



**F. McArdle**  
**Chief Executive**

Civic Offices, Civic Way,  
Swadlincote, Derbyshire DE11 0AH

[www.south-derbys.gov.uk](http://www.south-derbys.gov.uk)

**Please ask for: Democratic Services**  
Phone: (01283) 595722 / 595848  
Minicom: (01283) 595849  
DX 23912 Swadlincote  
Email :  
[democraticservices@south-derbys.gov.uk](mailto:democraticservices@south-derbys.gov.uk)

Date: 26 August 2016

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 06 September 2016** at **18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**  
Councillor Roberts (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Atkin, Mrs Coe, Ford, Mrs. Hall, Harrison, Stanton and Watson.

**Labour Group**  
Councillors Dr Pearson, Shepherd, Southerd and Tilley.



## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES **3 - 139**

### **Exclusion of the Public and Press:**

- 5** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 6** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

# **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

**SECTION 1: Planning Applications  
SECTION 2: Appeals**

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

-----

## **1. PLANNING APPLICATIONS**

**This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2016/0288	1.1	Swadlincote	Swadlincote	5
9/2016/0329	1.2	Woodville	Woodville	28
9/2016/0466	1.3	Church Broughton	Hilton	48
9/2016/0470	1.4	Church Broughton	Hilton	54
9/2016/0745	1.5	Swadlincote	Swadlincote	63
9/2016/0787	1.6	Swadlincote	Swadlincote	69
CW9/2016/0001	1.7	Melbourne	Melbourne	74
9/2014/1013	2.1	Melbourne	Melbourne	83
9/2016/0346	2.2	Overseal	Seales	102

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

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

Item 1.1

Reg. No. 9/2016/0288/OS

**Applicant:**  
**Trine Developments Limited**  
**Watling Court**  
**Orbital Plaza**  
**Watling Street**  
**Cannock**  
**WS11 0EL**

**Agent:**  
**Mr Graham Fergus**  
**First City Limited**  
**19 Waterloo Road**  
**Wolverhampton**  
**WV1 4DY**

**Proposal:** **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE DEVELOPMENT OF UP TO 71 DWELLINGS TOGETHER WITH ASSOCIATED ACCESS, OPEN SPACE, LANDSCAPING, INFRASTRUCTURE AND FACILITATING WORKS INCLUDING DEMOLITION ON LAND AT SK3119 0360, SK3019 9268 AND 61 COURT STREET WOODVILLE SWADLINCOTE**

**Ward:** **Swadlincote**

**Valid Date:** **08/04/2016**

#### **Reason for committee determination**

The item is presented to Committee at the request of Councillor Steve Taylor because local concern is expressed regarding a particular issue, and because this is a major application having received more than 2 objections.

#### **Site Description**

The site is located within the Swadlincote Urban Area, comprising some 3.54ha of predominantly sloping pasture land adjacent to Swadlincote Woodlands. A former bungalow at 61 Court Street with associated garden, garages and outbuildings is included, as is an access track to the side and rear which facilitates access to a telecommunications mast and an area of Council owned public open space (POS).

The slope of the site is most pronounced north of this POS where levels fall by some 8 metres. The northern boundary is demarked by hedgerow beyond which there is a public footpath (Swadlincote Footpath 22) and watercourse. Beyond this is a residential estate, erected around the 1990s. The western boundary is lined by mature hedgerow and the woodland of Swadlincote Woodlands. To the south, away from the POS, are residential properties along Court Street and Calwich Close, whilst the main eastern edge of the site leads onto further pasture land.



## Proposal

The existing bungalow and outbuildings would be demolished to facilitate access for the erection of up to 71 dwellings (reduced from the 80 originally proposed) along with public open space, drainage infrastructure and landscaping. The application is made in outline with only access to be considered in detail. Notwithstanding this, an indicative layout plan shows a central spine road running generally south to north with small cul-de-sacs in places. A spur in this road would allow for access to land to the east. The dwellings are indicatively shown as a mix of 2, 3 and 4 bed properties, with 30% for affordable housing purposes.

## Applicant's supporting information

The Planning Statement was written and submitted prior to the adoption of the Local Plan Part 1 and therefore the discussion regarding those policies is slightly out of date. However the report recognises the issues that would be apparent, particularly with the likely increase in traffic from the development; but notes that these issues have been adequately addressed in the Transport Assessment. The statement recognises the benefits, with the contribution to local housing and the infrastructure that would be delivered as part of the development.

A Design and Access Statement demonstrates that the development can address the site constraints and can successfully integrate with the existing area and local community in a positive way. Public and private realm would be clearly shown through the layout and use of materials, and would improve connectivity and provide more access to public transport modes.

A Statement of Community Involvement sets out that the applicant has consulted various parties and local residents which have been considered in the evolution of the scheme and, where reasoned and justified, their aspirations and/or requirements have been incorporated into the design approach.

The Transport Assessment and a Transport Addendum (both referred to herein as the TA) notes the site would be served by an extension to Frederick Street creating a crossroads with Court Street. The TA has considered the current highway operation network and its suitability in terms of accommodating the likely traffic created by the proposal, as well as the highway safety record of the highway and the accessibility of the site to local facilities. The TA has also demonstrated the trips generated would be low compared to the existing background traffic flows and the proposed and existing traffic flows can be safely and satisfactorily accommodated on the highway network.

An Arboricultural Survey and Arboricultural Impact Report notes retention of good condition trees should be a priority whilst even some of the poorer quality trees should be considered for retention. The proposed works would require the partial removal of three hedgerows and the removal of 3 poor-category trees. The development would however have a minimal impact on retained trees and remaining hedgerows, and to minimise the amount of harm to root systems and canopies during construction periods, tree protection barriers shall be erected. Proposed planting should consist of native planting.

The Ecology Survey confirms there are no European sites within 5km of the site, there are no statutorily designated sites within 2km, and would it have no material impact on an SSSI and five non-statutory sites within 1 km of the site. The existing hedgerows and scattered trees are of valuable habitat importance. It is noted there is the potential for bats to roost within the existing bungalow and hedgerows and birds to roost in the scattered trees and hedgerows. There is no evidence of Great Crested Newts with the site but there is the potential for reptile species within the adjacent woodland area.

Bat Surveys were carried out in light of the Ecology Survey findings. It is noted that demolition of buildings would be required to facilitate the development. The daytime survey confirmed that the bungalow offers a good opportunity for roosting bats and recommends emergence surveys. There is no evidence of roosting bats with the garage and outbuildings. During nocturnal (emergence) surveys, it was clear that the bats were not existing/entering buildings but were using the site for commuting and foraging. A dawn survey confirmed there was no emergence activity with a small amount of foraging activity to the south-west of the property. Lighting near to hedgerows should be kept to a minimum as these are clearly important for the commuting bats.

A Flood Risk Assessment confirms the site falls within Flood Zone 1. Infiltration drainage may be acceptable on site depending on geological conditions. Outfall would be limited to greenfield rates. Details from Severn Trent outline two potential options for foul water drainage; a potential gravity connection across third party land to the north, but here the adjoining sewers are subject to adoption; or a pumped discharge to the south/east of the site. Modelling would be required to confirm if off-site improvements would be required (secured under separate legislation). In summary, the proposed site is at a low risk of flooding and has a viable means of drainage.

A Visual Impact Assessment states the site character would permanently change from open equestrian fields to permanent residential. The level of direct landscape effect would be moderate, with Swadlincote Woodlands ensuring that the effect does not extend across the wider landscape. This level of direct and indirect landscape effects is not considered sufficient to justify withholding permission. The most significant visual effect would be experienced through the construction period which would be temporary, but even then it is apparent there are limited views of the site other than glimpse views from one location on the A511, between houses on the estate to the north, and at close proximity when passing the site on the public footpath.

The Archaeological Assessment finds there are no designated archaeological sites (scheduled monuments) located within the site or 1km of the site. There are non-designated heritage assets within the site which reflect the industrial landscape surrounding the site. In addition, ridge and furrow is well preserved along the centre of the site but do not form part of a complete open field system. On the basis that there are no other elements of medieval landscape feature, this is considered to be of local significance and indicates that the site has remained on the peripheries of

the settlement. The assessment has shown a low potential for archaeological interest and that any local significance should not preclude development.

#### The Ground Condition and Coal Mining Report

notes there various ground related issues that could affect development of the site. These are coal mining legacy where there could be unrecorded workings; the topography of the site for structural stability of the development; and potential for contamination off-site influencing receptors being introduced to the site. It is considered that a Phase II site investigation is required in order to provide sufficient information to facilitate the engineering design and gas mitigation approach to the site.

### **Relevant Planning History**

There is none relevant to this site, but there is a pending application for the erection of up to 44 dwellings on the land to the east of the site, accessed from Burton Road (the A511). A permission for a further 14 dwellings off Court Street expired without implementation recently.

### **Responses to Consultations**

The County Highway Authority notes the Transport Assessment (TA) as amended by way of further drawings and an addendum. They make particular comment that the Highway Authority does not necessarily 'agree' its content or concur with every detail, but it is not considered there is evidence to suggest that the conclusion would differ if the applicant devoted resources to further amending the details contained therein. Swept path diagrams for the Frederick Street/A514, Bernard Street/A514 and Granville Street/A511 junctions demonstrate that the situation is less than ideal at the Frederick Street and Granville Street junctions, insomuch as delivery, service and emergency vehicles would overrun the white lining onto the opposite carriageway when entering and leaving the junctions. This is already an existing issue but the proposed development would increase the number of such movements. However the number of times that this would occur would be insufficient to justify the refusal of the proposal, although additional traffic management measures – predominantly to control parking, during and/or after the development takes place, are considered necessary. These would take the form of Traffic Regulation Orders funded by financial contributions of £15,000 towards three such Orders under a Section 106 Agreement. The TA analyses the capacity of the above junctions and concludes that they would operate within capacity with the development in place. The capacity of the Clock Island is also assessed and it is indicated that the island currently operates above capacity at peak times and, in future years, delays at the roundabout would increase. With the development in place delays would increase further, and these cannot be regarded as marginal, with traffic having an additional detrimental impact on the efficient operation of this junction. The applicant indicates a willingness to make contributions toward mitigating this impact, and it requested that sums be secured for the early implementation of the Swadlincote Regeneration Route (SRR) which would deliver a consequential reduction in flows through the junction. Contributions have been calculated on the basis of the cost of delays at the roundabout and equate to the sum of £584.16 per dwelling. Accordingly, a contribution of £41,475.36 is requested

through a Section 106 Agreement. Based on the above comments, the Highway Authority does not consider that objections to the development could be sustained and, therefore there are no objections subject to financial contributions as outline above and conditions to secure the acceptable access detail and appropriate layout and control of the street network within the site.

Peak and Northern Footpaths has no objection provided that the full width of Swadlincote Footpath 22, which runs along the northern boundary of the site, remains open and unobstructed at all times.

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

The Lead Local Flood Authority notes that at this stage a ground investigation is not available to demonstrate the drainage hierarchy, although this could be done post consent and inform a detailed drainage strategy secured by condition. In addition the FRA advances a restricted discharge rate which is not appropriate, but again this can be addressed through condition. It is also recommended that any swale/attenuation pond that a sufficient easement be provided for maintenance.

Natural England has no objections and recommends their standing advice be used for assessing impacts on protected species, and that biodiversity enhancements be secured where possible.

The National Forest Company seeks 0.7ha of woodland planting to accord with policy, but note there are no details in the submission on how this will be met. However with 0.91ha of open space proposed in a position next to Swadlincote Woodlands, the planting could form an extension to the woods if suitably designed. This is notwithstanding the need to also accommodate an attenuation basin. The expected amount of National Forest planting could therefore be accommodated if it is suitably designed at reserved matters stage, and the NFC considers that this should be secured by condition.

Derbyshire Wildlife Trust (DWT) notes the site comprises amenity, improved and semi-improved grassland, hedgerows (native and ornamental), scattered trees and scrub, tall ruderal vegetation and a building. Survey work confirms there is no evidence for reptiles and great crested newt on the site. The bat survey work confirms no roosting bats are present, however foraging and commuting activity was noted over the site. It is considered a bat roost is in the local area, but not within the buildings on site. Badger surveys have confirmed badgers setts nearby are in use and the badgers use the site foraging and commuting. As a result appropriate protection zones, green corridors and mitigation during construction works is recommended through condition. Furthermore if works do not commence by June 2017, updated bat and badger surveys would be required.

The Development Control Archaeologist notes the site has entries on the Derbyshire Historic Environment Record. The site also contains earthwork ridge and furrow. In terms of below-ground archaeology the site has a low background potential for previously unknown remains. Given the relatively small extent of the site, the lack of indicators for prehistoric activity in the vicinity, and the unfavourable topographic

situation; further work to archaeologically evaluate the site as a whole is not justified. However there are two areas with potential for post-medieval/industrial interest, these being in the south-western corner where a building shown on the earliest available mapping perhaps represents a post-medieval farmstead pre-dating the industrial development of the area; and a former engine house in the north-western part of the site, perhaps associated with the contemporary extraction pits or with the colliery activity to the west. The medieval ridge and furrow earthworks (higher end of 'local importance') would be destroyed by the proposed development and in determining the application a balanced approach in weighing this harm to an undesignated heritage asset against benefits of the development proposals should be made. If permission is recommended, then a scheme of archaeological excavation and recording should be secured by planning condition. The western hedgerow alongside the woodland has also been considered against the 1997 Hedgerow Regulations for its importance, but the evidence is lacking in demonstrating it qualifies as such.

The Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment (CMRA) that coal mining legacy potentially poses a risk and that intrusive site investigation works should be undertaken in order to establish the exact situation. This should be secured by condition along with appropriate remedial works where necessary.

The Contaminated Land Officer notes the site is within influencing distance of historical features which could present hazards during the development. It is recommended that further intrusive site investigation be secured by condition, along with remediation/mitigation as necessary.

The Pollution Control Officer requests conditions to control noise, dust, air quality and hours of deliveries and works during the construction phase.

The Strategic Housing Manager seeks provision of 30% affordable housing in a mix of 2 and 3 bedroom dwellings (in a 68:32 rent to shared ownership tenure) to be spread across the site in clusters of no more than 10 dwellings. On the maximum number proposed, this would be 21 dwellings. Regard has been given to local need in the area and that, due to the welfare reforms, there is currently no demand for 2-bed flats.

The County Planning Policy Officer notes that infant and junior schools do not have the capacity to accommodate the additional pressure on places from this development and seek contributions:

- £79,793.07 for 7 infant places at Woodville Infant School; and
- £102,591.09 for 9 junior places at Woodville Junior School.

Members should note this is based on the original 80 dwellings and updated figures will be reported verbally at the meeting.

The NHS Southern Derbyshire CCG notes that the 5 practices potentially affected by the proposals are operating at capacity and a contribution of £27,008.40 (adjusted to reflect the reduction in proposed dwellings) is requested.

## Responses to Publicity

4 objections have been received raising the following concerns:

- a) there is not a need for the (affordable) housing given existing sites with permission or being built;
- b) the dwellings would not be affordable given their likely price;
- c) volume of traffic the proposal would generate;
- d) impacts on the Clock Island and exacerbation of existing safety issues there;
- e) the Clock Island must be improved;
- f) impact on local schools and health facilities, which are nearing or at capacity with little or no scope to expand;
- g) could stretch facilities further forcing residents to shop elsewhere due to lack of parking;
- h) dentist surgery would become overcrowded;
- i) the TA fails to consider congestion on Court Street, Bernard Street, Granville Street and Frederick Street;
- j) capacity of junctions onto the A514 and A511;
- k) existing on-street parking in the vicinity poses a hazard and prevents emergency and service vehicle accessing easily;
- l) risk to pedestrian safety;
- m) access issues during the course of construction and for refuse/service vehicles thereafter;
- n) ecology surveys completed outside of optimal survey time;
- o) inadequate surveys in respect of bats, with potential for a roost to exist in the bungalow;
- p) potential for the development to disturb the habitat/wildlife in the woodland;
- q) loss of hedgerows on the site;
- r) the development would be contrary to the Council's aim of retaining green spaces within settlements;
- s) loss of privacy/overlooking from the dwellings, especially given rising land levels;
- t) overshadowing from dwellings/trees; and
- u) detrimental to the quality, character and amenity value of the area;

Councillor Steve Taylor has considerable concern of the potential impact of this application on the local area. Principally the key problem envisaged is its location and lack of access to the main highway network. A development of this size should not rely on the existing street network and access would be reliant on a route along Court Street/Granville Street to a very poor current access on to Burton Road that has poor visibility and is normally congested. The route to Burton Road also includes a junction and congestion as a result of on street parking on a terraced street. The other route to Swadlincote Road along Frederick Street includes a crossroads – a narrow junction that has poor visibility and is also usually congested. It is envisaged that potential residents would use Bernard Street to Swadlincote Road, further from the proposed site but an alternative in congestion towards Tollgate Island. This road is normally double parked along its length and only provides single file access. For these reasons alone a development of this size is not appropriate at this location. In Councillor Taylor has sought clarity on the prospects of the SRR following the Council's decision not to engage with the County on devolution, and the prospective

infrastructure projects that could come with that. Accordingly he encourages officers to seek clarification as he does not believe applications can continue to be approved on the assumption it will happen. Should the application be approved however it is expected that normal health, education and recreation contributions be made alongside a contribution to the SRR.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): EV7 (Open Land, Swadlincote), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features).

### **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE8 (Trees, Woodland and Hedgerows), BNE9 (Local Green Space) and BNE11 (Heritage).

### **National Guidance**

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

### **Local Guidance**

- Housing Design and Layout SPG
- Section 106 – A Guide for Developers

### **Planning Considerations**

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

- Principle of development;
- Infrastructure contributions and affordable housing;
- Highway impact and connectivity;

- Biodiversity;
- Cultural heritage;
- Flood risk;
- Visual impact; and
- Design and amenity.

## **Planning Assessment**

### Principle of development

The site is well related to existing services and facilities within the heart of the Swadlincote Urban Area and is, in this respect, sustainably located. Its location within the urban area means the principle of it coming forward as a windfall site is acceptable in principle. The 5 year supply contains an element of windfall as part of the annual delivery, and this would help to provide a further boost to the supply and cushion to assist the Council in defending sites should the supply fall at any stage.

The site however is, in the majority, within the open space designation under saved policy EV7. This open space was designated some 18 years ago prior to the Swadlincote Woodlands coming forward as accessible space. Throughout this time the site has not been open to the public other than on a perceptual, or visual, basis. As part of the proposals some of the site would be made accessible for the benefit of prospective occupants and those already residing near to the site, and this carries some weight in tempering the principle of this loss. However, it is the simple fact that the land has not been accessible and would remain so in the event of a refusal, which demonstrates that the designation has not achieved its purpose in so far as this site is concerned. With ample accessible woodland to the west and the existing public open space to the south, it is not considered the proposal could be resisted on these grounds. Indeed, it is highly material that it is not presently a candidate green space in the emerging Part 2 Plan, particularly as it would appear to fail to meet the terms for designation now under the NPPF.

### Infrastructure contributions and affordable housing

Affordable housing would be secured in line with policy H21, with 30% of the dwellings (up to 21) provided. The proposal would have impacts on existing services and facilities, of which some would be beneficial through additional inward investment in the local economy. However primary education capacity is of concern and for this reason contributions to mitigate the impact are sought by the County. There is capacity at Granville College to accommodate secondary age pupils. Similarly healthcare requires mitigation in the same fashion. Furthermore the traffic impact of the development, during both the construction and occupation phases, is considered to require mitigation so to avoid adverse cumulative impacts. In summary, the contributions (based on the indicative housing mix provided) would be:

- Education (infant age): £79,793.07\*
- Education (junior age): £102,591.09\*
- Healthcare: £27,008.40
- Outdoor sports facilities: £49,280.00
- Built facilities: £27,507.20

- Swadlincote Relief Road: £41,475.36
- Traffic Regulation Orders: £15,000.00

\*At the time of writing, these figures are subject to change given the revision from 80 to 71 dwellings.

The NFC seeks 0.7 hectares of woodland planting in line with policy INF8. At the same time, some 0.57 hectares of POS (and a Locally Equipped Area for Play (LEAP) within this) is required on site to serve prospective occupants. The indicative layout suggests there is inadequate room for both given the need for above ground attenuation in the open space; but it is feasible to consider the woodland as open space as long as it is made available as such. Nevertheless the balance between wooded and open space for public access would need to be considered more carefully at the reserved matters stage given the pending application on land the east, the Council's existing POS to the south which appears to require investment, and the need for a cohesive solution across all the relevant 'parts' making up this wider space within Swadlincote. It is thus recommended that flexibility be allowed so to allow for financial contributions in this particular case for all or part of the open space and/or National Forest planting, secured under the legal agreement, should the equivalent provision not be provided on the site itself.

#### Highway impact and connectivity

The consultation response from the Highway Authority above provides a succinct summary of the pertinent matters which have been considered. In brief, there will be an adverse impact on the Clock Island but this can be mitigated for by way of the SRR – a project which is still very much progressing towards fruition. The impacts on junctions with the A514 and A511 are noted but it is clear that the main concern is toward the temporary effects during the construction period when a greater number of LGVs and HGVs are likely to access the site. Thereafter the numbers of HGVs accessing the site should reduce to zero, or thereabouts, and LGVs should fall back broadly in line with the existing numbers of service/delivery vehicles already using these streets. Refuse vehicles would continue to access in the same fashion, and simply extend their route into the site; whilst domestic vehicles would represent a tolerable increase on the numbers already using these roads and junctions. These impacts are likely noticeable to a degree, but not so severe to warrant refusal.

The proposed access to the site is acceptable following amendment whilst internal layout would be a reserved matter controlled by conditions. It is anticipated that parking provision will achieve expected standards and pedestrian routes and connections would be beneficial in promoting sustainable modes of transport for occupants and existing residents in dwellings to the north and south of the site.

#### Biodiversity

DWT has assessed the proposals at some length and now consider that impacts are either acceptable, with it demonstrated that protected species would not be harmed; or that they can be mitigated through condition. Due to the existence of setts nearby, it will be necessary to secure certain elements of the indicative layout by condition

and provide buffers where required. Further conditions can help to secure biodiversity gain from the proposals.

### Cultural heritage

There are no listed buildings or conservation areas which would be impacted upon by the proposals, and below-ground archaeology can be addressed by condition. The focus is solely on the loss of ridge and furrow which has an elevated local importance. However, as a non-designated heritage asset, it must be weighed against the public benefits of the proposal and carries reduced weight in harm terms given its lack of national or locally designated status. This matters is revisited below.

### Flood risk

The site is not at an elevated risk of flooding and the drainage strategy signals the ability to drain the site in a satisfactory manner, although conditions will be required to achieve acceptable standards. Foul water would need to be pumped back uphill in order to reach the nearest available public sewer, but Severn Trent Water has not raised issue in respect of capacity.

### Visual impact

The Visual Impact Assessment notes there would be noticeable and permanent change to the landscape in this locale. However the south elements of the site, south of the high ground around the existing POS, would be well enclosed by existing dwellings and the Swadlincote Woodlands. The focus therefore is on views of the slope running down towards the northern boundary, and the public footpath along this edge. Undeniably, the impact from this footpath would be pronounced as it present gives the impression that one is on the edge of the urban area with open landscape to the south with little hint of Woodville beyond except for a ribbon of development along Burton Road. However other than a further glimpse views in a handful of locations on the estate to the north and one from the A511 near the Midway Inn; it is difficult to appreciate this site as a green space within the heart of the urban area. Its lack of public access also adds to this lessened impact arising from its loss. Views from elevated ground further afield are so distant that the sites assimilation into the built form it is seen in context with would have no discernible impact. As a result, given this is not considered to be a valued landscape; the level of impact is towards the lower end and it is not sufficient in its own right to justify withholding permission.

### Design and amenity

Amended designs have addressed potential layout and Building for Life concerns raised to the initially submitted scheme. Amenity standards would also be protected following the omission of a plot and the likely orientation of dwellings on the site. A strong built frontage along the main road would exist, along with natural surveillance of open and public areas; and appropriate appearance and detailing can be secured at the reserved matters stage.

## Summary

The above assessment identifies that there is some residual harm arising from visual impacts, the loss of some ridge and furrow and the fact that any additional traffic is less than ideal at the present time. However the latter can be addressed by way of planning obligations such that the harm is mitigated, and the remaining harms need to be weighed against the benefits – namely provision of market and affordable housing in a very sustainable location and resulting gain/cushion to the 5 year housing land supply without the loss of open land to the edge of a settlement elsewhere. This is wholly in line with the strategic approach to housing delivery under the Local Plan. The economic benefits of the development should also be recognised. In this respect the identified harms are not considered to significantly and demonstrably outweigh the benefits arising.

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**

Subject to the completion of a Section 106 Agreement to secure the financial contributions as set out above, with flexibility delegated to the Planning Services Manager in respect of the amounts which might be required in lieu of on-site woodland planting or POS; **GRANT** permission subject to the following conditions:

1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:
  - (a) appearance;
  - (b) landscaping;
  - (c) layout; and
  - (d) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. The access shall be laid out in accordance with drawing ref: 5436/003 and the reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan (ref: A191-105 Rev B), and each application for reserved matters approval shall incorporate, in so far as relevant to that/those matter(s) and/or phase of development, the following specific detail/requirements:
- (a) undeveloped areas of green infrastructure adjacent to the northern edge of the site and along the boundaries with Swadlincote Woodlands;
  - (b) except where to the rear of existing dwellings, retained hedgerows and trees shall, as far as practicable, not form boundaries to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
  - (c) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats outside of private areas, including grassland creation where feasible to mitigate for the loss of suitable habitat for ground nesting birds and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;
  - (d) the internal layout of the site shall accord with the Highway Authority's Policy Document '6Cs Design Guide' and national guidance laid out in Manual for Streets;
  - (e) a swept path diagram to demonstrate that emergency, goods and service vehicles can adequately enter, manoeuvre within the site and leave in a forward gear;
  - (f) detailed design for the provision of bin stores within private land at the highway end of private shared accesses to prevent refuse bins and collection vehicles standing on the residential street for longer than necessary causing an obstruction or inconvenience for other road users;
  - (g) at least 0.7 hectares of woodland planting along with at least 25.4m<sup>2</sup> of public open space per bedroom (to include a locally equipped area for play), unless a financial contribution is made in respect of one or both requirements (in full or in part) under the provisions of the legal agreement accompanying this permission.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, in the interest of highway safety, and in the interest of safeguarding protected species, biodiversity conservation and enhancement.

4. No construction works shall take place on the site, and no deliveries shall be received or dispatched from the site, other than between 8:00am to 6:00pm Monday to Friday, and 8:00am to 1:00pm on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

5. No generators shall be used on the site during the construction phase other than in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect the amenities of adjoining residential occupiers.

6. The gradient of the new estate street accesses shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.

Pre-commencement

7. If this permission is not implemented prior to June 2017, updated badger and bat surveys shall be submitted to and approved in writing prior to any works commencing on site. Where necessary, additional mitigation with a relevant timetable for its provision shall be included as part of the recommendations arising from the findings of these surveys. The approved mitigation shall then be implemented/incorporated into the development in accordance with the approved timetable.

Reason: In the interests of safeguarding protected species, noting that the site's potential to provide habitat for the species concerned.

8. No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers (and other mammals) from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include:

- a) creation of sloping escape ramps (mammal ladders) for badgers (and other mammals potentially using the site), which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
- b) open pipework greater than 200 mm outside diameter being blanked (capped) off at the end of each working day.

The approved measures shall be implemented throughout the construction period.

Reason: In the interests of safeguarding against harm to protected species.

9. No development or other operations on the site (including demolition, ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

10. No development shall take place (including demolition, 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/buffer zones” to include ponds, hedgerows, woodland, trees other habitat as required.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on habitats and species during construction
- d) The location and timing of sensitive works to avoid harm to habitats and species.
- 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 (as required).
- h) Use of protective fences, exclusion barriers and warning signs.
- i) The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

11. No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority indicating:

- i) a construction traffic routeing plan;
- ii) the proposed temporary means of construction access;
- iii) site accommodation;
- iv) storage of plant and materials;
- v) areas for parking and manoeuvring of site operatives’ and visitors’ vehicles;
- vi) loading, unloading and manoeuvring of goods vehicles
- vii) hours of operation;
- viii) measures to minimise noise close to habitat for protected species; and
- ix) method of prevention of debris being carried onto the highway.

Before any other operations are commenced the scheme shall be fully implemented in accordance with the approved details and be retained/followed as such throughout the construction period.

Reason: In the interests of highway safety and biodiversity, recognising that even initial stages of development could cause unacceptable impacts on the public highway and protected species.

12. No development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the design shall include appropriate Give Way white lining and signage and the provision of visibility splays at the junctions of Court Street and Calwich Close with Frederick Street. The access shall be retained in accordance with the approved scheme throughout the construction period free from any impediment to its designated use until it is replaced/completed pursuant to the requirements of condition 24.

Reason: In the interests of highway safety, recognising that even initial stages of development could cause unacceptable impacts on the public highway.

13. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to

and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and

- i) the programme and methodology of site investigation and recording;
- ii) the programme for post investigation assessment;
- iii) provision to be made for analysis of the site investigation and recording;
- iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi) nomination of a competent person or persons/organization to undertake the works set out within the WSI.

(b) No development shall take place other than in accordance with the archaeological WSI approved under (a).

(c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible, noting that initial ground works could lead to the permanent loss of such items.

14. (a) No development shall commence 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; 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 Local Planning Authority dispenses with any such requirement specifically and in writing.

(b) Prior to first occupation of the development (or parts thereof) an independent verification report must 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 should 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'.

