

REPORT OF THE HEAD 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 includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) and responses to County Matters.

Reference	Item	Place	Ward	Page
9/2009/0054	1.1	Swarkestone	Aston	1
9/2011/0422	1.2	Findern	Willington & Findern	12
9/2011/0493	1.3	Swadlincote	Midway	15
9/2011/0495	1.4	Swadlincote	Swadlincote	17
9/2011/0482	2.1	Stanton	Newhall & Stanton	20

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 Head 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 Head 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. 9/2009/0054/MAO

Applicant:

Mr Robert Hartley
Derby & Sandiacre Canal Trust
43-45 St Peters Church Yard
Derby

Agent:

Mr Robert Hartley
Derby & Sandiacre Canal Trust
43-45 St Peters Church Yard
Derby

Proposal: The construction of new canal (Outline All Matters Reserved) joining the Erewash and Trent and Mersey canals at Former Derby Canal Swarkestone Lock and Bridge The Trent And Mersey Canal Swarkestone

Ward: Aston

Valid Date: 14/04/2010

The application was deferred at the meeting on 12 July 2011 for a site visit. The applicant has provided further information, as summarised in italics. Additional consultee responses are also included.

Reason for committee determination

This is a major application with more than two objections.

Site Description

The site runs from the Trent and Mersey Canal at Swarkestone Bridge, to the east of the line of the former Derby and Sandiacre Canal northwards across agricultural land to the A50, where it passes underneath, and then follows the line of the disused canal to the City Council boundary, albeit with a margin of some 30m either side.

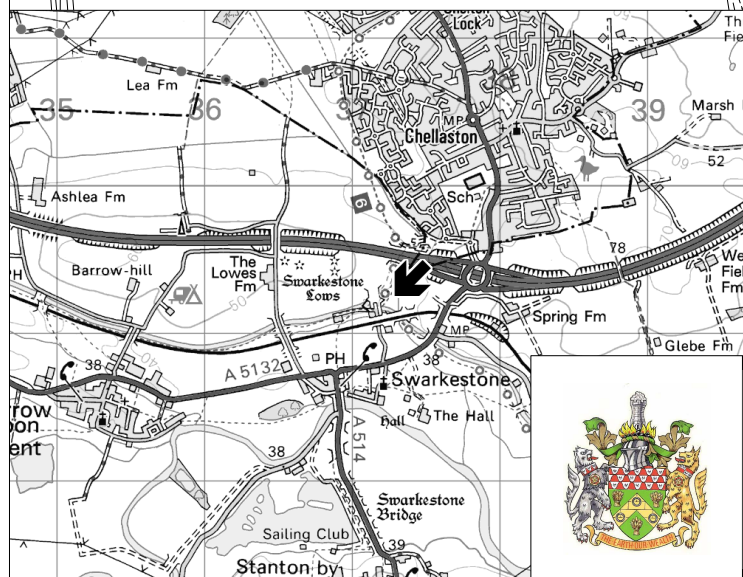
Proposal

The application seeks to re-open the Derby and Sandiacre Canal from Swarkestone, through Derby to connect to the Erewash Canal in Sandiacre. Derby City Council and Erewash Borough Council are also considering applications affecting their administrative areas.

While the general principle of the scheme is to re-open the canal along its original line, the first leg from Swarkestone would involve a new channel across farmland to the east of the former canal. A new junction with the Trent and Mersey Canal would be created here, where the site frontage would be some 100m. The new channel would pass under the A50 at or close to the existing underpass, which presently carries a footpath/cycleway and a farm access road. North of the A50 the canal would broadly

**9/2009/0054 - Former Derby Canal Swarkestone Lock and Bridge,
The Trent & Mersey Canal, Swarkestone, Derby (DE73 7GN)**

THE SITE



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South Derbyshire District Council. LA 100019461. 2010

**9/2009/0054 - Former Derby Canal Swarkestone Lock and Bridge,
The Trent & Mersey Canal, Swarkestone, Derby (DE73 7GN)**



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South Derbyshire District Council. LA 100019461. 2010

follow its historical alignment although the application site encompasses about 30 m of land either side. At Cuttle Brook the canal would enter the City Council's administrative area.

The application is in outline and relates to the proposed canal's horizontal alignment only. It is accompanied by an Environmental Statement, Flood Risk Assessment and Ecological Report.

Applicants' supporting information

- The proposal is the first stage of the reinstatement of the canal to a navigable waterway.
- The restoration would be undertaken in phases, when funding is available, with advantage being taken of developer contributions pursuant to other projects.
- While a 10 year phasing programme is assumed a 20 year time limit is sought to take account of unforeseen constraints.
- The land south of the A50 to the Trent and Mersey Canal is needed to provide adequate turning and passing room at the new canal junction.
- *With regard to the A50 three options have been considered.*
- *Option 1 – do nothing. The very valuable Derby Ring would not be created and the Derby Canal would be fragmented. No environmental benefits. An inappropriate isolated terminus would be created. The Erewash Canal would remain inaccessible during a Trent Flood. The wishes of local people would be ignored. Remaining archaeology and hedgerow would gradually deteriorate*
- *Option 2 - A lock/s at north side of A50 taking the route through the farmer's culvert. This provides an option for dual usage, navigation of barges and access for existing farm access and egress underneath the A50 via suitable engineering designs.*
- *Option 3 - To canalise and bore underneath the A50. The significant expense of tunnelling and engineering costs associated with minimising disturbance during the works to highway traffic make this a less attractive option. This approach would require further consultation and approval from the highways agency.*

Responses to Consultations

The National Grid does not object but has provided information for the applicant to take into account at design and construction stage in order to avoid adverse impact on the safety and integrity of National Grid apparatus. This advice covers electricity cables and gas pipelines.

East Midlands Airport has no objections in principle.

Derbyshire Wildlife Trust objected to Derby City Council but is reviewing its stance on the basis that additional ecological information has resulted in Natural England being satisfied. DWT's final position will be reported verbally.

The Contaminated Land Officer recommends a condition to ensure that appropriate investigation and risk assessment takes place, and subsequent management of excavated materials.

The Development Control Archaeologist does not object but comments that features of the historic canal should be retained (and restored if necessary). Conditions are recommended constrain the new cut entirely to the east of the former canal cut, where archaeological potential is lower, and the new canal route should undergo archaeological evaluation to inform design details and minimize the archaeological impacts.

On initial consultation Natural England responded with an objection, because the application did not provide sufficient information on the impacts on plants and animals. However Natural England removed its objection after receiving further ecological information from the applicant.

