expressed concern that the village primary school would not be able to cope with the influx of new children from the proposed development. Whilst I understand their concerns, the local education authority (LEA), which was consulted on the appeal application, chose not to object. Moreover, the LEA did not seek a Section 106 contribution towards additional school places and/or other improvements.

Conclusion

50. I therefore conclude that the proposed development would not be harmful to the existing community infrastructure of the village; that the proposal would be sustainable in relation to its economic and social impact; and that Linton is a sustainable location for a scheme of the size of the appeal proposal. The sustainability of the scheme is therefore an additional material consideration in support of the proposal.

Issue 3: The effect of the proposed development on the character of the surrounding countryside and the village of Linton

Introduction

51. The Council's concerns are that the proposal would unacceptably intrude into the character and appearance of both the landscape and the setting of Linton with reference to a number of impacts. Firstly, it considered that the proposed development would urbanise a section of attractive countryside on the edge of the village. It maintained that this countryside is valued by local people and lies within the Mease/Sence Lowlands National Character Area 72, within which it is classified as part of the Character Type 'Village Estate Farmlands'. This is described as: "generally rolling and park-like, with a fair scattering of copses for fox-coverts..."¹⁸ The Council's landscape witness, during his Evidence in

¹⁷ Proof of Evidence by Timothy Dean on behalf of the Appellant (paragraph 3.2.4, page 16).

¹⁸ Derbyshire County Council: Landscape Character Descriptions – 10 Mease/Sence Lowlands, Part 1, section 10.2.

Chief, stated that it was not appropriate for new housing to be developed in the Mease/Sence Lowlands, and that Linton was located in an area of historic sensitivity.

52. The Council's second concern was that the proposed development would be seen from a number of receptors, including parts of the village bordering the appeal site and several properties to the west, south-west and south of the appeal site. In addition, concern was expressed that the 'new urbanity' would be visible from Penguin Wood and other parts of the National Forest, which encompass the appeal site, including from the newly formed National Forest Way. It was therefore considered that the proposal, in the heart of the National Forest, would detract from this important national asset. In xx, the Council's landscape witness considered that in time, the status of the National Forest would be equal to the other national policy designations listed in footnote 9 below paragraph 14 of *the Framework*.
53. The Council's third concern related to the loss of high peripheral hedges as a result of the requirement for a 86m long visibility splay, in order to allow safe vehicular access into the proposed development; and that this would open up the site even further to impacts on receptors, which would be exacerbated in the winter months following leaf fall. The Council considered that the landscaping to mitigate the impacts of the development would serve to reduce the openness of the landscape, particularly as viewed from the village.

Impact on landscape character and appearance

54. Although the landscape appears to be a typical example of the 'Village Estate Farmlands' Character Type, it has no statutory landscape designation. The Council's landscape witness also accepted in xx that nothing in the ALP or landscape character area documents states that new housing development is inappropriate in principle within this character type. In areas such as the appeal site, the advice in *the Framework* (paragraph 17[5]) is to recognise the intrinsic character and beauty of the countryside. The loss of countryside per se therefore does not amount to serious harm.
55. In the absence of any countryside policies at national level or in the development plan to which I can attach even moderate weight, it is necessary to come to a view on how important the appeal site is in landscape terms and in particular whether it merits protection as a valued landscape in relation to *the Framework* (paragraph 109). In this regard, Derbyshire County Council's AMES sensitivity study¹⁹ places the appeal site outside the primary or secondary levels of sensitivity, but in the least sensitive category of landscape.
56. Both parties also made reference to the Landscape Institute's GLVIA²⁰, which advises on the way landscape assessments should be undertaken, and in particular, the advice that the impact on the landscape needs to be separated from the effects on people, or receptors. The GLVIA 3rd edition also places greater emphasis on professional judgment and less emphasis on a formulaic approach. Generally, the discussion of the visual impact of the proposed development followed this advice during the Inquiry.

¹⁹ Derbyshire County Council: Areas of Multiple Environmental Sensitivity (AMES); 2013.

²⁰ Landscape Institute: Guidelines for Landscape and Visual Impact Assessment: 3rd Edition; April 2013 [Inquiry Document 19].

57. From my observation the site, whilst not unattractive, is unremarkable in its character and appearance, and seems to accord with the low sensitivity characterisation which the AMES study attributes to this part of South Derbyshire. In addition, the site is largely enclosed by mature, tree lined hedgerows, which further reduce its sensitivity to residential development.