(d) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, 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 on or off the site which might be brought to light by development of it, noting that initial ground works have the potential to open up a new pathway to a receptor or mobilise contaminated material around or off the site.

15. No development shall commence until further intrusive site investigation works to fully establish the risk from coal mining legacy on or adjacent to the site has been undertaken and the findings, along with details of the recommended remedial works/mitigation necessary to ensure the safety and stability of the proposed development, have been submitted to and approved in writing by the Local Planning Authority. Any remedial works approved shall be undertaken prior to commencement of the development, whilst any mitigation to be incorporated into the buildings to be erected shall be incorporated prior to first occupation of each respective dwelling.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

16. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

17. No development shall commence until a scheme of noise and vibration control has been submitted to and approved in writing by the Local Planning Authority. The scheme should consider construction phase noise and vibration arising from the development and the mitigation measures necessary. The approved scheme shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

18. No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby approved, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.

Reason: To ensure that the visual impact of the development is minimised as far as possible and to ensure acceptable impacts on adjoining residential property, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions (i.e. roads, drainage, SuDS, etc.).

19. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000. The assessment shall demonstrate, with appropriate evidence, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i) into the ground (infiltration);
- ii) to a surface water body;
- iii) to a surface water sewer, highway drain, or another drainage system;
- iv) to a combined sewer.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options.

20. No development shall take place until a detailed design, timetable for implementation and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling/road/hard surface served by the surface water drainage system.

Reason: To ensure that the principles of sustainable drainage can be incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

21. No development shall commence until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling served by the foul drainage system.

Reason: In the interests of flood protecting and pollution control, noting that initial works to set site levels will have implications for the effective drainage of the site.

22. No development involving the construction of a street or dwelling shall commence until an external lighting strategy has been submitted and approved in writing by the Local Planning Authority. This strategy shall be implemented in full as part of the installation of external lighting across the site.

Reason: In the interests of protecting foraging and commuting habitat for protected species.

#### Pre-occupation

23. Prior to the first occupation of a dwelling hereby approved, a Landscape and Ecological Management Plan (LEMP) for all retained habitats within the development site shall be submitted to and be approved in writing by the

Local Planning Authority. The plan should incorporate the details provided in the ecological appraisals and the content of the plan should include the following:

- a) Description and evaluation of features to be managed / enhanced or created.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options and methods for achieving aims and objectives.
- e) Timescales
- f) Prescriptions for management actions.
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- h) Details of the body or organisation responsible for implementation of the plan.
- i) Ongoing monitoring and remedial measures for where conservation aims and objectives of the plan are not being met.
- j) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured as by the developer with the management body(ies) responsible for its delivery.

The approved plan shall be implemented in accordance with the approved details.

Reason: In the interests of mitigation, preservation and enhancement of biodiversity.

24. Prior to the first occupation of any new dwelling hereby permitted, the new estate street junction shall be constructed. The junction shall be laid out in accordance with the approved plan ref: 5436/003, constructed to base, drained and lit. Give Way white lining and signage and visibility splays of 2.4m x 33m to the north and 2.4m x 43m to the south shall be provided at the junctions of Court Street and Calwich Close with Frederick Street. The area forward of the splay lines shall be constructed as footway and included in the highway for adoption.

Reason: In the interests of highway safety.

25. Prior to the first occupation of any new dwelling, the proposed new estate street, between each respective plot and the existing public highway, shall be laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

26. Prior to the first occupation of a dwelling, details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of each respective dwelling and shall thereafter be retained for use at all times.

Reason: In the interests of encouraging sustainable modes of transport.

27. Prior to the first occupation of each dwelling, space shall be provided within each plot curtilage for the parking of vehicles in accordance with the 6Cs Design Guide and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions shall not be less than 3m x 6m.

Reason: In the interests of highway safety.

Other

28. 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 2A and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the Local Planning Authority.

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 its development.

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, 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 a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. You are advised, as part of the application for approval of reserved matters, to provide details of the following (so to avoid the need for additional conditions at a later stage):
  - facing materials, eaves and verge details, and cill and lintel details;
  - surfacing materials; and
  - boundary treatments (including materials thereof).
- d. For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire – Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital

copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department:  
[thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
  - CLR guidance notes on Soil Guideline Values, DEFRA and EA
  - Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
  - Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
  - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
- e. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement
- f. Pursuant to Section 38 of the Highways Act 1980, 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 Economy, Transport and Environment Department at County Hall, Matlock.
- g. The application site is adjacent to a Public Right of Way (as shown on the Derbyshire Definitive Map). This route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. You are also advised:
- the granting of planning permission is not consent to divert or obstruct a public right of way; and
  - 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 08456 058 058 for further information and an application form.
- h. The Crime Prevention Design Adviser advises that in submitting details under a reserved matters application, that (1) all exposed housing elevations are well treated to allow a view between interiors and external space; (2) where housing is set in blocks of more than two properties rear garden access should originate within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less; (3) that enclosed parking courtyards would be

best gated or overlooked; and that (4) the open aspects of the footpath route and proposed links are not compromised by any landscaping sited between footpath and the development.

- i. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.
- j. No removal of buildings, hedgerows, shrubs or scrub should take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period in order to ensure that wildlife protection legislation is complied with.
- k. In the interest of pollution control there must be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preliminary works to clear vegetation on site.

**Item**            **1.2**

**Reg. No.**        **9/2016/0329/SMD**

**Applicant:**  
**Mr Richard Needham**  
**c/o Agent**

**Agent:**  
**Mrs Gail Revill**  
**David Lock Associates**  
**50 North Thirteenth Street**  
**Central Milton Keynes**  
**Bucks**  
**MK9 3BP**

**Proposal:**        **RESIDENTIAL DEVELOPMENT FOR 45 DWELLINGS,  
MEANS OF ACCESS AND ASSOCIATED  
GROUNDWORKS AND INFRASTRUCTURE ON LAND  
TO THE WEST OF MOIRA ROAD WOODVILLE  
SWADLINCOTE**

**Ward:**            **Woodville**

**Valid Date:**     **15/04/2016**

#### **Reason for committee determination**

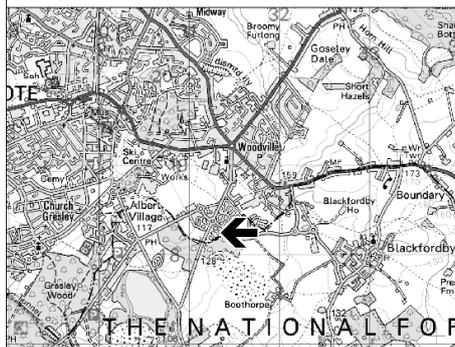
The item is presented to Committee at the request of Councillor Steve Taylor because local concern is expressed regarding a particular issue.

#### **Site Description**

The site is located on the southern edge of the Woodville Woodlands development with access from Moira Road. The site lies close to the border with Leicestershire. To the north the site, and the wider landscaped mounds beyond, abut Arliston Drive and the established residential development completed as part of Phase 3 of Woodville Woodlands. To the south is a national cycle route and the National Forest. To the west is a football ground with sports pavilion, and a play area, all built as part of the wider Woodville Woodlands development.

The site originally comprised part of the former Woodville Pipeworks before being restored and prepared for employment use as part of the wider Woodville Woodlands permission. The site occupies a relatively flat plateau with some grass land and bare earth comprising the majority of its area. Abutting the site are landscaped mounds on three sides, planted with a mix of trees and shrubs. The site is served by an existing bell mouth and stub of some 10m of carriageway leading into the site off Moira Road.

**9/2016/0329 - LAND TO THE WEST OF MOIRA ROAD,  
WOODVILLE, DE11 8DG.**



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

## **Proposal**

The current full application proposes the erection of 45 houses and associated works together with an estate road providing access from Moira Road. This would be instead of the previously approved employment units on the site. The dwellings would be a mix of 2, 3 and 4 bed properties, all for sale on the open market. Ancillary works off-site to connect the new highway with existing footpaths through the adjoining open space would also take place.

## **Applicant's supporting information**

A Marketing Report accompanies the application which sets out that whilst demand for employment buildings in South Derbyshire, East Staffordshire and North West Leicestershire is becoming far more buoyant; demand for employment buildings at this location is virtually non-existent. The marketing agents are confident that the marketing undertaken since 2008 has fully exposed the opportunity for employment units here on a local, regional and national basis; and can confirm they have received no firm verbal or written offers whatsoever for any form of commercial occupation upon this site. It is noted that the area is strongly characterised by new residential development and it is hard for an industrial scheme to be 'kick started' given locational disadvantages and working hours restrictions.

A Viability Appraisal has been provided outlining the costs of development against prevailing land values in the area and the normal policy requirements. This is discussed further below.

A Planning, Design & Access Statement describes the content and nature of the planning application, the site location and application site, provides the planning background and context, and outlines pre-application engagement with the Council. The Statement goes on to consider the site and its relationship with its wider context, and the physical, social, and economic contexts that have influenced the design. The planning policy context is addressed, looking at the National Planning Policy Framework, adopted policy, emerging Local Plan, sustainability and how the proposals meet with these requirements. The proposal is evaluated in the context of the wider Woodville proposals whilst draft conditions and Heads of Terms are provided.

The Transport Statement concludes that the extant employment development would generate significantly more traffic in both the AM and PM peak hours than the proposed 45 residential units. The proposed housing scheme would generate 52 less trips in the AM peak hour and 37 less trips in the PM peak hour, with significantly less generation of LGV and HGV movements. Car parking would be provided in line with local and national guidance with a minimum of 2 spaces for each unit. All 4 bedroom units would be provided with 3 parking spaces (including garages) whilst all properties would be provided with cycle parking by way of a shed and/or garage. Turning areas would be provided for refuse vehicles and fire tenders and sightlines onto Moira Road are excellent in both directions.

An Ecological Appraisal has been undertaken. The site is not located within the boundary of any designated site of international, national or regional importance for

nature conservation, nor does it fall within the designation boundary of any site which has been afforded a local non-statutory designation for its nature conservation importance. No protected species have been previously recorded within the site. The habitats present were considered to be of negligible value for bats, reptiles and great crested newts. 6 ponds were identified within 500m from the site, of which four are known great crested newt (GCN) breeding ponds. All of these ponds were located east of Moira Road which is considered a barrier to dispersal and therefore the site is considered isolated from the known population of GCN. Some birds on the amber and red Birds of Conservation Concern list were observed to be using the site, but given the site does not represent usual habitat it is considered this was transitory or limited to site-wide importance only. Therefore, any such change as a result of the development is not considered to result in significant effects to the local breeding bird population. Replacement of industrial development with a network of residential gardens is expected to make a significant contribution to achieving a net biodiversity gain given the current low ecological value of the habitats which currently form the site

A Drainage Strategy confirms that there is sufficient capacity within the adopted foul sewer network to accommodate the development whilst the foul water discharge ultimately discharges to the Milton Water Treatment Works which lies within the River Trent catchment. Accordingly, the River Mease Special Area of Conservation (SAC) would be unaffected by the disposal of foul water from the site. In addition, whilst the Strategy confirms there is sufficient capacity within the adopted surface water sewer network to accommodate the development; the consented development had a greater impermeable area than the proposal and, as such, this provides a degree of betterment.

A Ground Conditions Desk Study notes reclamation works undertaken in 2007/08 and included earthworks to create a level platform. Whilst placed to achieve sufficient compaction to maintain the integrity of the slope and minimise future settlements; the fill materials are not considered suitable for standard foundations in some areas due to the depth of natural strata. Alternative foundations (e.g. piles) will be required for affected plots. Previous site investigation results indicate potentially elevated levels of potential contaminants that may not be suitable for use as near surface soils in the proposed residential development. However, the earthworks operations undertaken in 2007 will have moved soils around the site and these previous results are therefore no longer sufficient to allow risk assessments to be undertaken. Therefore, further site investigation works will be required so to determine the need for mitigation (e.g. clean cover in gardens). No significant risks to controlled waters are identified and no mitigation is considered necessary. Monitoring of ground gases prior to the reclamation works identified elevated levels of carbon dioxide, but no monitoring has been undertaken since the completion of the reclamation works which may have significantly altered the gas regime at the site. Further investigation/monitoring is therefore recommended.

A Coal Mining Risk Assessment (CMRA) has been undertaken. The CMRA recognises that stabilisation of shallow mine workings has been undertaken with respect to the former proposed employment layout. However, there is considered to be potential for further untreated unrecorded mine-workings to be present and an

additional programme of stabilisation is recommended targeting the proposed development footprint.

A Minerals Extraction Statement has been received. It is considered the site is small and is constrained by an established residential area, a children's play area, sports pitches and the National Forest. There is no additional land or infrastructure to support mineral extraction and the proximity to the residential area would be unacceptable in terms of noise, disturbance and nuisance. Previously agreed works to prepare the site for development has resulted in substantial expenditure and this also makes the viability of extraction questionable.

### **Relevant Planning History**

- 9/2001/0050 Outline application (all matters to be reserved) for the erection of approximately 400 dwellings, the provision of B1/B2 employment, open space and National Forest planting together with the provision of a link road (along with NWLDC ref: 02/01416/OUT) – Approved June 2004.
- 9/2005/0270 The approval of reserved matters for the erection of 115 dwellings, B1/B2 employment buildings, construction of western section of link road, formal and informal open space and recreation areas including a new sports pavilion – Approved September 2005.

### **Responses to Consultations**

The Coal Authority concurs with the recommendations of the CMRA; that potential unrecorded shallow coal mine workings pose a risk and that further targeted intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding them. It is recommended a condition be imposed to secure this and any remedial works arising.

The County Planning Officer is satisfied that identified mineral reserves affected would be neither practical nor viable to extract and has no further comments to make.

The County Planning Policy Officer notes that the development influences capacity at Woodville Infant School, Woodville CofE Junior School and Granville Sports College. The proposed development of 45 dwellings would generate the need to provide for an additional 4 infant, 5 junior and 7 secondary pupils. Both junior and secondary levels have capacity to accommodate the numbers generated, but Woodville Infant School is already over capacity and latest projections indicate an increase during the next 5 years, putting the school over capacity by 25 pupils. This increases to 33 when factoring in recently granted planning permissions. Therefore none of the 4 infant school pupils generated by the proposed development could be accommodated and a financial contribution is requested towards delivering additional classroom space.

The County Highway Authority is satisfied that the proposed development would not have a negative impact on the surrounding road network, noting that the proposed

development offsets similar numbers of vehicles which might have otherwise been associated with the employment use – including HGVs. Accordingly there is considered to be a neutral impact on the Tollgate Island and no financial contribution is sought. Satisfactory access to the site is possible and a swept path analysis demonstrates that a refuse vehicle can negotiate the proposed road layout. Conditions are recommended to control the finer details.

The Development Control Archaeologist advises that historic mapping suggests that proposal site lay within clay pits associated with the nearby pottery works, and railways sidings, clay shafts, a reservoir and a few buildings are shown on historic mapping from the late 19th and early 20th centuries. None of these features survive within the site today and their below-ground manifestation would be very slight or of minimal significance. It is therefore advised that the site is of little archaeological potential, and there is no requirement for archaeological work.

The Lead Local Flood Authority notes the contents of the Drainage Strategy although questions the extent of the claimed betterment which would arise and notes a lack of porosity tests to confirm the runoff destination hierarchy has been applied correctly. In addition, it is considered the applicant should demonstrate why SuDS cannot be incorporated into the proposed development. It is reminded that the proposed development should not exacerbate or increase the flood risk outside of the developable zone. Notwithstanding these concerns, it is considered conditions can be attached to address these matters.

Natural England advises that the proposal, if undertaken in accordance with the details submitted, is not likely to have a significant effect on the River Mease SAC. Natural England therefore advises that an Appropriate Assessment is not required in order to assess the implications of this proposal on the SAC conservation objectives. Conditions are however required. The nature and scale of the proposal also means that there is not likely to be an adverse effect on the River Mease SSSI, and it does not represent a constraint in determining the application.

Derbyshire Wildlife Trust (DWT) notes that the site comprises neutral grassland, bare ground and hardstanding. They raise no concerns as to the surveys undertaken insofar that there is no suitable habitat for bats, badgers and great crested newts on site. However the Trust assesses that due to the type of habitats present, and species recorded, it is considered suitable for dingy skipper butterfly and ground nesting birds such as skylark. There also remains disagreement as to the potential the site offers for reptiles. In respect of reptiles, DWT notes proximity to woodland and the disused railway line enhances the potential for their presence and recommend reptile surveys are required prior to determination. In terms of nesting skylark, DWT note the surveys confirm evidence of their presence on the site, and consider the outstanding concern needs to be addressed with detailed mitigation, enhancements and compensation. They disagree that the loss of breeding habitat for skylark is of no conservation significance and the contention that skylark is widespread and common is not supported by evidence and is in stark contrast to a national decline. They comment that developments do not take place in isolation, but are part of a wider pattern of development across the area that inevitably has cumulative impacts on habitats and species. The Trust also considers the site to qualify as an Open Mosaic Habitat (OMH) on previously developed land, and that in

turn the potential for dingy skipper needs further consideration; advancing that this year's emergence of the butterfly – two weeks later than normally expected – may have assisted in their absence from the site under the surveys. In addition a single 24 hour assessment period is not considered sufficient. They recommend that additional measures are incorporated into the landscaping mitigation to provide habitat for this butterfly and that the habitat is subsequently included in a management plan for the site.

The National Forest Company (NFC) notes the site forms part of the wider Woodville Woodlands development, the outline approval of which included sufficient National Forest planting across the wider site the NFC does not expect any further planting from these proposals. The proposed footpath links to connect to the existing path network are welcomed though it is noted that as these are third party land they may not be deliverable.

The Environmental Health Officer raises no objection subject to conditions.

The Strategic Housing Manager seeks provision of 30% affordable housing on site (14 dwellings) providing a mix of rent and intermediate two and three bed properties.

### **Responses to Publicity**

North West Leicestershire District Council (NWLDC) has no objections or comments to make.

Woodville Parish Council objects noting the land is designated as industrial and should remain so. In addition the land should have been marketed properly and developments need to be sustainable.

A single representation has been received from a neighbour noting no objection in principle but seek comfort that vehicular access will not be provided to Arliston Drive.

Councillor Steve Taylor raises concern in that the original sustainable intentions for the wider Woodville Woodlands have already been eroded by loss of employment provision, and hence it is even more concerning that this proposal intends to further diminish such opportunities. There was an accepted consideration to mix housing and employment recognising the need for employment in an area where traditional industries had diminished at a pace. Currently only 4 small industrial units have been created – pre-built and occupied following initial investment. The site here has been largely ignored with a meagre hoarding regarding its availability and it is believed that the site has not been advertised to its true potential and location. Councillor Taylor strongly believes that residential development should be resisted and the original approval maintained. It is also advanced that this Council should not continue to approve applications on the assumption that the Swadlincote Regeneration Route (SRR) will happen, and that without it the limitations of the existing highway network would make this development inappropriate. It is also questioned why this proposal is not providing for affordable housing. Should this application be determined it is expected that normal health, education and recreation contributions be secured along with a contribution to traffic relief by way of the SRR if relevant.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S5 (Employment Land Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), E1 (Strategic Employment Land Allocation), E6 (Woodville Regeneration Area), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).
- 1998 Local Plan (saved policies): EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage).

## **National Guidance**

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

## **Local Guidance**

- Housing Design and Layout SPG
- Section 106 – A Guide for Developers

## **Planning Considerations**

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

- Principle of development and loss of employment land;
- Viability, infrastructure contributions and affordable housing;
- Highway impact and connectivity;
- Biodiversity;
- Flood risk;
- Design and amenity; and
- Other technical matters

## Planning Assessment

### Principle of development and loss of employment land

The site is well related to existing services and facilities on the fringes of the Swadlincote Urban Area and is, in this respect, sustainably located. It falls within the wider built confines of the Woodville Woodlands and has been previously accepted as a candidate site for built development. The extant employment permission must be afforded weight in assessing this proposal, particularly in terms of visual and transport impacts as discussed below.

The site is not protected for employment purposes under adopted and emerging policy. Nonetheless it is a material consideration that the original wider Woodville Woodlands development was considered sustainable on the basis of a mix of residential and employment uses, and the loss of employment land here would compound the losses already seen across the County border in North West Leicestershire. However, consideration must extend further to consider whether employment opportunities for residents would be compromised to an unacceptable degree to upset the social sustainability of the original development. This is not considered to be so given the existing occupation rates of dwellings on the Woodville Woodlands development and their apparent ability to secure employment.

The applicant has gone further to demonstrate that there is little prospect of the site coming forward for employment purposes. It has been marketed for 8 years and attracted little interest and no firm offers. During the course of assessing this application, it has been marketed once more – again to no avail. There are no clear reasons to explain the lack of market interest in this site. It is possible that the lack of any building activity on site has given a poor impression and that had some speculative development taken place, some take up might have occurred. However, this would be a large financial risk. Another factor may relate to the sites accessibility to the highway network and motorways. A key locational advantage sought by industrial uses is access to strategic rail and road networks. Whilst the SRR is partially complete, the site remains unable to compete with better quality sites situated within or with better access to the established motorway corridors (such as those closer to Ashby for instance). This competition from other employment sites in the area is strong, and particularly those without nearby residential uses where there are no restrictions on working hours.

Paragraph 22 of the NPPF states that the long term protection of sites allocated for employment use should be avoided where there is no reasonable prospect of a site being used for that purpose. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities. Policy E3 paints a similar picture – that redevelopment of existing industrial and business land for non-employment uses will only be permitted where it can be demonstrated that there is no demand for Use Class B1, B2 and B8 purposes, and that the development proposals would not unduly inhibit existing or planned neighbouring land uses. In this context the principle of development is acceptable.

## Viability, infrastructure contributions and affordable housing

The site was formerly used for the Hepworth Pipeworks and lies in an area of elevated coal mining risk. It thus required considerable remediation in order to provide the existing plateau for employment purposes. In addition, the residential use now proposed means the introduction of more sensitive receptors and hence further remediation and mitigation will likely be required in order to facilitate the development. This has a bearing on the viability of the proposal, as does the slightly lower land values in this part of the District. The scheme has been assessed by the District Valuer who concurs with the findings of the applicant's Viability Appraisal – that it is not viable to provide affordable housing or financial contributions. Even when modelled at the 100% market housing mix proposed, a lower than normal return is being borne.

Whilst no affordable housing would therefore be secured under the proposals, the applicant is still willing to set aside some monies – arguably at his own expense – for section 106 contributions, recognising that the development must still be sustainable in the round. The headline amounts requested are:

- Education (infant age): £45,596.04
- Healthcare: £17,041.00
- Public open space: £16,785.00
- Outdoor sports facilities: £34,540.00
- Built facilities: £19,279.60

Total: £133,241.64

The applicant is offering £90,000 to be split as Members see appropriate. All the requests listed above are considered to be CIL compliant. The following split is recommended, recognising the significant pressures on certain services/facilities in the Woodville area (i.e. fixing education and healthcare at their full amounts and reducing the remaining sums on a proportional basis):

- Education (infant age): £45,596.00
- Healthcare: £17,041.00
- Public open space: £8,865.00
- Outdoor sports facilities: £13,288.00
- Built facilities: £5,210.00

Total: £90,000.00

When considering the above viability issues against the definition of sustainable development as set out in the NPPF, it is not considered that the social dimension suffers so greatly to argue that this is not sustainable development. The lack of affordable housing does not mean that the housing would be out-of-reach of all prospective purchasers and the mix of 2, 3 and 4 bed dwellings helps to make available – as best as possible in the circumstances – housing which caters for a range of ages.

## Highway impact and connectivity

As noted above, the extant permission on this site is a material consideration in establishing the acceptability of the impact on the public highway. The Transport Statement demonstrates a betterment in terms of overall vehicle flows to and from the site each, most notably a considerable reduction in arrivals to the site in the morning and departures in the evening – through the site not acting as a ‘draw’ for employment purposes. In addition the change in the mix of vehicle types going to and from the site, with fewer HGVs and LGVs, is likely to result in an improvement on what could otherwise be a noticeable increase in such vehicles through key junctions in the locality (e.g. the Tollgate Island).

When considering whether a financial contribution should be required to mitigate the impact on the Tollgate Island, through contributing towards the SRR; it is not considered a contribution would be CIL compliant. This is simply because the wider Woodville Woodlands development has been previously tested for its impact on the highway network and at that time, no contribution was required. As section 106 can only be used to mitigate the impacts of the development proposed – not address what increases in traffic flows might have occurred in the meantime; there is not considered to be a sound basis for demonstrating this proposed scheme would have an impact above and beyond that already accepted.

As to the layout of the scheme, revised plans are acceptable subject to conditions with adequate space provided for residents’ vehicles and turning space for refuse and other service vehicles. The footpath links from the site edges to the existing route through the POS are considered to be essential in order to ensure suitable access for all users and to accord with design principles. Similarly the required southern visibility splay at the Moira Road access appears to marginally overlap the POS, although the applicant argues that the visibility is sufficient in any case (given the access exists and must have previously been acceptable to the Highway Authority). Whilst the land is presently undergoing transfer to the Council, it is not, at the time of writing, in the ownership of the applicant or the Council. In order to secure these links and visibility splays it would be necessary to either impose a condition or planning obligation. A planning obligation is not considered appropriate given it places the onus on the Council to provide the footpath links, by way of a financial contribution, at a later date. This relies on the land being transferred in time to achieve this before the development is occupied, and the third party landowner to be involved in the signing of a legal agreement; introducing a degree of uncertainty at this point in time. The condition is preferred as it then falls to the developer to carry out the footpath works and achieve the splays, although permission would have to be withheld until such a time when a condition could be imposed (i.e. once the land is owned by the Council and in public control). Hence, as there is a mechanism to make the development acceptable – albeit subject to the time necessary to complete the land transfer; this is not considered to be a reason to withhold the principle of permission here. Delegated authority is, however, sought for flexibility as to this approach such that an obligation, with financial contribution of £10,000 to cover the footpath works, can be used if necessary.

## Biodiversity

As noted above the site comprises neutral grassland, bare ground and hardstanding. It is largely uncolonised in habitat term and thus not surprising that the site holds little or no potential for bats, badgers and great crested newts. However, the Trust assesses the site of a habitat of principal importance. Due to the type of habitats present, and species recorded, it is considered suitable habitat for dingy skipper butterfly and ground nesting birds such as skylark. There also remains disagreement as to the potential the site offers for reptiles.

In respect of reptiles, the applicant considers the site is isolated in nature and lacks potential habitat for their presence. The Trust disagrees, noting the southern edge is near to woodland and the disused railway line and that although the area lacks records; this should not be taken that the species is absent from the site. They recommend reptile surveys are required prior to determination. In maintaining that the site does not provide optimal habitat for common species of reptile such as grass snake or common lizard; the applicants highlight that over 120 days of trapping/translocation completed on the wider Woodville Woodlands site to the east of Moira Road (with a similar relationship to woodland and the disused railway line) did not confirm the presence of reptiles in habitats which were optimal. Hence it is advanced that land which is less than optimal is even more unlikely to harbour the species. In this respect, it is considered that it is reasonably unlikely that common species of reptiles are present within the site. Paragraph 99 of the Government Circular 06/2005 which states “bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development”. In this respect it is considered that a precautionary destructive search for reptiles prior to the commencement of development is appropriate.

Turning to the potential for nesting skylark, the surveys correspond with the Trust’s observations and they consider this concern needs to be addressed with detailed mitigation, enhancements and compensation. They are particularly concerned over the loss of breeding habitat when a national decline is being observed. The Trust also considers the site to qualify as an Open Mosaic Habitat (OMH) on previously developed land (an OMH Habitat of Principal Importance), and that in turn the potential for dingy skipper needs further consideration; advancing that this year’s emergence of the butterfly – two weeks later than normally expected – may have assisted in their absence from the site under the surveys. In addition a single 24 hour assessment period is not considered sufficient. DWT recommends that additional measures are incorporated into the landscaping to provide habitat for this butterfly and that the habitat is subsequently included in a management plan for the site.

The applicant contests both these matters. Firstly, only a single pair of breeding skylark were observed and they maintain that the loss of the limited extent of grassland on the site would not result in a significant effect to the local skylark population. Moreover they highlight that mitigation has already been applied under the original Woodville Woodlands consent (when this site was to be lost to employment use) which has already provided some 24ha of open space, including National Forest planting and 10ha of open grassland which is relatively undisturbed

and suitable for skylarks. Given this mitigation has already been provided by the wider permission, it is not reasonable to expect additional mitigation – effectively ‘double charging’ the applicant, especially where significant impacts are not predicted.

Secondly, it is strongly contested that OMH is not present as one of the five criteria are not met on this site – criteria which must all be satisfied. Furthermore, given the results of the completed survey work and the Trust’s own data confirming dingy skipper is not widespread locally; it is reasonable to assume that this species is unlikely to be present or affected by the proposals. In looking at the layout and the land in the control of the applicant, there is little scope to provide habitat that could be maintained to the benefit of this species. Notwithstanding this, in the absence of statutory protection and paragraph 118 of the NPPF only protecting ‘irreplaceable’ habitats; it is not considered a refusal could turn on this point. It is also interesting to note that the Trust acknowledge the 10ha of open grassland within National Forest land that was included as part of earlier developments. In this vein, again it would be unreasonable to require the applicant to duplicate mitigation for the same site.

The above discussion must be considered with a further potent material consideration in mind – that the extant permission could be implemented at any time without the need for a further planning permission. Groundworks could reasonable take place and works to implement that permission begin, leading to the loss of all habitat which might hold some potential. The passage of time and changing legislative and protective approach to species is of relevance, but this cannot be reasonably used to effectively ‘double charge’ the applicant and require mitigation to be carried out where it has already taken place.