Having regard to the submitted Flood Risk Assessment the Environment Agency has no objecting in principle.

British Waterways recommends conditions to protect BW's water supply to its canal network and a flood mitigation scheme to prevent increased water flows from the canal into BW's canal system.

The Highway Authority raises no objection in principle but comments that a great deal of detail relating to the construction will emerge at reserved matters stage, creating a degree of uncertainty regarding the practicality and viability of road crossings and other necessary mitigation measures along the route. In the circumstances conditions are recommended to control these elements of the scheme.

The Highways Agency comments that the existing A50 underpass was constructed to accommodate a farm access, following the Public Inquiry preceding approval of the line of the Trunk Road. The previous line of the canal was not provided with such a highway structure. The deliverability of a canal through the existing structure is dependent on the agreement of towpath access along the farm access. Therefore the principle of an alternative, new structure has been assessed. A new structure would require a greater drop in canal level than the existing structure, due to a greater headroom requirement. Since using the existing structure would already require lowering from the current canal level, the prospect of a greater drop in level required by a new structure is not an additional concern. A condition to require details of the crossing to be approved is recommended.

Responses to Publicity

31 letters of support have been received, raising the following benefits:

- a) Employment during construction and after
- b) Wildlife enhancement
- c) Creation of amenities/leisure opportunities for residents and tourists
- d) Opening up the area for tourist and the benefits that brings
- e) Opportunities to provide facilities along the route to be for tourists and locals

3 letters of objection have been received.

- a) The application lacks sufficient detail to enable its implications to be properly assessed. The claimed benefits are vague, generalised and arguable. The

disbenefits, such as property blight and confusion to other planning objectives have already started and will harm good planning.

- b) The application line is drawn too widely without detail of what might happen therein. No case has been made as to why the red line is so widely drawn. It implies that other development could be proposed
- c) The red line could be used as a justification for compulsory purchase. In any other scheme each square metre would need to be justified.
- d) If the wider area is to be used for active canal purposes then far too much land is included and the application should be refused as blighting more land that is justified by the scheme. If it is intended to include working areas then these should be specified.
- e) No explanation has been offered by the applicant to the affected landowner as to why so much land is included.
- f) The objector has put forward sites which include some of the application land in the LDF/SHLAAA process, which in itself could help to meet strategic housing objectives. If the application is approved the red line could be used as a kind of protection against development. Furthermore developers of adjacent land could be expected to make contributions to the construction of the canal. It is not clear how the project would be funded.
- g) The agricultural access provided under the A50 pursuant to the trunk road scheme could not co-exist with the canal. This would harm the farm operation contrary to PPS7 and PPS4.
- h) Some of the land is understood to be part of an agricultural tenancy, which indicates that the application has not been lawfully certified.
- i) A 20 year consent would blight existing land and would discourage the farmer from effecting maintenance and improvements due to uncertainty.
- j) Part of the land proposed for development is currently tenant farmed, therefore is not lawfully certified.
- k) High pressure gas mains would be affected.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan Policies 1, 26, 27, 29, 31, 32, 35, 42, 43

South Derbyshire Local Plan Saved Environment Policies 1, 11, 12 & 13, Recreation and Tourism Policies 1 & 7 and Transport Policy 6.

National Guidance

PPS1 PPS4 PPS5 PPS7 PPS9 PPS23 PPS25 PPG13

Planning Considerations

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

- The principle and sustainability.
- Environmental Statement.
- Impact on the countryside.
- Heritage.

- Flood risk.
- Ecology.
- Highway safety.
- Time limit.

Planning Assessment

The principle and sustainability.

Local Plan Saved Recreation and Tourism Policy 7 acknowledges the recreation value of canals and seeks to safeguard their restoration. As part of a wider proposal the scheme would introduce a recreation facility accessible to a range of people. In addition to waterborne users, the restored canal would encourage other sustainable modes of transport such as walking and cycling. Saved Recreation and Tourism Policy 1 encourages new recreation proposals, subject to qualitative safeguards, and in particular acknowledges the value of water based recreation facilities. It is to be expected that the restored canal would generate economic activity. The restoration of this rural stretch of canal in South Derbyshire would satisfy the requirements of Saved Environment Policy 1 and PPS4 for economic development in the countryside and Policies 41 & 42 of the Regional Plan.

Environmental Statement

The Environmental Statement is limited to the extent that the application seeks horizontal alignment only. It is likely that further environmental assessment will be needed at reserved matters stage when detail designs emerge.

Impact on the countryside

The proposal would involve the formation of a new channel across a field. The visual impact on the landscape, having regard to its context, being adjacent to or on the line of the disused canal would not be unduly obtrusive, particularly given the scope for appropriate landscaping along the boundaries. As such there would be no conflict Regional Plan Policy 31 and Saved Environment Policy 1 of the Local Plan.

Heritage

The restoration of the canal would be in keeping with the character and appearance of the Trent and Mersey Canal conservation area, subject to detail design at reserved matters stage, when the setting of nearby listed buildings would also inform design. As such the development would not conflict with PPS5, Policy 27 of the Regional Plan and Saved Environment Policies 12 & 13 of the Local Plan.

The recommendations of the Development Control Archaeologist would safeguard the cultural interest of the site in accordance with PPS5, Policy 26 of the Regional Plan and Local Plan Saved Environment Policy 14.

Flood Risk

The concerns of British Waterways in respect of water supply and flood risk would be safeguarded by condition. The Environment Agency is satisfied with Flood Risk

Assessment at this stage. As such the development conforms to PPS25 and Regional Plan Policies 32 & 35.

Highway safety

On the advice of the highways authorities there would be no harm to highway safety with main issues being manifest during the construction phase. The recommended conditions of the Highways Agency and the County Highway Authority would protect this interest and in particular the A50 crossing.

Ecology

Natural England and Derbyshire Wildlife Trust are satisfied that natural history interests can be safeguarded by condition and the proposal is thus in accord with PPS9, Regional Plan Policy 29 and Local Plan Saved Environment Policy 11.

Time limit

The normal time limit for the submission of reserved matters is three years with development to be commenced two years after their approval. In this case the application is part of a long-term project that would be undertaken in phases. It is reasonable for the applicant to seek a longer time period to take account of the particular circumstance of this project and to be able to rely on the certainty of an extant permission. Whilst the applicant seeks a 20 year period this is twice the assumed phasing period. As extended time periods need to be justified, a time limit of 8 years for the submission of reserved matters (with two years from their approval to start development) is a reasonable balance between the applicant's aspirations and the need to enable the community to remain engaged in event of protracted delay.