Impact on receptors

58. On my formal site visit I viewed the appeal site from all the receptors to which the Council referred me²¹. Clearly, the proposal would impact on the views from the rear windows and back gardens of 16 properties on Warren Drive, on the western edge of the village. However, the existing weak landscape edge, dominated by a mix of fence types, would be replaced by stronger, more consistent landscaping which would be subject to conditions at the reserved matters stage. There would be some increase in the sense of enclosure from these properties, but the proposed development would not be overbearing, whilst the loss of views from private properties is not a material consideration.
59. The only other receptor relatively close to the appeal site that I was taken to was a viewpoint from the north of the site on Cauldwell Lane, a field's length away and separated from the site by a well-established screen including evergreen species. Furthermore, the appeal site slopes down away from the field to the north, further diminishing any visual impact from future housing on this receptor. This would be in contrast to the expansive views over the Trent Valley in the other direction from this viewpoint, i.e. to the north.
60. The other receptors that I visited on the Council's map were significantly further away than the above mentioned location on Cauldwell Lane, in the region of 1,000-1,200m from the western or southern boundary of the appeal site. I consider it significant that the mature, traditional hedges along the surrounding country lanes, coupled with the enclosed nature of the site and the lack of prominence in its topography meant that the Council was not able to identify any other receptors close to the appeal site for me to visit. Moreover, the Appellant submitted a map²² which showed that the Zone of Theoretical Visibility around the appeal site is limited to a segment to the west and the south-west, extended to a maximum distance of around 1,500m and significantly constrained by woodland.
61. I also find it significant that the views from the other receptors to the west or south-west showed the appeal site, in the middle distance, against the backdrop of existing houses in the village, so that any impact would not be in relation to a pristine landscape; the likely effect of the proposed development would be an almost imperceptible shortening of the distance to what would become the new eastern, and well landscaped, edge to the village.
62. I was taken to a section of the National Forest Way where it passes through Penguin Wood, about 1,100m to the south-west of the appeal site. This area has been recently planted, and I agree with the Appellant that in a few years' time, it would be difficult to see the proposed development, if at all from this location. Although landscaping is a reserved matter, I am satisfied from the submitted indicative site layout and the unilateral undertaking to provide 20%

²¹ The locations of the receptors from which the Council requested me to view the appeal site are identified on the map which was submitted as Document 34 to the Inquiry.

²² Figure 5 (Visual Appraisal) in Timothy Jackson's Proof of Evidence in relation to Landscape and Visual Matters; August 2014.

tree planting on the site, that it would be possible to provide substantial mitigation to further soften the impact of the proposal on the surrounding landscape.

Impact on the National Forest

63. The Council cites the National Forest as an argument against allowing the appeal. The Forest, however, is not a landscape designation, and I can find no evidence to support the view of the Council's landscape witness, that its status would, in time, equal that of the AONB or any other national policy designation. The purpose of the National Forest is not to fetter development but to increase the amount of woodland cover over the 220 sq. mile area of the Forest, from 6% in 1990/91 to an eventual target of 33%²³.
64. The eLP, by setting a National Forest planting target (woodland and landscaping) of 20% of new housing sites between 0.5ha – 10ha²⁴, reflects the Strategy's acceptance of new development within the Forest in principle, subject of course to appropriate environmental safeguards. It is therefore not surprising that the National Forest Company supports the appeal proposal, which aims to provide 20% of its area as woodland or landscaping.