### Flood risk

The site is not at an elevated risk of flooding and the drainage strategy signals the ability to drain the site in a satisfactory manner. Indeed it is noted there would be betterment over the extant scheme to some degree, by way of introducing a greater extent of permeable areas (i.e. through residential gardens). Severn Trent Water has confirmed suitable capacity exists for both surface water and foul sewage flows, and given the network (eventually) carries fallout to the Milton Waste Water Treatment Works, there is not considered to be an impact on the River Mease SAC and SSSI.

### Design and amenity

Amended designs have addressed minor concerns raised to the initially submitted scheme. A strong built frontage along the main road would exist and, whilst of a more contemporary appearance, the overall appearance would recognise and respond to the local vernacular. There is no concern as to overlooking or overshadowing of existing property, and with a largely outward facing development; there would be natural surveillance of public spaces and routes.

### Other technical matters

Land stability and contamination matters are considered to be acceptable subject to conditions to secure further investigation (where necessary) and remedial

works/mitigation. Satisfactory information is also provided to demonstrate the extraction of mineral reserves is not feasible, whilst there is no archaeological interest in the site.

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**

Subject to:

- (A) the transfer of public open space land surrounding the site and abutting the adopted highway along Moira Road to the Council;
- (B) the completion of a Section 106 Agreement to secure the financial contributions set out above, or those as Members may resolve to secure; and
- (C) delegated authority be given for the Planning Services Manager to deal with the method of securing of the pedestrian links adjacent to the site;

**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 submitted for approval as specified in the Drawing Schedule (amended July 2016); unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; any car ports shall not be enclosed other than allowed for by the drawings hereby approved, and all car ports and parking spaces (including garages) to be provided in connection with the development 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 off-street parking provision, in the interests of highway safety.

4. During the period of construction of any phase of the development, no works including deliveries shall take place outside the following times: 0800 - 1800 hours Monday to Friday and 0800 - 1300 hours on Saturdays and any time on Sundays, Bank and Public holidays (other than emergency works).

Reason: To ensure that the construction phase does not prejudice the enjoyment by neighbouring occupiers of their properties.

5. During the period of construction of any phase of the development, no portable generators should be used on site without details (including noise attenuation where necessary) having been first submitted to and approved in writing by the Local Planning Authority. Only those generators approved shall thereafter be used and any necessary attenuation shall be first implemented and retained throughout the construction period.

Reason: To ensure that the construction phase does not prejudice the enjoyment by neighbouring occupiers of their properties.

6. No development shall commence until a precautionary destructive search for reptiles on or immediately adjacent to the site has taken place. The results of this search, along with any mitigation measures considered necessary based on the findings, shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing.

Reason: In order to safeguard protected and important species.

7. No development shall commence until a dust mitigation scheme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented and adhered to throughout the construction period.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

8. No development shall take place until a scheme of further targeted intrusive site investigation, as recommended by the Desk Study Report (February 2016, prepared by Wardell Armstrong), has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be carried out and before any construction of buildings, roads or service infrastructure takes place, a report of the findings arising from the intrusive site investigation shall be submitted to and approved in writing by the Local Planning Authority. This report of findings shall also set out a scheme for any remedial works necessary and a timetable for the implementation of those works. Any remedial works approved by the Local Planning Authority shall thereafter be carried out in accordance with the approved timetable.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

9. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000. The assessment shall demonstrate, with appropriate evidence, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i. into the ground (infiltration);
- ii. to a surface water body;
- iii. to a surface water sewer, highway drain, or another drainage system;
- iv. to a combined sewer.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options.

10. No development shall take place until a detailed design, timetable for implementation and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling/road/hard surface served by the surface water drainage system.

Reason: To ensure that the principles of sustainable drainage can be incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

11. No development shall commence until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling served by the foul drainage system.

Reason: In the interests of pollution control.

12. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The management plan/method statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, measures to protect existing vegetation adjoining the site, method of prevention of debris being carried onto highway, method of prevention of pollutants and debris being washed into the public sewer network, pedestrian and cyclist protection and any proposed temporary traffic restrictions. A timetable for the implementation of each of these measures and shall be included in the submitted details. The approved plan/statement shall be adhered to throughout the construction period.

Reason: In the interests of highway safety and pollution control, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.

13. No construction of a building shall commence until details of the finished floor levels of the buildings and of the ground levels of the site relative to adjoining land levels have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels.

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

14. No construction of a dwelling shall commence until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. This shall include noise from the surrounding road network and any other local noise sources that are deemed significant to the site. The approved measures shall be incorporated into the dwellings and/or installed prior to first occupation of the dwellings and thereafter retained/maintained as such.

Reason: To ensure that neighbouring uses do not prejudice the enjoyment by occupiers of the properties hereby approved.

15. Notwithstanding the submitted drawings/plans, no development involving the construction of a dwelling or boundary treatment shall commence until revised drawings detailing the height, types and materials of boundary treatments 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 treatments shown on layout plans hereby approved and be supplemented with elevational plans to show the typical appearance 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) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; no further boundary treatments shall be erected forward of such walls or fences.

Reason: In the interests of the character and appearance of the area (noting that the plan submitted proposes unsuitable boundary treatments to some public aspects), so to maintain the character of public realm as secured under the plans hereby approved.

16. Notwithstanding the plans/drawings submitted, prior to the first occupation of a dwelling a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area, recognising that the plans initially submitted no longer reflect the amendments now secured.

17. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme first submitted to and approved in writing by the Local Planning Authority.

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

18. No construction of a dwelling or boundary wall shall commence until precise details, specifications and, where necessary, samples of the facing and surfacing materials to be used in the construction of the external walls and roof of the buildings, of boundary walls and of non-adoptable roads and shared driveways 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 buildings/walls and the locality generally.

19. No construction of a building shall commence until large scale drawings to a minimum scale of 1:10 of window and door reveals, and cill and lintel details; and details of colours for window and door frames, fascias and soffits, have been submitted to and approved in writing by the Local Planning Authority. The buildings shall be constructed in accordance with the approved drawings.

Reason: The details submitted are presently inadequate to determine whether the appearance of the building would be acceptable.

20. Notwithstanding the approved plans, bin collection points shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. Such details shall include measures to prevent the use of such areas for the parking of vehicles. The facilities shall be provided prior to the first occupation of the dwellings to which they serve and shall be retained thereafter free from any impediment to their designated use.

Reason: To prevent refuse bins and collection vehicles standing on the new estate streets for longer than necessary causing an obstruction or inconvenience for other road users.

21. No dwelling shall be first occupied until the footpath links to the existing footpaths on adjoining open space, as shown on the approved plans, have been provided in accordance with a detailed scheme for their construction and surfacing first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of pedestrian movement onto adjoining open spaces and routes, so to encourage sustainable modes of transport.

22. Prior to each respective dwelling being occupied, the designated space(s) for parking and manoeuvring of residents' vehicles associated with that dwelling shall be laid out and surfaced in accordance with the approved plans. The manoeuvring space shall thereafter be retained free of any impediment to its use for such purposes.

Reason: So to provide adequate off-street parking and turning space, in the interests of highway safety.

23. All vehicular accesses within the development shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on either side of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

25. The layout and construction of the internal roads to the site shall accord with the Highway Authority Policy Document '6Cs Design Guide'.

Reason: In the interests of highway safety.

26. Vehicle accesses shall be no steeper than 1 in 20 for the first 5m from the nearside highway boundary.

Reason: In the interests of highway safety.

Informatives:

- a. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- b. 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 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.
- c. The applicant is advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management (IAQM) for advice on how dust assessments should be performed. The assessment of the impacts of construction on local air quality should be undertaken following a risk based approach, as outlined in the IAQM document 'Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance'.
- d. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: [www.coal.gov.uk/services/permissions/index.cfm](http://www.coal.gov.uk/services/permissions/index.cfm).
- e. 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.
- f. 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.

- g. 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.
- h. 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 Economy, Transport and Environment at County Hall, Matlock (Tel: 01629 533190 and ask for the New Roads and Streetworks Section).
- i. 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 Lead Local Flood Authority respectively. The use of soakaways for highway purposes is generally not sanctioned.
- j. 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 landowner.

**Item**            **1.3**

**Reg. No.**        **9/2016/0466/NU**

**Applicant:**  
**Mr John Casey**  
**1a Sutton Road**  
**Church Broughton**  
**DE65 5DB**

**Agent:**  
**Mr John Casey**  
**1a Sutton Road**  
**Church Broughton**  
**Derbyshire**  
**DE65 5DB**

**Proposal:**        **THE ERECTION OF AN AMENITY BUILDING**  
                         **(AMENDMENT TO INCREASE THE SIZE OF THE**  
                         **BUILDING PERMITTED UNDER PERMISSION REF:**  
                         **9/2010/1085) ON PLOT 1A BROUGHTON CARAVAN**  
                         **PARK SUTTON ROAD CHURCH BROUGHTON DERBY**

**Ward:**            **Hilton**

**Valid Date:**     **08/06/2016**

**Reason for committee determination**

The item is presented to Committee at the request of Councillor Plenderleith as local concern has been expressed about a particular issue.

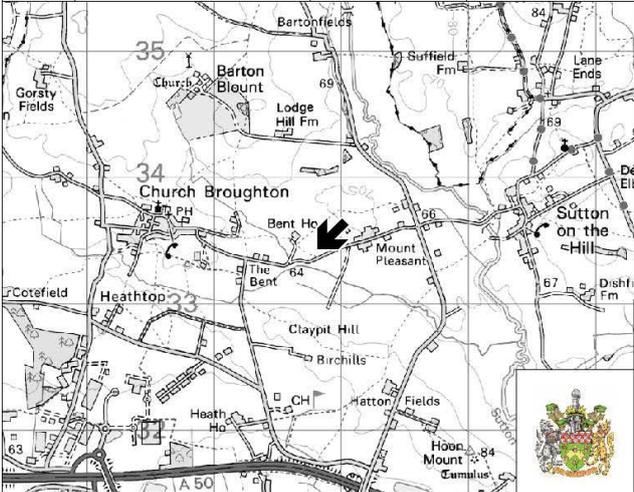
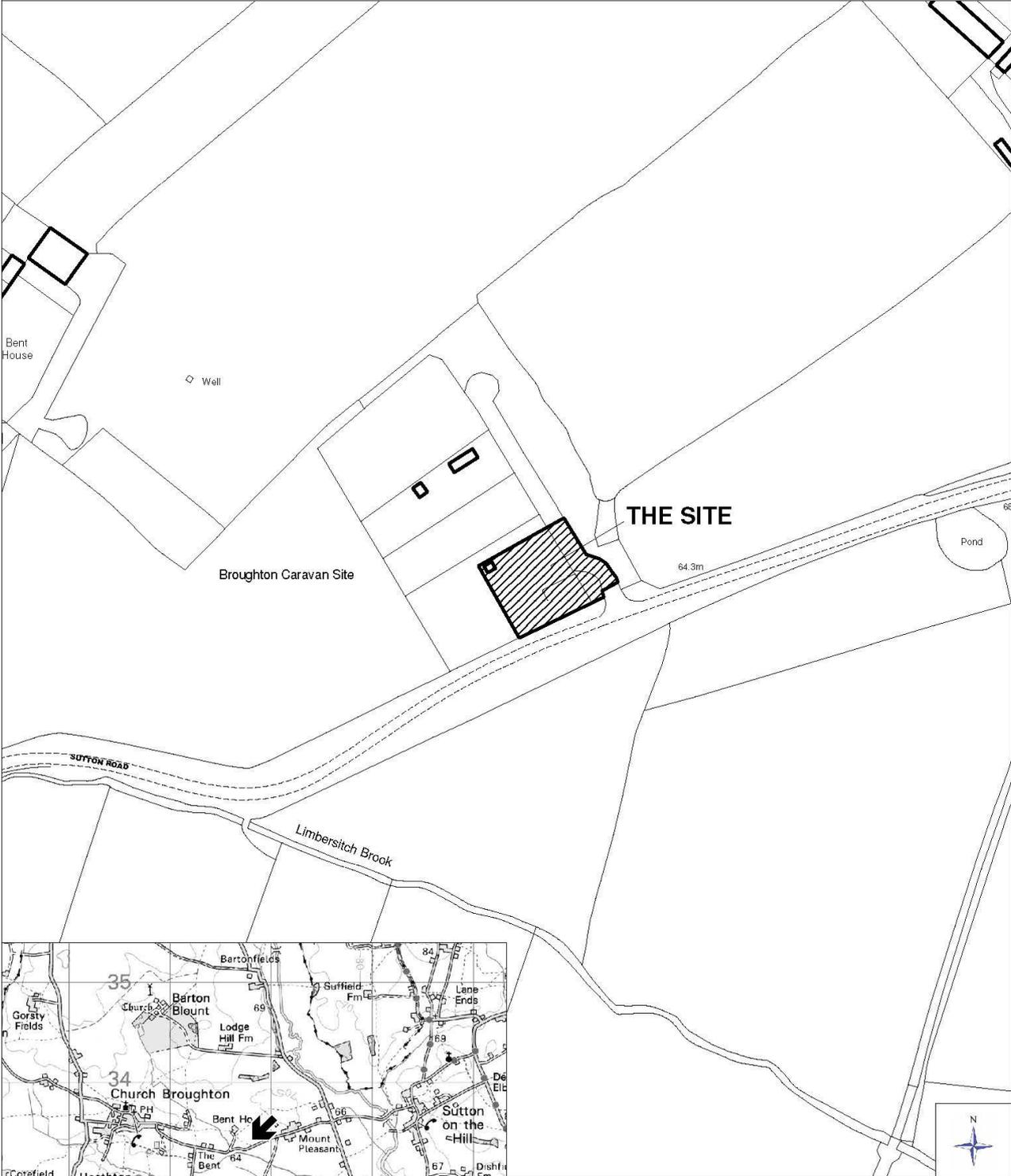
**Site Description**

The site lies to the north of Sutton Road approximately 600m west of the hamlet of Mount Pleasant and just over 1km east of the village of Church Broughton. The site area is 0.09 Ha and forms part of the larger Broughton Caravan site accessed from Sutton Road. Church Broughton Footpath 8 runs to the west and Footpath 6 runs to the north of the site. The Sutton Road boundary has 2m high hedging and entrance gates. The site is hard surfaced and enclosed by 1.8m fencing with hedging behind. Plot 1A is the southernmost plot adjacent to the road boundary and the internal access road runs to the east.

**Proposal**

A larger amenity building than previously approved under permission 9/2014/0974 is proposed. The building would measure 11m by 8m with an eaves height of 2.7m and a ridge height of 5.5m. The previously approved building measured 8m by 4.5m by 2.8m to eaves and 4.1m to the ridge. The proposed location would be approximately 10m from the Sutton Road boundary.

**9/2016/0470 - Plot 1A Broughton Caravan Park, Sutton Road, Church Broughton, Derby DE65 5DB**



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

## **Applicant's supporting information**

None

## **Planning History**

- 9/2015/0943 The creation of 3 additional pitches and the erection of an amenity building - Granted 13/5/16
- 9/2014/0974 The erection of an amenity block - Granted 23/12/2014
- 9/2012/0424 The retention of decking to plot one and proposed decking to plots 1a, 2, 3 & 4 and a timber shed to plots 1, 1a, 2, 3 & 4 - Granted 18/7/12
- 9/2010/1085 Retrospective application for the change of use of land to use as a residential caravan site for four gypsy families, each with two caravans, including laying of hardstandings, improvement of access and erection of amenity blocks - Refused 18/1/2011 but allowed at appeal 7/9/2011

The site approved at appeal under 9/2014/1085 also included an amenity block measuring approximately 6m x 4m.

## **Responses to Consultations**

Church Broughton Parish Council considers that the previous proposal for an amenity block was considered an adequate size. The larger the block the more individuals the site would attract and move against the dominance planning policy for Travellers sites of August 2015, which states within rural or semi-rural settings these sites should not dominate the local community.

## **Responses to Publicity**

Heather Wheeler MP considers the enlargement of the amenity block would increase the permanent built environment in this rural setting and it would be detrimental to the countryside.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- 1998 Local Plan (saved policies): Environment Policy 1

## Emerging Development Plan Policies

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside)

## National Guidance

- National Planning Policy Framework (NPPF) 7, 14, 17, 32, 58, 103, 109, 196, 197
- National Planning Policy Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS)
- Noise Policy Statement for England (NPSE)

## Planning Considerations

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

- Principle of development
- Impact on character and visual amenity; and
- Impact on neighbouring amenity;

## Planning Assessment

### Principle of Development

The proposal seeks permission to provide a larger amenity block on the basis that the occupiers of the site have a particularly high number of children and the block approved would be an insufficient size to provide appropriate facilities. The proposal includes provision of a bathroom, separate toilet, utility room and larger living / dining area. The previous approval proposed a bathroom, shower room and amenity/day room. Whilst the site is located in the open countryside the development is clearly to serve the existing occupiers of the plot and on that basis needs to be in that location. The size and facilities within the block are considered to be proportionate to the occupiers and as such are considered acceptable. The principle of an amenity block on this plot was established through the original appeal decision and through the grant of planning permission in 2014. Whilst this proposal would increase the size still further the resulting building is still considered to be acceptable relative to the needs of the residents. As such, in principle, the proposal is considered to be acceptable.

### Impact on character and visual amenity

Local policies and national guidance seek to ensure that development should respond to local character and reflect the identity of local surroundings; create safe and accessible environments where crime and disorder, and the fear of crime; would not undermine quality of life or community cohesion and be visually attractive. Local Plan policy H22 requires the development to be acceptable in environmental terms and capable of sympathetic assimilation into its surroundings. The existing site is now established and its intrusion into the open landscape would not be unduly exacerbated by this proposal. Whilst the proposed amenity block would be

substantial the facilities contained therein are considered to be proportionate to the proposals. Whilst there would be views of the site from Sutton Road they would be some distance and the proposed building would be set within the context of the existing site. The amenity building would be approximately 10m from the Sutton Road boundary and the existing static caravan would partially screen the building from the main entrance. Existing hedging bounds the land to the north-west and south-west and landscaping to the north-east. Existing screening is therefore considered appropriate mitigation. Hence the degree of harm arising is moderated by the nature of the site and existing screening.

#### Impact on neighbouring amenity

Whilst Mount Pleasant and some residents are close by the provision of a larger amenity building would not in itself lead to an increase in the number of travellers as it is for use by an existing family on site. The position of the amenity building would be such that the impact resulting from noise disturbance and so forth would not be readily apparent.

#### Balancing of planning considerations

Considerable weight is afforded to the fact that the building would be within an existing site that is adequately screened from the surrounding countryside and it is thus not considered to cause undue impact on neighbouring or visual amenity, nor cause pollution to the natural environment. Hence whilst there would be an increase in the building size it would not intrude further into the countryside, would be viewed in the context of the existing site and any modest harm would not be likely to significantly and demonstrably outweigh the benefits of the proposal.

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 the drawing labelled as 'Proposed Site Plan' at a scale of 1:200 and drawing No. AMJC02 submitted on the 2nd March 2016, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. The development shall be built using Hanson Wentworth facing bricks and Marley Rivendale roof tiles, unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

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

Informatives:

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 meetings. 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. 9/2016/0470/NU

**Applicant:**  
**Mr John Casey**  
**Plot 2**  
**Broughton Caravan Park**  
**Sutton Road**  
**Church Broughton**  
**Derby**  
**DE65 5DB**

**Agent:**  
**Mr John Casey**  
**Plot 2**  
**Broughton Caravan Park**  
**Sutton Road**  
**Church Broughton**  
**Derby**  
**Derbyshire**  
**DE65 5DB**

**Proposal:** THE SUB-DIVISION INTO 2 GYPSY PITCHES AND THE  
ERECTION OF AN AMENITY BUILDING ON PLOT 2  
BROUGHTON CARAVAN PARK SUTTON ROAD  
CHURCH BROUGHTON DERBY

**Ward:** Hilton

**Valid Date:** 08/06/2016

**Reason for committee determination**

The item is presented to Committee at the request of Councillor Plenderleith as local concern has been expressed about a particular issue.

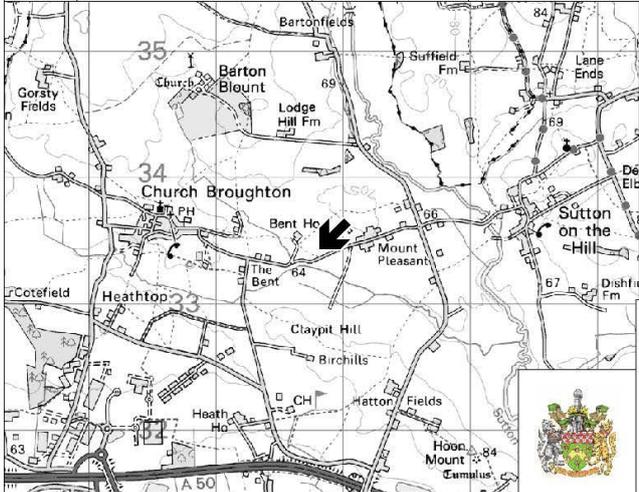
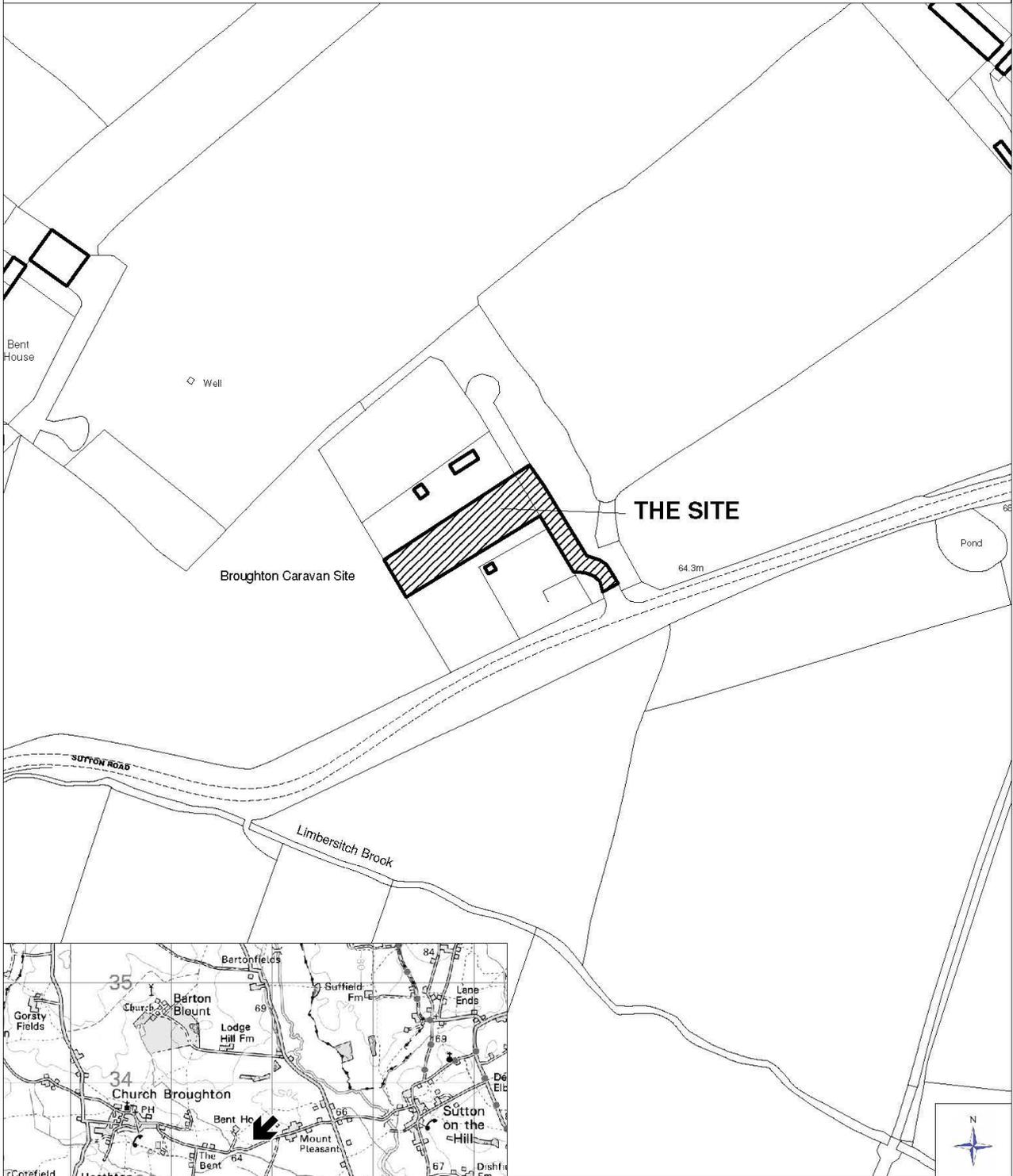
**Site Description**

The site lies to the north of Sutton Road approximately 600m west of the hamlet of Mount Pleasant and just over 1km east of the village of Church Broughton. The site area is 0.11Ha and forms part of the larger Broughton Caravan site accessed from Sutton Road. Church Broughton Footpath 8 runs to the west and Footpath 6 runs to the north of the site. The Sutton Road boundary has 2m high hedging and entrance gates. The site is hard surfaced and enclosed by 1.8m fencing with hedging behind. Plot 2 is 33m from the Sutton Road boundary to the south east and the internal access road runs to the east.

**Proposal**

Planning permission is sought to split plot 2 into two plots with a static caravan, touring caravan and amenity block on each plot. The proposed amenity blocks would each measure 11m x 8m with an eaves height of 2.7m and a ridge height of 5.5m. This is the same size building as proposed for Plot 1A the subject of a separate

**9/2016/0470 - Plot 2 Broughton Caravan Park, Sutton Road, Church Broughton, Derby DE65 5DB**



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

application. The additional plot is required to accommodate the applicant's sons who have young families of their own.

### **Applicant's supporting information**

None

### **Planning History**

9/2015/0943 The creation of 3 additional pitches and the erection of an amenity building, Granted 13/5/16

9/2014/0974 The erection of an amenity block, Granted 23/12/2014

9/2012/0424 Retrospective application for the retention of decking to plot one. application for proposed decking to plots 1a, 2, 3 & 4 and a timber shed to plots 1, 1a, 2, 3 & 4, Granted 18/7/12

9/2010/1085 A retrospective application for the change of use of land to use as a residential caravan site for four gypsy families, each with two caravans, including laying of hardstandings, improvement of access and erection of amenity blocks, Refused 18/1/2011 – Allowed at appeal 7/9/2011

The site approved at appeal under 9/2014/1085 also included an amenity block measuring approximately 6m x 4m.

### **Responses to Consultations**

The County Highways Authority has no objections subject to a condition requiring 2 spaces per plot to be provided prior to occupation.

Church Broughton Parish Council has grave concerns over the site of the site becoming too big within their community. Increasing the number of travellers would move against the dominance planning policy for Travellers sites of August 2015, which states within rural or semi-rural settings these sites should not dominate the local community of Mount Pleasant.

### **Responses to Publicity**

Heather Wheeler MP considers the increase in the number of caravans on site by two and a further amenity block would exacerbate the domination on the nearby of hamlet of Mount Pleasant and may outnumber the permanent dwellings in the hamlet. The increase and enlargement of the amenity blocks would increase the permanent built environment in this rural setting and it would be detrimental to the countryside.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- 1998 Local Plan (saved policies): Environment Policy 1

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE5

## **National Guidance**

- National Planning Policy Framework (NPPF) 7, 14, 17, 32, 103, 109, 196, 197
- National Planning Policy Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS) August 2015
- Noise Policy Statement for England (NPSE) 2010

## **Planning Considerations**

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

- The weight to be given to national and local planning policy;
- The need for gypsy pitch provision;
- Access to services and impact on local infrastructure;
- Highway safety;
- Impact on neighbouring amenity;
- Impact on character and visual amenity; and
- Drainage matters.

## **Planning Assessment**

### Weight given to national and local planning policy

The Development Plan forms the primary policy consideration for this application, although the NPPF, Planning Policy for Travellers Site (PPTS) are material planning considerations carrying varying degrees of weight. 2016 Local Plan policy H22 relates to sites for Gypsies and Travellers requires a target to be set for new pitches and/or plots and the criteria based assessment on the impact on the local environment, including biodiversity, heritage assets or conservation, the surrounding landscape and land uses. It requires that sites should have: safe and convenient vehicular and pedestrian access without any adverse impacts on the highway network, movements of vehicles that would not cause undue disturbance, adequate space for parking and turning, reasonable accessibility to local services, no undue risk of flooding, suitable landscaping and boundary enclosures and a safe and acceptable living environment with sufficient site services. Policy H22 is not sensitive

to settlement confines, recognising that such proposals often sit outside of settlements and/or adjoining them. On this established site the above criteria are met and the additional of a further plot is considered acceptable in principle. Notwithstanding the above, consideration against EV1 is necessary given its intention to protect and enhance the character of the countryside, and this is discussed below.

#### The need for gypsy pitch provision

An updated Gypsy and Travellers Accommodation Assessment (GTAA), published in June 2015, sets out a need for 14 pitches over 5 years from 1 April 2014, and subsequent need for 7, 8 and 9 pitches for each 5-year period thereafter respectively. Prior to the adoption of a Gypsy and Traveller Site Allocations DPD, this need must be met by individual applications in the interim, such as this one, at a rate of 2 to 3 pitches per annum. Since April 2014 permission has been granted for 7 pitches.

The Council met and exceeded its identified needs under the 2008 GTAA, however at present there is an undersupply of pitches compared with the need identified in the updated GTAA. Furthermore, the 5-year supply as required by the PPTS has not yet been met and as such significant weight must be afforded to the proposal.