Other issues raised through the publicity process

Whilst an affected landowner is concerned about the strategic implications for the operation of his farm business and potential development proposals, the application would not unduly prejudice those interests. The canal restoration project is already effectively protected by Saved Recreation and Tourism Policy 7 of the Local Plan. In the event that the objector may seek to bring forward a development project there would be an opportunity to raise specific matters with the applicant, by which time there may be more information available about the specific impacts of the canal project on third party land. The applicant has stated that the land south of the A50 to the Trent and Mersey Canal is needed to provide adequate turning and passing room at the new canal junction hence the width of the application site in this area. A grant of permission would not place an undue burden on respective landowners and there is no existing commitment to compulsory purchase, it being anticipated that the applicant will negotiate the acquisition of land in the usual manner.

Conclusion

This is project that would provide a valuable leisure resource for the community, which would also stimulate economic activity. Environmental, water and heritage interests, and highway safety would be protected by condition and the scheme would therefore further the aims of sustainable development.

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

Recommendation

GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of eight years from the date of this permission.

(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the layout, scale, appearance, access and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. Prior to excavation of each section of canal details of site investigation and methodology for treatment of the excavated material shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved investigation and methodology.

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

4. No phase of the development hereby permitted shall take place until a scheme for providing a water supply to that part of the canal has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of the water requirements of that phase of the canal and the means of providing the necessary water to maintain water levels within the canal, and the operating and maintenance arrangements for the scheme. In the case of any phase which results in a direct connection to the wider British Waterways canal network, or any subsequent phase which results in a further extension of that connection, the scheme shall also demonstrate the means of providing adequate water supplies to cater for the movement of additional craft between the completed phase(s) and the wider British Waterways network without resulting in a reduction in water supply within the wider British Waterways network. The development shall be carried out only in accordance with the approved scheme (or any alternative scheme that may be agreed in writing with the Local Planning Authority) and the completed phase of the canal shall not be brought into use until the approved scheme has been fully implemented.

Reason: To ensure that adequate water resources can be made available to provide water supplies sufficient to maintain water levels in the canal and to ensure that the development does not adversely affect the wider waterway network where it connects to the development.

5. No phase of the development hereby permitted shall take place until a scheme for flood mitigation has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the means of disposing of excess water from the canal during flood events, the means of preventing or attenuating increased water flows from the canal into any adjoining watercourses or canals and the operating and maintenance arrangements for the scheme. The development shall only be carried out in accordance with the approved scheme (or any alternative scheme that may be agreed in writing with the Local Planning Authority) and the completed phase of the canal shall not be brought into use until the approved scheme has been fully implemented.

Reason: To minimise and mitigate the risk of flooding from the canal and to reduce the risk of excess water from the canal being conveyed into adjoining water courses or canals and causing flooding from those adjoining watercourses or canals.

6. No development shall commence until a scheme for phasing of the work has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

7. Before any work commences in any phase approved in connection with Condition 6 above, detailed designs shall be submitted to and approved in writing by the Local Planning Authority in respect of any alterations or access to the highway network. The works shall be implemented in accordance with the approved design unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

8. Before any work commences in any phase approved in connection with Condition 6 above, a scheme for construction traffic routing and traffic management shall be submitted to and approved in writing by the Local Planning Authority. The schemes shall be implemented in accordance with the approved designs unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

9. Before any work commences in any phase approved in connection with Condition 6 above, space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detail designs first submitted to and approved in writing by the Local Planning Authority. Thereafter the facilities shall be retained throughout the construction period within that phase free from any impediment to their designated use.

Reason: In the interests of highway safety.

10. Before any work commences in any phase approved in connection with Condition 6 above, design details of construction traffic access to that phase shall be submitted to and approved in writing by the Local Planning Authority. The access shall be implemented in accordance with the approved details and retained accordingly throughout the construction period within that phase.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

12. The construction of any part of the development within 67 m of the centreline of the A50 Trunk Road shall not commence until a Geotechnical Report and Method Statement for the proposed crossing has been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highways Agency. The trunk road crossing shall then be constructed in full accordance with the approved Method Statement.

Reason: To ensure that the A50 trunk Road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from geotechnical risks. To comply with highway standards as set out in the Design Manual for Roads and Bridges (DMRB), specifically HD22.

13. Unless as may otherwise be agreed following compliance with Condition Nos 14 and 15 below the new cut shall be constrained to the former canal cut and/or to the east of the former canal cut.

Reason: It is likely that nationally important archaeology exists to the west of the former cut. In the absence of an evaluation this heritage interest should not be disturbed.

14. No development shall take place within the site until the developer has submitted a mitigation statement demonstrating how historic canal features will be conserved within the detailed restoration scheme, and this document has been approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved mitigation statement.

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

15. A) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and

1. The programme and methodology of site investigation and recording;
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

B) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (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 Written Scheme of Investigation approved under condition (A) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

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

16. Further ecological studies and mitigation measures shall be undertaken in accordance with the recommendations of the submitted ecological report dated November 2010 and the Middlemarch Environmental letter dated 11 January 2011, and no phase of the development shall be undertaken until such time as the Local Authority has approved the further surveys and mitigation measures. The development shall proceed only in accordance with the approved mitigation measures.

Reason: To ensure protection of ecological interests.

17. The development shall be implemented in accordance with the submitted Flood Risk Assessment 'Derby and Sandiacre Canal Revision B'

Reason: In the interests of flood prevention.

Informatives:

You are advised to contact Third Party Works Engineers Team at British Waterways Fazeley Office on 01827 252000, in order to ensure that any necessary consents are obtained and the works are compliant with the current British Waterways "Code of Practice for Works Affecting British Waterways"

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 Environmental Services Department at County Hall Matlock. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

The application site is affected by or adjacent to public rights of way (Footpath Nos 8 and 9 Swarkestone on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works taking place. Advice regarding the temporary (or permanent) diversion of such routes may be obtained from the Rights of Way Section, Environmental Services, County Hall, Matlock.

Pursuant to Section 149 and 151 of the Highways Act 1980, the applicant/developer must take all necessary action 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/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

Item 1.2

Reg. No. 9/2011/0422/FH

Applicant:
Mr & Mrs R Toone
83 HILLSIDE
FINDERN
DERBY

Agent:
Matt King
Making Plans
Ivy Lodge
5 Twyford Road
Willington
Derby

Proposal: The erection of extensions at 83 Hillside Findern

Ward: Willington and Findern

Valid Date: 23/05/2011

The application was deferred at the meeting on 2 August 2011 to seek a reduction in the size of the proposed two-storey extension, omitting any development on the current walkway between the existing property and the boundary. Consequent changes to the report are in italics.

