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Date: 12 January 2015

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, on **Tuesday, 20 January 2015 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

Councillor Ford (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Bale, Mrs. Hall, Jones, Stanton and Watson.

**Labour Group**

Councillors Bell, Dunn, Pearson, Richards, Shepherd and Southerd.



## **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 & PLANNING SERVICES **3 - 48**
- 5 ARTICLE 4 DIRECTION AFFECTING VICTORIA HOUSE, 33 HIGH STREET, WOODVILLE **49 - 58**
- 6 ARTICLE 4 DIRECTION AFFECTING SWADLINCOTE TOWN CENTRE **59 - 86**
- 7 CONFIRMATION OF TREE PRESERVATION ORDER (TPO 389) **87 - 90**

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

The Chairman may therefore move:-

That in accordance with Section 100 (A) of the Local Government Act 1972 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.

- 8 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).

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## 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, hedgerow works, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and strategic submissions to the Secretary of State.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2014/0948	1.1	Drakelow	Linton	1
9/2014/1032	1.2	Coton-in-the-Elms	Seales	25
9/2014/1046	1.3	Repton	Repton	32

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.** 9/2014/0948/OS

**Applicant:**  
**Mr Jonathan Harbottle**  
**Providence Land Limited**  
**c/o Agent**

**Agent:**  
**Mr Tom Hutchinson**  
**Howard Sharp And Partners LLP**  
**79 Great Peter Street**  
**Westminster**  
**London**  
**SW1P 2EZ**

**Proposal:** **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 75 DWELLINGS WITH ASSOCIATED PUBLIC OPEN SPACE AND SUSTAINABLE DRAINAGE AT LAND AT SK2520 3411 ROSLISTON ROAD SOUTH DRAKELOW SWADLINCOTE**

**Ward:** **LINTON**

**Valid Date:** **02/10/2014**

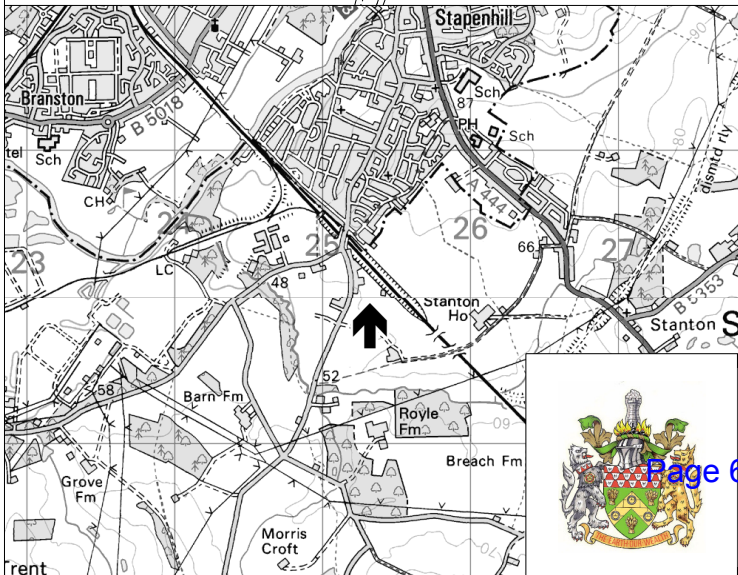
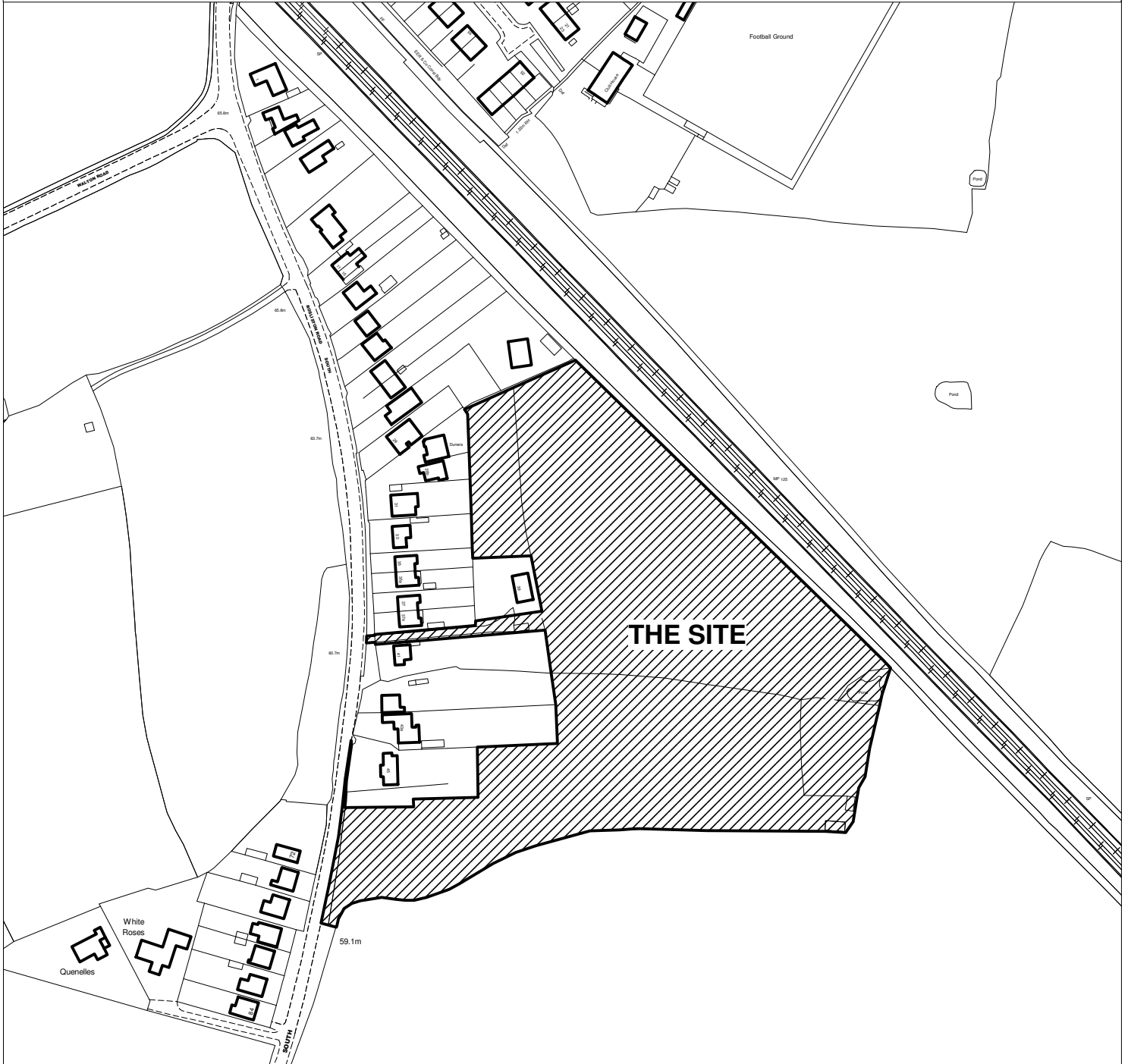
**Reason for committee determination**