Impact on existing hedges and the effectiveness of the proposed mitigation

65. A section of the existing high hedges would be required to make way for the proposed vehicular access. I observed, however, that a substantial portion of the hedge around the cottage is part privet, part ornamental. This would be replaced by a native hedgerow extending just behind the visibility splay, although there would of course be a larger (around 10m) gap than the existing entrance to the field. This could be achieved through translocation or semi-mature stock with the details determined at the reserved matters stage. Whilst the cottage is not unattractive, it would not be a significant loss architecturally.
66. The proposed highway works to secure the vehicular access would be complemented by street widening. However, the entrance to the village is not particularly coherent at present, with a broad entrance to Long Close, opposite the appeal site. Any visual impact from the new entrance would be compensated by the hedge improvement and increased highway safety due to the wider road and street lighting. Moreover, the entrance to the village would revert to a more rural appearance with the demolition of 50 High Street and the replacement of privet by native hedgerow. I therefore do not agree that the setting of the village would be harmed by the proposed development.
67. Although the Council's landscape witness in xx was dismissive of the quality of the proposed landscaping, referring to such planting as SLOP (space left over after planning), the Appellant aims to integrate the 20% National Forest planting within the scheme which, even allowing for some thinning due to leaf fall in winter, would represent a significant planting screen for the proposed development ; and secondly as a reserved matter, the Council will be able to control the timing, quality and distribution of the planting on the appeal site through negotiation and ultimately, condition. Moreover, the initial landscaping proposals in the Appellant's illustrative submissions were supported by the Council's Design Excellence Officer.

²³ The National Forest – the strategy 2004-2014; the woodland target is set out in paragraph 2.2, page 7.

²⁴ South Derbyshire Pre-Submission Local Plan, policy INF 8 (The National Forest) and Table 6; March 2014; and the National Forest Guide for Developers and Planners [Inquiry Document 21].

Conclusion

68. In conclusion, the proposal would result in the loss of a visually well contained field in an undesignated, low sensitivity landscape on the fringe of the village of Linton. However, it would not breach natural landscape boundaries, such as broad tree belts, woodland and ridges. I agree with the Appellant's landscape witness who stated in xx that the landscape impact, following mitigation through careful design, the provision of green infrastructure and landscaping, would be 'minor adverse'. I therefore consider that the harm to the landscape would be minimal and as such I attach limited weight to the Council's concerns.

Section 106 Unilateral Undertaking

69. The Unilateral Undertaking covers a range of financial and environmental provisions, none of which are in dispute between the main parties. (The provision of affordable housing is covered by condition). Following my request during the Examination, a schedule²⁵ was produced which provided the necessary justification in relation to the requirements of CIL Regulation 122.
70. It is clear from the schedule that the contributions set out in the Unilateral Undertaking, i.e. towards community facilities in Linton, outdoor facilities, the maintenance of residential open space, household waste management facilities and National Forest planting, satisfy the tests in Regulation 122, in that they are necessary to make the proposed development acceptable in planning terms; they are directly related to the proposed development; and they are fairly and reasonably related in scale and kind to the development. In summary, the contributions are linked to specific schemes which would benefit the future residents of the proposed development.

Other considerations

71. Many residents wrote letters objecting to the proposal, although there was also a smaller, though not insignificant, number of supporting letters. In addition to the issues which I have addressed above, several other points were made in opposition to the scheme.

Prematurity

72. Concern was expressed, especially by LVAG, that the proposal, for a major housing site, would be premature in relation to the eLP, which focuses new development on the more urbanised parts around Swadlincote and on the edge of Derby, rather than in the more rural areas of the District such as around Linton. However, I have already concluded that the eLP can only be given limited weight. Moreover, the proposed Settlement Hierarchy does not require every new dwelling in the District to be built in and around Swadlincote or the environs of Derby. I also agree with the Appellant that prematurity requires a high threshold to be passed. In the light of this consideration, the scale of the proposal, at 110 dwellings, is insufficient to harm the strategic thrust of the eLP, which seeks to make provision for over 13,000 new homes.

Highway congestion and safety

73. Concerns related to increased vehicular traffic generated by the proposed development, leading to congestion on rural roads and safety issues around the proposed access. The highway authority has not raised any of these concerns

²⁵ Schedule of Section 106 matters [Inquiry Document 43].

or objected to the development; the road widening and access visibility splays would meet the appropriate standards, and can be secured by condition. Another condition would secure a Residential Travel Plan to encourage increased use of sustainable means of travel. I see no reason to come to a different view from the highway authority and the Council.

Ecology

74. Neither Natural England nor Derbyshire Wildlife Trust raised objections, subject to conditions requiring a detailed mitigation and monitoring strategy for great created newts, badger protection and a biodiversity management plan. Subject to these conditions the proposal would be acceptable in ecological terms.