Reason for committee determination

Councillor Ford (ward member) has requested that the Planning Committee determine this application as local concern has been expressed about a particular issue.

Site Description

The property in question is a two-storey detached dwelling with an attached single storey garage to side. It is situated on a large residential estate, an estate that features a mix of property types. The immediate site in question is generally flat. Taking the site in its wider context though there is a modest north to south slope.

Proposal

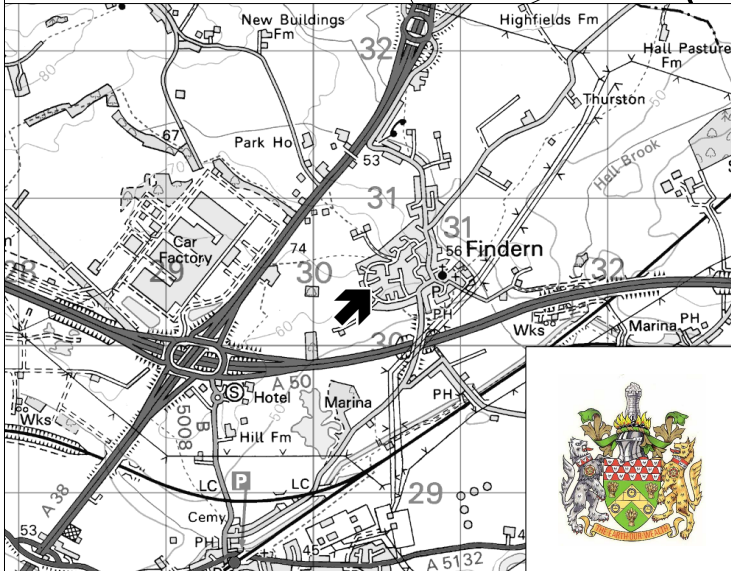
The proposal is in three main parts: a two storey extension to the side replacing in part the existing garage, a single storey extension to the rear and a single storey extension to the front.

The application has been amended such that a pathway of 850 mm would be left between the side of the extension and the neighbouring boundary.

Applicants' supporting information

None

Planning History



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None

Responses to Consultations

A neighbour has objected to the scheme and are summarised as follows:

- a. The planned alterations would have an overbearing effect on neighbouring property;
- b. There is concern over proximity of the extensions to the rear wall of a neighbouring garage;
- c. Loss of light to kitchen window;

A second letter of objection was received from the same neighbour (following the submission of amended plans) with additional points raised:

- d. Loss of light to hallway door – this glazed door allows some light into the kitchen;
- e. The design is not in keeping with the existing situation / surrounding area.

Development Plan Policies

Local Plan Housing Policy13; Supplementary Planning Guidance (SPG): Extending Your Home.

Planning Considerations

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

- Design/Impact on the streetscene
- Residential amenity

Planning Assessment

Design/Impact on the streetscene

The proposal here is similar to a number of approved schemes (in the same street) that have been seen to be acceptable - this in fact is where the applicant got the idea. As such the forward projection of the gable would be in keeping and without undue detriment. The end elevation (south) is simple in its appearance, with the new mass softened by the built forms adjacent.

Residential Amenity

The objector has sited that the two-storey side extension here will overbear and reduce light levels to his kitchen window.

No 81 Hillside is a bungalow. As is often the case with bungalows it features a kitchen window on the side. Adopted supplementary guidance 'Extending your Home' however defines 'side' windows as secondary and as such not constrained by minimum distance requirements. Any assessment should be based on the merits of the scheme. In this regard consideration should be made to avoid a wholesale loss of light and views. In an attempt to provide some context, the kitchen window at No 81 is north facing. There are existing built forms in close proximity to that window - a 1.8m boundary fence, garden shed

at No.83 and the existing two storey gable of No.83 which is already in close proximity. Accordingly, as acknowledged by the objector, light levels are currently not ideal.

The originally submitted plans featured a two-storey extension to the side and a two-storey addition to the rear. These two elements working together would not have been acceptable and would have been unduly detrimental to the amenity of the neighbour. Not only would it have meant a loss of light over and above the existing, but also an unacceptable loss of outlook.

In an attempt to be 'considerate' the applicant has subsequently amended the plans to reduce the rear extension to single storey and remove the large garden shed that presently sits adjacent to the boundary. It is considered that the amendment offers a good compromise and provides a reasonable outlook for the adjoining neighbour. *It is considered that the additional amendment is substantially compliant with the previous resolution of the Committee.*

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. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. This permission shall relate to the amended drawing, no J1520/4 Revision F showing in particular: the replacement of the rear two storey element with a single storey lean to extension and omission of covered walkway.
Reason: For the avoidance of doubt.
4. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.
Reason: To ensure that adequate parking/garaging provision is available.

Item **1.3**

Reg. No. **9/2011/0493/TP**

Applicant:
Mr Ian Redfern
79 Midway Road
Swadlincote

Agent:
Mr Ian Redfern
79 Midway Road
Swadlincote

Proposal: **The pruning of an Ash Tree Covered by South
Derbyshire District Council Tree Preservation Order
Number 91 at 79 Midway Road Swadlincote**

Ward: **Midway**

Valid Date: **13/06/2011**

Reason for committee determination

This application has been brought to Committee as the applicant is the partner of a Ward Member and as such Committee determination is required.

Site Description

The tree in question is located in the front garden area of 79 Midway Road, Swadlincote.

Proposal

The applicant has requested the removal of deadwood from the tree and trimming back of branches as they are currently touching the telephone wires.