#### Access to services and impact on local infrastructure

The PPTS advocates very strictly limiting new traveller sites in open countryside that is away from existing settlements. This site is somewhat away from existing settlements and not within identified settlement confines but is an established site and the proposals seek to consolidate their provision in this established location. The availability of transport modes, promotion of community cohesion, and ease of access to health services, shops and schools are all important in assessing the sustainability of a site. Development Plan policies reflect this point. In this case services and facilities are available within reasonable distance in Church Broughton and therefore the site is considered to be suitably located with respect to services and facilities for occupants of the site.

As to the impact on existing education, healthcare provision and community facilities; the development is not of a scale where contributions would normally be sought particularly given that the occupants are transient in nature such that existing provision is considered to suitably absorb any varying pressures arising. In any event, policy would not normally require contributions for such a small number of additional residences.

#### Highway and pedestrian safety

In terms of highway safety it is noted that Sutton Road is a rural lane but notwithstanding this the proposal still needs to be appropriate to this location. The scheme would not result in an overall increase in the comings and goings as the additional plot is for an existing family member. In order to come to a view on highway safety the opinion of the County Highway Authority has been sought. In its reply it has stated that no objection is raised subject to the provision of parking for 2

spaces per plot. In policy terms it is noted that Local Plan INF2 states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for pedestrians, cyclists, public transport users and the private car. NPPF paragraph 32 states, amongst other things, that safe and suitable access to the site shall be achieved for all people; and development should only be prevented or refused on transport grounds where the impacts of development are severe. Examining the proposal it is clear that whilst the proposal would increase comings and goings in this location, it is considered that the proposal would not be contrary to the advice contained on Local Transport Policy INF2 as well as paragraph 32 of the NPPF and therefore the proposal is considered to be acceptable in terms of highway safety.

#### Impact on neighbouring amenity

The PPTS notes that sites in rural areas should not dominate the nearest settled community. Whilst Mount Pleasant is close by and is a relatively modest hamlet, the provision of one additional pitch, even taking into account the additional pitches recently granted on the wider site, would not lead to such an intensification in the number of pitches that the overall site would dominate the existing hamlet. Whilst there may come a point where an increase in the number of pitches proposed on the site in the future which could lead to a different conclusion on this matter, that would have to be determined on the basis of the facts at that time. It is considered therefore that this development would respect the scale of, and would not dominate, the hamlet of Mount Pleasant. Whilst the proposal would extend the gypsy community in this location, amenity concerns must be substantiated if they are to form a reason for refusal. The position of the additional caravans and amenity buildings would be such that the impact resulting from noise disturbance and so forth would not be readily apparent.

#### Impact on character and visual amenity

Local policies and national guidance seek to ensure that development should respond to local character and reflect the identity of local surroundings; create safe and accessible environments where crime and disorder, and the fear of crime; would not undermine quality of life or community cohesion and be visually attractive. Local Plan policy requires the development to be acceptable in environmental terms and capable of sympathetic assimilation into its surroundings. Specifically 2016 Local Plan Policy BNE1 requires development to, amongst other things, be visually attractive and respect important landscapes and Saved Environmental Policy EV1 of the 1998 Local Plan requires development to be unavoidable in the countryside and if permitted it should create as little impact as practicable on the countryside. The existing site is now established and its intrusion into the open landscape would not be increased by this proposal. Whilst the amenity blocks are substantial the facilities contained therein are considered to be proportionate to the proposals. Whilst there would be views of the site from Sutton Road Plot 2 is some 33m distance from this boundary and set within the context of the existing site. However, as an amenity building is proposed adjacent to the south western boundary adjacent to an open field where only 1.8m high screening exists then further mitigation is required. The provision of additional screening on the south western boundary can be secured by

further planting which can be controlled by condition. Hence the degree of harm arising is moderated by the nature of the site and proposed mitigation.

### Drainage matters

The applicant proposes to direct foul water to an existing septic tank but the detail of that installation has not been submitted at this stage as part of this application, therefore it is unclear whether it has sufficient capacity. As such it is considered that conditions should be imposed to appropriately address this matter.

As for surface water no information has been submitted, but again conditions could alleviate these concerns to allow determination of the proposal at this time.

### Balancing of planning considerations

As outlined, the proposal attracts significant weight in favour by way of the lack of a 5-year supply of gypsy and traveller pitches – a supply which would be boosted under these proposals. Added to this is further weight afforded by the ability for the site to be developed, with conditions where necessary, without causing undue impact on neighbouring or visual amenity, nor cause pollution to the natural environment. Hence whilst there would be an increase in the number of plots in this particular location, and the caravans and amenity building would intrude further into the countryside, these would be in the context of the existing site and any modest harm would not be likely to significantly and demonstrably outweigh the benefits of the proposal.

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 drawing numbers: NSC1122 and NSJ1123, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt.
3. This permission does not authorise the use of the land as a caravan site by any persons other than Gypsies and Travellers as defined in Annex 1:

Glossary of the Government's Planning Policy for Traveller Sites (August 2015), or any subsequent policy or guidance which replaces that definition.

Reason: To safeguard the site for occupation by Gypsies and Travellers.

4. No commercial activity or outside storage related to any trade or business shall take place on the site.

Reason: To protect the visual and rural amenities of the locality.

5. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in unladen weight.

Reason: To protect the visual and rural amenities of the locality.

6. There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.

Reason: For the avoidance of doubt and to ensure occupiers of the site are afforded sufficient room for amenity space.

7. The only caravans permitted to be stationed on the site shall be those which comply with the definition as set out in the Caravan Sites Act 1960 (as amended).

Reason: To safeguard the visual amenity of the countryside.

8. The hardsurfacing to the site shall be constructed using porous materials.

Reason: In the interests of flood prevent and pollution control.

9. Notwithstanding the approved plans, no development shall take place until further details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include evidence of infiltration testing and details that proposed surface and foul water drainage means are of suitable capacity to accommodate flows, as well as demonstrating the site levels do not compromise the efficient operation of drainage runs. The scheme shall also provide a maintenance plan for the foul water infrastructure to guarantee it is in good working order throughout the period of use. The scheme shall be carried out in strict conformity with the approved details before the development is first occupied and the foul water infrastructure shall be managed in accordance with the approved maintenance plan thereafter.

Reason: In the interests of flood protecting and pollution control.

10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, prior to the installation of any walls, fences or gates plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. 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 appearance of the area.

11. Notwithstanding the approved plans, prior to first occupation details of tree planting adjacent to the south east boundary shall be submitted to and approved in writing by the Local Planning Authority. Such details shall also include measures for the protection of existing trees (both their roots and canopies) during the course of development. All planting comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner; and any trees 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.

Reason: In the interests of visual amenity.

12. Prior to the first occupation of any of the plots space shall be provided within the site curtilage for the parking and turning of two vehicles per plot, laid out and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The construction of the amenity building hereby permitted shall not commence until samples of the proposed materials to be used in its external construction have been submitted to, and approved in writing by, the Local Planning Authority and the development shall only be undertaken in accordance with the materials so approved and shall be retained as such thereafter.

Reason: To ensure a satisfactory standard of external appearance

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 and meetings. 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. Having regard to the provisions set out under the Caravan Sites and Control of Development Act 1960, an amendment to the existing Caravan Site Licence and supporting licence Conditions will be required. Please contact Environmental Services, South Derbyshire District Council, Civic Offices, Swadlincote, Derbyshire - tele: 01283 595950.
- c. The amenity buildings hereby permitted are consented to serve the plots 2 and 2A. It is anticipated that no other amenity block will be necessary.

**Item**            **1.5**

**Reg. No.**       **9/2016/0745/U**

**Applicant:**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**Swadlincote**  
**DE11 0AH**

**Agent:**  
**Mr James Houghton**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**Swadlincote**  
**DE11 0AH**

**Proposal:**       **CHANGE OF USE FROM CAR PARKING TO MIXED USE FOR CAR PARKING AND/OR ACTIVITY AREA FOR EVENTS, ORGANISED ACTIVITIES/SCHEMES AND EXHIBITIONS AT MARKET HALL MIDLAND ROAD SWADLINCOTE**

**Ward:**           **Swadlincote**

**Valid Date:**    **28/07/2016**

#### **Reason for committee determination**

The item is presented to Committee as the District Council is the applicant and owns the building to which this application relates.

#### **Site Description**

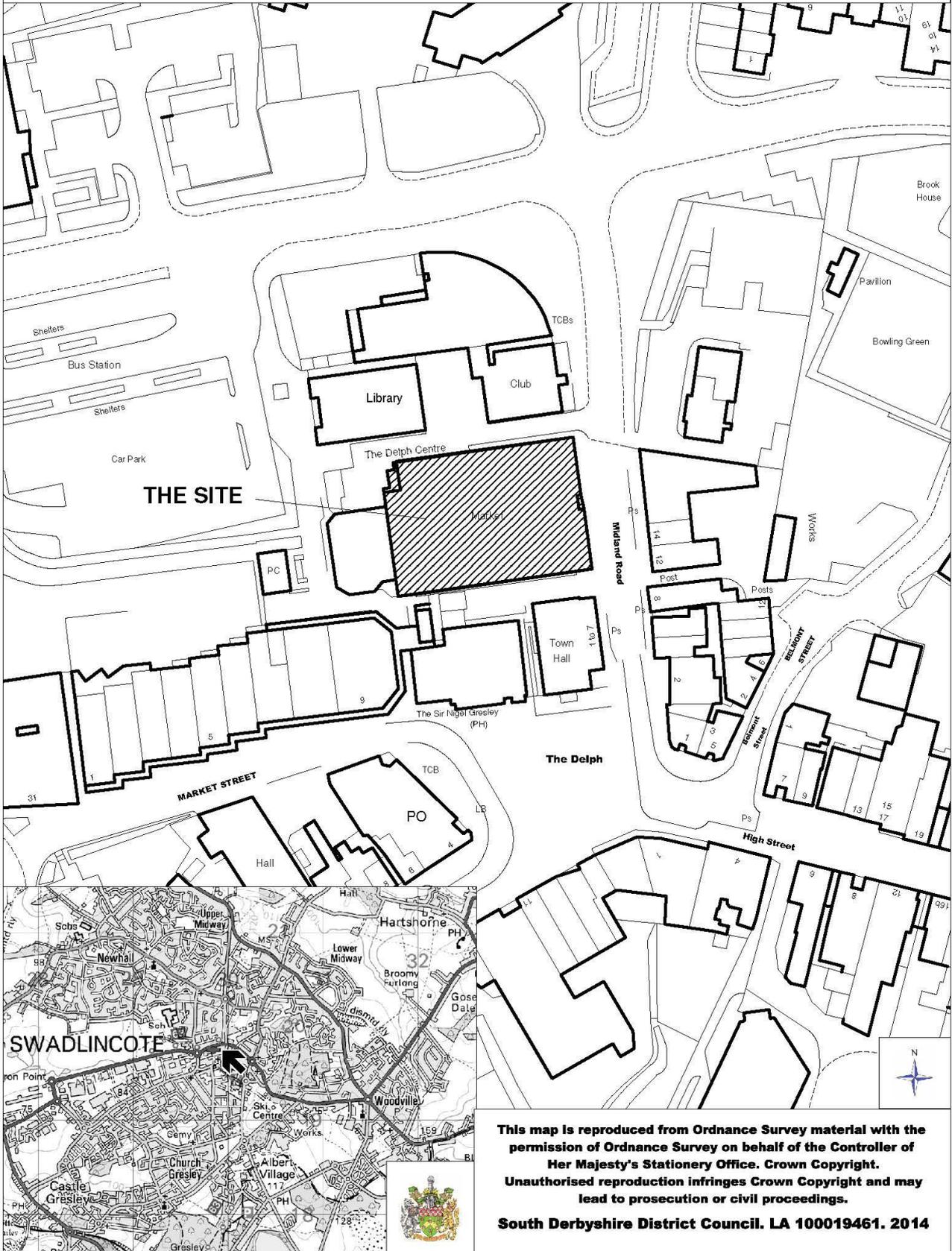
The application site is located within Swadlincote Town Centre, and the extended conservation area. The building to which this application relates is the former indoor market hall, which is currently being used as a car park for Council staff. The building is flanked to the north by the Constitutional Club, which has recently been refurbished with new boundary walls installed to its frontage. The building itself is rather utilitarian in appearance of brick construction with in-filled panels of iron railings, with a flat corrugated roof including inset rooflights. Vehicular access in to the building is provided from Midland Road.

#### **Proposal**

The building has a lawful use as a car park following the granting of the 2011 planning permission. The application proposes the mixed use of the building to allow its use for the following;

- Council staff car parking;

9/2016/0745 Market Hall, Midland Road, Swadlincote DE11 0AG



- An activity area for youth engagement, play schemes and arts development;
- Event use; and
- Public consultation.

It is expected that the building would be used for Council staff car parking Monday to Friday until 7pm, with evening and weekend use mixed between the above uses.

## **Planning History**

9/2011/0688 Alterations and change of use from indoor market to indoor car park - Approved 11/10/11

## **Responses to Consultations**

The Environmental Health Officer has no objection to the proposal.

The County Highway Authority does not raise any objections to the proposed use of the building subject to the use of the building as a car park and other events not taking place simultaneously.

## **Responses to Publicity**

None received.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), BNE2 (Heritage Assets), NF2 (Sustainable Transport), INF6 (Community Facilities), and INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): EV12 (Conservation Areas), and EV13 (Listed or Other Buildings of Architectural or Historic Importance)

## **Emerging Development Plan Policies**

- Draft Local Plan Part 2: RTL1 (Swadlincote Town Centre), BNE11 (Heritage) and INF12 (Provision of Education Facilities)

## **National Guidance**

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

## **Planning Considerations**

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

- The principle of development;
- Impact on the conservation area;
- Impacts on amenity; and
- Highway safety.

## **Planning Assessment**

### Principle of development

The application seeks permission to allow the flexible use of the former indoor market hall for a car park, activity area for youth engagement, play schemes, arts development; event and exhibition use; and public consultation. As the principle of using the building as a car park has been established the assessment of the principle of the use will only consider the introduction of the additional community uses proposed.

In planning policy terms there is general support for both the flexible use of buildings and the provision of new community facilities particularly within sustainable locations such as the town centre being considered main town centre uses as defined within the NPPF. This is an acknowledgement of the important role that town centres play in the community, and the role that new community focused developments can have in improving the vitality and viability of the town itself.

Policy INF6 supports the development of new community facilities, particularly those accessible to all members of the community through a variety of travel options, which is true of this town centre location. The current deficiency of recreation facilities within the Borough is acknowledged within Policy INF9, which supports the provision of new facilities to meet the needs of the existing population.

The flexible use of the building is considered to meet one of the main drivers of planning policy which is to support the sustainable use and re-use of under-used buildings and resources within sustainable locations. The building currently lies vacant during the evening and at weekends and is accessible to members of the public by public transport being located in very close proximity to the town centre bus station. In principle therefore the flexible use of the building is considered to be a sustainable form of development and is considered to be acceptable.

### Impact on the conservation area

The building is located within the Swadlincote Town Centre Conservation Area, and as such the impact of the proposal on its significance needs to be considered. As the proposal does not include any physical works to the building or propose any uses that would be likely to harm the conservation area the proposal is considered to be acceptable in conservation policy terms. Indeed, Policy BNE2 supports the re-use under-utilised buildings where the development is beneficial to the character and appearance of the area, so whilst the proposal would not impact upon the physical setting of the conservation area the use of the building during the evening and weekends would have a positive impact on the vitality and viability of the town centre and the conservation area.

### Impacts on amenity

Policies SD1 and BNE1 set out support for new developments which are not unduly affected by neighbouring land uses. As the site is mostly surrounded by existing commercial uses the flexible use of the building during the evening and at the weekend is not likely to significantly impact upon on any of the surrounding uses in terms of privacy or impacts on amenity though noise and disturbance.

### Highway safety

The use of the building as a car park was considered to be acceptable in granting the previous permission for use of the building as a car park and suitable access in to the building provided as part of that permission. Subject to the imposition of a condition which would prevent the use of the building for the other specified activities, other than car parking, when the building is in use as a car park, the County Highway Authority raise no objection. This approach is considered to be appropriate in highway safety terms in order to avoid any pedestrian/vehicle conflict. As such the proposed change of use is considered to be acceptable from a highway safety perspective and given a lack of objection from the County Highway Authority, the proposal is considered to accord with Policies S6, INF2 and provisions of the NPPF.

### Conclusion

The proposal facilitates the flexible use of a currently under-utilised building within the town centre. The development is considered to meet a recognised need for recreation facilities within the district and due to the lack of physical works to the building no harm results on the Town Centre Conservation Area. The proposal is therefore considered to be a sustainable form of development supported by the development plan and the provisions of the NPPF

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 under Regulation 3 of the General Regulations 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 provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 2015, or any

Order(s) which revokes, amends or replaces that Order(s); this permission shall relate to the use of the premises as described in the application documents and above description and for no other purpose.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises, and in the interests of the amenity of the area and highway safety.

Informatives:

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

**Item**            **1.6**

**Reg. No.**        **9/2016/0787/B**

**Applicant:**  
**Victoria Robb**  
**SDDC Strategic Housing**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Agent:**  
**Victoria Robb**  
**SDDC Strategic Housing**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Proposal:**       **THE REMOVAL OF CONDITION 4 ATTACHED TO**  
**PLANNING APPLICATION 9/0891/0496 FOR THE FLATS**  
**TO BE USED FOR RESIDENTIAL PURPOSES (USE**  
**CLASS C3) AND TO BE TENANTED BY SINGLE**  
**PERSONS AT 75 TO 89 ALEXANDRA ROAD**  
**SWADLINCOTE**

**Ward:**           **Swadlincote**

**Valid Date:**    **28/07/2016**

**Reason for committee determination**

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

**Site Description**

The site is located on Alexandra Road, within the built up area of Swadlincote and is situated adjacent to neighbouring residential properties. To the south of the site there is a public car park and an open piece of undeveloped land.

**Proposal**

The property consists of nine, one bedroom flats the occupancy of which is restricted by condition four attached to planning application 9/1991/0496 so that they can only be occupied by mothers and babies. The condition was imposed due to concerns over inadequate parking facilities being available to serve the flats if they were in general residential occupancy. Consent is sought to remove condition four to allow the property to be occupied by any person, though the size of the flats would mean that they would be most suitable for single people, and not solely mothers and babies as is currently the case.

9/2016/0787 - 75 to 89 Alexandra Road, Swadlincote DE11 9AY



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

## **Planning History**

- 9/0891/0496 The erection of a two storey building to provide a nine bedroom mother and baby unit with resident warden facilities - Approved with conditions 19/08/1991
- 9/2004/0153 The conversion of nine bedsit flats, one 2 bedroom flat, communal lounge and laundry room into eight 1 bedroom flats - Withdrawn 23/02/2004

## **Responses to Consultations**

The County Highways Officer has no objections to the application.

The Coal Authority does not wish to raise any specific observations.

The Councils Environmental Health Officer has no objections to the application in principle.

## **Responses to Publicity**

There have been no comments received from local residents with regard to the application.

## **Development Plan Policies**

The relevant policies are:

- 1998 Local Plan (saved policies): Housing Policy 7 (Residential Conversion).
- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), INF2 (Sustainable Transport).

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: STD1 (Settlement Boundaries and Development)

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs 6-10 (Achieving sustainable development), paragraphs 11-14 (The presumption in favour of sustainable development), paragraph 17 (Core principles), paragraph 32 (Promoting Sustainable Transport), paragraphs 50, 51, 53, 55 (Delivering a wide choice of high quality homes)

## **Planning Considerations**

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

- Principle of the application
- Impact of the use of single tenants
- Highways Impact

## **Planning Assessment**

Consent is sought to remove planning condition four attached to planning application 1991/0496 to allow the flats to be occupied by any person as opposed to solely mothers and their babies. The flats are currently vacant due to a lack of interest in the current use and the application has been submitted to try and provide more effective residential accommodation which is available to more people in the district and put them to productive use.

### Principle of the application

The building is located within the Swadlincote urban area, in a predominantly residential area. The principle of the occupancy of the flats free of any occupancy restriction would be broadly supported in principle due to the location of the site within the settlement boundary and its close proximity to local facilities, in compliance with policies S2 and H1 of the Local Plan Part 1.

The removal of condition four would not fundamentally change the use of the flats, they would remain in residential use, but would remove the restriction on who could occupy them, freeing the flats to be occupied by any person. On this basis the removal of planning condition four would be acceptable in principle.

### Impact of the use of single tenants

The building is currently vacant due to the lack of demand arising from the restrictive nature of condition four. The removal of the condition would allow the flats to be occupied by any person though their physical size would mean that this is likely to be single people. The removal of the condition would result in improved occupancy rates for the flats which would be a positive and effective use of the building. Paragraph 51 of the NPPF supports the bringing back of properties into residential use that which are consistent with local housing needs and empty homes strategies.

### Highways Impact

Condition was originally imposed due to concerns in regards to the level of off-street parking were the flats able to be occupied by any person. The site falls within the built up area of Swadlincote and whilst it is noted that there is very little parking available to serve the development, the location of the site close to the centre of Swadlincote within easy access to shops and public transport links would result in a highway objection being difficult to sustain. The NPPF encourages the creation of development that gives occupants access to different modes of public transport and the development is further supported by policy INF2 of the Local Plan Part 1 which stipulates the need to reduce car travel and that public transport services should be located at a convenient walking distance to development. It is noted that the County Highway Authority raise no objection to the proposals and as such in highway safety

terms and in terms of the level of off-street parking available, the removal of the condition and the resulting occupancy of the flats by any person is considered to be acceptable.

### Conclusion

On the basis of the information that has been submitted it would appear that the removal of planning condition four to allow any person to occupy the flats would be acceptable and would be consistent with policies H1 and S2 of the Local Plan Part 1 and paragraph 52 of the NPPF.

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 unconditionally.

### Informatives:

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

**Item**            **1.7**

**Reg. No.**        **CW9/2016/0001/CW**

**Applicant:**  
**Thornfield 005 Limited**  
**c/o Agent**

**Agent:**  
**Mr Colin Virtue**  
**Pegasus Planning Group Ltd**  
**First Floor, South Wing**  
**Equinox North**  
**Great Park Road**  
**Almondsbury**  
**Bristol**  
**BS32 4QL**

**Proposal:**        **ERECTION OF AN ON-FARM ANAEROBIC DIGESTION PLANT, FOR THE PROCESSING OF AGRICULTURAL MANURES, CROP AND CROP RESIDUES, WITH A TOTAL FEEDSTOCK CAPACITY OF 17,500 PER ANNUM; TOGETHER WITH WEIGHBRIDGE, COMBINED HEAT AND POWER UNIT, CONCRETE APRON, WOOD DRYING SHED, LANDSCAPING, MODIFICATIONS TO ACCESS, RE-PROFILING OF GROUND LEVEL AND ASSOCIATED INFRASTRUCTURE (COUNTY REF: CW9/0416/9) ON LAND AT SK3823 1506 (PART OF DERBY HILLS FARM) B587 FROM ROBINSONS HILL TO COUNTY BOUNDARY MELBOURNE DERBY**

**Ward:**            **Melbourne**

**Valid Date:**    **20/06/2016**

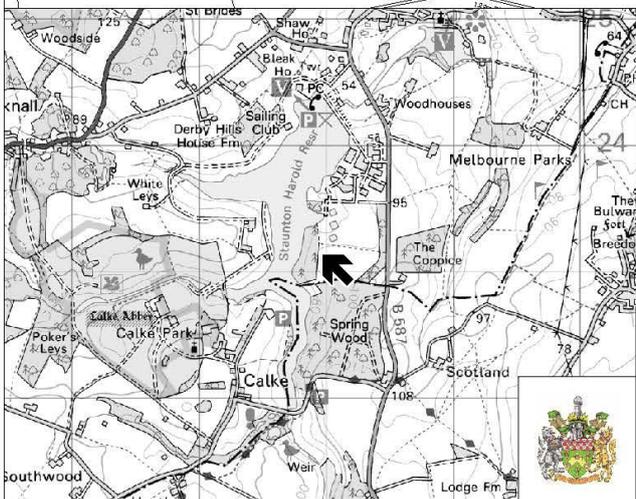
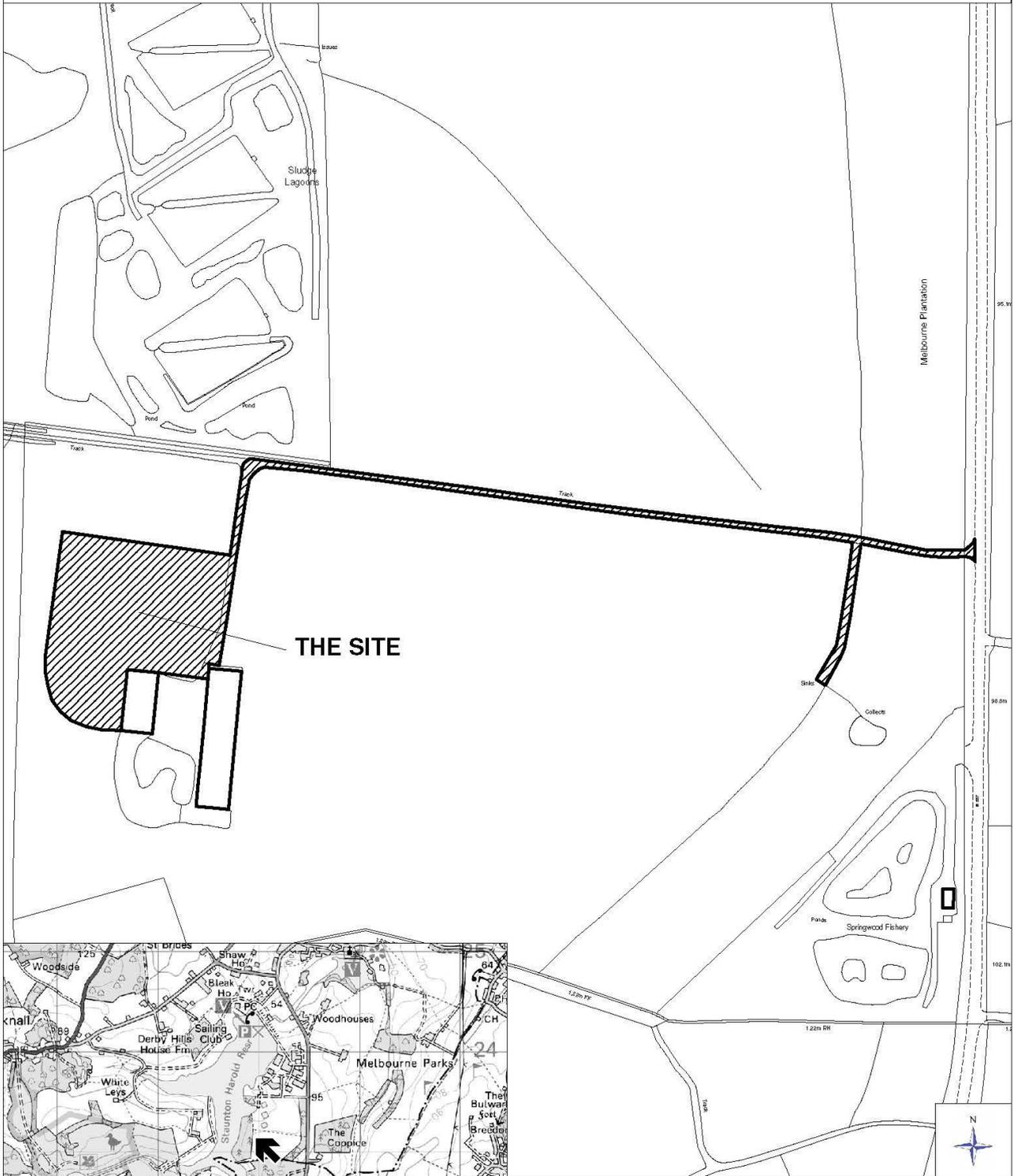
**Reason for committee determination**

The item is presented to Committee at the request of Councillor John Harrison as it is considered the development is of sensitive nature.

**Background**

This application has been submitted to Derbyshire County Council, as the relevant planning authority for waste applications. The following report and recommendation below thus discusses the likely benefits and impacts of the development, and makes a recommendation for the Committee's formal consultation response to the County.

CW9/2016/0001 - Land at Derby Hills Farm, Springwood, Derby DE73 7LD



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

## **Site Description**

The site lies within an area of farmland enclosed by woodland to the east of the Staunton Harold reservoir, near Melbourne. The site comprises part of a single agricultural field currently in arable use, located immediately adjacent to a group of large modern agricultural outbuildings. The northern boundary of the field is formed by a narrow belt of trees, beyond which lies a series of artificial ponds. Further to the north is the water treatment works. The eastern boundary is formed by a strong belt of woodland on the west side of the B587 road. The southern and western boundaries are formed by further woodland. Melbourne public footpath 32 runs from the B587 along the access track to the farm buildings, but terminates at the eastern edge of the woodland to the west of the site.

## **Proposal**

It is intended to construct construction of an anaerobic digestion (AD) plant and wood drying unit. The applicant operates an established agricultural business from Derby Hills Farm and the proposal is intended to enable the existing business to expand its capabilities and evolve in line with latest environmental requirements regarding the sustainable treatment and management of its raw cattle slurry whilst, at the same time, securing the resulting benefits from the renewable energy source and diversifying the farming business so to provide an additional income stream.

The AD process would generate biogas that would be utilised by a Combined Heat and Power (CHP) unit to produce electricity and heat. The electricity will be exported to the grid whilst the heat would be recycled and utilised by the development itself – using it to dry both the digestate and wood, in turn increasing the efficiency of energy generation by 40%. The process would also produce up to 15,500 tonnes of solid and liquid digestate annually. This would be spread onto local fields as an organic fertiliser. The solid form would be processed and used on the holding or transported to local farms, whilst the liquid would be stored in a tank before it is spread on agricultural land during the permitted windows of March/April and July/August. This fertilizer would replace the current activity of spreading raw slurry and, once through the AD process, omits a negligible amount of odour. The AD process itself is ‘air-tight’ and would not omit any odour.