The application has been brought to Committee at the request of Councillor Wheeler and because this is a major development, not in accord with the development plan and more than two letters of objection have been received.

**Site Description**

The application site comprises 2.89ha of garden and adjoining agricultural land (two fields) to the east and south of Nos. 29 to 45 Rosliston Road South. The majority of the site is mainly pasture and used for hobby farming purposes. There are existing mature trees along the southern and eastern boundaries, together with a row of trees which denotes the boundary between the two fields. The line of the Leicester and Swannington railway forms the north eastern boundary of the site. There is an existing pond in the eastern corner of the site. No.39, which is located to the rear of Nos.35 to 37a, and accessed via a 3m wide driveway between Nos. 37a and 41, is included within the red line and would be retained and incorporated into the proposed development. There are five buildings within the application site, three of which are used for hay storage and livestock accommodation with the remaining two being residential accommodation (No.39) and an associated domestic garage. The site slopes upwards in a northerly direction.

9/2014/0948 - Land at SK2520 3411 Rosliston Road South, Drakelow, Swadlincote (DE15 9UD)



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## Proposal

The application is in outline with all matters reserved except for access for the erection of up to 75 dwellings together with associated public open space and sustainable drainage. A new vehicular access would be formed onto Rosliston Road South adjacent to No.45 and a pedestrian access would be provided between Nos. 37a and 41. An area of public open space and play area measuring a minimum of 0.47ha would be provided on the eastern part of the site. An amended plan also shows the provision of a 1m to 1.5m pedestrian footway to the front of Nos. 43, 43a and 45 where no footway currently exists. It is also proposed to realign the carriageway to incorporate the new footway which can all be accommodated within highway land so that existing private driveways would not be affected.

It is proposed to connect the new development to the existing mains sewer with surface water being controlled by a Sustainable Drainage System (SuDS) which would run south from the site to the existing pumping station, connecting to a manhole on the outfall from the pumping station.

## Applicants' supporting information

The application is accompanied by several supporting documents, all of which are available to view on the Council's website. However, for ease of reference, these can be summarised as follows.

- Proposed Heads of Terms. This relates to a proposed Section 106 Agreement for contributions towards the provision of affordable housing, national forest planting, off-site recreation facilities, healthcare provision, education provision and waste and recycling facilities.
- Design and Access Statement (DAS). This demonstrates that the site could accommodate up to 75 dwellings, having regard to the national and local policies on new housing development. An indicative layout shows how the site could provide satisfactory access for vehicles, cyclists and pedestrians and would improve the connectivity of the site with the land around it. The principles within the DAS provide a sound basis to deliver high quality development at reserved matters stage in which the layout, scale, appearance and landscaping of the proposal would meet the national and local policies for securing good design and promoting healthy communities.
- Statement of Community Involvement. Whilst pre-application discussions have been had with the District and County Councils, Derbyshire Wildlife Trust and Severn Trent Water, the applicants made the decision to establish the principle of the development prior to seeking the views of the public and local community. They are willing to engage with the public when the reserved matters scheme is being worked up, taking account of comments made on the current outline application.
- Affordable Housing Statement. This provides an indicative housing mix ranging from one bedroom flats to four/five bedroom dwellings and confirms that a minimum of 30% would be affordable with a proposed tenure split of 65% social

and affordable rent, 35% intermediate, or as otherwise agreed with the District Council.