Planning History

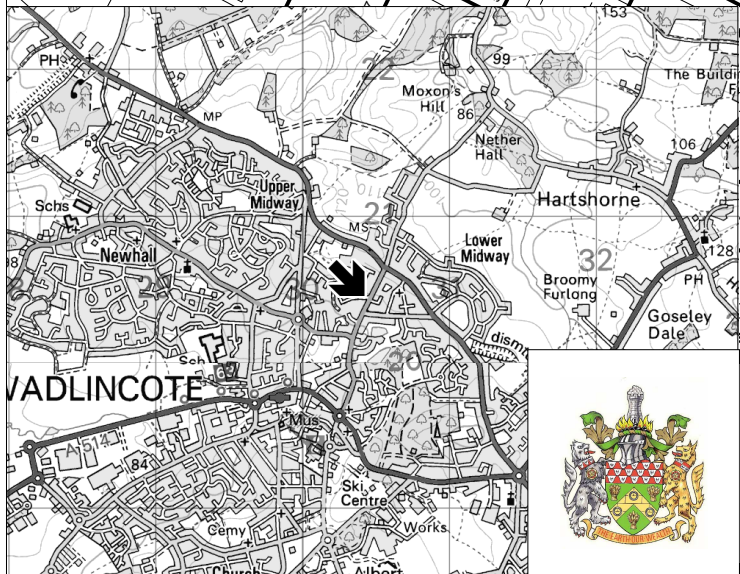
TPO 91 was imposed on this tree because the tree is the most prominent feature of this upper stretch of Midway Road, being a mature tree and a fine example of its type. Furthermore its contribution to the visual amenity of the area is unquestionable.

Responses to Consultations

The District Council's Tree Officer advises that removal of the deadwood with the stubs being taken back to the union in accordance with BS3998 and minor pruning of branches 2m back from the utility lines would be acceptable. The applicant is in agreement with the Tree Officer's advice.

Responses to Publicity

None at the time this report was prepared.



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South Derbyshire District Council. LA 100019461. 2010

Development Plan Policies

The relevant saved policies are:

Local Plan: Environment Policies 9 and 10

National Guidance

N/A

Planning Considerations

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

- The necessity for the works.
- Impact on the immediate area.

Planning Assessment

TPO 91 was imposed because the tree is the most prominent feature of this upper stretch of Midway Road, being a mature tree and a fine example of its type. Furthermore its contribution to the visual amenity of the area is unquestionable. The District Council's Tree Officer advises that removal of the deadwood with the stubs being taken back to the union in accordance with BS3998 and minor pruning of branches 2m back from the utility lines would be acceptable. The pruning of this tree by 2m back from the utility lines will still ensure it is a prominent feature in the street scene and the dead wooding is good arboricultural practice which will ensure the tree remains healthy.

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

Recommendation

GRANT consent subject to the following conditions:

1. The works hereby granted consent shall be carried out within two years from the date of this permission.
Reason: To enable the Local Planning Authority to retain control over the works.
2. Notwithstanding the details originally submitted, the works hereby approved are the removal of deadwood and the pruning of the tree 2m back in distance from the utility lines.
Reason: To safeguard the health of the tree.
3. The work shall be carried out in accordance with BS3998: 1989 - Tree Work.
Reason: To safeguard the health of the trees.

Item 1.4

Reg. No. 9/2011/0495/FH

Applicant:
Mr Andrew Bosworth
7 Pennine Way
Swadlincote

Agent:
Mr Andrew Bosworth
7 Pennine Way
Swadlincote

Proposal: **The conversion of the garage into living
accommodation at 7 Pennine Way Swadlincote**

Ward: **Swadlincote**

Valid Date: **06/07/2011**

Reason for committee determination

Councillor Mulgrew has requested that this planning application be brought to committee, because local concern has been expressed about a particular issue and unusual site circumstances, which members should consider.

Site Description

The application site lies within a residential estate in Swadlincote. 7 Pennine Way is a linked detached property, with its garage attached to No 5.

Proposal

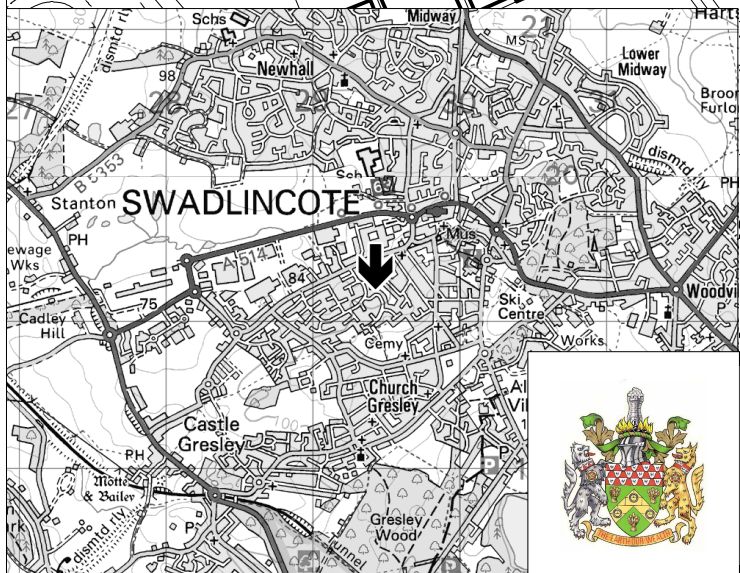
The application seeks permission to use the garage as living accommodation. No enlargement or extension is proposed.

Applicants' supporting information

None.

Planning History

9/887/414 – The erection of 12 dwellings on land to the north east of the junction of Chiltern Road and Pennine Way Swadlincote. Condition 4 states that the garage accommodation “shall not be converted into living accommodation of any description whatsoever, or put to any alternative use that would prevent its being available as garaging accommodation without the prior permission of the Local Planning Authority granted on an application made in that regard”.



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Responses to Consultations

None.

Responses to Publicity

One neighbour has objection. The neighbour's concerns are:

- a) The proposed works would alter the property from linked detached to semi detached adversely affecting property value.
- b) There would be increased risk of fire and flood
- c) There would be an increase in noise as purlins from the garage have broken into the neighbouring wall.
- d) There could be further damage to 5 Pennine Way.

One neighbour supports the proposal and states that there is no reason for this application not to be passed.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan Policy 48

South Derbyshire Local Plan Saved Transport Policy 6

National Guidance

PPG13

Planning Considerations

The main issue central to the determination of this application is parking.

Planning Assessment

The proposal would not normally require planning permission, being permitted development. Permitted development rights were removed with the sole reason of ensuring the retention of adequate off-street parking. Two parking spaces would be retained within the curtilage of the dwellinghouse, which would be in accord with regional policy and PPG13.