Agricultural land loss

75. There is no compulsion in *the Framework* for developers to use poorer quality agricultural land, although paragraph 112 encourages significant development to do so. There is, however, no definition in *the Framework* of what is meant by the term 'significant development'. The same paragraph advises local planning authorities to take into account the economic and other benefits of the best and most versatile agricultural land. As the Council officers' report stated, the advice in *the Framework* is not intended to prohibit development on land just because it is currently in use as agricultural land, otherwise there would be no growth at all outside settlement confine boundaries. I agree with the Council and for the above reasons I am unable to give much weight to this consideration.

Impact on the footpath network

76. There were concerns that there would be increased use of the footpaths on the appeal site; this is not seen as an argument against the proposal in planning terms.

Other concerns

77. In response to concerns that a precedent would be set for similar developments, I have determined the appeal on its own merits, bearing in mind the specific context of the appeal site and its surroundings. Any further planning applications would be determined by the Council in the normal way. I have no evidence to point to any flood risk associated with the proposal.
78. Detailed concerns, such as loss of privacy, can be addressed at the reserved matters stage. Other concerns were made, but none were sufficient to outweigh the reasons that have led me to allow the appeal. Finally, concerns over property devaluation and loss of views are outside the remit of the appeal.

Conditions

79. I have based my conditions on the helpful round table discussion at the Inquiry, and the subsequent list which was submitted jointly by the main parties²⁶. I am generally satisfied that these conditions comply with the advice set out in Circular 11/95 *The Use of Conditions in Planning Permissions*. However, I have omitted the suggested condition referring to a detailed Arboricultural Method Statement as this is appropriately required at the reserved matters stage, and the highway authority's standards relating to

²⁶ Schedule of Suggested Planning Conditions [Inquiry Document 44].

gradient of the access and swept path diagram are unnecessary if the road is to be adopted, which is my understanding of the evidence.

80. Conditions (5) to (8) are to protect the character and appearance of the surrounding area. Condition (9) is to ensure the appropriate quantum, delivery and type of affordable housing to be included in the development. Condition (10) is to safeguard the living conditions of future occupiers of the development. Conditions (11) to (13) and (15) are in the interests of wildlife conservation. Conditions (14), (20) and (21) are to safeguard the living conditions of neighbouring residential occupiers and highway safety. Conditions (16) to (18) are for pedestrian and vehicular safety. Condition (19) is required to promote sustainable transport. Finally, condition (22) is to minimise the risk of flooding and pollution.

Overall conclusions and planning balance

81. I have found that the presumption in favour of sustainable development, as set out in paragraph 49 of *the Framework*, applies to the relevant ALP policies, and it is therefore necessary to apply the tests in paragraph 14. This means that where the relevant policies in the development plan are out-of-date and can therefore be given little weight, as I have already concluded, I have to determine the planning balance, i.e. whether the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies in *the Framework* taken as a whole.
82. I have concluded on the first main issue that the lack of a 5 year housing land supply is a material consideration to which I attach significant weight. I have also concluded that the provision of 30% affordable homes in an area which has delivered an insufficient quantity in relation to its serious need is a further significant material consideration in support of the proposed development. There would also be other economic benefits through construction jobs and household expenditure impacts, which are material to the decision.
83. On the issue of sustainability, I have concluded, in relation to the economic and social criteria in paragraph 7 of *the Framework*, that the appeal site is in a sustainable location based on local facilities and services in the village; regarding access by bus to the nearby towns of Swadlincote and Burton on Trent; and in terms of its impact on existing community infrastructure. There is now no disagreement with the Council on the economic and social aspects of sustainability, as Linton has been reclassified as a Key Service Village where the size of the proposed development would not be inappropriate.
84. I now turn to the final issue which covers the remaining, environmental, strand of sustainability. I have concluded that, although the impact of the proposal on the character and appearance of the landscape and the setting of the village of Linton would result in limited visual harm following the proposed mitigation, it would fail by some distance to significantly and demonstrably outweigh the material considerations in favour of the proposal, which I have summarised above.
85. The proposed development, therefore, subject to the Section 106 Unilateral Undertaking and the conditions set out in the Schedule, would be in accordance with national planning policy. Whilst my findings will disappoint many residents, the evidence leads me to conclude that the appeal should succeed.