- Planning and Sustainability Statement. This concludes by stating that the site relates well to the existing built form and would form a logical small urban extension that infills behind existing dwellings. The site is contained by strong boundaries on all sides. The site is not protected under the Birds and Habitats Directives, neither is it a SSSI, within the Green Belt, a Local Green Space, an Area of Outstanding Natural Beauty or within a National Park. It does not materially affect a designated heritage asset or fall within a location at risk from flooding. It has no physical, environmental, access or ownership constraints. The only constraint is the existing countryside protection policy within the dated Local Plan which does not take account of housing need. The proposal represents sustainable development that would deliver significant, economic, social and environmental benefits, including making a significant contribution to the Council's housing land supply, and would qualify for the New Homes Bonus over a six year period.
- Noise and Vibration Impact Assessment. This concludes that there would be a low probability of adverse impact from passing freight trains both during the daytime and night time periods. An assessment of the impact of additional traffic flows indicates that there would only be a negligible increase in noise levels at existing sensitive receptor locations. During the construction phase of the project Best Practical Means would be implemented to ensure noise levels are kept to a minimum.
- Heritage Statement. This statement confirms that the site does not contain any archaeological sites or other heritage assets such as a Scheduled Monument, Listed Building, Conservation Area, World Heritage Site, Historic Park or Garden and Battlefield. The development of the site would not adversely affect the site or setting of any designated heritage asset.
- Flood Risk Assessment. This concludes that the proposed development would not be affected by current or future flooding from any source and the development would not increase flood risk elsewhere. The proposed measures to deal with the effects and risks are considered to be appropriate. There are no anticipated negative impacts associated with the proposed development. The proposed on-site drainage solution would be suitable to attenuate flows up to and including the 1 in 100 year + 30% rainfall event. Surface water from the development would be limited to a maximum rate of 14.9 litres per second and surface water flows from the site would not be increased. On-site storage would be provided through a variety of means such as oversized pipes, crates and the open attenuation area. All surface water will be stored within the site and released at a controlled rate. The on-site sewers will be offered to Severn Trent Water for adoption and connections into the existing sewerage system would be subject to Section 106 approval from Severn Trent Water.
- Ecological Appraisal. The poor semi-improved grassland compartments within the site are considered to be of low conservation value. The compartments were heavily grazed and comprise low species diversity. A single area to the south was ploughed during July 2014 and does not meet the criteria for neutral



grassland. The development layout (indicative) has been designed to retain much of the existing hedgerows although some inevitable disturbance or loss would occur as a result of the construction of the access roads. Mitigation would be provided through the gapping up and enhancement of existing hedges and/or through their replacement elsewhere within the site. With regard to habitats it is recommended that a nature conservation management plan for any retained and newly created habitats be implemented to ensure that the optimal benefits for biodiversity are achieved. The plan should span a minimum of 10 years and include details for appropriate management of semi-natural habitats, e.g. hedgerows, retained grassland and pond and should be designed by an appropriately qualified ecologist.

- Open Space Assessment. The open space provision on site has been calculated in accordance with the National Playing Fields Association Standards of 2.4ha per 1,000 people, resulting in a requirement for 0.43ha of public open space on the site. The actual provision within the indicative layout would be 0.47ha which allows scope for the sustainable urban drainage to be provided within the site without impacting on the amount of usable space for recreation. Some national forest planting would also be within the open space with the remainder being provided off-site via a contribution within the S106 agreement. The 0.47ha also takes account of the revised standard in the emerging Local Plan of 2.54ha per 1000 people. Assuming the Council would adopt the open space a contribution for maintenance would be made in accordance with the Council's requirements.
- Pre-development Tree Survey. All trees on the site have been surveyed from the ground and the survey is based on visual assessment only. A climbing survey has not been undertaken. Specific recommendations for remedial tree works have been included which are valid for 12 months, after which date it may be necessary to reassess the advice. The majority of trees and hedgerows are healthy and require no works to be carried out at present. A small number of specimens require remedial works, including pruning, with a recommendation that three trees be felled, as they are either dead or unhealthy and unlikely to last very much longer.
- Framework Travel Plan. An audit of existing travel facilities has been undertaken which identifies there are a number of facilities already in the vicinity of the sit to encourage travel by sustainable modes, including bus services and pedestrian routes to surrounding residential areas, and key local facilities including schools, health centres and retail. The broad objective of the Travel Plan is to promote the use of non-car modes to travel to and from the site. The Travel Plan has set out a package of measures that may be taken forward upon occupation of the development. It outlines how the Travel Plan would be administered by the co-ordinator in co-operation with the local Highway Authority. It also outlines a target for the reduction in private car use and a strategy for the monitoring and review of the plan. It is concluded that the Travel Plan provides a sustainable access strategy for the development.
- Transport Assessment. The level of traffic likely to be generated by the proposed development in the peak hours has been estimated using the TRICS database, based on a worst case assessment of up to 100 dwellings. The proposed site access junction has been capacity assessed based on opening year 2016 and

future year 2021 traffic flow scenarios with the inclusion of development traffic. Additional technical analysis has been undertaken to demonstrate that the number of development trips utilising the existing Walton Bailey Bridge is negligible and the existing shuttle signals operation can accommodate the proposals. It concludes that the Transport Assessment has demonstrated that the proposed development site is accessible by a variety of sustainable modes of travel and the trips generated by the development can be accommodated by the local highway network.

- Phase 1 Geo-environmental Risk Assessment. This concludes by stating that the site is considered to be suitable for the proposed development from a ground contamination perspective. However, it is considered prudent to undertake a preliminary site investigation to prove ground conditions and investigate the unlikely presence of shallow soil contaminants and ground gas. The site and surrounding areas are dominated by undeveloped agricultural land. A farm and associated farm buildings are located to the west of the site. There is limited potential for localised soil contamination in the western area of the site associated with the farm buildings and their construction. There is limited potential for ground gas associated with potential fill materials. The risk to human health receptors is considered to be low.
- Utilities Report. This confirms that the site is capable of being served by all the major utilities including South Staffs Water, BT Openreach, Western Power Distribution and British Gas.