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. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter two parking spaces, each measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

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

Item 2.1**Reg. No.** 9/2011/0482/U**Applicant:**
M Hunt
C/O Price Planning Associates**Agent:**
Mrs Sally Price
Price Planning Associates
60 Albert Road
Tamworth**Proposal:** The Change of Use from partial residential garden and field to a commercial kennel business with two kennel buildings, and office and a toilet/shower/wet room at 2 Woodland Road Stanton Burton on Trent**Ward:** Newhall and Stanton**Valid Date:** 04/07/2011**Reason for committee determination**

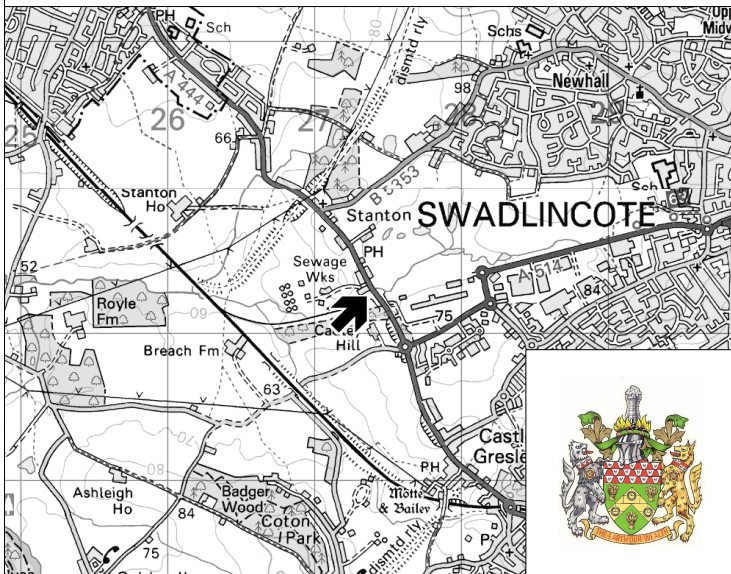
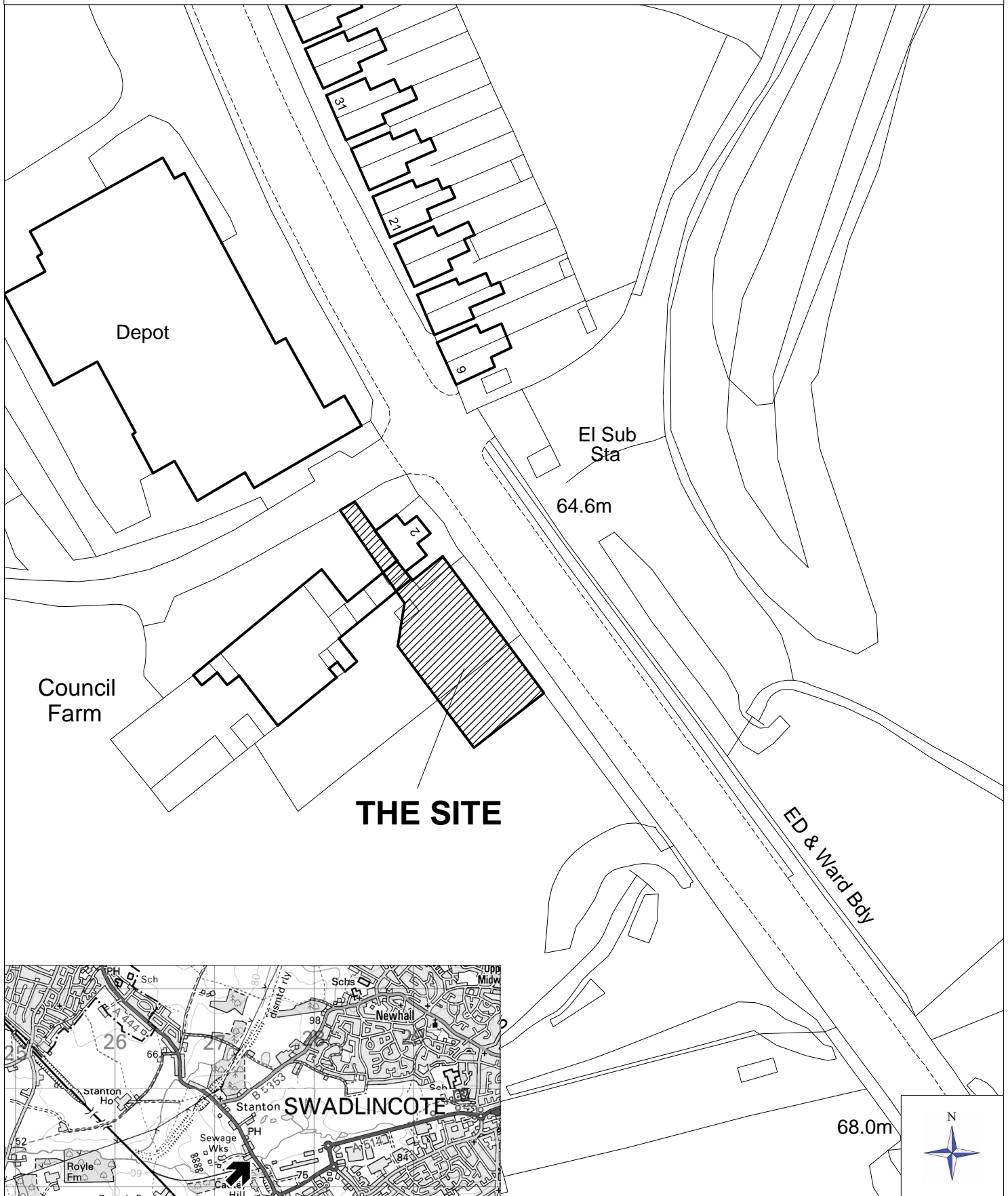
This application is brought before this committee following a request by Councillor Bambrick advising that there are unusual circumstances, which need to be considered by the planning committee.

Site Description

The application site is located to the side of the residential property of 2 Woodland Road at Stanton. The site is washed over by Green Belt and was formerly attached to Council Farm. The property was divided in approximately 2010. The property as now divided consists of a residential dwelling with access to the east of the property and the main garden and amenity area being to the side of the property backing onto agricultural fields and grazing areas bounded by dense hedging.

Proposal

The proposal is for the change of use from partial residential garden and field to a commercial kennel business, with the erection of two kennel buildings, an office and toilet/shower/wet room. The proposed kennels buildings would measure 17.6m in length x 3.82m in width x 2m to the eaves and 2.77m to the ridge in height. One kennel building proposed (K1) would include a toilet/shower/wet room measuring 1.95m in length x 3.62m in width at one end of the proposed kennels and at the other end an office measuring 4.75m in length x 3.62m is proposed. The proposed buildings would house 12 kennels including some double or family kennels. Three car parking spaces are proposed in front of the proposed kennels facing Woodland Road, which would be accessed by the existing vehicular access. Approximately 5.9m of the proposed kennel buildings would be located outside the residential curtilage of 2 Woodland Road, protruding into the open countryside, necessitating the removal of the existing dense hedging that forms the current boundary.