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

Mike Fox

INSPECTOR

Schedule of Conditions

- 1) Details of the layout, scale, appearance and landscaping (the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development is commenced and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of:
 - a) Three years from the date of this permission, or
 - b) Two years from the date of the approval of the last of the reserved matters to be approved,whichever is the later.
- 4) The development hereby permitted shall be carried out in accordance with the details shown on the submitted Development Framework Plan, Drawing Number 5536-L-01 Rev G, including the proportion of National Forest Planting as shown, and also in accordance with the principles set out in the submitted Design and Access Statement.
- 5) Prior to the commencement of development a scheme outlining the phasing of development, including a site layout plan identifying land uses and associated Habitat Management Areas, informal open space and infrastructure, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved phasing scheme.
- 6) No part of the development shall be carried out until the precise details and specifications of all external materials to be used in the construction of the dwellings have been submitted to and approved in writing by the local planning authority. The work shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of the development hereby approved, levels of the finished floor levels of the dwellings and of the ground levels of the site relative to adjoining 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.
- 8) Any reserved matters application shall include plans indicating the positions, design, materials and type of all boundary treatments to be erected, including those along the routes of the public footpaths. The boundary treatments shall be completed in accordance with the approved details before the development is occupied.
- 9) No development approved by this planning permission shall commence 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 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- (i) The numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall be distributed throughout the development, and which shall consist of not less than 30% of the dwellings in each phase of which 70% shall be affordable rented housing and 30% shared ownership;
 - (ii) No more than 80% of the open market housing in each phase shall be occupied before all of the affordable housing for that phase is completed and ready for occupation;
 - (iii) The arrangements for the transfer of the affordable housing to an affordable housing provider of the management of the affordable housing if no registered social landlord is involved;
 - (iv) The arrangements to ensure that such provision is affordable for both the first and subsequent occupiers of the affordable housing; and
 - (v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 10) No part of the development hereby permitted shall be commenced on the site unless and until: a) a site investigation has been designed for the site using the information obtained from the desktop investigation previously submitted in respect of contamination. This shall be submitted to and approved in writing by the local planning authority prior to the investigation being carried out on the site; and b) The site investigation and associated risk assessment have been undertaken in accordance with details submitted to and approved in writing by the local planning authority; and c) A method statement and remediation strategy, based on the information obtained from 'b' above, including a programme of works, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved remediation strategy.
- 11) Prior to the commencement of development of any works that may affect bats or great crested newts or their habitats, a detailed mitigation and monitoring strategy shall be submitted to and approved by the local planning authority. All works shall then proceed in accordance with the approved strategy.
- 12) Prior to the commencement of any works on a site a survey for any recently excavated badger setts within the site shall be carried out and submitted to the local planning authority. Works shall only commence when the local planning authority is satisfied that no new badger setts have been created since the original badger survey was carried out. If new badger setts have been created since the original badger survey was carried out then a strategy for the exclusion of badger and subsequent closure of the setts under licence will be submitted to and agreed in writing by the local planning authority and thereafter the works shall be implemented in accordance with Natural England guidance and the Protection of Badgers Act 1992.

- 13) No development or other operations shall commence, including but not limited to site clearance and site preparation, until a Biodiversity Management Plan, that shall include provisions for ecological retention, enhancement and future maintenance and management, has been submitted to and approved in writing by the local planning authority. The approved Biodiversity Management Plan shall be implemented in full and subsequently maintained in accordance with the approved Biodiversity Management Plan.
- 14) The demolition of no. 50 High Street shall be carried out in accordance with a Best Practice Method Statement as outlined in paragraph 5.6 of the FPCR Bat Survey Report dated 25 September 2014.
- 15) As part of any reserved matters submission details of the intended positions and design of the bat boxes and roost features for the site shall be provided, and the scheme shall be carried out in accordance with the approved details before any of the dwellings hereby approved are first occupied.
- 16) No operations shall be commenced until a temporary access for construction purposes has been constructed to High Street, laid out in accordance with a detailed design first submitted to and approved in writing by the local planning authority. The access shall have a minimum width of 5.5m and be provided with visibility sightlines of 2.4m x 43m in the north easterly direction and 2.4m to the extremity of the site frontage abutting the highway in the south westerly direction. The area forward of the sightlines shall be cleared and maintained thereafter clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.
- 17) Prior to occupation of the first dwelling, High Street shall be modified in accordance with the application drawing F0026-001-002A. A 2m wide footway shall be provided around the southern radius of the High Street/The Crest junction and extend along the south eastern side of High Street opposite the application site frontage. The High Street carriageway shall be widened to 5.5m and be provided with a 2m wide footway on the north eastern side from the site's north eastern boundary extending along the entire site frontage. The modified highway shall be laid out, constructed, drained and lit in accordance with Derbyshire County Council's specifications for new estate streets.
- 18) The reserved matters application shall provide details showing car parking of two vehicles per dwelling.
- 19) Any future reserved matters application shall be accompanied by a detailed Residential Travel Plan with SMART objectives. The Travel Plan shall set out proposals, including a timetable to promote and monitor travel by sustainable modes which are acceptable to the local planning authority and shall be implemented in accordance with the timetable set out therein. Monitoring reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the planning consent, to the local planning authority for a period of five years from first occupation of the development.
- 20) No development shall take place until a construction management plan or construction management statement has been submitted to and approved in