## **Planning History**

9/2001/0504 – Retention of field shelter – approved 19/07/2001

9/2003/0900 – Outline for one dwelling and garage – refused 09/09/2003

9/2005/1173 – Loft conversion and dormer windows – approved 22/11/2005

9/2006/0122 – Erection of agricultural building for use as a machine store, animal treatment area, and animal shelter for pigs and sheep – approved 04/04/2006

## **Responses to Consultations**

The County Highway Authority comments on both the original application and the amended plan which indicates the slight realignment of the kerblines in order to provide a footway on the east side of Rosliston Road South between the existing and proposed site access. Whilst the footway does not fully comply with the Highway Authority's design criteria in terms of width, in view of the fact that an alternative pedestrian access between Nos. 37a and 41 would be provided and that visibility would be improved at the proposed access and those of the fronting properties, the benefits are considered to outweigh any concerns.

For the number of dwellings proposed a Transport Statement is required to accompany any planning application. With regards to accidents, the submitted document refers to data obtained from the Crashmap website rather than Derbyshire Constabulary and concludes that there is no significant highway safety problem as, in the last 5 years, no personal injury accidents have occurred on Rosliston Road South between the railway

bridge to the north of the site and the extend of the dwellings on the western side of the road. The Highway Authority is looking into accident data on the wider network with a view to identifying any locations where the introduction of the traffic generated by the development would exacerbate an existing situation. In the event that a pattern of problems exist that would be exacerbated by the development traffic, measures to mitigate the impact of the development would need to be addressed and included within the proposal. If investigations find no evidence of accident histories or patterns of causation or suitable mitigation measures are proposed to be implemented at the applicant's cost, the Highway Authority would not raise any objections to the proposal subject to the inclusion of conditions.

In a subsequent letter the Highway Authority confirms that whilst a number of accidents were identified at the crossroads close to the application site, no collisions resulted from vehicles turning into or out of Rosliston Road South towards Swadlincote. On this basis it would be difficult to demonstrate that the existing situation would be exacerbated by the proposed development traffic.

Finally, the Highway Authority is mindful of the fact that the nearby Drakelow Park development is restricted by planning condition and as part of the Section 106 Agreement to the building of no more than 100 dwellings before the Walton Bypass is open to traffic and improvement works are undertaken on Walton Road between the site and the Bypass. It is acknowledged that the current proposal would add to the traffic in the vicinity. Whilst it could be construed that there is a potential inequity between the obligations arising from the Drakelow Park permission and the possible absence of similar requirement being attached to the current application, it is considered that two significant issues arise:

Firstly, it will be recalled that the Transport Assessment (TA) submitted in support of the Drakelow Park proposal pre-supposed that the Walton Bridge and Bypass would be constructed and open to traffic prior to the permission being granted (the Bridge and Bypass having previously been proposed and permission granted in advance of, and unrelated to, Drakelow Park). As it became evident that the Bridge and Bypass would not be constructed in the timescale envisaged it was considered that, rather than requiring the TA to be fundamentally revised to take account of the absence of that infrastructure, and assessing the consequential vehicle trip redistribution and impact, mechanisms would be put in place to provide for a specified number of dwellings being constructed in advance of the expenditure on the Bridge/Bypass and improvements to Walton Road.

Secondly, noting that permission for Drakelow Park was granted in February 2012, the National Planning Policy Framework (NPPF) was published the following month. The current outline application is for up to 75 dwellings and is accompanied by a TA although, strictly speaking, a Transport Statement is generally acceptable when less than 80 dwellings are proposed. Paragraph 32 of the NPPF states that: *'Plans and decisions should take account of whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'*.

In view of the above, it is considered that there is no evidence or justification supporting a requirement for the current proposal to contribute to works on Walton Road or associated with the Walton Bridge/Bypass.

Comments by Derbyshire County Council on the Travel Plan include the requirement for a contribution of £5,000 (i.e. £1,000 per annum for 5 years) towards the Travel Plan monitoring fee, secure and accessible cycle storage and the provision of electric vehicle charging points. The name and contact details of the Travel Plan Coordinator should be supplied to the LPA and DCC on appointment one month prior to first residential occupation and the person should remain in role for the full 5 year lifetime of the plan.

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

Derbyshire County Council requests developer contributions as follows:  
£2,145.75 towards additional waste management capacity;  
£188,937.87 towards the provision of 11 secondary school places (classroom project A at The William Allitt School).

DCC also requires the provision of access to high speed broadband for future residents and new homes designed to Lifetime Homes standards.

DCC Flood Risk Management Team recommends the inclusion of Sustainable Drainage Systems (SuDS) within the proposed development and advises the applicant to contact the Flood Team for guidance.

The County Archaeologist considers there is potential for previously unknown prehistoric/R-B archaeology and likely ridge and furrow earthworks within the site and required the submission of a detailed geophysical survey before commenting further on the application. As such he maintained a holding objection on grounds of non-compliance with the NPPF, para. 128. Since then further information has been submitted which overcomes his concerns subject to further work being carried out following the grant of outline consent and prior to the submission of reserved matters. This would be covered by a suitably worded condition.

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

The Environmental Protection Officer (noise) requires a condition in respect of noise mitigation detailing how noise impacts arising from the adjacent railway line will be controlled.

The National Forest requests conditions to ensure the retention of trees and hedgerows, new tree planting and nature conservation enhancements. There is also a requirement for £11,600 towards off-site planting.

Natural England considers that the proposal is unlikely to affect any statutorily protected sites or landscapes.

Derbyshire Wildlife Trust considers there are unlikely to be any protected species impacts associated with the proposed development but recommends the protection of all hedgerows to be retained during construction works. The Trust does not support the use of existing native hedgerows as private garden boundaries as their long-term retention and appropriate uniform management cannot be guaranteed. As a result their wildlife value is likely to significantly diminish. It is therefore advised that the existing

hedgerows should be retained within undeveloped green corridors with a suitable landscape buffer and that this is reflected in the final layout submitted as part of the reserved matters application. The Trust recommends a condition with regard to no removal of hedgerows, trees or shrubs between 1 March and 31 August.