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Applicants' supporting information

In support of the application are the following related documents:

- Coal Mining Risk Assessment Report and non-residential Coal and Brine Report
- Planning, design and access statement.
- The applicant has long experience of working with dogs.
- The applicant's family have lived in South Derbyshire for 11 years and are greatly involved in local communities.
- The proposal would enable the applicant to satisfy a need for boarding kennels in the local area and the proposal has met with tremendous support from people who know the applicant's abilities and skills with dogs.
- The proposal could lead to increased tourism and economic growth in South Derbyshire and would complement the golf course in Swadlincote as people would have somewhere to board their pets whilst they take advantage these developments.
- Whilst this is not 'appropriate development' kennels are best located away from residential areas for reasons of noise and security, and location on the edge of settlements are therefore best. The property is also the applicant's home the need for staff to travel would be avoided. In addition, due to the surrounding development, limited impact of the scheme and location within an established group of buildings adjacent to a large commercial activity, the applicant considers that this constitutes special circumstances that outweigh the need to retain the openness of the Green Belt.
- Because of the scale and siting of the buildings there would be no demonstrable loss of openness to the Green Belt or visual amenity.
- The objectives the Green Belt would not be harmed.

Responses to Consultations

The Coal Authority does not raise any objections to the application as submitted and advises that a standard condition be applied should approval be given.

The County Highway Authority does not raise any objections to the application subject to a condition relating to parking spaces being provided.

The Environmental Protection Manager objects to the application as submitted, raising concerns regarding possible disturbance from dogs barking, particularly when in outside pens, and the close proximity of residential dwellings to the site.

Responses to Publicity

One letter of objection has been received from the owner at Council Farm who borders the site. The concerns noted are:

- a) Inappropriate for people to be living in close proximity to a commercial kennels
- b) Animal noise
- c) Customer traffic
- d) Smell
- e) Hygiene

- f) Animal waste – what happens to the faeces?
- g) Disease could be brought to humans (toxicariasis) and livestock intended at Council Farm
- h) Access is inadequate and dangerous off Woodland Road for people to drop off and collect animals
- i) One only space left for car parking
- j) Part of kennels are proposed to be located in the Green Belt which should not be for commercial use
- k) Devalues property value at Council Farm

National Guidance

Planning Policy Guidance 2.

Development Plan Policies

The relevant policies are:

Saved Policies from the Local Plan: Green Belt Policy 4.

Planning Considerations

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

- Development plan policy and national guidance and advice
- The impact of the proposal on neighbours and highway safety.

Planning Assessment

With regards to whether the development proposed is in line with national guidance and development plan policy, Planning Policy Guidance 2 and saved Green Belt Policy 4 are relevant. The proposal is wholly within an area that is washed over by the statutory Green Belt. The proposed development does not fit within the defined categories of development which are considered to be 'appropriate' in the Green Belt and as such is, at the national level, considered inappropriate. Inappropriate development is by definition, harmful to the Green Belt. As such PPG2 makes it clear that an applicant must demonstrate very special circumstances to show why permission should be granted. This is a severe test and no evidence has been put forward to explain why a site outside the green belt could not accommodate kennels. The fact that the applicant owns the house and land is not in itself of any significant weight. This is the smallest green belt in the country and to allow its erosion without an overriding reason would weaken the local planning authority's ability to maintain open space around Swadlincote and Burton on Trent. PPG2 states that the essential characteristic of Green Belts is their permanence and their protection must be maintained as far as can be seen ahead.

The proposed commercial buildings would be an urban intrusion into the adjacent field. As such the proposal would reduce the openness of the green belt, which is identified in PPG2 as its most important attribute.

County Highways do not raise any objections to the development as proposed and therefore highway safety is not considered to be an issue.

The proposed development is located approximately 50m from residential properties on Woodland Road and only 10m from Council Farm, which was granted permission for a

two bedroomed dwelling in 2009. The Environmental Protection Team has raised concerns regarding the close proximity of the residential properties and the disturbance from dogs barking at the site. Accordingly they have recommended the application be refused, as the impact upon the neighbours is unacceptable.

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

Recommendation

REFUSE permission for the following reasons:

1. The proposal, being of an urban nature would reduce the openness of the Green Belt and encroach into the open countryside. The construction of the proposed commercial kennel buildings is not appropriate development as defined in Planning Policy Guidance 2 and is thereby also contrary to South Derbyshire Local Plan Green Belt Policy 4. The Local Planning Authority considers that there are no very special circumstances that would justify inappropriate development in the Green Belt in this case.
2. The proposal would likely result in unacceptable disturbance to neighbouring properties by dogs barking from the proposed kennels, in particular when they would be in outside pens, contrary to PPG24.

2. PLANNING AND OTHER APPEALS

Reference	Place	Ward	Result	Cttee/Delegated
9/2010/1045	Church Gresley	Church Gresley	Dismissed	Delegated
9/2011/0169	Melbourne	Melbourne	Dismissed	Delegated



Appeal Decision

Site visit made on 27 July 2011

by A J Davison BA(Hons) LLB(Hons) MSc MBA Dip LD RIBA FRTPI

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

Decision date: 4 August 2011

Appeal Reference: APP/F1040/A/11/2147919/WF
199 Regent Street, Church Gresley, DE11 9PQ

- 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 M Chilton against the decision of South Derbyshire District Council.
 - The application Reference 9/2010/1045, dated 10 November 2010, was refused by notice dated 4 February 2011.
 - The development proposed would comprise a dwelling and car parking to the rear of 199 Regent Street.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are, firstly, the effect of the proposed development on the character and appearance of the area and, secondly, its impact on living conditions in 65 George Street in terms of noise and disturbance, light and privacy.

Reasons

Character and Appearance

3. The proposal is to erect a four bedroom house with an integral garage on land behind 199 Regent Street. Permission has been granted separately for a detached house on part of the street frontage and access to the appeal site would pass between that house – which has yet to be built – and the gable wall of number 199. The access would be across land occupied by the garage of number 199 and the development would include two replacement parking spaces for that house. These would adjoin two others associated with the approved house as well as a turning area serving all three houses.
4. The house would be large in relation to the size of the plot and, as the Council points out, the need to comply with standards for space around it has dictated the design. The rather awkward form of the building is exacerbated by the use of a hipped roof on the front elevation and a series of gables on the rear, giving the side elevations a truncated and unsatisfactory appearance. Because it would be positioned behind the houses on George Street and Regent Street the development would not, in either case, be visible in views along the street so I do not agree with the Council that it would be read as part of the street scene on Regent Street.