The AD plant would operate 24 hours a day, 7 days a week, other than for short periods of maintenance.

## **Applicant’s supporting information**

The application is EIA Development and thus accompanied by an Environmental Statement (ES). This considers:

- Alternative sites/locations;
- The agriculture and policy context;
- Landscape and visual impacts;
- Hydrology and ground conditions; and
- Odour.

These matters are discussed further below.

The Design and Access Statement (DAS) considers the constraints and opportunities relating to the site. It outlines that the proposal as whole includes a silage clamp for temporary storage of biomass crop; one liquid intake tank; a feed hopper; one digestate tank partially sunk into the ground; a transformer and CHP unit set on a concrete base; one tank for liquid residue storage partially sunk into the ground; one agricultural shed for wood drying; a concrete yard for vehicle circulation; improvements to the internal access track; new hedgerow planting; and a swale. The layout and appearance of the facility would be influenced by function whilst the main structures would be coloured green. There would be no floodlighting at the site, although limited lighting would be used to maintain safe working conditions; and a hedgerow along the northern edge of the site would be planted to limit views from the nearby footpath. It is proposed that all vehicles would utilise an existing private track and the B587. Tractors and trailers would be used to carry the manure and silage from the individual holdings to Derby Hills Farm. The feedstock would be transported using 10 and 14 tonne capacity tractors and trailers, and the digestate distributed back onto the farmland transported using 30 tonne capacity tractors and tankers.

A Planning Statement outlines the economic and environmental benefits of the proposals, and how it accords with national planning policy. It also outlines how the proposal would allow the farming business to accord with other environmental controls and add a further income stream. Taken overall, it is considered the balance of planning consideration weighs heavily in favour of the benefits which would arise from this scheme.

An Arboricultural Impact Assessment (AIA) notes the closest vegetation includes a group of mature oak trees to the south of the existing farm buildings, plantation woodland on the western boundary of the arable field and a small number of mature trees/group to the north of the field, just off the existing access track. In total eight trees/groups/woodlands are considered relevant, of which five are considered to be of low quality (Category C), two of moderate quality (Category B), and one considered to be of high quality (Category A). The proposals would retain all surveyed trees and hence no significant impacts are envisaged given all are located off-site and away from the main area of construction.

A Flood Risk Assessment & Drainage Strategy confirms the site is located in Flood Zone 1 and therefore at low risk of flooding. The site has a dry, safe access at all times. The silage clamp and apron to serve the AD plant would be constructed of impermeable concrete ensuring there is no risk of leaching of any silage spillage to the ground, and surface water run-off from these areas would be collected and fed into the digester tanks and recycled. Surface water from other parts of the site would soak into the ground with a contour swale intercepting runoff from the site. The site and swale would be inspected at the end of each season and restored to clean condition so that the runoff arrangement operates as intended.

A Cultural Heritage Assessment notes there are no heritage assets recorded within the site and there is little indication of prehistoric and Roman activity across the area. More contemporary remains are considered to be isolated and artefacts deriving

from use of medieval common land and post-medieval manuring practices, meaning these are considered to be of little archaeological or historical interest. The development would not alter the setting of recognised heritage assets further afield such that their significance would remain unaffected.

The Ecological Survey notes the site comprises an improved grassland field which is species poor and is surrounded by woodland, with an area of wetland and ponds to the north. No badger setts were identified, although there was evidence of badgers in the local area. The waterbodies were assessed as having suitability for breeding great crested newts and hence should be subject to a further survey in order to assess the presence or absence of this species. In order to mitigate for disturbance to bats and birds within the surrounding woodland, it is recommended that roosting/nesting boxes are installed within quiet area of the site for these species to utilise. A Construction Environmental Management Plan (CEMP) and a Landscape and Ecological Management Plan (LEMP) are also recommended to ensure that species and habitats are protected during construction and the ecological value of the site is enhanced during its operational phase.

### **Planning History**

None relevant.

### **Responses to Consultations**

As this is a consultation from the County Council, consultations have not been undertaken by SDDC. However selected responses given to the County are included below:

The Environmental Health Officer (SDDC) has no objections in principle but recommends that a scheme of noise and odour control is secured, covering all mitigation measures referred to in the supporting Environmental statements, and that the scheme is implemented and retained thereafter.

The Environment Agency considers the proposal to be acceptable subject to a condition to secure a scheme to protect spills from affecting the Staunton Harold reservoir. It is also noted that a permit under their controls will be required.

Natural England presently objects noting the close proximity to the Dimminsdale, Ticknall Quarries and Calke Abbey Sites of Special Scientific Interest (SSSIs) and the view that the development is likely to damage or destroy the interest features for which the above sites have been designated. These concerns are focussed around a lack of evidence that the AD process emits negligible odour, given there is no specific air quality emission assessment with the application. It is also noted it is not clear if the CHP unit would generate any pollutants.

The County Highway Authority has submitted a holding objection noting that the access is via a single width track which carries the route of a Melbourne Public Footpath 32 and an increase of up to 32 HGV or tractor and trailer movements a day could result from the development. The concern is that only one vehicle can access and exit the site at once, leading to one vehicle waiting on/reversing onto the B587 in

the event of two vehicles arriving and leaving simultaneously. Furthermore, as no passing places are shown, it is unclear how vehicles would manoeuvre within the site and is likely that the potential for conflict with users of the footpath would increase. However it is considered these concerns could be addressed by making improvements to the access and by providing passing places within the site.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD6 (Sustainable Energy and Power Generation), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 1998 Local Plan (saved policies): EV1 (Development in the Countryside), EV5 (Agricultural Development), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest), EV13 (Listed or Other Buildings of Architectural or Historic Importance), EV14 (Archaeological and Heritage Features) and EV15 (Historic Parks and Gardens)

### **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside), BNE6 (Agricultural Development), BNE8 (Trees, Woodland and Hedgerows) and BNE11 (Heritage)

### **National Guidance**

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

### **Planning Considerations**

With the principle of this form of development appropriate in a rural location, the main issues central to the determination of this application are:

- Odour and noise
- Highway safety
- Biodiversity
- Drainage and flood risk
- Design and visual impact

## **Planning Assessment**

### Odour and noise

The comments from Natural England are of interest and raise a pertinent issue, in that without sufficient evidence having been submitted it is not possible to ascertain whether odour impacts would be acceptable. There are residences in the locality which are potentially downwind of the site, depending on the direction of the prevailing wind at the time. Whilst it is noted that odours from existing spreading activities on land cannot be controlled under this application; the proposed AD process should not exacerbate the present situation. The comments from the Environmental Health Officer align with this concern, and hence it is considered that an air quality assessment should be carried out prior to determination of the application so to ensure that conditional control is appropriate to handle residual concerns.

### Highway safety

The B587 is subject to the national speed limit and is straight in the vicinity of the site access allowing vehicles to travel at this limit. The vehicles likely to be entering and leaving the site are larger and slower in nature. The comments from the County Highway Authority are noted and it is considered that presently there is sufficient justification to require improvements to the existing access and passing places along the access track. However, it should also be noted that improvements to the access would affect existing vegetation either side and potentially open up a view into the site, and the County should be advised to consider these impacts in the round.

### Biodiversity

The site falls towards the edge, but within, the National Forest. It should be recommended that the applicant look to enhance existing planting around the site, at least mitigating against the loss of trees necessary to facilitate the development (i.e. around the access, as noted above).

### Drainage and flood risk

With the site at low risk of flooding, attention is focussed towards the risk of spills contaminating the reservoir, and in turn water supplies for a wide area. Nonetheless, drainage measures are proposed in order to ensure 'trapping' of surface waters in a swale and their infiltration through the ground downslope. It will however be important to ensure the long term maintenance of the swale so that it functions correctly throughout the life of the development, and it is recommended this be an integral part of any detailed scheme submitted pursuant to condition – including management responsibilities. Notwithstanding this control, it is noted that the Environment Agency require the applicant to apply for a permit for the operation and this adds a further layer of control to protect water supplies.

### Design and visual impact

With the development located adjacent to existing agricultural buildings and resulting in the loss of a small area of agricultural land; the visual and landscape impacts from the built form would be limited. This is because visually the site is well contained by existing vegetation around the field perimeters, with extensive woodland to the west, south and east. The removal of some trees to facilitate an improved access might increase aspects from the main road, but with the buildings at some distance from this thoroughfare and at a lower level this would be a marginal effect. Some views would be gained from the public footpath, but mitigation by way of hedgerow, setting the large digestate tanks into the ground and the use of dark recessive colour finishes; this is a limited impact – particularly as it would be conceptually associated with the agricultural buildings and that use of surrounding land. Overall there is no particular concern in respect of design but additional tree planting as part of the landscaping scheme would help in assimilating the development into its surroundings.

### Conclusion

In light of the foregoing, the principle of an agricultural based diversification and energy production scheme is acceptable in this location, and subject to amended and/or additional information it appears that residual concerns could be overcome or appropriately addressed by way of conditions.

### **Recommendation**

**DO NOT OBJECT** to the granting of permission subject to the following matters being considered and/or addressed to the satisfaction of the County Council:

1. It is recommended that the applicant undertake an air quality assessment prior to determination to properly demonstrate that the proposed operation of the facility would not exacerbate odour impacts on surrounding property and their occupants/customers, in line with policy SD1 of the Local Plan Part 1. The County Council should be satisfied that appropriate controls can be deployed by way of condition to address any residual concerns in respect of odour emissions.
2. It is recommended that amended plans be secured prior to determination to demonstrate a safe and suitable access arrangement can be delivered in line with policy INF2 of the Local Plan Part 1; both in the interests of vehicular and pedestrian users of public routes. In securing such amendments, regard should be had to increased impacts on biodiversity through loss of trees/vegetation to facilitate access, in line with policy BNE3 of the Local Plan Part 1.
3. It is recommended that, in order to ensure the long term maintenance of the drainage swale so that it functions correctly throughout the life of the development, in line with policy SD3 of the Local Plan Part 1; that a maintenance plan, including management responsibilities for delivery of that plan, be secured by condition.
4. The site falls within the National Forest where major schemes should contribute towards on-site woodland planting, in line with policy INF8 of the Local Plan Part 1. The applicant should commit to such planting on land

surrounding the proposed facility, in turn assisting in its assimilation into the countryside.

**Item**            **2.1**

**Reg. No.**        **9/2014/1013/OS**

**Applicant:**  
**Melbourne Trust & Trustees Of Lady**  
**Lothian's Settlement**  
**c/o Agent**

**Agent:**  
**Mr Anthony Duthie**  
**Clarendon Planning and Development**  
**No 1 Leeds**  
**20 Whitehall Road**  
**Leeds**  
**West Yorkshire**  
**LS12 1BE**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 15 DWELLINGS ON LAND NORTH OF BLACKWELL LANE MELBOURNE DERBY**

**Ward:**            **Melbourne**

**Valid Date:**     **27/10/2014**

#### **Reason for committee determination**

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

#### **Site Description**

The proposed development site is located on the south-eastern edge of Melbourne to the north of Blackwell Lane and Melbourne Hall. The site covers an area of approximately 0.49 hectares, and is comprised of a grassed field with a modern barn occupying part of its eastern side alongside an existing track which provides vehicular access to the site. An existing pedestrian pavement runs along the northern side of Blackwell Lane

The site is bound to the south and west by the existing domestic boundaries to Nos 1 and 2 Blackwell Lane and Castle Mews. To the north lie existing allotments, which include a number of temporary structures including small sheds and greenhouses with associated vegetable patches with exposed soils, grassed and hardstanding areas. The ploughed agricultural field to the east of the site sits lower than the application site with the Carr Brook running along its eastern boundary beyond which is a woodland area. Beyond the existing dwellings to the south lies Melbourne Hall and its associated gardens, with its walls forming the boundary of Blackwell Lane to the south.

9/2014/1013 - Land to the north of Blackwell Lane, Melbourne, Derby  
DE73 8JG



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

The application site is located outside of the Melbourne settlement boundary which runs along the western boundary of the site as identified within the 1998 Local Plan, and lies within the Melbourne Conservation Area and is identified as an area of Archaeological Significance.

## **Proposal**

The application has been submitted in outline for 'up to 15 dwellings', with all matters reserved for future approval save for access which is to be considered at this stage. Whilst in outline the application is supported by an illustrative masterplan, which envisages the site being developed in a 'farm and barn' style with linked buildings of a simple form creating courtyards which provide parking and landscaping.

Vehicular access to the site is proposed from the existing site access (albeit modified) to the east of No2 Blackwell Lane, with access to the allotments to the north and the existing cottages on Blackwell Lane retained. A new pedestrian access is proposed in-between these existing cottages on Blackwell Lane to provide a pedestrian link in to the site.

The application as originally submitted extended well beyond the current proposal to 3.32 hectares (54 dwellings) and included the allotments to the north, the agricultural field to the east of the site, and the Blackwell Lane cottages to the south. However, following concerns raised by Officers the scale of the development the scheme has been reduced in size to the current site of 0.49 ha. The development of the larger site (3.32 hectares) was subject to an EIA Screening Opinion by the Council in July 2014. Due to the nature, size and location of the site it was considered that the development would not give rise to significant effects on the environment and is not EIA development and as such an Environmental Statement is not required.

## **Applicant's supporting information**

The Planning Statement outlines the proposal and site preparation, which included submission of the site for consideration as part of the Local Plan (Part 1) consultation in November 2013, which followed the site's identification within the Council's Strategic Housing Land Availability Assessment (SHLAA) in November 2012. The Statement details the planning policies relevant to the development of the site in general and more specifically references; Transport; Design; Flood Risk; Natural Environment; and Historic Environment. An assessment of the policies within the 1998 Local Plan and the now adopted Local Plan Part 1 is also undertaken. The assessment concludes that overall, in terms of national and local planning policy, the site can be considered a deliverable and achievable housing development constituting sustainable development in meeting the tests of both NPPF and the locational strategy within the emerging South Derbyshire Local Plan. The statement also noted that South Derbyshire does not currently have a 5 year housing land supply. However this is now inaccurate following the adoption of the Local Plan Part 1. The Statement highlights that pre-application advice was sought at various stages of the process and identifies the key issues raised together with the stakeholder and community consultation undertaken.

A Historic Environment Assessment notes the archaeological geophysical survey and evaluation trenching undertaken in 2015 highlighted that there is some potential for the survival of unrecorded prehistoric sub-surface archaeological remains within the site, but that features of a medieval date are likely to represent limited agricultural remains of field boundaries, rather than relating to the site of the former medieval manor house known as 'Melbourne Castle'. The proposed development is considered by the assessment to have no significant impact on the setting of any nationally designated Listed Buildings or the Melbourne Hall Registered Park and Garden to the south of the site. The view towards the Melbourne Castle Scheduled Monument from Blackwell Lane, across the proposed development site, would see a minor alteration by the development, but the statement considered that this will not significantly 'harm' the setting of the site, which both lacks substantial visible upstanding remains and is largely surrounded by urban development, including modern houses occupying its southern half. The statement considered that there will be no significant 'harm' on the setting or character of the 'Regionally' significant Melbourne Conservation Area, and that the removal of the present barn will be beneficial to its character.

A Flood Risk Assessment notes the detailed Flood Zone map shows that the proposed development site is entirely located within Flood Zone 1, with a probability of flooding from fluvial sources of less than a 0.1 per cent (1 in 1,000) chance of flooding occurring each year. The existing site is predominantly greenfield and the proposals would increase the impermeable area of the site. This has the potential to increase both the rate and volume of surface water runoff compared to its existing (greenfield) condition. An outline surface water drainage strategy has been developed for the site in order to manage the surface water runoff generated by the proposed development. The site is at risk from reservoir flooding from The Staunton Harold Reservoir, owned by Severn Trent Water, and The Melbourne Pool, owned by the Melbourne Estate, which are both upstream of the development site. Reservoir flood risk to the site could be via overtopping of the reservoir (residual risk) or by failure (breach). The residual risk of a reservoir failure or breach is extremely unlikely. Should flooding from a reservoir dam breach or failure occur, it is unlikely that there will be any forewarning and a number of precautionary recommendations are made in the FRA. The surface water strategy is intended to effectively and safely manage surface water for the site, ensuring no increase in runoff rates or increase in flood risk. It is proposed that the site will be drained to the Carr Brook via the existing drainage channel located to the east of the site. The proposed discharge rates for the site are therefore 5l/s per second for the 1 in 1-year event and 6l/s for the 1 in 100-year with climate change event. It is proposed that discharge rates will be controlled using cellular storage located beneath the road and visitor parking area.

A Tree Survey finds only two trees would need to be removed to facilitate the development of the site and this is to provide visibility splay for the access into the development. These trees are both Lombardy Poplar considered as having typical crown forms for the species. These trees have a moderate quality and as there are double the amount of Lombardy Poplar trees retained, the survey considers the removal of the trees to be acceptable. The opportunity to increase the tree cover through new planting within the development or around the landscaped gardens are noted within the survey.

The Extended Phase 1 Habitat Survey identifies that no statutory designated nature conservation sites (i.e. SSSI) or non-statutory designated nature conservation sites (i.e. LWS) are located within the site. The nearest LWS is approximately 170m south of the survey area. The only notable habitat recorded on the site was mature scattered broadleaved trees; however, it is recommended that the majority of these trees remain unaffected. No protected or notable species were recorded on the site; although the site does provide potential habitat for amphibians, badgers, reptiles and nesting birds. Following a DNA assessment of the nearby ponds it has been identified that there is a negative presence of great crested newts, and subject to mitigation measures there should be no significant impacts on protected species or their habitats.

A Landscape and Visual Impact Assessment considers that the most sensitive component within the project site's visual envelope is the landscape and there is only one moderate impact associated with this, namely from the existing residential dwellings on Castle Mews. Primary mitigation would come in the form of high quality building design, open layout of dwellings and general enhancement of the existing high quality streetscape. Landscape interventions can be implemented to mitigate the diminution of visual amenity. These will serve to integrate old and new built elements, enhancing the town's Conservation Area status. It is considered that the landscape impact could be "a potentially positive addition to the conservation area's character." It is recommended that a landscape masterplan is drawn-up as part of more detailed proposals in future planning phases. This will ensure that considerations of public open space, green infrastructure, footpath connectivity and amenity-driven SUDS strategy are fully integrated into the masterplan design. With a holistic design approach, there is no reason why a housing development shouldn't make a "positive contribution to local character and distinctiveness" as the National Planning Policy Framework suggests.

A Geo-environmental Desk Study identifies a number of potentially contaminated sources both on-site and within the immediate surrounding area. It is recommended that a penetrative ground investigation is carried out in order to determine the ground conditions present beneath the site to investigate the chemical and geotechnical properties of the underlying soils. A gas monitoring program should also be incorporated into the investigation to allow quantification of soil borne gas.

## **Planning History**

None relevant.

## **Responses to Consultations**

Historic England (HE) advises that special attention needs to be paid to the desirability of preserving or enhancing the character and appearance of the conservation area. HE notes that NPPF is clear that any harm requires clear and convincing justification and must be weighed against the public benefit associated with the proposal. HE's previous comments relating to the proposed access have been taken into account in the revised scheme, which proposes access to the site in the location of the existing.

The Contaminated Land Officer notes that the site and neighbouring land has historically been used for military and industrial activities and has the potential for ground gas generation from areas of unknown filled land. As a result conditions relating to contaminated land are recommended.

The Strategic Housing Manager has commented that as the site falls below the affordable housing threshold of 'more than 15 dwellings' and as such affordable housing requirements do not apply.

The Tree Officer has considered the proposed development as the provision of the visibility splay to the east requires the removal of two Lombardy Poplar trees, which are protected by TPO No. 95 (1990). The Officer considers that the long term value of the trees should not constrain the development particularly as there is a good opportunity to increase tree cover through an enhanced planting scheme.

The Highway Authority has no objection to the proposed development. They consider that the revised access details which include the provision of 2.4m x 90m visibility splays (including the realignment and reduction in height of the boundary wall to the west and the removal of two trees to the east) are considered to be acceptable. Whilst there are a number of issues with the internal layout of the site these can be addressed at the reserved matters stage.

Derbyshire Police (Crime Prevention Design) advises that the scheme does not represent an acceptable design in terms of community safety due to the separation of the allocated spaces from the dwellings.

The Planning Policy Officer has requested the following financial contributions to be secured via a Section 106 Agreement towards additional education facilities, based on the reduced site;

- £11,399.01 towards Melbourne Infant School;
- £22,798.02 towards Melbourne Junior School;
- £34,352.35 towards 2 secondary school places; and
- £18,627.90 towards 1 post-16 school space.

Derbyshire County Council (Lead Local Flood Authority) considers that providing the principles of the FRA are followed then there are no objections to the proposals subject to conditions.

The Environment Agency has no objections to the proposed development but do note that site lies within an area at risk from reservoir flooding.

The Local Flooding Officer comments that providing the developer follows the recommendations within the FRA relating to surface water run-off.

Southern Derbyshire NHS have requested a contribution of £5,782 towards an enhancing capacity and infrastructure at existing local practises as the development would increase demand that cannot be easily accommodated within the existing Melbourne GP Practice.

Severn Trent Water have no objection to the proposed development subject to the inclusion of a drainage condition on any permission.

Derbyshire County Council (Archaeology) advises that the amended plans have addressed previous concerns regarding the setting of Melbourne Castle and Hall (including the Scheduled Garden). Due to the demonstrable archaeological potential on the site a scheme of archaeological investigation is considered necessary and a condition to that effect is recommended.

Natural England have no comments on the proposals but note that only relates to impacts on statutorily designated sites or landscapes.

Derbyshire Wildlife Trust have no objections to the proposed development following the submission of an eDNA survey undertaken in June 2016 which demonstrates that the nearby ponds have a negative presence of great crested newts. This is subject to conditions to safeguard biodiversity on the site and the adjacent land.

### **Responses to Publicity**

Melbourne Civic Society object to the application, and comment that the proposals should have been the subject of a fresh full application. The following points are raised within the number of responses received following re-consultation on the proposals:

- i) The new houses will alter the historic landscape;
- ii) The site has never been allocated for development, and this application is premature of the Part 2 Local Plan and the Neighbourhood Plan;
- iii) The new access road is over engineered and a feature of a suburban estate road wholly inappropriate for the Conservation Area, the visibility requirements should be relaxed and moved closer to the existing cottage;
- iv) The NPPF places great stress on the need to preserve the nations heritage. The proposed housing does not outweigh the adverse effects this would have no a previous historic environment.

The Civic Society note the revised proposals overcome most of the strong objection to the original proposals it does not go far enough to overcome the policy and heritage objections. In addition, concern is raised than a number of dwellings do not have dedicated vehicular access.

Melbourne Footpaths Group object to the application due to the 'profound' effect on the Conservation Area, listed Castle and Hall. The proposal is within the Conservation Area and will be much more damaging than the recently rejected proposals on Jawbone Lane. Reference is made to recent court judgements and planning policies concluding that the development will cause harm to heritage assets. Their previous comments raised the following four concerns:

- i) The approach from Wilson is the only route in to Melbourne with a rural view, which is much appreciated by walkers and visitors with the view towards the castle site and Melbourne Hall;

- ii) The Conservation Area Report (2011) highlights the importance of the view when approaching and leaving Melbourne along this route;
- iii) Concern at the flooding problems in this area;
- iv) The site of the proposed allotments waterlogs and half of the site is a flood plain.

Melbourne and Kings Newton Residents Action Group object to the proposals. The site is not allocated and is premature to the decision making of the Melbourne Neighbourhood Development Plan. The objections received echo those of the Melbourne Footpaths Group reported above.

Melbourne Parish Council object to the proposals due to concern about flooding due to the low lying area, poor access on to a narrow country lane, the fact that this site is the only approach to Melbourne that remains unspoilt by development, that all new residents would have no option but to go through the centre of Melbourne, and increased pressure on schools, doctors surgery, burial provision etc.

147 letters / e-mails of objection have been received responding to the application following a number of re-consultations on the plans. The responses object on the following grounds:

- a) A 5 year housing land supply has now been secured
- b) Not allocated for strategic development in emerging local plan, and the site is outside the defined settlement boundary ;
- c) Premature to Melbourne Neighbourhood Plan;
- d) Profound effect on conservation area;
- e) Duties in sections 66 and 72 of the listed building act and reference to Barnwell Decision;
- f) Development not sustainable ;
- g) Impact on value of property;
- h) Pollution;
- i) The Flood Risk Assessment is inadequate;
- j) The recent flooding in June 2016 shows how the site cannot cope with nay new development;
- k) Damage to existing listed building by heavy traffic and vibrations;
- l) Restriction in outlook;
- m) Lack of privacy and overlooking;
- n) Noise levels may cause health and nuisance concerns;
- o) Security issues;
- p) Insufficient details in respect of trees and landscaping;
- q) Outline application in this location is not acceptable;
- r) Aircraft noise requires consideration;
- s) Development would jar against existing properties on Blackwell Lane;
- t) Direct and significant impact on rural setting of Blackwell Lane;
- u) Small size of development hardly significant contribution to housing need;
- v) Requirement for Melbourne is bungalows;
- w) Over engineered access road is inappropriate;
- x) Proximity to existing houses;
- y) Contrary to aims of NPPF to preserve and enhance the nations historic heritage;

- z) Alter views of the heritage landscape;
- aa) Impact on setting of Melbourne Hall;
- bb) Impact on settling of the castle;
- cc) Important visual link with past will be reduced;
- dd) Detrimental effect on the area;
- ee) Insufficient on site car parking;
- ff) Highway safety;
- gg) Surface and foul water systems unable to cope;
- hh) Significantly diminishing the space associated with the castle the development will harm its significance;
- ii) Little consideration given to the character of the surroundings to the historic assets and the contribution this might make to their significance;
- jj) Historic England advice on application reflects government policy;
- kk) Incongruous intrusion into the countryside;
- ll) Fail to preserve the character and appearance of the surrounding landscape;
- mm) Strain on Swarkestone Causeway;
- nn) Impact on recognisable skyline;
- oo) Limited public benefit that would be greatly outweighed by the significant harm to and loss of open space, setting and character and appearance of conservation area;
- pp) Does not represent a balanced approach to sustainable development;
- qq) Set a precedent;
- rr) Congestion;
- ss) Number of alternative schemes in south Derbyshire will meet the required housing needs;
- tt) Blackwell Lane remains unchanged since 19<sup>th</sup> century;
- uu) Loss of individuality, identity and character;
- vv) The desktop archaeological analysis not representative of site as a whole;
- ww) Impact of the proposed footpath on the two existing cottages fronting Blackwell Lane;
- xx) Loss of identity and character;
- yy) Destruction of British historical sites;
- zz) Greed;
- aaa) Scheme does not address affordable housing;
- bbb) Danger of making insufficient contrast between old and new;
- ccc) Security compromised;
- ddd) Impact on tourism;
- eee) Lack of landscaping to screen views of the site;
- fff) Impact on the setting of No14 Castle Mews and existing cottages on Blackwell Lane;
- ggg) Properties should be limited two storey so they do not dwarf the existing cottages, and thought should be given to the placing of windows;
- hhh) An offer for members of the committee to view the site from an adjoining dwelling.

In addition, two letters have been received stating no objection to the proposals.

Councillor Harrison (Ward Member) has stated no objection in principle unless there are any over-riding planning grounds.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF6 (Community Facilities), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): H5 (Village Development), EV1 (Development in the Countryside), EV8 (Open Spaces in Villages and Settlements), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest), EV12 (Conservation Areas), EV13 (Listed or Other Buildings of architectural or Historic Importance), EV14 (Archaeological and Heritage Features), EV15 (Historic Parks and Gardens).

## **Emerging Development Plan Policies**

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE11 (Heritage) and INF12 (Provision of Education Facilities)

## **National Guidance**

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

## **Local Guidance**

- Melbourne Conservation Area Character Statement 2011
- Housing Design & Layout SPG 2004
- Better Design for South Derbyshire 2010
- Section 106 – A Guide for Developers
- Strategic Housing Marketing Assessment (SHMA)

## **Planning Considerations**

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

- The principle of the development;
- Heritage considerations;
- Highway safety;
- Biodiversity; and
- Section 106 contributions.

## Planning Assessment

### The principle of the development

As members will be aware planning applications must be determined in accordance with the development plan unless there are material considerations that indicate otherwise. The Local Plan Part 1 (LP1) was adopted on the 13<sup>th</sup> June 2016 and as a result the Council can now demonstrate a 5 year housing supply, currently standing at 5.33 years. Therefore the housing policies contained with the newly adopted plan and the saved plan are now considered up to date for the purposes of determining planning applications for housing and carry full weight. As such new residential developments should be directed to the most sustainable sites within the District i.e. those allocated within the Local Plan or sites within the defined settlement boundaries.

The LP1 sets the strategy for development within the District, and Policies S1, S2 and S4 set the growth strategy and highlight the importance of the presumption in favour of sustainable development as required by paragraph 197 of the NPPF and to take into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. This approach is designed to enable the District to meet its objectively assessed housing need over the plan period.

Policy H1 of the LP1 sets the settlement hierarchy for the District and identifies Melbourne as a Key Service Village where development sites outside the settlement boundary are not supported unless they are adjacent to the settlement boundary and constitute an exception or cross subsidy site (i.e. an affordable dwelling led scheme of not greater than 25 dwellings) as set out in H21 of the LP1. Although the application site is adjacent to settlement boundary of Melbourne (both that in the SDLP and that proposed in the Local Plan – Part 2), the proposal is not an exception or cross subsidy site and is therefore not supported by Policy H1.