The neighbouring local authority (East Staffordshire Borough Council) has no objections to the proposal.

The Council's Strategic Housing Manager requests 30% of the development to be affordable housing, of which a minimum of 68.1% should be for rent and a maximum of 31.9% for shared ownership. The housing mix should be as follows:

#### For Rent

15% 1-bed, 2-person flat/house  
40% 2-bed, 4-person house/bungalow  
35% 3-bed 5-person house/bungalow  
10% 4+bed 7+person house/bungalow

#### For Shared ownership

66% 2-bed 4-person house/bungalow  
34% 3-bed 5-person house/bungalow

The Crime Prevention Design Adviser recommends the extension of the pavement up to the new vehicular access and makes comments on the indicative site layout with regard to the overlooking of parking spaces and communal accesses.

### **Responses to Publicity**

The local County Councillor objects to the proposal on the following grounds:

- No requirement for the dwellings as the site has not been identified in the local plan and new housing provision is being made in the area by the Drakelow Park development;
- The application site is a greenfield site which is not sustainable;
- Adverse environmental impacts, such as flora and fauna, diversion of footpaths, covenants on the land, flooding;
- Highway safety, particularly at Flint Mill crossroads, which is an accident blackspot, additional traffic and consequential impact on residents;
- Domestic sprinkler systems should be required for all new properties.

An objection has been received from Drakelow Developments which can be summarised as follows:

- The Drakelow Park development is subject to a planning condition (No.47) which restricts development beyond 100 houses until the Walton bypass has been constructed. It would be entirely unreasonable, illogical and irrational if the Council were to grant permission for this development given that the above restriction was considered necessary for Drakelow Park. The development

would utilise the same infrastructure and therefore, logically, permission cannot be granted until the bypass has been constructed.

- If permission is granted a condition should be imposed precluding development until the bypass has been constructed.
- A financial contribution of £300,000 towards the construction of the bypass should be required, given that it will unlock the highway infrastructure needed to allow the site to be brought forward.

Stapenhill Parish Council has concerns relating to:

- Increased volumes of traffic through Stapenhill;
- Increased HGV traffic through Stapenhill during construction;
- Increased pollution
- Adverse impacts on ecology.

A total of 35 letters and emails have been received in response to the application together with 9 letters/emails that were received prior to the application being submitted. All the representations raise objections to the proposed development, and these can be summarised as follows:

- a. The new footpath and realignment of the road would necessarily need to use land in private ownership and seriously infringe upon the view from the 60mph to the 30mph and would leave no buffer hedgerow or verge;
- b. Further strain on the road network;
- c. Speed surveys should be undertaken as, despite the 30mph limit, large numbers of vehicles regularly travel at speeds between 50 and 60 mph;
- d. Rosliston Road South is used by HGVs as an alternative route to avoid the A444, which has speed cameras in order to monitor speed limits;
- e. Disruption to day-to-day usage of driveways;
- f. Illegal parking will increase;
- g. Potential for increased number of accidents, particularly at Flint Mill crossroads where two deaths have already occurred;
- h. Localised flooding caused by previous road repairs and by the proposed development;
- i. Increased traffic on already busy road will cause congestion, pollution, noise, danger, disruption and invasion of privacy;
- j. Narrow width of road and lack of existing infrastructure;
- k. Lack of need, owing to Drakelow Park development;
- l. No capacity at schools or doctors;
- m. Adverse impact on character of village and the rural community and the open countryside – closure of green gap between Staffordshire and Derbyshire;
- n. Overdevelopment of site – less properties of single storey design would be more in keeping with the area – comparisons with Stapenhill are not relevant as the site is in Drakelow;
- o. Overdevelopment of the area in light of the Drakelow Park development;
- p. Future occupiers are likely to be young people in contrast to the current mature demographic state;
- q. Development of greenfield site (Greenbelt land) in the National Forest is against Government direction;
- r. Lack of pavement, narrowness of road has caused cars to cross the pavement and crash through domestic fences;



- s. Is the Council only interested in increasing Council Tax revenue from new properties rather than acting in the interests of existing local tax payers?
- t. Light pollution caused by street lighting;
- u. Overlooking of outdoor swimming pool and changing rooms and enclosure of existing property, impact on privacy;
- v. Potential increase in crime;
- w. Adjacent land is subject of a livestock holding agreement and allows for the keeping of cattle, pigs, sheep, hens etc. How do the developers intend to secure the boundary and avoid future confrontation that could arise?
- x. Lack of detail within the application, such as boundary screening;
- y. Lack of existing public transport to schools and doctors with one existing service currently under threat;
- z. No garages will result in cars being parked on the road which is inappropriate for the area;
- aa. Existing covenant forbids the use of the land for anything other than the keeping of chickens;
- bb. Blight on existing properties;
- cc. Impact on ecology including newts and wildlife habitats and feeding grounds for buzzards, kestrels etc;
- dd. Devaluation of existing property

## **Development Plan Policies**

The relevant policies are:

Adopted Local Plan: Saved Housing Policies 6, 8, 9, 11; Saved Environment Policies 1, 9, 10, 11, 14; Saved Transport Policies 6, 7; Saved Community Facilities Policy 1B; Saved Recreation & Tourism Policy 4.

Emerging Local Plan: Policies S2, S6, H1, SD1, SD4, BNE1, BNE3, BNE4, INF1, INF2, INF6, INF7, INF8, INF9.