5. Nevertheless, it would be seen in views along the access from Regent Street, albeit that these would be restricted by the houses to each side of the entrance. More particularly, it would be very prominent in views from George Street looking across the gardens of neighbouring properties. At present these views are relatively open and the trees on the site – which the house would replace – are prominent features. The loss of this pleasant open aspect as a result of the proposed development would detract from the character of the area. Its impact would be exacerbated by the design of the house, especially as it would be the awkward side elevation that would face George Street.
6. Although the Council is concerned that the house would set an unwelcome precedent each case has to be treated on its own merits. If planning decisions set precedents then one would already exist in the form of the detached house, 67a George Street, which has been built behind number 67 on a plot adjoining the appeal site. Whatever the considerations may have been that led to permission being granted for 67a, its significance lies not in any precedent that it might set but in the fact that it has added to the group of buildings around the site. The addition of another large house in a prominent backland location next to number 67a would further erode the openness of the area and result in development along George Street having a more cramped appearance.
7. My conclusion on this issue is that the development would harm the character and appearance of the area on account of its location, bulk and design.

Impact on 65 George Street

8. The effect of noise and disturbance associated with the parking and turning area on 65 George Street would be mitigated by the fact that these activities would be screened by a 1.8m high brick wall. The development would not, in that respect, unduly affect living conditions in number 65.
9. The proposed house would lie to the east of number 65 and could potentially affect the amount of daylight and sunlight reaching it during the morning. It would, however, be slightly offset from the house and would comply with the Council's normal requirement for space between buildings. As it would be some 3m from the boundary, along which is a 1.8m high solid fence, it would not have a material additional impact on the amount of light reaching the garden of number 65. The development would not, therefore, unduly affect amenities in number 65 in those respects.
10. While the position of the house would generally comply with the Council's requirements, one of the bedroom windows would directly overlook the conservatory of number 65 at distance of 16.4m. That compares with the minimum of 21m. The Appellant suggests that any loss of privacy could be overcome by means of a condition requiring the offending window to be obscure glazed or, alternatively, moved to another elevation.
11. The bedroom in question is shown to have another window, facing east, which would also be obscure glazed because it would be only about 1m from the boundary. Obscure glazing the offending west facing window would result in the bedroom having no views at all to the outside. That would not be a satisfactory form of development. Moreover, if the window were moved to the east elevation it would still have to be obscure glazed while moving it to the north elevation might raise issues in respect of number 67a, the boundary of which is only a few metres away.

12. In any event moving the window to another elevation would represent a material change in the design on which neither the Council nor the occupants of other neighbouring properties that might be affected have had the opportunity to comment. For those reasons the suggested condition would not be a satisfactory way of overcoming the problem of overlooking from the bedroom window.
13. My conclusion on this issue is that, while it might not unduly affect the living conditions of occupants of 65 George Street in other respects, the proposed development would have an unacceptable impact on their privacy due to overlooking from the bedroom window.

Conclusion

14. My overall conclusion is that the proposed development would have an unacceptable impact on the character and appearance of the area and on the privacy of occupants of 65 George Street. It would, therefore, conflict with saved Housing Policy 11 of the 1998 South Derbyshire Local Plan. For those reasons I conclude that the appeal should be dismissed.

Anthony J Davison

Inspector



Appeal Decision

Site visit made 4 July 2011

by Richard High BA MA MRTPI

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

Decision date: 12 July 2011

Appeal Ref: APP/F1040/D/11/2154144

73 Castle Street, Melbourne, Derby, DE73 8DY

- 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 Daniel Banks, against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0169/FH, dated 28 February 2011, was refused by notice dated 11 May 2011.
 - The development proposed is the erection of a second floor rear extension to the dwelling.
-

Decision

1. The appeal is dismissed.

Main issue

2. The main issue is the effect of the proposed development on the character and appearance of the row of terraced houses which includes No.73 and the Melbourne Conservation Area.

Reasons

3. The west side of Castle Street lies within the Melbourne Conservation Area and is characterised by redbrick terraced housing which comprises groups of dwellings which, though connected, differ in height and proportions. The varying character of this late nineteenth century housing makes an important contribution to the character of the Conservation Area. 73 Castle Street lies at the southern end of a row of 3 houses which are higher than the dwellings to the south and only connected at ground floor level to the pair of dwellings to the north. This group thus has a distinct identity in the street scene.
 4. The proposed extension would be in the form of a gable to the rear to create accommodation at second floor level. The gable would extend the full depth of the rear half of the roof so that its face would be a vertical continuation of the existing rear elevation of the dwelling. It would disrupt the simple linear form of the roof and disturb the balance of the row of the three cottages. It would appear bulky and incongruous because the eaves height would be substantially above that of the terrace and the depth of the gable would make it stand out from the relatively gentle pitch of the existing building. Moreover the
-

alignment and width of the window would not respect the existing windows. I also note the comments of the Council's Heritage Officer regarding the possible additional harm to the appearance of the building that could result from the guttering that would be required but has not been shown on the drawings.

5. I accept that there have been alterations to the rear of other properties nearby in the form of projecting gables at 67-71 Castle Street, but these are lower and less disruptive as all three properties in that group have been similarly extended. I also acknowledge that the extension would not be visible in the street scene, but the uniformity of this group of houses is a defining characteristic of them and would be damaged by the proposed extension. The land rises to the rear of this group of dwellings and the extension would be a discordant feature in the outlook from the gardens of all three dwellings in this group and from the gardens of neighbouring properties. For these reasons the character of the rear of the building is a matter of public interest.
6. I accept that development need not positively contribute to the character of a Conservation Area. However I have concluded that the extension would fail to preserve the character or appearance of the Conservation Area because it would be harmful to the group of terraced houses of which it forms part. It would fail to comply with Saved Environmental Policy 12 of the South Derbyshire local Plan 1998. While Saved Housing Policy 13 is phrased in permissive terms, the height and proportions of the existing building define its character and the development would not be in keeping with them and the development would therefore conflict with the Policy. Because the simple and coherent form of the existing building contributes to the character of the Conservation Area the development would not comply with Policy HE8 of PPS5 *Planning for the Historic Environment* published in 2010.
7. For the reasons I have given and having carefully considered all other matters raised, I conclude that the appeal should be dismissed.

Richard High

INSPECTOR