writing by the local planning authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for: - storage of plant and materials, parking and manoeuvring of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried on the highway, pedestrian and cyclist protection, proposed temporary traffic restrictions and arrangements for turning vehicles.

- 21) Wheel cleaning facilities for all construction vehicles shall be provided and retained within the site throughout the entire construction period. 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.
- 22) No development shall take place until details of a scheme for the disposal (incorporating Sustainable Urban Drainage principles) of surface water have been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in conformity with the details which shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Costs Decision

Inquiry held on 9 September 2014

Site visit made on 12 September 2014

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 27 October 2014

Costs application in relation to Appeal Ref: APP/F1040/A/14/2214428 Land at 50 High Street, Linton, Swadlincote, Derbyshire, DE12 6QL

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gladman Developments Ltd for a full award of costs against South Derbyshire District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for 110 dwellings; access to be taken from high Street; 50 High Street to be demolished for access purposes.
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Decision

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

The submissions for Gladman Developments Ltd

2. The Applicant refers to several paragraphs in the Planning Practice Guidance (PPG) and is based on the following principal grounds:
 - (1) The Council's reasons for refusal do not stand up to scrutiny in relation to the planning merits of the case; and the Council's case lacks any respectability.
 - (2) In particular, the Council has failed to apply the planning balance as set out in paragraph 14 of *the Framework*.
 - (3) The Council Members disregarded the full and comprehensive officer report recommending approval.
 - (4) The Council does not grapple with the paragraph 14 test to assess whether the adverse impacts significantly and demonstrably outweigh all the benefits.
 - (5) The Council has also been inconsistent in its decision making, as evidenced by its decision to grant planning permission for 23 units at Coton Park, clearly inferring that Linton was a sustainable settlement, whilst arguing against the appeal proposal on the grounds of unsustainability

The response by South Derbyshire District Council

3. The Council maintains that (1) its reasons for refusal were carefully considered and (2) the Officer's Report to Committee does recognise the balance set out in

paragraph 14 of the Framework. In response to (3) and (4), the Committee Report accepts that there was a difficult balance to be decided, and the reason for refusal even refers to this balance and the Council's view as to the principal considerations on both sides of the application. Finally, in response to (5), the Coton Park development was an exceptions site and the Council was therefore quite justified in taking a different view in that case to the current appeal decision.

Reasons

4. Paragraph 30 of the PPG advises that costs may 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.
5. The Council's two appeal statements expanded upon the reason for refusal and were presented in some detail at the Inquiry. The fact that they were subjected to detailed scrutiny at the Inquiry, and that I have allowed the appeal does not, however, infer that I consider that the Council's case was lacking in respectability. I consider that the Council came to a decision after considering the Officer's detailed Report which made it clear a balance had to be struck, with significant issues on both sides of the equation. It is unfair to state that the Members disregarded the Officer's Report.
6. Although paragraph 14 of *the Framework* is not specifically mentioned in the Officer's Report, it does refer to the need for a balance and specifically mentions the 'presumption in favour of sustainable development' and the 'golden thread' which are phrases taken straight out of paragraph 14. I cannot therefore come to the view that there is compelling evidence to prove that the Council did not grapple with the paragraph 14 test.
7. The Council has stated the reasons why it allowed the development at Coton Park, and whilst I am not wholly convinced of the soundness of the reasoning, it is clear to me that the Council was grappling with the need to deliver affordable housing and whether the site qualified as an exceptions site. The fact that an officer expressed an opinion regarding the sustainability of Linton in the Report to the Council regarding Coton Park is not of itself sufficient to demonstrate a culture of inconsistency in the Council's decision making, and for this to be grounds for awarding costs. The Council has at least sought to provide an explanation and this matter was discussed at the Inquiry.
8. I therefore conclude that the Council submitted enough evidence at an acceptable quality to substantiate its reasons for refusal.
9. Other appeal and costs decisions were advanced by both parties. However, none of these have outweighed the reasons for coming to my decision.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mike Fox