This approach is reflective of saved Policies H5 of the 1998 LP which seeks to restrict new housing development to existing village confines as defined on the proposals map unless the development would meet a genuine local need and the proposal would be well related to the existing built form of the village.

The LP2 will allocate a minimum of 600 dwellings across the District to meet the identified housing need not met by the strategic sites allocated in 2016 LP1. The draft version of the LP2 has been consulted on which included the allocation of non-strategic sites i.e. those sites under 100 dwellings not identified within the LP1. It is noteworthy that the 5 year housing land supply is not reliant on the allocation of sites within the Local Plan Part 2 given that the Part 1 has been adopted with an agreed supply. The supply is based on sites with permission or allocated within Part 1. Therefore at this stage no new sites (i.e. those without permission) proposed for allocation within Part 2 make up part of the current 5 year housing land supply.

Policy EV1 states that outside settlement boundaries 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 is safeguarded and protected. The

proposed development does not meet the criteria for being considered favourably under policy EV1, as the proposal is considered to be avoidable development in the countryside as the housing policies in the Part 1 and 1998 Local Plan are now considered up to date.

It is not in doubt that the new houses would have economic and social benefits through occupiers of new dwellings supporting businesses and community facilities in Melbourne and there would be some economic benefits through the construction phase of the development. However these aspects do not outweigh the harm to the countryside as a result of the development of this greenfield site.

In conclusion the application site is located outside the defined settlement boundary for Melbourne, with no special circumstances that would warrant policy support for the proposal and as such the proposal would not be acceptable development in the countryside. This recognises the importance of safeguarding the intrinsic character and beauty of the countryside from development as outlined within the Local Plan and the NPPF.

### Heritage considerations

The application site is located within the Melbourne Conservation Area, which extends in to Melbourne to the east and to the west to include the agricultural field adjacent to the site. The Council has a duty under the Act to have special regard to this, and carefully consider any new development that could affect or harm its setting and significance.

In addition to the requirements under the Act, Policy EV12 does not permit development which would have an adverse effect on the character of conservation areas, which is echoed in the requirements of Policy EV13 in respect of the setting of listed buildings. Policy BNE2 of the LP1 expects new developments to protect, conserve and enhance heritage assets' settings. These policies coupled with Section 12 of the NPPF form the policy basis for this heritage assessment.

There are two main aspects to the assessment: the impact on the character and setting of the Melbourne Conservation Area, and the impact of the development on nearby heritage assets.

In terms of listed buildings, clearly the first to consider is Melbourne Hall Registered Park and Garden which includes the Grade I listed hall itself and its listed garden walls (Grade II) which need to be considered. The hall and its garden are themselves well contained behind the listed walls, so the proposed development which is outside its walls is screened from any views from within the Registered Park and Garden and is therefore not considered to result in any harm to these nationally important heritage assets. It is therefore important to consider the listed walls as they form an important part of the historic streetscape of Blackwell Lane and create part of the experience of entering Melbourne from the east. Due to the separation of the application site from the walls, whilst the development would be clearly visible from the walls it is not considered that the proposal would harm the listed walls themselves.

In terms of the impact of the development of the site on the Melbourne Conservation Area itself, an understanding of the area itself needs to be considered using the evidence available. The adopted Melbourne Conservation Area Character Statement, 2011 (MCACS) is the most informative and robust document by which to gain an understanding of the area and inform the importance of the character and appearance of this area. The description of this part of the conservation area within the statement is as follows:

“Blackwell Lane is a continuation of Church Street and has similar characteristics - picturesque groups of buildings and high boundary walls.

There is a sharp contrast between the strong unbroken line of the walls enclosing and surrounding Melbourne Hall, which sweep along the edge of the road in a shallow, graceful curve (at over 6 metres high in places), and the small and intimate scale of the red brick cottages and low stone boundary walls running along the north side of Blackwell Lane.

Between the cottages and their gardens, there is a spacious, open character to this part of the village, with long views towards the brook and between the houses towards the allotments and site of the castle.

. Blackwell Lane has changed little as historic photographs from the late 19th century show quite clearly. The new development of Castle Mews blends into the townscape very effectively, borrowing details from the local vernacular, particularly in views looking into Melbourne from the east.”

In consideration of the approaches into Melbourne, that of Blackwell Lane, from the east, survives as the most pleasant and unspoilt of them all. From the north Packhorse Road is defined by 20th century ribbon development, as is Queensway and to a slightly lesser degree Ashby Road/High Street.

The undeveloped slopes of the former Manor/Castle serve to acknowledge and provide interpretation of Melbourne's past. For approximately two and a half centuries, the two cottages on Blackwell Lane (Nos 1 and 2), have existed as the only dwellings topographically below the town, previously having the manor and the castle on the ridge above. This, together with the prominent stone garden wall to Melbourne Hall has been the long-lasting image of the approach to Melbourne from this direction, easing you in to the built form of the urban area as you leave the countryside.

The undeveloped rural context and unchanged views, over a significant period of time, contribute positively and significantly to the character of the conservation area. The existing allotments to the north of the site sit comfortably within this transitional context on the edge of the town, within its adjacent rural use. Whilst it is considered that the removal of the existing agricultural barn on the site would be beneficial to the character of the area, its replacement with 15 dwellings would erode the views in to the heart of the conservation area. The town's identified characteristic as a place of strong contrasts would be diluted by a reduction in the rural character of this significant view, approaching the town from the east, and the dense historic development of the town, together with the anticipation of its high concentration of designated heritage assets of high architectural quality.

The adopted conservation area character statement identifies the view across the site as an important element of the character and appearance of the conservation area:

“From the east, Melbourne is approached via Wilson, which falls just within Leicestershire. The land falls away gradually down towards the Blackwell Brook, and Blackwell Lane passes over a small arched bridge. Between the wooded sides of the road, which are partly formed by the parkland belonging to Melbourne Hall, the land opens out to the north with long views across the unfenced field towards Castle Street. To the south, the walls of Melbourne Hall gardens form an impressive backdrop and sweep around the bend leading the visitor into the town. Picturesque views unfold of the cottages on the north side of the street.

There are few significant views from the outlying parts of the town approaching Melbourne. Perhaps the most important view in approaching Melbourne is that from the east, from the eastern slope of Blackwell Brook. The view looking north-west across the open expanse of the cornfield and allotments (once known as Castle Orchard) towards the old site of the castle (a scheduled ancient monument), is perhaps the only place where the strategic importance and status of the castle in the history of Melbourne can be appreciated. Looking in the other direction along Blackwell Lane, there is an equally important view out of the conservation area.”

The adopted conservation area character statement identifies the site of the proposed development as an open space which is important to the character and appearance of the conservation area:

“Other important open spaces are large private green spaces that contribute to the quality of the views and the setting of important historic buildings (include, amongst others):  
Castle Orchard (the allotment gardens and cornfield alongside Blackwell Lane and behind Castle Street).”

It is clear from the MCACS that this area of Melbourne plays an important role in the overall character of the conservation area heightened by the fact that this is the only relatively untouched entrance since the late 19<sup>th</sup> century into the town and the reason for this area's inclusion within the conservation area 25 years ago in 1991. The proposal represents significant development that will alter the appearance of this part of the conservation area and radically change the undeveloped rural context of this important entrance into Melbourne affecting its character in such a way that it could not be considered to preserve or enhance the character or appearance of the conservation area. This includes both those views of buildings within the Conservation Area and the feeling or experience of travelling through a predominantly countryside setting on the approach to Melbourne along Blackwell Lane. Whilst it is noted that additional landscaping is proposed along the eastern boundary of the site, this would not disguise or screen the development to such an extent that the harm from affecting views would be sufficiently mitigated against.

In light of this assessment and the strong presumption against granting planning permission for development which would harm the character or appearance of a conservation area unless there is clear and convincing justification for the development (which is not the case as outlined above) it is considered that the harm caused to the conservation area would justify the refusal of this application.

### Highway safety

Vehicular access to the site is proposed from Blackwell Lane via an existing vehicular access, where the local speed limit is 40mph. Pedestrian access is proposed in-between the two existing cottages on Blackwell Lane, which will realign their respective domestic curtilages.

The proposed development of 15 dwellings, is considered to result in an increase in traffic that would have a minimal impact on the surrounding highway network, particularly given differing destinations for drivers; and certainly not result in a significant adverse impact on the local highway network.

The application demonstrates that 2.4m x 90m visibility splays can be achieved from the site entrance in both directions, subject to the removal of two trees to the east and the realignment of the existing boundary wall to No2 Blackwell Lane and as such complies with the requirements of Manual for Streets.

The internal roads within the development have not been assessed at this stage as they are only indicative and would be assessed at reserved matters stage. The Highways Authority only need to consider the proposed access arrangement and whether a route from this point to the development could be achieved without detriment to highway safety, within the submitted masterplans this is considered to be achievable.

Generally by virtue of the site location close to the services within Melbourne the site is considered to be a sustainable and accessible location, with services, public transport and education facilities mostly within walking distance. In terms of parking provision, each of the dwellings are proposed with 2 parking spaces, with additional undesignated visitor spaces. Parking spaces and/or access to the rear gardens of the Blackwell Lane cottages are provided for within the development, which will reduce the likelihood of vehicles parking on Blackwell Lane. This would provide a sufficient level of parking in convenient places to ensure that the dedicated spaces are used appropriately.

Given the above, and lack of objection from the County Highway Authority, the proposal is considered to accord with policy INF2 and provisions of the NPPF.

### Biodiversity

The habitats within the site at present is comprised of a field of improved grassland bordered by domestic boundaries to the south and east. Historic aerial photos show the site was once an orchard, however the trees have been removed. The submitted report is considered to be adequate in terms of assessing the impact on biodiversity and no protected species have been found on site. It is noted that no objection has

been raised by Derbyshire Wildlife Trust who recommend the retention and enhancement of the existing boundary hedgerows should be reflected in any reserved matters application. As such in terms of impact on wildlife and ecology this outline proposal is considered to be acceptable in principle.

### Section 106 contributions

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

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

The most recent Government legislation on the matter places a restriction on the use of planning obligations for financial contributions to the size of the development and to no more than 5 contributions per development, provided that specific projects can be identified.

Local Plan Policies INF1, INF6, and H21 expect new residential developments to be adequately supported and where necessary the impacts of additional impacts mitigated, in the interests of sustainability. As the number of dwellings proposed falls below the threshold for affordable housing no contribution is required. The main contributions therefore fall under education, local health services and sports facilities.

The Council's requirements for public open space for a development of under 20 dwellings would be contribution for formal open space as below:

- £373 per person for Recreation open space
- £220 per person for Recreation outdoor facilities
- £122 Recreation Built Facilities.

The County Education Authority requires a contribution for education provision:

- £11,399.01 towards the provision of 1 infant place at Melbourne Infant School.
- £22,798.02 towards the provision of 2 junior places at Melbourne Junior School.
- £34,352.35 towards the provision of 2 secondary school places.
- £18,627.90 towards the provision of 1 post-16 school space.

Due to the increase in numbers of pupils generated by this development, and taking in to account other approved residential developments in the catchment both Melbourne Infant and Junior school would be unable to accommodate the additional number of pupils. The contribution at these schools would be allocated towards a classroom remodelling scheme to ensure that the classrooms are of sufficient size to accommodate the rising pupil numbers. The secondary and post-16 contribution would be provided towards the adaptation of classrooms at two as yet unidentified secondary schools, which would be identified though the South Derbyshire Secondary School Strategy and would need to be identified prior to the securing of any agreement.

## Other Issues

Design and layout; whilst the application has been submitted in outline with all matters reserved for future approval, with the exception of the site access discussed above, an indicative site layout has been submitted indicating how the site could be developed. The proposals form a dense farm and barn type development with linked buildings forming courtyards which generally contain car parking and front gardens. However, this indicative layout is not sufficient to overcome the principle concerns of the encroachment of the development on the countryside and the impact on the character and appearance of the conservation area.

Residential Amenity; The application is in outline with all details reserved except for access, therefore only an indicative layout has been provided and no specific details in terms of the house design are known at this stage. A further assessment of any potential overshadowing, overbearing, overlooking and loss of privacy would need to be undertaken at reserved matters stage. Any reserved matters application would be assessed against the Council's adopted space about dwellings standards.

Archaeology; In terms of the below ground archaeological remains on the site, the evaluation submitted in support of the application identified a likely medieval wall and Roman and Bronze Age features. These finds identify that there may be further evidence of these periods on the site. There is a possibility that the remains are associated with the castle and may be of regional significance however, the density of the findings do not indicate that they would be of schedulable quality. Therefore subject to the undertaking of a detailed excavation of the site including a strip and recording there would be no archaeological objections to the proposed scheme.

Drainage; It is noted the supplied Flood Risk Assessment (FRA) recommends that the method of surface water disposal off site is to be via below ground cellular storage to limit the flow to an open ditch prior to discharge to Carr Brook. The County Council Flood Risk Management team have no objections to the proposals subject to a detailed design being submitted and approved at the detailed reserved matters stage or conditioned.

Neighbourhood Plan; Work has started on a Neighbourhood Plan for Melbourne Parish. However, the Plan is in the early stages of preparation and as such its policies do not have any weight in the decision making process at this point in time.

## Conclusion

The surrounding highway network is considered to have sufficient capacity to accommodate the proposed development, suitable visibility splays are achievable and subject to suitably designed internal roads and parking provision the proposal is not considered to have any significant detrimental impacts on the safe and efficient operation of the immediate and local highway network.

The site has been the subject of detailed ecological and archaeological surveys, and a Flood Risk Assessment which consider the development of the site to be acceptable (subject to conditions) so as to comply with the relevant guidance,

habitats and protected species legislation, and to ensure that suitable drainage of the site can be provided.

However, the application site is located outside the defined settlement boundary for Melbourne, with no special circumstances that would warrant policy support for the development of the site and the resultant encroachment of built development in to the countryside and as such the proposal is not considered to be sustainable development and cannot be supported in principle.

Most significantly the proposed development is considered to have a detrimental impact on the character and appearance of the Melbourne Conservation Area by virtue of introducing new development on a greenfield site which currently forms an important component of the character and appearance of this undeveloped rural entrance in to Melbourne and as a result the proposal would cause harm to the Conservation Area.

When considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is evident that there are social and economic benefits of the scheme through the provision of new housing but this does not overcome the environmental concern of developing the site. It is considered that this environmental harm outweighs the benefits of the scheme. The proposal is, therefore not considered to be sustainable in overall terms and the benefits of the development are clearly and demonstrably outweighed by the adverse environmental impact of the proposal.

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

## **Recommendation**

**REFUSE** permission for the following reasons:

1. The application site is located outside the village confine for Melbourne, and is therefore within countryside. No special circumstances exist which would override the well-established policy position restricting new dwellings within the countryside in order to protect undeveloped greenfield land, the character of the countryside and prevent unrestricted development outside of the identified village confine. The proposed development would intrude harmfully into the countryside beyond the clearly defined edge of the built-up part of the village and is therefore contrary to Policies S1, S2, S4 and H1 of the South Derbyshire 2016 Local Plan Part 1, Policies H5 and EV1 of the South Derbyshire 1998 Local Plan (saved policies), and the provisions of the NPPF and does not represent sustainable development.
2. The proposed development due to its siting within this generally undeveloped open rural context and historic entrance in to Melbourne along Blackwell Lane would result in harm to the character, appearance, and significance of the Melbourne Conservation Area. The proposal is therefore contrary to Policy BNE2 of the South Derbyshire 2016 Local Plan Part 1, Policy ENV12 of the South Derbyshire 1998 Local Plan (saved policy), Policy BNE11 of the Draft

South Derbyshire Local Plan Part 2, and the provisions of the NPPF (Section 12).

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, and negotiations throughout the process seeking to overcome objections to the scheme. However despite such efforts, the planning objections could not be overcome. 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 2.2

Reg. No. 9/2016/0346/NU

**Applicant:**  
**Mr J Doherty**  
**c/o Agent**

**Agent:**  
**Mr Philip Brown**  
**Philip Brown Associates Ltd**  
**74 Park Road**  
**Rugby**  
**Warwickshire**  
**CV21 2QX**

**Proposal:** CONTINUED USE OF LAND TO PROVIDE 5 GYPSY PITCHES INCLUDING RETENTION OF HARDSTANDING AND ACCESS ROAD ALONG WITH THE ERECTION OF AN AMENITY BUILDING, RETROSPECTIVE DRAINAGE WORKS AND LANDSCAPING ON LAND TO REAR OF 137-149 WOODVILLE ROAD OVERSEAL SWADLINCOTE

**Ward:** Seales

**Valid Date:** 07/07/2016

#### **Reason for committee determination**

The item is presented to Committee at the request of Councillor Murray as local concern has been expressed over a particular matter.

#### **Site Description**

The site lies to the rear of terraced properties to the northern side of Woodville Road, mainly comprising former garden space to the rear of these properties. It sits within the settlement confines for the village. The site formerly was put to grass and orchard trees, with a gradual fall towards the northern boundary beyond which is a drainage ditch leading to the Hooborough Brook, some 150m east of the site. Consequently the site lies within the River Mease Special Area of Conservation (SAC).

The site has more recently been put to hardcore with significant raising of ground levels – up to around 1.8m in parts. A concrete slab has been laid to part of this on which is sited a static caravan, a timber shed containing wash facilities, two portaloos, a small domestic shed and floodlighting on poles. Commercial and domestic vehicles, along with some plant and equipment, accompany these structures; whilst there is some storage of building materials and further hardcore around the site. The raised ground levels sharply fall to a boundary fence to the rear,



whilst very recently the boundary fence to the garden of number 151 has been removed – where the hardcore also sharply falls towards it.

The access from Woodville Road is constrained by third party boundary walls and/or the dwellings of 147 and 149 to either side, before close boarded fencing makes up the remaining boundary between their gardens and the site. A telegraph pole also sits tight on edge of the access point to the public highway.

## **Proposal**

It is proposed to use the site for the provision of 5 gypsy pitches. The applicant indicates this would be for him and his family. Notwithstanding the plans submitted, it is understood the applicant intends to retain the hardstanding as laid. As such the layout provided with the application cannot be relied upon and the applicant's agent has confirmed the above formal description.

## **Applicant's supporting information**

A Coal Mining Risk Assessment concludes there is negligible risk from recorded coal legacy and a low to negligible risk from mine entries and unrecorded workings subject to further investigation and drilling/grouting if necessary.

A Drainage Strategy considers Sustainable Drainage System (SuDS) options have been reviewed and a treatment train is proposed that manages up to 1 in 100 annual probability storms (including climate change allowance). It is advanced that the strategy yields a significant reduction of runoff rate compared with the existing, and provides mitigation for potential pollution of watercourses. Foul water would be discharged into the public sewer system where a suitable level of treatment would take place prior to discharge. The Strategy (amongst other things) recommends:

- installation of water butts on downpipes where appropriate;
- allowance for a fed gravity flow;
- provide a storage unit with an area no less than 200m<sup>2</sup> and at least 1.25m depth of sub base with 30% void ratio for water storage;
- consider use of permeable paving; and
- construction of an interception ditch along the boundary adjacent to the rear gardens of Woodville Road with piped conveyance to an outlet headwall.

A Design and Access Statement (DAS) outlines the proposals in relation to the originally submitted site layout. It is noted that the site benefits from access to services and facilities in Overseal, caravans would be set back from existing properties along the road, the development is single storey in height and would not appear prominent or obtrusive. It is not considered necessary to provide additional landscaping to screen the development. The DAS goes on to discuss the existing permission for dwellings as well as the overall need for gypsy pitches in the District, as set out in the Gypsy & Traveller Accommodation Assessment (GTAA) and the need to meet this need through the Local Plan. It is noted that work has only just begun on the Local Plan Part 2 and it is likely to be some time before a 5 year supply can be demonstrated. In assessing the proposal it is considered the presumption in

favour of sustainable development should be applied, at the same time having regard to whether conditions and obligations can mitigate the impacts.

### **Planning History**

- 9/2015/0602 The erection of a detached dwelling (in addition to the four consented) – Approved September 2015.
- 9/2014/1001 The erection of four detached dwellings – Approved December 2014
- 9/2010/0922 Extension of time limit for implementation of 9/2008/0277 – Approved November 2010
- 9/2008/0544 Outline (all matters reserved except for scale, appearance and landscaping) for 4 dwellings (on part of the site) – Approved August 2008
- 9/2008/0277 The erection of a detached bungalow (on land formerly rear of 149) – Approved April 2008
- 9/2007/1467 The erection of a detached bungalow (on land formerly rear of 149) – Approved February 2008

### **Responses to Consultations**

The County Highway Authority notes the principle of 5 static caravans would result in a similar traffic generation to that possible under the extant permissions and given that suitable visibility can be achieved at the access, it is not considered that this would be to any highway safety detriment. The main concern would be getting the static caravans into and out of the site, given the need to manoeuvre within the carriageway and given the photos this is a concern. However, provided it is conditioned that prior to any caravans being delivered a scheme is agreed in writing to provide a banksman or traffic control to control the traffic whenever the static caravans are moved, it is considered that it would be an inconvenience rather than a highway safety issue. The other concern is that it is likely that occupants would have a touring caravan as well as the static caravan, causing an issue with the available parking; although a condition could ensure that parking areas are reserved for domestic vehicles only and not for caravans, trade or business vehicles.

The Coal Authority notes conclusions of investigations previously undertaken in support of permission ref: 9/2015/0602 in that coal mining legacy issues are not significant within the site; and as a result does not object.

The Contaminated Land officer has no comments to make.

The Environmental Health Officer notes the access abuts existing residential property and vehicles, including larger commercial vehicles associated with the applicant's business, would regularly access the site. The access route is unmade, and vehicles travelling across it, in particular commercial vehicles loaded with work equipment, would cause significant levels of noise that will be clearly audible in

neighbouring property, potentially having a significant impact upon amenity. Whilst the extent of this noise is difficult to quantify, and not a reason for refusal on its own; it is considered the issue needs further consideration in order to be satisfied that any adverse impacts can be mitigated. In addition the drainage scheme provides very little details with regards to the potential flows and loadings of the ditch to the rear of the adjacent gardens, and the pipework proposed to convey the water from the ditch to its discharge point. It is recommended that further information is requested to ensure that this will be satisfactory. Conditions are also requested in respect of mitigating dust and controlling hours of deliveries during construction, and the use of portable generators.

The Environment Agency raises no objections, noting that the applicant intends to enter into a planning obligation regarding the River Mease.

Natural England advises that the proposal is not likely to have a significant effect on the River Mease SAC or the SSSI subject to entering into the Developer Contributions Scheme and conditions to ensure sufficient capacity at treatment works to receive foul water flows, that the drainage scheme is fit for purpose, that surface water is not directed to a sewer and a construction management plan.

The Lead Local Flood Authority notes there is no depth given for the 'stone filled storage' (attenuation) proposed and thus cannot be certain there would be sufficient volume to store the 1 in 100 (+climate change) year rainfall event. Given the proximity to the River Mease there may be a high water table and it may be necessary to demonstrate that the storage is achievable without groundwater emergence into the voids. Based on a total impermeable area, the required storage volume is likely to be between 82m<sup>3</sup> and 118 m<sup>3</sup>, with this falling to between 50m<sup>3</sup> and 75m<sup>3</sup> based on the drainage strategy. The outfall into the ditch is proposed to be set at 5l/s and this is the minimum recommended flow.

Severn Trent Water has no objection.

## **Responses to Publicity**

The Parish Council objects to the application, raising the following concerns:

- i) the access to the site is totally inadequate for caravans;
- ii) the application contains a number of incorrect statements, which give a false impression, namely:
  - the width and visibility splays are not factual;
  - at least 8 additional pitches have been provided in the Parish recently;
  - there are existing parking problems opposite the entrance to the site, which would make access and exit for caravans extremely difficult as well as causing difficulties for people parking on the road; and
  - work had already started on the development before this application had even been submitted;
- iii) the development and proposed use would be out of keeping with this densely populated residential area and is situated immediately behind several houses;
- iv) the applicant has not complied with several legal requirements, in particular:

- no notice was served on the County Council before opening the highway and no traffic controls were put in place during those works, thereby causing potential danger to traffic and pedestrians;
  - an electrical connection was made without prior approval; and
  - the large hardstanding was created without building regulation approval;
- v) bottled gas is stored on site without the necessary security measures being in place;
- vi) the ditch on the site is the main surface water drain from Forest View and the applicant is filling it in with building rubble and now household rubbish;
- vii) the pavement at the entrance to the site is still in a dangerous condition despite the applicant being required to remedy this;
- viii) drainage from the hardstanding has no means of escape other than by flooding neighbouring gardens; and
- ix) the applicant has shown disregard for his neighbours by:
- having high luminance flood lights on at night, causing disturbance and nuisance;
  - taking out a hedge owned by a neighbour without permission;
  - building in such a way that the hard surface will be above DPC on a neighbouring wall; and
  - knocking down two walls belonging to neighbours in order to allow him to move his van onto the site.

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

Principle of development and need for gypsy pitches

- a) Overseal has met and exceeded its responsibilities to provide for gypsy and traveller families – now it is the turn of other settlements;
- b) there are ample pitches already available in Overseal and close by in neighbouring villages within walking distance (24 existing gypsy pitches in a 2 mile zone) such that there is no justification for the creation of a new site;
- c) recent permission at The Conifers, Park Road has extended that site to 16 pitches;
- d) a new site had just opened in Moira which is sparsely populated and has room for another dozen caravans;
- e) there are no energy efficiency plans, no plans to encourage biodiversity, no planting or landscaping and no sustainable drainage design, suggesting this is not 'sustainable' development;
- f) loss of land suitable for housing and meeting affordable housing requirements;

Impact on services and facilities

- g) the school is at capacity;
- h) additional strain on the local doctors;

Balance with the settled community

- i) The Conifers, at just over a mile distant, represents a 60% increase in available gypsy and traveller accommodation in the village;
- j) 6 of the 14 pitches (nearly 50% of documented need up to 2019) has now been provided by one village;
- k) fears of a 'clash of cultures';

#### Highway safety

- l) Woodville Road already has capacity issues;
- m) additional traffic poses a danger to other road users and pedestrians;
- n) inadequate access and turning space on site;
- o) no passing places along the access;
- p) obstruction of the public highway/problems caused in bringing caravans to the site given the access width, etc.;
- q) emergency, refuse and service vehicles would not be able to access the site;
- r) it is necessary to remove walls/fences to get caravans onto site;
- s) insufficient off-road parking;
- t) effect on other residents' ability to park their own vehicles;

#### Impact on neighbouring amenities

- u) high powered halogen security lights shine directly into rear bedrooms of adjoining properties;
- v) any permitted lighting should not cause nuisance;
- w) unsightly concrete/rubble platform and raised ground has removed the privacy previously enjoyed by the adjoining properties;
- x) overlooking/loss of privacy from proposed caravans;
- y) access is down the side of houses and gardens;
- z) disturbance late at night from vehicles coming and going;
- aa) use of commercial plant and machinery on the site;
- bb) dust arising from use of the site;
- cc) operation of business from the site;
- dd) causing stress to neighbouring occupants;
- ee) impact on the quality of life;

#### Visual and biodiversity impact

- ff) the site is visible from a public road and from the rear of all properties on the north side of Woodville Road;
- gg) loss of view;
- hh) any structure (including caravans) would be approximately the height of a two-storey property and thus prominently and obtrusively located;
- ii) the site used to be a mixture of domestic garden and former orchard containing many mature trees including ash and elm;
- jj) the site is not well-screened given that all existing vegetation and landscaping has been removed;
- kk) the proposed development will directly adjoin National Forest planting and will not be in keeping;
- ll) there is no reference or detail of any proposed landscaping/tree planting;

- mm) this is designated garden/green space for housing in the village;
- nn) no wildlife survey has been carried out at the site;

#### Drainage, water quality and sanitation

- oo) negative impact on the River Mease and its surrounding wild life and fauna;
- pp) the application makes no assessment of what the adverse effects on the River Mease would be, merely providing an offer to financially compensate;
- qq) there is no evidence of percolation tests to confirm ground conditions would enable a soakaway system to function correctly;
- rr) the area is prone to flooding;
- ss) elevated flooding risk off-site as a result of the development;
- tt) the made ground is potentially contaminated, and surface water directed to ground may leach contaminants into the adjacent brook;
- uu) the applicant and his family are currently residing on the land without any appropriate means of drainage in place;
- vv) the drainage ditch to the rear of the site has been blocked by rubble;
- ww) the applicant relies on drainage to a ditch at the rear which is in third party ownership, where a right to drain has been previously refused by the landowner;
- xx) localised and severe flooding into the gardens of the adjoining properties;
- yy) the raising of the land means the drainage proposed to address flooding issues caused would not work;
- zz) standing water has had to be pumped out from surrounding properties;
- aaa) loss of vegetation formerly on site will have changed the ability for water to permeate into the site;
- bbb) foul water is being discharged to the Hooborough Brook;
- ccc) no proper sanitation, drainage or waste water facilities in place;
- ddd) it is doubted that a mains connection is feasible given private sewage pumping stations already necessary in the vicinity;

#### Land contamination and waste

- eee) the bringing on of inert landfill; non-hazardous waste and demolition & excavation waste is likely to have contaminated the site;
- fff) remains of existing outbuildings and concrete fish tanks have been bulldozed and buried with the above waste;
- ggg) the applicant does not have a waste licence and the waste register does not designate this area for waste disposal;
- hhh) all the waste should be excavated and disposed of in the correct manner;
- iii) no designated space for refuse/recycling collection and storage;
- jjj) dumping of rubbish into the brook at the rear;

#### Design and character

- kkk) as the surrounding properties are Victorian/Edwardian in design, the amenity building would not in keeping;
- lll) the caravans would not be in keeping with the traditional dwellings in the area;
- a) the land levels have been raised 6ft to 8ft and a concrete raft poured;

- mmm) there are no details of the elevations, design or appearance of the caravans themselves;
- nnn) over-development of the site would have an adverse impact on the character of the neighbourhood;

#### Land stability

- ooo) builder's rubble has been used and thus does not provide a suitable foundation;
- ppp) the coal report does not consider the alternative layout and housing type proposed;

#### Accuracy and content of the application

- qqq) the application is retrospective, despite that stated;
- rrr) there is no reference to proposed lighting arrangements;
- sss) misleading to state there will be no new or altered vehicle access;
- ttt) no clarity on proposed drainage from the site;
- uuu) form states the development is not within 20 metres of a watercourse, but the northern boundary is located immediately adjacent to a tributary brook to the River Mease;
- vvv) the applicant is not the sole owner, despite the declaration on the application form;
- www) a new wall at the access is not included in the application;

#### Other matters

- xxx) rubble pouring out under broken fencing onto adjoining properties;
- yyy) rubble pushing over/damaging adjacent garden fences;
- zzz) damage to neighbouring boundary walls/frontage to 149 Woodville Road in order to facilitate access;
- aaaa) removal of boundary fence to rear of site;
- bbbb) damage to public highway around the access;
- cccc) removal of mature hedging and trees on neighbouring land, without consent;
- dddd) sets a precedent for use of other land on Woodville Road;
- eeee) possible precedent for other individuals to behave in the same fashion elsewhere;
- ffff) applicant has shown little desire or intent to live harmoniously within the local community;
- gggg) applicant shows little intention to accord with the law/rules;
- hhhh) how much taxpayers money would be spent by the Council enforcing controls if permission were granted;
- iiii) concerns over personal security;
- jjjj) possible rise in anti-social and criminal behaviour;
- kkkk) any LPG storage should be controlled;
- llll) there is no evidence that electric is being supplied safely;
- mmmm) impact on house prices;
- nnnn) increase in insurance premiums from increased risk of flooding;
- oooo) conflict with covenant on the land; and

pppp) site notice regarding the application has not been displayed.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport) and INF8 (The National Forest);
- 1998 Local Plan (saved policies): H5 (Village Development), EV9 (Protection of Trees and Woodland) and EV11 (Sites and Features of Natural History Interest).