Supplementary Planning Guidance: Housing Design and Layout

## **National Guidance**

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 17, 28, 47, 49, 50, 55, 57, 58, 59, 61, 69, 109, 112, 118, 186, 187, 196, 197, 203, 204, 206

National Planning Practice Guidance (NPPG), ID 50-001-20140306 – Rural Housing; ID 30-001-20140306 – Noise; ID 37-001-20140306

## **Planning Considerations**

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

- The principle of the development
- The Council's five-year housing land supply and sustainability
- Visual impact
- Highway matters
- Ecology issues
- Miscellaneous issues, including the loss of agricultural land
- Section 106 obligations

## Planning Assessment

### Principle of development

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

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

- *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *Specific policies in the NPPF indicate the development should be restricted”*.

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

The application site is located within the countryside, to the rear and south of existing residential properties that make up the small linear settlement of Drakelow, which comprises dwellings mainly positioned along both sides of Rosliston Road South. The old Leicester Line railway forms the north eastern boundary beyond which is an area of Green Belt that prevents urban sprawl between Burton upon Trent and Swadlincote. The weight to be attached to Local Plan policies is dependent on their level of consistency with the NPPF (para.215). The adopted Local Plan contains numerous saved policies relating to new residential development and countryside development that have been considered to be consistent with the NPPF although recently, an appeal decision questioned the validity of some policies in certain circumstances. When assessing this application against the adopted Local Plan it is clear that the proposals would be contrary to Housing Policies 6 and 8 and Environment Policy 1. It is evident that the site is not within a village confine, with Drakelow being classed as a rural settlement with no settlement boundary, but rather that the site lies in open countryside outside any settlement boundary.

Saved Housing Policy 6 only supports new housing development in rural settlements provided that they represent the infilling of a small gap for not more than two dwellings within small groups of housing and they are in keeping with the scale and character of the settlement.

Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or that it is necessary to be in a countryside location.



Part A of Environment Policy 1 is similar to Housing Policy 8 in that it requires new development to be either essential to a rural-based activity or unavoidable in the countryside.

Whilst it is evident that the proposal does not meet any of the criteria in these three policies, it is clear that they should not be solely instrumental in reaching a decision on whether to approve or refuse consent as they could be considered to be out-dated when considering development of sites of this size when weighed against the need for housing in the district.

The Emerging Local Plan Part 1 was examined in Public at the end of November into December 2014. The Inspector has written to the both South Derbyshire and the Derby Housing Market Area authorities with further work that is required before the process can continue. In the Plan, Policy H1 – Settlement Hierarchy – includes Drakelow Village as a rural settlement where the level of housing accepted will be limited infill and conversion of existing buildings and local scale affordable and cross subsidy housing will be promoted on appropriate sites. Clearly, this is not the case here. However, although some weight can be afforded to the Emerging Plan now that it has progressed beyond its consultation stages and has reached the Examination stage, it would not be advisable to attribute it significant weight until such time as the Plan has been found to be 'sound' following the Inspector's Report.

Given that the proposals do not accord with Saved Housing Policies 6 and 8 and Environment Policy 1 of the adopted Local Plan, it is considered that the principle of the development has not been satisfied. Notwithstanding this, Members will be aware that the decision is not as clear cut as the above policy considerations appear to suggest. Another important material consideration is the Council's five year housing land supply.

#### The Council's Five year Housing Land Supply and Sustainability

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

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. It has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal

planning circumstances for any given development is not likely to outweigh the presumption.

The Council currently is unable to demonstrate that it has a five year housing land supply (the current figure is below four). Paragraph 49 of the NPPF is specific on this subject. It states: Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites. It follows, therefore, that, as the Council is unable to demonstrate a five year housing supply, Members should be approving the current proposal, provided that they consider the scheme to be sustainable development.

Whilst it is acknowledged that Drakelow village itself is devoid of any local services, it being comprised mainly of two rows of houses along Rosliston Road South, its close proximity to the local services available in Stapenhill to the immediate north of the village would meet the sustainability test for the site. Stapenhill, which is well within walking distance, offers a range of facilities, including a public house and a variety of shops, and is also served by much-used public transport.

Members will be aware of the recent appeal decision for High Street, Linton, where the Inspector concluded that Linton was sustainable, even though the available services were limited. In this case the range of local services available is much wider and more readily available. Consequently, it is considered that the site is sustainable and therefore it would meet the sustainability objectives of the NPPF.

Picking up the Inspector's conclusions within the Linton appeal and, indeed, continuing the theme that runs through the majority of other recent appeals, it is clear that regard must be had to paragraph 14 of the NPPF in that (if the presumption in favour of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit, not just marginally but rather '*significantly*' and '*demonstrably*'.

### Visual impact

The majority of the application site is located to the rear of existing residential properties along the eastern side of Rosliston Road South confined by the railway line and as such would not feature as an intrusive or incongruous development in its location when viewed from the public realm. That said, the existing properties are predominantly single storey and therefore it is likely that a development of two-storey dwellings would have some impact on the surrounding area, mainly when approaching the site from the south (Rosliston). The creation of the new vehicular access would lead to the loss of some hedgerow although the majority of existing boundary hedgerows would be retained and enhanced. The application is in outline and therefore matters of layout and design are reserved for later approval. The indicative layout is fairly non-prescriptive, which provides a good opportunity to work with the developers prior to the submission of reserved matters in order to achieve a high quality design which reflects the character of the area both in terms of its countryside setting and existing development. Owing to the generous sizes of the gardens of the dwellings to the west of the site it would be possible to design an acceptable layout that would respect the privacy of the existing residents whilst achieving a development that would score highly when assessed

against the Building for Life criteria. There are no public rights of way within the site that would restrict the layout. The intention to retain existing boundary planting and hedgerows is to be welcomed and this would mitigate the impact of the development to a significant degree.