INSPECTOR

Appeal Decision

Site visit made on 1 October 2014

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

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

Decision date: 27 October 2014

Appeal Reference: APP/F1040/E/14/2219548
4 and 5 The Green, Ticknall, Derby DE73 7GY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr R J Fleetwood and Mr P Woods against the decision of South Derbyshire District Council.
 - The application (reference 9/2014/0111/L, dated 28 January 2014) was refused by notice dated 15 April 2014.
 - The works proposed are described in the application form as: *"to remove the concrete render from the front of the property; to expose the stone/brick façade; to sandblast, repair and make good and re-point using lime mortar"*.
-

Decision

1. The appeal is allowed and listed building consent is granted for the following works: *"to remove the concrete render from the front of the property; to expose the stone/brick façade; to sandblast, repair and make good and re-point using lime mortar"*. The consent applies to both 4 and 5 The Green, Ticknall, Derby DE73 7GY, in accordance with the terms of the application (reference 9/2014/0111/L, dated 28 January 2014), subject to the conditions set out in the attached Schedule of Conditions.

Main issue

2. The main issue to be determined in this appeal is the effect of the proposed works on numbers 4 and 5 The Green and on the setting.

Reasons

3. Ticknall is an attractive village, extending southwards along the B5006, a relatively busy local road. It is characterised by houses in a variety of styles and materials, including both stone and brickwork elevations. There is a significant number of listed buildings in the village, as well as other buildings that make a positive contribution to the setting, due to their historic and architectural qualities. The Green is a small enclave on the west side of the main road. Much of the village lies within the Ticknall Conservation Area, including The Green and the appeal site.

4. Numbers 4 and 5 The Green stand at the end of the close. The external walls are constructed of coursed rubble, brickwork and render, though the rendering has been removed from the front elevation of number 4 (initially as part of a repair project). The cottages were originally built as a house, subsequently converted to form a pair of cottages. They date from the seventeenth century but were substantially "improved" in the nineteenth century, as were others in the village. They are listed together (Grade II) as buildings of special architectural or historic interest.
5. Provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 impose obligations on those considering whether to grant listed building consent for works that would affect a listed building. In such cases, it is necessary to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses. Other provisions in the Act require decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas affected by development proposals.
6. That statutory framework is reinforced by the 'National Planning Policy Framework', especially at Section 12, which emphasises the importance of conserving and enhancing the historic environment.
7. The policies in the Development Plan do not have the same weight in respect of applications for listed building consent as would be the case in respect of an application for planning permission. The Policies are material considerations, nevertheless, and the Development Plan also includes specific Policies aimed at protecting the historic environment.
8. The appeal proposals would involve the removal of the rendered finish to number 5 The Green and further works to repair and make good the newly exposed elevations of both numbers 4 and 5.
9. The removal of the rendered finish at number 4 The Green has exposed the underlying brickwork and stonework, which is sound and of a reasonable quality. The work is incomplete, however, since the brickwork and stonework would require careful cleaning and repointing, as well as some making good. Subject to those works being carefully carried out, the finished building would be sound and architecturally appropriate. The same considerations apply to both number 4 and number 5 The Green, though it would not be an imperative for the works to the two properties to be carried out simultaneously.
10. The cottages would evidently be changed by the removal of the nineteenth century rendered finish. There are various examples of this type of finish in the village but they do not appear to be based on a comprehensive architectural concept, rather than merely a practical response to the concerns of the time. Though the render forms part of the historic evolution of the building it is not otherwise of particular architectural value. Thus its removal would not be unacceptable in itself, provided that a good standard would be achieved for the finished buildings.
11. In short, I am satisfied that the proposals would enhance the listed building, and its setting in the Ticknall Conservation Area, and that they would accord with planning policies that are intended to protect the historic heritage. Hence, I am persuaded that the scheme before me can properly be permitted and,

although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision on the appeal.