### **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 (Settlement Boundaries and Development) and BNE8 (Trees, Woodland and Hedgerows).

### **National Guidance**

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS)
- Noise Policy Statement for England (NPSE) 2010

### **Planning Considerations**

It is important to first appraise Members of the recent activity on site and set out the nature of the application that is before them for determination – notwithstanding what might have occurred on site and is presently occurring, with or without permission. The applicant began undertaking works on the site in early 2016. The matter was investigated and an intent to implement the 2014 permission was established. The applicant was advised of his outstanding pre-commencement conditions and invited to make an application to discharge these, which he has done so. Before a decision could be made, the current application was submitted.

The application as originally submitted did not reflect that which had occurred to date on site. Following dialogue the amended description is that as set out above, and the applicant has confirmed this is correct with an intent to retain the levels/hardstanding which is on site now and add the remaining caravans and amenity building proposed. It is proposed to retrospectively 'make good' drainage arrangements.

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

- The weight to be given to national and local planning policy;
- The need for gypsy pitch provision;
- Access to services and impact on local infrastructure;
- Balance with the settled community;
- Surface water drainage and biodiversity;
- Foul drainage and contamination;
- Land stability;
- Highway safety;
- Impact on neighbouring amenity; and
- Impact on character and visual amenity.

## **Planning Assessment**

### Weight given to national and local planning policy

The Development Plan forms the primary policy consideration for this application, although the NPPF, PPTS and emerging policy are material considerations carrying varying degrees of weight. Policy H22 can be given full weight given its recent adoption, notwithstanding that it carries intent to create a site allocations document to meet the need in a planned fashion. This is because the policy also handles 'reactive' situations, such as this application, stating

“...[in] determining planning applications for required potential sites, sites will be considered suitable provided they are of an appropriate scale and character and the following criteria are met:

- i) development does not result in an unacceptable impact on the local environment, including biodiversity, heritage assets or conservation, the surrounding landscape (unless capable of sympathetic assimilation) and compatibility with surrounding land uses; and
- ii) safe and convenient vehicular and pedestrian access to the public highway can be provided with no undue adverse impact on the highway network; and
- iii) the movement of vehicles to and from the site will not cause undue disturbance or be inappropriate for the locality; and
- iv) there is adequate space for parking, turning and servicing on site; and
- v) the site is reasonably accessible to local services including health services, shops, education, public transport and other community facilities; and
- vi) the site is not located in an area at undue risk of flooding; and
- vii) suitable landscaping and boundary enclosures are provided to give privacy to both occupiers and local residents and minimise impact on the surrounding area; and
- viii) the site provides a safe and acceptable living environment for occupiers with regard to noise impacts, adequate on site facilities for parking, storage, water supply and electricity supply, drainage and sanitation”.

With the site also lying within a settlement confine, the principle of development is acceptable. It is therefore necessary to consider the above criteria throughout this

assessment to ascertain compliance or not with H22 (as well as other policy and guidance).

#### The need for gypsy pitch provision

The GTAA, published in June 2015, sets out a need for 14 pitches over 5 years from 1 April 2014, and subsequent need for 7, 8 and 9 pitches for each 5-year period thereafter respectively. In the interim to the adoption of a site allocations document, this need must be met by individual applications, such as this one, at a rate of 2 to 3 pitches per annum. Since April 2014 permission has been granted for 7 pitches and hence it can be demonstrated that need is being met at a pace which is required by the GTAA. The Council also met and exceeded its identified needs under the previous GTAA, adding to the argument that sites readily become available in the District and there is no issue with a failure to meet the needs of the gypsy community. Notwithstanding this, the Council cannot demonstrate a 5 year supply of deliverable pitches given it does not have an adopted plan document for this purpose, nor sufficient sites with permission. Hence whilst significant weight must be afforded to the proposal, it can be tempered by the foregoing evidence as to historical and continuing supply of pitches in line with projected needs.

#### Access to services and impact on local infrastructure

This site is located within the settlement confines Overseal where a number of local services and facilities exist. There is reasonable access to sustainable transport options and additional vehicle movements generated by the proposal are unlikely to have a negative impact on the capacity of the wider highway network. Whilst it is acknowledged that the primary school and doctors surgery may have capacity issues, the scale of development proposed falls below that which would normally command financial contributions to offset increased pressures arising from the proposal. In addition, the extant permission allows for 4 dwellings meaning this proposal would arguably only increase the pressures by a further family to the already accepted position.

#### Balance with the settled community

The PPTS notes that sites in rural areas should not dominate the nearest settled community. There is some debate as to whether this is a rural area given it is within the settlement confines of the village, but the village itself cannot be said to be in or close to an urban area. It is noted that the site would extend the gypsy community in the wider area, which includes sites nearby on Park Road and in North West Leicestershire. However, a number of the sites outside of the District are not exclusive to gypsy accommodation. The balance with the settled community is a difficult concept to grapple with in the absence of associated guidance for methodology, thresholds, proximity, etc. In this instance the site would represent a minority of the overall number of families in the village. This would remain the case when including the Park Road site. Whilst specific numbers are not readily available for North West Leicestershire sites, the wider the catchment for such sites and hence the greater the settled community becomes. In this vein, it is not considered that the settled community would be overwhelmed by the proposal.

## Surface water drainage and biodiversity

The site was formerly capable of classification as having a greenfield rate of drainage. The site as existing is, more or less, completely impermeable with observations evidencing pooling of water on the hard surfaces created and in neighbouring gardens where previously surface water flows would have passed onto and infiltrated the site. The drainage strategy for the site should therefore not worsen the original position and mitigate for the creation of hard surfaces on the site and changes to the drainage equilibrium for neighbouring occupiers. The Drainage Strategy is noted. However, there are fundamental concerns with the validity and applicability of the strategy in respect of the development sought. Indeed there must be a further layer of consideration as to whether, given the application is retrospective, conditions can be reasonably attached in line with national policy. This latter point is discussed below.

The Drainage Strategy calculates the greenfield runoff rates from the site area as 0.9l/s. However, it recognises that “in reality, high rates of runoff are expected from the existing site, as the site is largely impermeable with no opportunity for water storage”. It goes on to calculate peak flow rates based on annual probabilities. This gives a discharge of 11l/s for annual storms, 14l/s for 1 in 2-year events, 27l/s for 1 in 30-year events, and 45l/s for 1 in 100-year plus 30% climate change events. Hence it is clear that even for normal storm events, the present rate of discharge is some 12 times greater than greenfield. All this is notwithstanding an erroneous assumption that surface water has a flow distance of approximately 100m across the site (with a 1:200 gradient) and thus a 20 minute ‘lag’ in reaching the ditch to the rear of the site. In reality the average flow distance, given the shape of the site, is just 50m. This is the first issue which undermines the calculations for storage capacity given below.

The assessment of capacity needs is also questionable. It is based on the layout provided. In order for this to be achieved, and hence for areas of the site to be considered as permeable not requiring artificial attenuation; large areas of hardcore (540m<sup>2</sup> – approximately 25% of the site area) would need to be ‘cookie cut’ perfectly from the site back to natural ground below, before being backfilled solely with permeable material. The feasibility of this alone is questionable given the need to structurally retain existing features (e.g. the concrete slab and boundary fences) and the simple cost of doing so and disposing of hardcore lawfully off-site. The Drainage Strategy also notes that the applicant himself reports that during excavation work the ground was observed to be clayey with very low infiltration potential. Hence this makes the feasibility of permeable ‘pockets’ within the site even less likely.

The strategy intends to throttle outfall from the site at a peak rate of 5l/s. Notwithstanding whether a right to construct a headwall and discharge to adjacent land exists, and the advice of the LLFA; it is noted that this discharge is greater than the existing calculated rate of 0.9l/s and policy SD2 requires SuDS to mimic natural drainage patterns. In brief, the strategy fails to deal with drainage of the site back to on par with its natural state; instead relying on an allowance to discharge at a higher rate. The extant permission does little to offer a trade-off here, given that design incorporated impermeable areas and required less attenuation based on hard

surfaces created. In any case, the drainage condition for that permission remains outstanding at the present time.

The strategy also fails to account for the altered drainage characteristics for neighbouring properties. It is proposed to mitigate this by the creation of a drainage ditch close to the boundary, with a piped conveyance route around to the outlet point at the ditch. No attenuation for these flows is proposed. This is a significant omission from the strategy given the manner of these flows would be more rapid given their channelled nature and lack of infiltration possibilities. This throws into question the ability to limit discharge in peak events and also whether a correct approach is taken to calculating capacity requirements.

An attenuation storage area of 200m<sup>2</sup> is envisaged, this giving 60m<sup>2</sup> effective storage area given its fill to address water quality impacts (see below). Serving the assumed 75% impermeable area and with peak outflow controlled to 5l/s; it is recommended the storage unit should be constructed with at least 1.25m of water storage depth between the invert and the cover level to manage 1 in 100-year annual probability rainfall with a margin of safety. The reality therefore is that the storage chamber needs to be around 1.5m deep (at least) in order to properly function. As discussed above, this capacity calculation is likely to be an underestimate given reduced travel distance for waters, feasibility and likelihood of creating permeable pockets within the existing hardstanding, omission of drainage required to accommodate issues created to neighbouring properties, and the aim of reducing outfall to an original discharge rate. When turning to the proposed layout, there is significant uncertainty that sufficient storage could now be provided on the site without having to remove extensive amounts of hardcore – potentially including the concrete slab – from the site.

Turning to water quality, it is envisaged water would be collected and conveyed via a series of filter drains, providing pollutant removal as water passes through the fill material, before passing through and being stored within the sub-base of a permeable parking area with a controlled outflow to the ditch. It is advanced this provided at 2 separate stages as part of a SuDS treatment train. However, there are concerns here too. No calculations are provided to ascertain whether such measures can handle flows, especially during peak events, without surcharging to the ditch at the rear of the site. Such a scenario would result in untreated water discharging to the watercourse and in turn the Hooborough Brook and River Mease. In addition the above concerns as to storage capacity and higher than original discharge rates, as well as feasibility of providing a sustainable drainage solution, only serves to elevate doubt as to whether water quality would be adequately preserved. The Council must only give planning permission where it can be demonstrated that the development would not adversely affect the River Mease SAC and SSSI. Natural England make it clear that their 'no objection' response is on the basis that their specified conditions are attached – one being that the drainage scheme is fit for purpose.

Given the application is retrospective, drainage solutions could only be secured by way of condition. Notwithstanding the above doubts as to the validity of the Drainage Strategy's findings, and in turn the recommended capacity and flow rates; the effect of a condition would be to remove a large proportion of the development which is being applied for. The NPPG states that conditions which place disproportionate

financial burdens on an applicant will fail the test of reasonableness whilst unreasonable conditions cannot be used to make development that is unacceptable in planning terms, acceptable. The simple cost a condition would put the applicant to, accounting for exporting material and lawful disposal of it, makes the condition unreasonable. Furthermore the NPPG states “conditions that unnecessarily affect an applicant’s ability to allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used”. With the application retrospective, a condition would have to require the cessation of the use of the site and its reversion to its former condition within a specified time should a detailed drainage solution not be agreed. Given the considerable uncertainty that an acceptable drainage solution can be identified, it is not reasonable to impose the condition. In this respect the flood risk and water quality impacts cannot be mitigated and in turn the Council’s duties under the Habitat Regulations cannot be satisfied.

#### Foul drainage and contamination

The foul water from caravans and amenity building would be discharged to the sewer on Woodville Road. Whilst questions have been raised as to the applicant’s right to connect to the drain at the rear of number 149, it is possible to connect to the sewer in the road. As the ground rises in this direction, a pumping station would be installed. Conditions could control the position and noise attenuation for such a system. A condition could also ensure the drainage system was appropriately laid to function correctly, with only limited removal of hardcore necessary to lay pipes. Whilst, again, these might not seem likely it is a feasible solution and thus permission should not be withheld on this basis.

The concerns as to the content of the fill brought onto site is noted. The Contaminated Land Officer has no objections however, and it is considered that the waste material is largely inert and contaminants are unlikely to be mobilised by surface water (given its impermeable nature).

#### Land stability

The response of the Coal Authority is noted such that there is not considered to be a mining legacy risk. Furthermore the made ground is not likely to be subject to significant subsidence which might compromise living conditions for occupants, whilst spill of material onto neighbouring land is a civil matter.

#### Highway safety

As noted above, the site is not considered to cause highway capacity issues – especially when considered against the extant permissions. The main concern would be getting static caravans into and out of the site, given the need to manoeuvre within the carriageway. Observations of the existing caravan arriving demonstrate this concern and it is noted that residents echo this view. However, the Highway Authority considers that it would be an inconvenience rather than a highway safety issue, and that it can be controlled by condition through an agreed scheme to provide a banksman or appropriate traffic control whenever static caravans are moved. The Highway Authority also has concerns that touring caravans, as well as the static caravan and any commercial or domestic vehicles, might compromise the

availability of parking. It is therefore considered a condition should be attached to ensure that parking areas are for the parking of domestic cars only and not for caravans, trade or business vehicles.

Whilst the banksman/traffic control solution is not ideal and the access is clearly very tightly constrained making movement of static caravans difficult; such caravans are less likely to be moved than touring caravans and other vehicles. The approach to protecting parking provision is also appropriate, although Members may wish to consider whether sufficient provision for up to 2 caravans per pitch and associated vehicles exist in the context of the Drainage Strategy's intention to reduce impermeable areas.

#### Impact on neighbouring amenity

The extant permission was assessed as acceptable in respect of overlooking and shading impacts. This proposal, whilst now retaining a higher ground level, would still accord with separation distances set out in supplementary guidance. There is not considered to be a privacy issue here.

In terms of disturbance to neighbouring occupiers, conditions could prevent use of generators, commercial activities, etc. on the site; but it would be unreasonable to prevent the occupants from parking small commercial vehicles there. Indeed the applicant seeks only a limit on vehicles heavier than 3.5 tonnes. When compared to the housing permission, there is a change in the nature of the vehicles likely to come and go on a daily basis; and given the proximity of the access to existing dwellings, there is a concern as to the impact on their living conditions. The Environmental Health Officer notes that the access route is unmade and vehicles travelling across it, in particular commercial vehicles loaded with work equipment; would cause significant levels of noise that would be clearly audible in neighbouring property. Whilst a condition could require the surface to be bound, it could not control the frequency of movements nor the specific vehicle types (subject to being less than 3.5T) and their loads. However he does not recommend a refusal on the basis of the impacts arising.

Policy H22 requires the movement of vehicles to and from the site not to cause undue disturbance whilst policy SD1 states that the Council will only support development that does not lead to adverse impacts on the environment or amenity of existing occupiers. The NPPF supports these provisions whilst the PPG sets out the recommended approach to dealing with noticeable and intrusive and/or disruptive impacts – pointing towards either tight use of conditions or avoiding the development altogether. In this instance, it is considered the potential impacts would not be acceptable, nor could a condition adequately mitigate the concern.

#### Impact on character and visual amenity

Assessment of the visual impacts of the development has been made from public land to the north and from Woodville Road. In respect of the latter, views would be limited to along the access track where any caravans would be viewed perpendicular to the direction of travel along the road and set some way back. Nevertheless their appearance would not harmonise with the traditional built form in this locale. From

the National Forest planting to the north, the woodland screens the medium to long distance views across the land. Short distance views are possible from an informal trodden footpath through the woodland itself however, and this passes close to the site where existing screening falls away. Here the impacts are made much more apparent by the lack of woodland and the subsequent inability to screen the caravans and structures now placed on a raised platform. The site would be viewed in the foreground with no opportunity for landscaping to soften the stark appearance of caravans, structures and the hardstanding, further compounding the prominence of the development from the public realm.

### Summary

Whilst it must be recognised that significant weight be given to the provision of 5 further pitches which would meet identified needs for the District, there is significant concern as to the feasibility and likelihood of identifying a drainage solution which would adequately attenuate peak flows and discharge them at an acceptable rate and water quality. In this respect there is a strong likelihood of exacerbated flooding off-site, as is already occurring to neighbouring properties; and that unchecked discharges from the site would be untreated and degrade water quality of the European site. In the absence of certainty, the Council's derogation tests under the Habitat Regulations cannot be satisfied. Further harm arises from the increased likelihood of commercial vehicles coming and going from the site and the resulting impacts occupiers of adjoining properties, as well as the visual impacts. When also considering that identified needs are still being addressed on time, it is considered the harm identified significantly and demonstrably outweighs the benefits of granting permission.

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

### **Recommendation**

**REFUSE** permission for the following reason:

1. Surface water from the site originally drained at a minimal greenfield rate. The existing impermeable area created would, without appropriate attenuation, exacerbate flood risk off-site, with evidence of this already occurring. The proposed drainage strategy fails to adequately address some impacts arising and makes a number of assumptions which do not reflect the development which is being retrospectively applied for, with it also likely to be unfeasible to 'retrofit' the drainage solutions proposed. In particular the calculated attenuation is likely to be significantly lower than what is actually required to drain the site back to former greenfield rates; and attaching a condition would be unreasonable given the high degree of uncertainty that a solution can be found and the financial burdens and disruption it would place on the applicant in complying with the condition. Furthermore without the confidence of an appropriate means of surface water drainage for the site, and thus treatment of water leaving the site; there is concern over water quality entering the

Hooborough Brook - a main tributary to the River Mease SSSI. The tests set out in the Habitat Regulation can therefore not be satisfied.

The nature of the proposed residential use and the existence of the applicant's landscaping business would result in a higher proportion of commercial vehicles accessing the site than might be expected under the extant planning permissions. The access is tightly constrained by residential properties whose occupants would be adversely affected by the comings and goings of such vehicles, often with machinery loaded or in tow. Where impacts cannot be minimised or mitigated, national guidance advises that such development should be avoided.

In addition the nature of the development would fail to harmonise with the predominant character of the area and has no scope for meaningful landscaping to mitigate its visual prominence from the public realm.

It is considered the proposal as a whole fails to provide an environmentally acceptable form of development, contrary to policy H22, SD1, SD2, BNE1, BNE3 and BNE4 of the Local Plan Part 1, saved policy EV11 of the Local Plan 1998, and paragraphs 7, 8, 17, 58, 103, 118, 120 and 123 of the National Planning Policy Framework; which does not represent a balanced approach to sustainable development, significantly and demonstrably outweighing the benefits brought about by the proposal.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through a pragmatic approach to enforcement of unauthorised development and seeking to resolve planning objections and issues. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. 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 appeals and references beginning with an E are enforcement appeals)

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2014/1145	Jawbone Lane, Melbourne	Melbourne	Dismissed	Committee
9/2015/0682	Repton Road, Hartshorne	Woodville	Dismissed	Delegated
9/2015/1064	Pack Horse Road, Melbourne	Melbourne	Dismissed	Delegated



---

## Appeal Decision

Hearing held on 10 May 2016

Site visit made on 11 May 2016

**by Geoff Underwood BA(Hons) PGDip(UrbCons) MRTPI IHBC**

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

**Decision date: 10 August 2016**

---

**Appeal Ref: APP/F1040/W/15/3139116**

**Land at Jawbone Lane, Melbourne, Derby, Derbyshire DE73 8HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Barry Maynard, Linden Homes Midlands against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/1145, dated 28 November 2014, was refused by notice dated 8 October 2015.
  - The development proposed is outline planning application for up to 60 dwellings, all matters reserved.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was submitted in outline with all matters reserved. I have dealt with the appeal on that basis, treating any details of reserved matters shown on the plans as being illustrative.
  3. During the course of the planning application the proposed scheme was amended to reduce the size of the site and consequently reduce the number of dwellings from up to 120 to up to 60. Consultation was carried out on this revised scheme and this was the scheme upon which the Council made its decision. I have considered the appeal on the same basis and have therefore used the revised description used by the Council and by the appellant on his appeal form in the heading above.
  4. In addition to the site visit which took place as part of the hearing I made an unaccompanied visit to the site's surroundings and other locations in the vicinity.
  5. Since the Hearing was held, the South Derbyshire Local Plan – Part 1 (Local Plan – Part 1) was adopted on 13 June 2016. Along with some remaining saved policies of the South Derbyshire Local Plan, 1998 (SDLP), this now forms the development plan for the District. The appeal must be determined on the basis of the development plan as it exists at the time of my decision. Both main parties have been given the opportunity comment on the implications of the adoption of Local Plan – Part 1 and I have taken these into consideration in reaching my decision.
-

### **Main Issues**

6. The main issues raised by this appeal are: i) whether the proposed development would provide a suitable site for housing, having regard to national and local policies relating to development within the countryside, and; ii) the effect the proposed development would have on the character and appearance of the area, including its effect on the significance of heritage assets, in particular the setting of Kings Newton Conservation Area, and its effect on the area's landscape.

### **Reasons**

7. The site comprises two parcels of land, both sloping gently to the south east; one roughly triangular situated between Station Road and Jawbone Lane and one on the opposite side of, and bounded by, Jawbone Lane. The latter site is an irregular shaped part of a field bounded to the east and west by properties known as Blakefield House and Bond Elm. Both main parties agreed<sup>1</sup> that the planning issues are related to that part of the site which lies to the north side of Jawbone Lane, a position that was re-iterated at the Hearing. However, the post Hearing adoption of the Local Plan – Part 1 means that there are development plan policies regarding the location of housing which affect the entirety of the appeal site which now need to be considered.

#### *Development within the countryside*

8. The Housing Strategy in Local Plan – Part 1 Policy S4 sets out the Council's approach of allocating strategic sites (greater than 99 dwellings) within the Plan and that 600 dwellings will be allocated on non-strategic sites of fewer than 100 dwellings in the draft South Derbyshire Local Plan – Part 2 (Local Plan – Part 2) which is at consultation stage. The site does not feature in the list of non-strategic Housing Allocations in Local Plan – Part 2 Policy H23, although I note that two sites on Station Road, Melbourne are included.
9. The settlement hierarchy in Local Plan – Part 1 Policy H1 sets out the Council's approach to the distribution of new development sites which are outside the allocations made within the plan. This identifies Melbourne as a Key Service Village where development within settlement boundaries is appropriate with sites adjacent to the boundaries only acceptable if they are exception (which in the absence of further detail I have taken to mean Rural Exception Sites for affordable housing as defined in the Framework) or cross subsidy sites of less than 25 dwellings. Although the appeal site is adjacent to Settlement Boundary of Melbourne (both that in the SDLP and that proposed in the Local Plan – Part 2), the appeal proposal would not fall into either of those categories.
10. Saved SDLP Housing Policy 5 (HP 5) restricts new housing development to within the village confines of Melbourne/Kings Newton amongst other settlements. Saved SDLP Environment (EV) Policy 1 only permits development outside settlements where it is essential to a rural based activity or unavoidable in the countryside. Although the National Planning Policy Framework<sup>2</sup> (the Framework) provides for wider range of special circumstances where development in the countryside is acceptable than saved SDLP Policy EV 1 does, it is nevertheless broadly in accordance with the Framework.

---

<sup>1</sup> Signed Statement of Common Ground, 29 April 2016.

<sup>2</sup> Paragraph 55.

11. At the time of the Hearing it was not a matter of dispute between the main parties that a deliverable five year housing land supply (HLS) could not be identified, circumstances where the Framework<sup>3</sup> states that relevant policies for housing development should not be considered up to date. However, the Council consider that this position has changed with the adoption of the Local Plan – Part 1 and that they can now demonstrate a HLS of 5.33 years.
12. Although the appellant considers that this figure is marginal and could be adversely affected by delays in delivery, he nevertheless accepts that paragraph 49 of the Framework would not be engaged. The Council have drawn my attention to a recent appeal decision<sup>4</sup> in the District. In that case the Inspector concluded that such a supply existed and therefore that policies relevant to housing supply in both the SDLP and the Local Plan – Part 1 were up to date, a conclusion with which I have no reason to disagree.
13. Saved SDLP Policies HP 5 and EV 1 can therefore be afforded appropriate weight. The Council considered that the pre-Local Plan – Part 1 HLS position could have led to the ‘unavoidable’ exception to development in the countryside provided for in saved SDLP Policy EV 1. However in light of the HLS position these can no longer be considered circumstances to trigger such an exception. The appellant points out that the HLS is reliant not only on allocated sites but also those in the draft Local Plan – Part 2. I agree that given the early stage that the Local Plan – Part 2 is at that only very limited weight can be given to Policy H23, particularly with regard to those housing sites listed which do not have the benefit of planning permission.
14. However, there is little evidence to support the appellant’s view that the Council will have to rely on additional residential development over and above existing and emerging allocations to achieve its housing requirements. Accepting that these are general estimates and that they could change as the plan preparation advances, the figures provided for sites listed in Local Plan – Part 2 Policy H23 would exceed the 600 dwellings that Local Plan – Part 1 Policy S4 identifies will need to be allocated on non-strategic sites. Even in the event that Local Plan – Part 2, when ultimately adopted, did not allocate sufficient housing to meet the Council’s target for housing delivery on non-strategic sites, given the provisions of Local Plan – Part 1 Policy H1 it cannot be concluded that the appeal site would be an acceptable one for housing.
15. In considering the evidence in light of the up to date development plan policies I am led to conclude that the proposal would not be acceptable development in the countryside and would be contrary to Local Plan – Part 1 Policy H1 and SDLP Policies HP 5 and EV 1. This is despite little suggestion from the Council’s evidence at the Hearing that there was a policy objection to the proposal in light of the then imminent adoption of the Local Plan – Part 1 and that the planning application was refused solely on character and appearance grounds.

*Significance of heritage assets*

16. The designated heritage asset of Kings Newton Conservation Area (the Conservation Area) lies to the north west of the appeal site in a slightly elevated position. It has a distinct historic character and appearance and includes attractive and largely historic buildings predominantly lining Main

---

<sup>3</sup> Paragraph 49.

<sup>4</sup> APP/F1040/W/15/3132831.

- Street as well as the historic parkland associated with Kings Newton Hall extending to the north. Its character, and accordingly its significance, is also derived from the well preserved relationship of principal and out buildings along Main Street extending back towards associated agricultural land beyond.
17. Glimpses of buildings within the Conservation Area are afforded through gaps in the hedge along the north side of Jawbone Lane, with more expansive views from the field gate which leads into the site. These views of the roofs, gables, chimneys, and in some cases rear elevations, of buildings on, and set back from, Main Street, interspersed with mature trees, are revealed further when viewed from the north part of the appeal site. Many of these are features of separately designated heritage assets; the Hardinge Arms, Four Gables, Kings Newton Hall, Chantry House, 54 and 56 Main Street, 58 Main Street, Church House and Kings Newton House and outbuildings, all of which are listed.
  18. The Framework<sup>5</sup> recognises that significance can also be derived from an asset's setting, which includes the surroundings in which it is experienced, and that such significance can be harmed through development within that setting. The Conservation Area's setting includes the countryside to the south, of which the appeal site is part.
  19. The Conservation Area also gains some of its significance from being to a large degree historically, physically and perceptually separate from Melbourne. The disposition of surrounding countryside in relation to existing built areas within the Conservation Area plays a role in this aspect of its significance. This extensive countryside setting makes a positive contribution to the asset's significance primarily through providing an open countryside landscape which the Conservation Area is set within and can be experienced from.
  20. In particular the Character Statement<sup>6</sup> identifies the sharp contrast between the tight-knit form of development on Main Street and the open character of fields beyond as well as a 'principal view' affording long vistas to the south (including the appeal site) as far as Breedon-on-the-Hill Church.
  21. There are also two undesignated heritage assets in the vicinity of the appeal site; Melbourne Cemetery (which includes a listed chapel) and Charnwood, a stone cottage on Jawbone Lane, situated on the other side of Blakefield House from the appeal site.
  22. The existing hedges and buildings along the north west side of Jawbone Lane mean that only glimpses of Kings Newton are afforded, except where there is a gate opening, from that part of Jawbone Lane running alongside the appeal site. However those through the hedges would be more apparent when they are not in leaf. Due to the intervening topography and hedgerows, the view is generally of the roofscape and skyline of Main Street. Nevertheless, there is a visual relationship between Jawbone Lane and the Conservation Area. This includes both those views of buildings within the Conservation Area and the feeling or experience of travelling through a predominantly countryside setting on the approach to Kings Newton along Jawbone Lane.
  23. The effect of the appeal proposal would be to significantly reduce glimpses of Kings Newton from that part of Jawbone Lane which runs alongside it and to change the character of that part of Jawbone Lane from one flanked by open

---

<sup>5</sup> Annex 2: Glossary and paragraph 132.