In conclusion it is considered that the location of the site is relatively recessive and any visual impact of the development could be minimised by ensuring the retention of existing boundary treatments together with additional planting where necessary and by working with the applicant prior to the submission of reserved matters to bring forward a high quality design that maximises its rural setting and features.

### Highway matters

The development would be served by a single vehicular access, which would be positioned to the south of No.45 Rosliston Road South, where an existing gated field access is located. A pedestrian/cycle access would also be provided where an existing vehicular access serving No.39 is currently located.

The County Highway Authority (CHA) has commented on the proposed slight realignment of the kerbline in order to provide a footway on the eastern side of Rosliston Road South. Whilst the proposed footway does not fully comply with the CHA's design criteria in terms of width, the provision of the alternative pedestrian/cycle access into the site would off-set this and therefore the benefits are considered to outweigh any concerns. Incidentally, the installation of the additional footway would be carried out within highway limits and would not require any third party land.

The issue of additional vehicles and the increased use of the highway network in the vicinity of the site forms one of the major concerns of neighbouring residents. It has to be acknowledged that this section of Rosliston Road South is heavily trafficked and busy throughout most of the day. However, information submitted as part of the application indicates that between the Rosliston Road railway bridge to the north to the extents of dwellings on the western side of Rosliston Road South no accidents were recorded in the most recent 5 year period (2008 to 2012 inclusive). As such it is considered that there would be no significant highway safety problems requiring mitigation as a result of the development. The CHA has studied accident data on the wider network and has concluded that whilst a number of accidents were identified at the crossroads some 120m to the south of the application site, no collisions resulted from vehicles turning into or out of Rosliston Road South. On this basis the CHA is of the view that it would be difficult to demonstrate that the existing situation would be exacerbated by the proposed development and the additional traffic likely to be generated.

The CHA is mindful of the potential inequity between the development of Drakelow Park and this development. The Drakelow Park development is restricted by planning condition and Section 106 obligations to building no more than 100 dwellings before (i) the Walton bypass has been constructed and is open to traffic; and (ii) improvement works to Walton Road have been undertaken. As detailed above, the CHA acknowledges that the current proposal is likely to add to the traffic in the vicinity. However, it considers that two significant issues arise:

1. The Drakelow Park Transport Assessment (TA) pre-supposed that the Walton bypass would be constructed and open to traffic prior to planning permission

being granted. As it became evident that this would not occur during the timescale envisaged a decision was made to provide for a specified number of dwellings being constructed in advance of the bypass being constructed rather than fundamentally revise the TA to take account of the absence of the infrastructure and re-assessing consequential trip redistribution and impact.

2. The permission for Drakelow Park was granted in February 2012 and the NPPF was published the following month. Paragraph 32 of the NPPF states *inter alia* that 'Plans and decisions should take account of whether improvements can be undertaken within the transport network that, cost effectively, limit the significant impacts of development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'.

In view of the above the CHA considers there is no evidence or justification supporting a requirement for the current proposal to contribute to works on Walton Road or associated with the Walton bypass.

### Ecology issues

The site contains two ponds: a small waterbody adjacent to the site's eastern boundary and a shallow depression/ditch adjacent to a hedgerow along the access to No.39. No Great Crested Newts were found during the surveys. Similarly, no evidence of badgers, including setts, and reptiles were observed. The hedgerows, trees and scrub all provide suitable nesting habitat for bird species in the local area and it would be prudent, therefore, to include a condition or informative regarding nesting birds.

A number of features within the site are likely to provide opportunities for foraging bats, including a single horse chestnut tree, although there was no evidence of bats found at the time of the surveys. Of the existing buildings on the site three were assessed as being unsuitable to support bat roosts with the remaining two having low potential. Nocturnal surveys carried out during June and July 2014 indicated that no bats entered or left the buildings during the surveys.

It is considered, therefore, that there is unlikely to be any protected species that would be adversely affected by the proposed development. However, it would be of benefit to include a requirement for the provision of bat and bird boxes within the development in order to encourage wildlife into the development.

The comments of Derbyshire Wildlife Trust have been noted and it is proposed to include suitably worded conditions or informatives in regard to hedgerows and nesting birds as part of the permission.

### Miscellaneous issues, including the loss of agricultural land

With regard to the loss of agricultural land, paragraph 112 of the NPPF advises local planning authorities to '*take into account the economic and other benefits of the best and most versatile agricultural land and that, where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use poorer quality land in preference to that of a higher quality*'. The paragraph has its origins in PPS7 (now superseded). In terms of the NPPF it should be recognised that although the soils on the site could support arable crops, in practice the land is

significantly restricted in terms of its ability to be farmed sustainably to its potential. Owing to their small size and awkward shape, the fields are inherently unsuitable for arable cropping; they do not form part of any farming unit and it is understood that they are only used incidentally by the occupiers of Nos. 39 and 45 Rosliston Road South (the applicants). Their contribution to the local economy is therefore considered to be negligible. Looking again at the Inspector's decision for the Linton appeal, he concluded that *"There is no compulsion in the NPPF for developers to use poorer quality agricultural land, although paragraph 112 encourages significant development to do so. There is, however, no definition in the NPPF of what is meant by the term 'significant development'. The same paragraph advises local planning authorities to take into account the economic and other benefits of the best and most versatile agricultural land"*. He went on to state that the NPPF is not intended to prohibit development on land just because it is currently in use as agricultural land, otherwise there would be no growth at all outside settlement boundaries. He consequently did not give much weight to the argument.