12. I have, however, also considered the need for conditions and I have concluded that conditions are necessary, to define the planning permission and to ensure that quality is maintained. In particular, it is necessary for a condition to be imposed to control the detailed specification and construction of the works and to define the materials to be used, in due course, to ensure that the quality and integrity of the construction is maintained. It is, however, unnecessary for conditions to be imposed to define the proposed works in detail.

Roger C Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The works hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The works hereby permitted shall be carried out in accordance with the unnumbered site plan (identifying the buildings affected).
3. No further works shall be commenced until a detailed specification of the works hereby permitted and a method statement for carrying out those works (including details of the materials to be used) have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved specification and method statement, using the approved materials.



Appeal Decision

Site visit made on 25 September 2014

by **I Murat** MSc, F.Arbor.A, CEnv, MCIEEM

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

22 OCT 2014

Decision date:

Appeal Ref: APP/TPO/F1040/4008

22 Hassall Road, Hatton, Derbyshire DE65 5HL

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to fell a beech protected by a Tree Preservation Order.
- The appeal is made by Mrs L Astbury against the decision of South Derbyshire District Council.
- The application Ref: 9/2014/0331/TP, dated 3 April 2014, was refused by notice dated 30 May 2014.
- The proposed work is felling.
- The relevant Tree Preservation Order (TPO) is the South Derbyshire District (Land at the rear gardens of Nos. 22, 24, 26 and, 28 Hassall Road, Hatton) Tree Preservation Order No 206 (2003), which was confirmed on 26 September 2003.

Decision

1. The appeal is allowed and permission is granted to fell the beech.

Main Issues/s

2. I consider the main issues in this appeal are:
 - a. The contribution of the tree to the treescape and visual amenity of the locality.
 - b. Whether the reasons given for the works are sufficient to justify that course of action.

Reasons

The contribution of the tree to the treescape and visual amenity of the locality.

3. The tree is located in the rear garden of the appellant's property. Views are limited of the tree. From within the housing estate, there are no views of the tree, thus the loss of the tree from this vista has no impact on the treed character of the area. Other views are restricted to the end of Church Mews or from the public footpath that travels to Marston Lane. There is also a view of the tree from the field adjacent to the estate. However, the degree of public access is not known. From Church Mews views are only available at the road's terminus, thus one has to make a special effort to see it. From the public footpath there is a fleeting view.
4. Overall, the tree makes a very limited contribution to the treescape and visual amenity of the locality.

Whether the reasons given for the works are sufficient to justify that course of action.

5. It is clear that the burden associated with the retention of the tree is significant and, at times, onerous. The tree dominates the rear garden leaving only a limited and decreasing area of private amenity space available to be enjoyed free from the influence of the tree. Also, if the tree were to continue to grow the effects that are currently endured would become even more severe. This strongly suggests that some action in terms of managing this tree is justified and necessary in order to accomplish a reasonable balance between the amenity value of the tree and the ability of nearby occupiers to gain a reasonable amount of enjoyment from their homes and gardens while avoiding an excessive maintenance burden.
6. Felling the tree is the most extreme form of management that is available. This would certainly succeed in abolishing the negative effect associated with the tree. It is clear that there are other less severe options such as crown reduction or thinning and these would bring about relief from some of the issues raised, namely shading. However, none of these would be a one-off exercise so there would be recurring maintenance and costs. Many of the problems that are currently occurring would remain.
7. Were the tree to be in a particularly important or sensitive location, or there were other compelling factors to support its retention, a pruning option might be considered to provide a reasonable solution. However, there is nothing especially noteworthy about the tree and the disadvantages associated with its retention are particularly severe. This suggests that, despite the loss of the tree's very limited amenity, there is a good reason to accept the loss of this tree because of its size, its species and its close proximity to the house and its significant future growth potential.

Conclusions

8. Pulling all the threads together. I have noted all that the appellant has stated in support of the application and those matters which are valid before me. Having considered carefully the points raised, I am persuaded that the evidence placed before me is sufficient to justify the felling of tree. The tree makes a very limited contribution to the treescape and the amenity of the locale but creates a significant burden on the reasonable enjoyment of the property that cannot be mitigated through pruning. The appeal is granted.

I Murat

Arboricultural Inspector