<sup>6</sup> Kings Newton Conservation Area Character Statement, South Derbyshire District Council, 2011

- countryside to one bounded by housing development. Whilst the indicative layout indicates that some glimpsed views may remain, any gaps between buildings in the subsequent development could be easily reduced and blocked through boundary treatments, maturing planting or domestic paraphernalia.
24. Whilst views of Kings Newton would be afforded from the access road and locations within the development itself, these would be different from those currently experienced along Jawbone Lane, although the visual aspect is only part of the character of the setting of the Conservation Area.
25. However, these effects would be limited ones when considered in the wider setting of the Conservation Area and where it would be experienced from. The experience of approaching Kings Newton on surrounding footpaths would remain unchanged to the north of the appeal site. Whilst Jawbone Lane allows for other users in cars or on bicycles to enjoy the existing passing views, their loss from this particular part of Jawbone Lane would be very limited in terms of the overall experience of appreciating and understanding the Conservation Area from its wider setting. This effect is more significant in views from Jawbone Lane towards the Conservation Area than those afforded from the south edge of Conservation Area towards the appeal site where any views of the new development would be set within the wider landscape views of the countryside.
26. In terms of views from Kings Newton, as a result of its distance from the village and how it would sit within the topography of the area, which slopes down to the south east, the development of the appeal site would not significantly encroach into the open character which lies to the south of the village or the views afforded from it. The roofscape (and parts of elevations) of the new development would be a feature in such views. However, provided that their heights are restricted (which could be reasonably controlled by way of a condition) its effect would be limited by its scale, degree of intrusion, the remaining surrounding landscape which would be visible and also its relationship to existing buildings. Whilst in the main existing buildings within such views currently appear as more isolated buildings in the landscape and the appeal proposal would be of a more intensive character, this effect would also be limited.
27. The physical and visual separation between the Conservation Area and the appeal site would remain legible. The development would not diminish the amount of open land which would remain between existing built up areas in Melbourne (including that stretching east along Station Road) to such an extent that Kings Newton would lose either its appearance or character of separateness given the amount, and character, of intervening open countryside which would remain.
28. Notwithstanding their earlier objection, Historic England's subsequent position on the current scheme could be summarised as one of effectively delegating to the Council the task of weighing the less than substantial harm to the significance of heritage assets that they found against any public benefits of the proposal.
29. The Council's Conservation Officer<sup>7</sup> considers the impact of the proposal on the significance of listed buildings to be negligible or absent and that the effect on

---

<sup>7</sup> Consultation response 7 August 2015.

- the Conservation Area would be acceptable, subject to landscape and design mitigation. In particular the Officer considers that the resulting gap between the proposed development and the Conservation Area would allow the medieval character of Kings Newton to be appreciated, reducing the detrimental impact of the initial scheme, and concludes overall that harm to the significance of heritage assets would be largely neutral or minor.
30. Bearing in mind the Framework's requirement to take account of available evidence and necessary expertise in considering the impact of a proposal on a heritage asset<sup>8</sup> these are views to which I have given considerable weight. Notwithstanding that subsequent evidence in the form of the Council's Statement of Case: Heritage Issues (SCHI) takes a different view on the effect on the listed buildings' and Conservation Area's setting, I note that this concludes with reference to earlier comments of the Conservation Officer<sup>9</sup>.
  31. There is limited substantive evidence as to how the setting of the listed buildings on Main Street (as distinct from the Conservation Area of which they are components) would be harmed and this does not alter my view that the settings of the listed buildings are more limited and would not be adversely affected by the proposal.
  32. It is likely that much of the surrounding agricultural and market garden land will have had a functional relationship with nearby settlements, including Kings Newton. The appeal site's role in respect of the significance of heritage assets would appear to be more one of a visual and spatial relationship as part of the wider landscape setting of the Conservation Area and associated heritage assets. However, there is limited evidence to conclusively demonstrate that the appeal site has any intrinsic historic value or is 'historically associated open space' of a degree significance whose development would harm the setting or significance of the Conservation Area.
  33. Notwithstanding that in practice most views from Jawbone Lane through the proposed development may be difficult to maintain in the long term, I consider that their loss would not have such a harmful effect on the significance of the setting of the Conservation Area as to warrant withholding consent for this reason alone. Any detriment to views through the growth of vegetation over time would in all likelihood be compensated for in that vegetation's effect in assisting the new development to better assimilate into its countryside setting.
  34. Domestic paraphernalia in gardens would be difficult to control and may consequently affect some of the glimpsed views anticipated on the appellant's Masterplan. There is little reason to doubt that any layout submitted in respect of reserved matters would not include an access road which would enable some views from Jawbone Lane. These would not be over domestic gardens and therefore uninterrupted by any such intrusions. In any event, given the limited level of harm which would arise from the loss of, or adverse effect on, such views, this would not be sufficient in itself reason to withhold consent in light of my findings above.
  35. The effect on views of Breedon-on-the-Hill Church would one be of introducing more roofs in the middle ground. It would not block the view but a limited part of the view currently occupied by vegetation would instead be occupied by the

---

<sup>8</sup> Paragraph 129.

<sup>9</sup> SCHI states as 23 February 2015.

- roofscape of the proposed development. However, this effect would occupy a very limited part of that view. It would not diminish it to any significant degree and I consider that this particular view would in effect be preserved. The effect on longer distance views of the Conservation Area, such as that from Blackwell/Wilson Lane, would similarly not be harmed.
36. There is little substantive evidence that there would be any harm to the setting of the non-designated heritage assets of Melbourne Cemetery or Charnwood. The SCHI is contradictory with regards to Charnwood, acknowledging at 5.4 that its setting would be unharmed but agreeing with the appellant at 7.13 that there would be less than substantial harm.
37. However, given the separation between Charnwood and the appeal site and the unaffected nature of its immediate surroundings I consider that the setting of Charnwood would be preserved. Melbourne Cemetery is well screened by existing vegetation and there is little intervisibility between it and that part of Jawbone Lane which would be affected by the proposed development. The proposal would not, therefore, have a harmful effect on the Cemetery's setting or that of the listed buildings within it.
38. I have paid special regard and attention to the desirability of preserving the assets' significance that they derive through their settings. Whilst the settings of listed buildings and non-designated heritage assets would be preserved as a result of the development, there would be a limited degree of harm to the setting of the Conservation Area.
39. This harmful effect would be less than substantial given the very limited effect it would have on its setting. However, notwithstanding the limited nature of the harm it is something to which I have given considerable importance and weight to and the Framework requires such less than substantial harm to be weighed against the public benefits of the proposal. I will return to this balance later in my overall conclusions.
40. By preserving important views from the conservation area, the proposal would comply with criterion B. (ii) of saved SDLP Policy EV 12. However, even though the degree of harm is minor, it would not comply with criterion A. of that policy which does not permit development which would have an adverse effect on the character of conservation areas. However, this part of the policy does not fully accord with the Framework's<sup>10</sup> approach in differentiating between circumstances where there is substantial and less than substantial harm, and the balancing required in the case of the latter. This reduces the weight I can give it.
41. Criterion C. of saved SDLP Policy EV 13 requires regard be paid to the need to preserve the setting of listed buildings, but having done so I consider that the proposal is not in conflict with that policy. Although other criteria are considerably less so, that part of saved SDLP Policy EV13 is broadly consistent with the approach of the Framework and I can give it material weight.
42. In finding that there is harm, albeit limited, the proposal would not comply with criterion A of Local Plan – Part 1 Policy BNE2 which expects development to protect, conserve and enhance assets' settings. In respecting important

---

<sup>10</sup> Paragraphs 123-134.

landscape, townscape and historic views and vistas the proposal would not conflict with Local Plan – Part 1 Policy BNE1.

*Landscape character*

43. As well as being an integral part of the setting of the heritage asset, of which the site forms a component, the recognition of the intrinsic character and beauty of the countryside is one of the Framework's core planning principles<sup>11</sup>.
44. Notwithstanding the concerns of the Council and interested parties in respect of the reduction of area of separation between Kings Newton and Melbourne, the open countryside which would remain between even the closest part of the proposed development to Kings Newton would be such that any reduction in actual or perceived separation would be limited in its effect.
45. The proposed development to the north of Jawbone Lane would be set between existing complexes of buildings at Bond Elm and Blakefield House so lessening the sense of an intrusion of new development into a previously undeveloped area of land. Existing hedges would also lessen its effect, albeit to a more limited degree. When viewed from Kings Newton, its visual effect on the countryside would be limited, in part as a result of the topography of the site. Therefore, proposed mitigation in the form of limiting the height of buildings and the potential for the reserved matters landscaping scheme to assist in assimilating the development into its surroundings to a degree, would assist in limiting its impact.
46. In support of their cases both the appellant and the Council have drawn my attention to the 'Stroud'<sup>12</sup> judgement. I am in no doubt that many local residents and civic groups consider the appeal site to be valuable in itself, because of its contribution to retaining a rural feel to Jawbone Lane, in its role in avoiding the coalescence of Kings Newton and Melbourne and the views it affords of the Conservation Area. However, in light of the evidence before me the appeal site does not contain any particular physical attributes or landscape features that would take it out of the ordinary as an area of landscape.
47. Similarly, I cannot therefore agree with the Council's position in their Statement of Case: Landscape Issues report that finding that the site has 'medium' value under two of the Guidelines for Landscape and Visual Impact assessment (3<sup>rd</sup> Edition) criteria would equate to a 'valued landscape' in the Framework's terms.
48. These interests relate to its role within the setting of the Conservation Area and its recreational value in terms of the site's contribution to rural views as part of wider landscape from surrounding footpaths including Jawbone Lane, but its recreational value is not one which includes the use of the site itself.
49. On balance therefore, and notwithstanding of the popularity of the site, I do not consider that the site can be considered as a 'valued landscape' which the Framework seeks to protect<sup>13</sup>.
50. The proposed development would have a relatively limited effect on the views and experience of using the network of footpaths and informal routes in the

---

<sup>11</sup> Paragraph 17.

<sup>12</sup> Stroud DC v SSCLG and Gladman Developments [2015] EWHC 488 (Admin).

<sup>13</sup> Paragraph 109.

vicinity of the site as a result of their situation, relationship to the site and in some cases, such as much of footpath FP14, intervening planting largely obscuring views of the site.

51. Whilst the change would be more marked when experienced from Jawbone Lane, I do not consider that the site's development for housing would change the recreational experience of users in a manner which would be significantly detrimental to users' enjoyment of the countryside to an extent which would justify withholding consent for that reason.
52. Although interested parties have referred to Derbyshire County Council's strategic planning comments<sup>14</sup> which raise concerns over the effect of the proposal on landscape character and coalescence, I note that these comments were made on the initial, larger scheme, the effects of which would have been materially different to that which is before me.
53. There would be a some tension between the aims of maturing landscaping on the appeal site partly screening development and assisting it to assimilate within the wider landscape, and the retention of views through the site from Jawbone Lane. However, given my findings that the reduction or loss of existing views through the site over time would not greatly harm the setting of heritage assets, considered by itself on balance the ability of any landscaping (which would be considered through approval of reserved matters) to mature would be a positive element of the scheme in mitigating its effect on the surrounding landscape and views from within the Conservation Area.
54. Overall, I conclude that any adverse effects on the character and appearance of the landscape would be limited. However in reaching this conclusion I am conscious that this is distinct from the harm caused by the principle of development encroaching into the countryside. Whilst the site may be of ordinary character in itself it nevertheless forms part of the wider countryside setting of Melbourne which development plan policies aims to protect by directing housing development to within settlements and allocated sites.

#### **Other Matters**

55. Local residents have started work on a Neighbourhood Plan for the Melbourne area and representations from interested parties at the Hearing suggested that it would not include the allocation of the appeal site for housing. However, the Plan is evidently in the very early stages of preparation with no evidence that a draft plan has been published. Accordingly I can only give this very limited weight.
56. A signed agreement between the main parties under section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. However the provisions of the agreement would on the whole mitigate the effects the development would have and it therefore weighs neutrally in the planning balance. In any event, as the appeal is to be dismissed on other substantive issues, it is not necessary to look at it in detail, given that the proposal is unacceptable for other reasons.

---

<sup>14</sup> 27 February 2015.

### **Overall Assessment and Planning Balance**

57. The public benefits of the scheme include a significant contribution to the provision of housing, a considerable proportion of which would be affordable. Notwithstanding that interested parties have questioned the need for, and accessibility to, the type of affordable housing likely to be delivered, it would nevertheless be a benefit of the scheme in meeting an identified need and support the Framework's<sup>15</sup> aim to boost significantly the supply of housing.
58. The proposal would have economic and social benefits through occupiers of new dwellings supporting businesses and community facilities in Melbourne and there would be some, time limited, economic benefits through the construction phase of the development. Together, these public benefits are something to which I have given material weight.
59. These benefits are also positive components of sustainable development. The location of the new houses is such that they would be in close proximity to commercial, community and education facilities in Melbourne which would play a role in limiting private car journeys which would be an environmental benefit. Furthermore the Framework<sup>16</sup> identifies that pursuing sustainable development includes seeking improvements which include widening the choice of high quality homes.
60. In support of their position the Council have directed me to the 'Barnwell Manor'<sup>17</sup> and 'Forge Field'<sup>18</sup> judgements. However even attaching considerable weight to the desirability of preserving the relevant heritage assets' significance, as required by the Act and paragraph 132 of the Framework, I have found that in this case such harm is very limited. In subsequently applying the test at paragraph 134 of the Framework, I nevertheless consider that in this instance such less than substantial harm the proposed development would cause to the significance of the Conservation Area even with considerable importance and weight attached, is in itself outweighed by the public benefits of the appeal proposal.
61. However, whilst such benefits may be sufficient to outweigh the less than substantial harm to the heritage asset's significance considered by itself they are not so extensive that they would outweigh the strong objections to the proposal in light of up to date development plan policies aimed at limiting development in the open countryside. The benefits of increasing housing (including affordable housing) are tempered by the Council being able to demonstrate a deliverable HLS in excess of five years and there is little evidence to suggest that this could not be achieved through the development of allocated housing sites or within settlements.
62. I am mindful, too, of the Minister of State's comments<sup>19</sup> relating to the importance of the environmental dimension of sustainable development and the importance the Framework attaches to protecting the countryside. Whilst the development of the site would have relatively little adverse effect on landscape character it would nevertheless result in the loss of an area of

---

<sup>15</sup> Paragraph 47.

<sup>16</sup> Paragraph 9.

<sup>17</sup> Barnwell Manor Wind Energy Ltd v East Northamptonshire and others [2014] EWCA Civ 137, 18 February 2014

<sup>18</sup> R (on the application of The Forge Field Society and others) v Sevenoaks District Council [2014] EWHC 1895 (Admin), 12 June 2014

<sup>19</sup> Letter from Brandon Lewis to Simon Ridley, 27 March 2015.

countryside outside the settlement limits of Melbourne, a significant negative factor in the environmental dimension of sustainable development and contrary to development plan policies.

63. Notwithstanding the factors which weigh in favour of sustainable development, considered as a whole I consider that the proposal would not constitute sustainable development in terms of the three strands set out in the Framework<sup>20</sup>. The considerations in favour of the proposal are not such that they outweigh the significant harm of developing in the countryside considered against the up to date the development plan policies aimed at preventing such encroachment together with the less than substantial harm to the heritage asset. In considering the planning balance it is clear that permission should not be granted.

### **Conclusion**

64. For the above reasons, and having considered all other matters raised, the appeal is dismissed.

*Geoff Underwood*

INSPECTOR

### **APPEARANCES**

#### FOR THE APPELLANT:

Peter Brady  
Peter Wilkinson BA MCD MA CPP MPIA FCMI FRTP  
Brian Denney  
Michael Taylor BA MA DipTP MRTPI IOBC

Barry Maynard

The Planning Law Practice  
Landmark Planning Ltd  
Pegasus Group  
Michael Taylor Conservation and  
Planning  
Linden Homes

#### FOR THE LOCAL PLANNING AUTHORITY:

Ian McHugh  
Dr David Hickie BSc(Hons) MA PhD CMLI CEnv MIEMA  
IHBC  
Chris Nash MRTPI

IMCH Planning and Development  
Consultancy  
Heritage Matters  
South Derbyshire District Council

#### INTERESTED PERSONS:

Paul Grimley  
Ian Turner  
Jane Carroll  
Margaret Gildea

Jessica Long  
Councillor Jim Hewlett

Councillor John Harrison

Melbourne Civic Society  
Melbourne Civic Society  
Melbourne Parish Council  
Melbourne and Kings Newton Action  
Group  
Kings Newton Residents' Association  
Melbourne Ward, South Derbyshire  
District Council  
Melbourne Ward, South Derbyshire  
District Council

---

<sup>20</sup> Paragraph 7.

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Speaking notes of Ian Turner.
2. Extract from Schedule of Proposed Minor and Main Modifications to South Derbyshire Pre-Submission Local Plan Part 1: Policy H1, pages 21-24.
3. Extract from Schedule of Proposed Minor and Main Modifications to South Derbyshire Pre-Submission Local Plan Part 1: Policies S4 and H1, pages 8-10, 18-24.
4. Extract from South Derbyshire Pre-Submission Local Plan Part 1: Policies S4, H1, BNE1, BNE2, BNE3 and BNE4 with modifications as tracked changes, pages 23-26, 42-45, 132-144.

**DOCUMENTS SUBMITTED AFTER THE HEARING**

5. E-mails from Chris Nash, South Derbyshire District Council, dated 20 June, 29 June 2016 and 5 July 2016.
6. Letter from Philip Rowland, Landmark Planning, dated 1 July 2016.
7. Extracts from South Derbyshire Local Plan - Part 1: Policies S4, H1, SD1, SD2, BNE1, BNE2, BNE3, BNE4, INF1, INF2, INF3, INF9 and INF10.
8. Extracts from draft South Derbyshire Local Plan - Part 2: Policies SDT1, H23, H24, BNE5, BNE6 and BNE11.
9. Extract from draft South Derbyshire Local Plan - Part 2, Appendix A Settlement Boundary Maps.
10. Appeal decision letter Ref: APP/F1040/W/15/3132831.



---

## Appeal Decision

Site visit made on 28 June 2016

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

Decision date: 10 August 2016

---

**Appeal Ref: APP/F1040/W/16/3147257**

**Land adjacent to 73a & 75 Repton Road, Hartshorne, Swadlincote, DE11 7AE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr J Garton against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0682, dated 20 July 2015, was refused by notice dated 28 October 2015.
  - The development proposed is outline application (all matters to be reserved) for one dwelling.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The number of proposed dwellings was reduced from 2 to 1 during the course of the application. I have therefore used the development description from the submitted appeal form and I have determined the appeal on this basis.
3. Following the refusal of the original application, the Council has formally adopted the South Derbyshire Local Plan Part 1 (LPP1) on 13 June 2016. In their decision notice the Council quoted Saved Policies H11 and EV8 of the South Derbyshire Local Plan (LP). The Council have confirmed that Policy H11 has now been superseded by Policies BNE1 and INF9 of the LPP1. Saved Policy EV8 of the LP still remains in place. The appellant is aware of the change and therefore no party is prejudiced by my determining of the appeal against Policies BNE1 and INF9 of the LPP1 as the adopted development plan, as well as saved Policy EV8 of the LP and the National Planning Policy Framework (the Framework).

### Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the surrounding area.

### Reasons

5. The appeal site forms part of an attractive area of open land which straddles the junction of Repton Close and Adams Close. The area is landscaped with established shrubs and other planting and I saw that it is well maintained and in good condition. Adams Close is a modern development of 2-storey
-

- dwellings, which were approved in 2011 and the appeal site forms part of an area of open space designed to serve the development.
6. Repton Road is a long and wide residential street which forms part of the main thoroughfare through Hartshorne. Dwellings within the immediate area along Repton Road are in a variety of architectural styles and densities. However, the vast majority of residential properties are detached, and either single or 2-storey properties which are set back in their plots, with reasonably large and mature planted front gardens. This gives Repton Road an open and verdant character and a sense of spaciousness.
  7. The appeal site, as a well maintained and functional open space, forms part of a visual break between development along Repton Road and the modern development along Adams Close, as a pleasant entry point into this small estate. The site therefore positively contributes to the overall open character, quality and visual amenity of the area, forming an important element in the street scene along Repton Road.
  8. The proposed dwelling would effectively infill the open space on the western side of Adams Road. I therefore consider that the proposals would represent an intensification of urban form through the loss of this designed open space and the erection of a new dwelling with associated ancillary domestic structures, garden areas, and hard surfaces.
  9. Accordingly, the loss of this important area of land to built development would significantly erode the open aspect of the site, as the entry point to Adams Close, and would cause harm to the spacious and verdant character along Repton Road.
  10. It is understood that at the time of the original consented scheme in 2011, amended plans were received and conditioned accordingly, to secure this open space and as part of mitigating the loss of mature trees within the centre of the site. However, I note that the management of the open space is not covered by the s106 agreement which accompanied the original outline planning application. The appellant contends that the Council should have adopted and maintained the land at the time of the original application and that the land is maintained at their own cost which cannot be continued indefinitely. It is also suggested that the site will, in the future, become derelict and untidy at the detriment to the character of the area and that any future owner would also seek planning approval for development here.
  11. While the lack of a formal management structure is regrettable, it is not uncommon that the provision and management of open space is undertaken by private owners, rather than by the Council. In any case, the issues of ownership, maintenance and financial concerns are private matters between the relevant parties and are not within my jurisdiction. Therefore, the weight in which I can attach to these matters is limited and would not have any material bearing on my assessment of the planning issues in this appeal.
  12. I acknowledge that the appeal site is not within a conservation area, nor is it covered by any other landscape designation. I also acknowledge that the proposed dwelling could be designed to emulate the development along Adams close, at reserved matters stage. Nonetheless, I conclude that the development, through the loss of the open space, would cause harm to the character and appearance of the area.

13. As such, the proposals would fail to accord with LPP1 Policies BNE1 which seeks, among other things, to secure development which responds to its local context, having regard to valued local townscape character and INF91 which restricts the loss of existing open space. The proposals would also be in conflict with saved Policy EV8 of the LP which safeguards areas of open space from development where they make a positive contribution to the character and quality of a village.

**Conclusion**

14. For the reasons above, taking into account all other matters raised, I dismiss the appeal.

*C Searson*  
INSPECTOR



---

## Appeal Decision

Site visit made on 19 July 2016

**by Alexander Walker MPlan MRTPI**

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

Decision date: 4<sup>th</sup> August 2016

---

**Appeal Ref: APP/F1040/W/16/3150627**

**Pack Horse Inn, Pack Horse Road, Melbourne, Derby DE73 8BZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr N Price against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/1064, dated 10 November 2015, was refused by notice dated 1 February 2016.
  - The development proposed is the erection of one new five bedroomed dwelling on part of the car park of the former Pack Horse Public House, and new accesses to new dwelling and former public house.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. Following the Council's determination of the planning application the Council adopted the Part 1 Local Plan (LP) on 13 June 2016, which now forms part of the development plan.

### Main Issues

3. The main issues in this appeal are the effect of the development on the setting of the adjacent listed building, the Pack Horse Inn, and whether it preserves or enhances the character or appearance of the Kings Newton Conservation Area.

### Reasons

#### *Setting of the Listed Building*

4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the PLBCA Act), requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
  5. Paragraph 132 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Substantial harm or
-

- loss to a grade II listed building should be exceptional. Paragraph 134 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
6. The appeal site forms part of the car park that was once associated with the Pack Horse Inn, a grade II listed building which has recently been converted into a single dwelling. The building was possibly originally two cottages before it was converted into a public house and has had a number of additions. The building is located on the corner of Pack Horse Road and Main Street. Its main elevation fronts onto Pack Horse Road. Although the building is substantial in size, the piecemeal additions with various heights break up its overall mass.
  7. Due to the location of the listed building on a corner plot and its substantial size, it is very prominent focal point when approaching along Main Street from the east or west. The appeal site is currently a large expanse of hardstanding and although there is a hedge planted on the northern boundary with Main Street, the openness of the site makes a positive contribution to the prominence of the listed building in the street scene, reinforcing its relatively isolated position.
  8. The proposed large, detached dwelling would be set back from the highway and would be some distance from the listed building. There would be no physical boundary separating the two buildings and the rear building line would follow that of the properties that form part of the housing development to the west of the site. However, the dwelling would project significantly further forward and due to its overall size it would occupy a large portion of the site, appearing very prominent within it. Consequently, the openness of the site would be significantly diminished. Whilst I appreciate the open countryside backdrop to the listed building has been lost to some extent due to the new housing development, the erosion of the openness of its setting would only detract from its character.
  9. Furthermore, the overall size of the dwelling would compete with the listed building. This would be particularly discernable when approaching the village from the west. Although the dwelling would be set back from the highway, due to its size, it would nevertheless be a prominent feature. As a result, the dwelling would significantly detract from the listed building's dominance within the streetscene. Overall, the dwelling would harm the setting of the listed building, and thereby the significance of the heritage asset. Whilst the harm to the significance of the listed building would be less than substantial, there is no public benefit identified that would outweigh this harm.
  10. I therefore conclude that the dwelling would fail to preserve or enhance the setting of the listed building, contrary to saved Environment Policy 13 of the South Derbyshire Local Plan 1998, which seeks to ensure that development preserves the setting of buildings of architectural or historic importance. In addition, it would also fail to comply with Policy BNE2 of the South Derbyshire Local Plan Part 1 2016, which also seeks to protect, conserve and enhance heritage assets and their settings. Furthermore, it would fail to accord with the Framework's objective of protecting heritage assets.
  11. Policy BNE11 of the emerging South Derbyshire Local Plan Part 2 also seeks to ensure development does not detract from the character and significance of

listed buildings and their setting. However, due to the current stage of the plan I only attribute limited weight to this policy. Nevertheless, the proposal would fail to accord with it.

*Character and Appearance of the Kings Newton Conservation Area*

12. Section 72(1) of the PLBCA Act, states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is reflected in paragraph 132 of the Framework.
13. The Kings Newton Conservation Area (CA) predominantly comprises large residential properties that line either side of Main Street with its east and west boundaries being generally defined by the crossroads with Jawbone Lane/Trent Lane and Pack Horse Road respectively. The pattern of development is characterised by small groups of buildings interspersed by spaces and gaps which make a positive contribution to the significance of the CA.
14. I note that the appeal site is not specifically recognised as an open space or gap in the King's Newton Conservation Area Character Statement. However, it nevertheless serves an important purpose, particularly in the context of the new development to the west of the site. The existing gap separates the Pack Horse Inn from the new development and allows open views of the Inn, and indeed the gateway into the CA from the west. To infill this gap with the proposed dwelling would consolidate the historical setting of the CA with the more modern development. The loss of the openness of the site would detract from the important role the Pack Horse Inn plays in defining the edge of the CA, in doing so diminishing its significance.
15. Furthermore, as a result of its set back position and due to its substantial size, the rear garden depth would be limited. Whilst the garden may not be viewed from public vantage points, private views within a CA are also important to its significance. When viewed from the Pack Horse Inn and from within the site itself, it would appear a cramped form of development that would fail to reflect the overall pattern of development in the CA, where larger properties generally have extensive rear gardens.
16. I have had regard to the appellant's contention that the site should not be considered as an infill development for the purposes of saved Housing Policy 6 of the South Derbyshire Local Plan 1998 and should in fact be considered as falling within the settlement boundary as the site has been including within the settlement boundary for Melbourne in the emerging South Derbyshire Local Plan Part 2. However, the emerging South Derbyshire Local Plan Part 2 is still subject to change and therefore I do not consider that it should be considered as development within the settlement. In any event, whether it is within the settlement boundary or not, this does not have any bearing on the harm I have identified above.
17. I conclude therefore that the proposal would fail to preserve or enhance the character of the Kings Newton Conservation Area. Whilst the harm to the significance of the Conservation Area would be less than substantial, there is no public benefit identified that would outweigh this harm. As such it would be contrary to saved Housing Policy 6 and saved Environment Policies 8 and 12 of the South Derbyshire Local Plan 1998, which seek to ensure that development does not have an adverse effect on the character or appearance of a Conservation Area and safeguards open spaces and gaps that contribute to the

character of an area. Furthermore, the proposal would fail to comply with the general design objectives of the Framework.

18. The Council also refer to Policies SDT1, BNE5 and BNE11 of the emerging South Derbyshire Local Plan Part 2, which allow for development within settlement boundaries and infill development in the open countryside. However, due to the current stage in the preparation of the plan I only attribute limited weight to these policies. Nevertheless, the proposal would fail to accord with them.

**Conclusion**

19. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

*Alexander Walker*

INSPECTOR