### Section 106 obligations

Saved Community Facilities Policy 1B of the adopted Local Plan requires that major developments make adequate provision for community facilities, infrastructure and amenities made necessary by the development. This is supported in section 203 of the NPPF.

As part of the application documentation, the applicants have offered various obligations including affordable housing, open space/recreation facilities transport infrastructure and travel schemes, education and community facilities, recycling facilities and healthcare. With regard to affordable housing the applicants are happy to have this requirement within the Section 106 rather than by condition.

With regard to education, Derbyshire County Council has confirmed that Rosliston Primary School has spare capacity and is likely to have during the next 5 years. Consequently, there is no requirement for a contribution towards primary school places. Pupils currently attending the William Allitt Secondary School outweigh its capacity with a further projected increase over the next five years. As such, there is a requirement for a financial contribution of £188,937.87 towards the provision of 11 secondary places via the adoption of a classroom.

Applying the tests within paragraphs 203 and 204 of the NPPF with regard to planning obligations, contributions must be:

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

With regard to health contributions, the Derbyshire and Nottinghamshire Area Team of NHS England has yet to respond to the consultation. Whilst the Council often requests contributions for healthcare in new housing developments, this must be underpinned by evidence of need, and as that evidence has not been submitted by the NHS a financial contribution cannot be justified in this instance.



As already stated above, the NPPF advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Planning obligations should only be sought where they meet all the tests.

Taking each obligation in turn and applying the tests, the obligations listed below are considered to be reasonable and necessary to make the development acceptable:

- £28.61 per dwelling towards additional waste management capacity
- £188,937.87 towards the provision of 11 secondary places at William Allitt School
- Recreation comprising £372 per person for open space, £220 per person for outdoor facilities and £122 per person for built facilities plus a financial contribution towards the adoption/maintenance/management of the on-site public open space facilities and the SuDS
- £5,000 towards Travel Plan Monitoring
- The provision of 30% affordable housing of a tenure and mix specified by the Strategic Housing Manager and agreed with the applicants
- The provision of a minimum of 0.58ha on-site National Forest Planting. If it is not possible to provide a minimum of 0.58ha planting on site a financial contribution towards the shortfall can be required for off-site planting
- On-site provision of landscaped public open space/play space of 0.47ha minimum. The proposed play area to be equipped with natural play equipment.
- Works for the realignment of Rosliston Road South and the provision of a footway as indicated on the submitted drawing 1240-01 Revision B.

### Overall Conclusions

As previously discussed there is a difficult balance to be struck in the determination of this application and the decision will not be as clear cut as one would wish. The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues. The County Highway Authority is satisfied that the development could be made acceptable in highway safety terms with the imposition of conditions. Similarly, any wildlife within the site could be protected by mitigation and monitoring work. The detailed layout, design and impacts of the development would be given careful consideration at reserved matters stage. Therefore, the decision falls to be determined on more fundamental issues of principle. Whilst the application appears to be contrary to Housing Policies 6 and 8 and Environment Policy 1 of the adopted Local Plan, this is outweighed by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to 'significantly boost the supply of housing'). In this context involving a development that could be argued to be relatively sustainable, and given that the Council cannot currently demonstrate a five year housing land supply and only limited weight can be afforded to the emerging Local Plan, and bearing in mind the result of the Linton appeal, it is strongly recommended that the application is approved, subject to the applicant entering into a Section 106 Agreement to cover the above obligations and subject to conditions.

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

## Recommendation

- A. That the Committee delegate authority to the Planning Services Manager to conclude the signing of a Section 106 Agreement in pursuit of the provisions and contributions as set out in the planning assessment above;
- B. Subject to A, **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 three 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 and landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced. The submitted landscaping details shall include a significant amount of new tree planting to reflect the site's location within the National Forest.

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

- 3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) 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 existing buildings and the locality generally.

- 4. The submitted landscaping scheme required under Condition 2 above shall include details to show how the existing trees and hedgerows would be retained and protected during the course of development. The hedgerows that are to be retained and incorporated within the development shall be provided with undeveloped green corridors and a suitable landscape buffer. The works shall be carried out in accordance with the approved details.

Reason: In the interests of protecting wildlife and their habitats.

- 5. All planting, seeding or turfing comprised in the approved details of landscaping under condition 2 above shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting

season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

6. No development shall take place until 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. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

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

D) No development shall take place until monitoring at the site for the presence of ground/landfill 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 of the site which might be brought to light by development of it.

8. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design,



materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

10. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

11. Prior to the commencement of development a Nature Conservation Management Plan, to include biodiversity enhancements and the incorporation of bat and bird boxes within the development shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: In the interests of nature conservation.

12. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive unless a competent ecologist has undertaken a careful check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect nesting birds in the interests of nature conservation.

13. Prior to the commencement of development details of a scheme of noise mitigation, specifically detailing how noise impact from the adjacent railway line will be controlled, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In order to protect the amenities of the future residents of the development.

14. 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/organisation 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 'A' above.

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 'A' above 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.

15. Prior to any other works commencing, a detailed design based on the topographical survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority for the new access into the site, the new footway on the eastern side of Rosliston Road South fronting Nos. 41 to 45 and the application site and the realignment of the carriageway, generally in accordance with the amended application drawing No. 1240-01 Revision B.

Reason: In the interests of highway safety.

16. 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. The access shall have a minimum width of 5.5m and be provided with 2.4m x 35m visibility sightlines in each direction, the area forward of which shall be cleared and maintained clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

17. No development shall take place until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto the highway, pedestrian and cyclist protection, proposed temporary traffic restrictions and arrangements for turning vehicles.

Reason: In the interests of highway safety.

18. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site. All construction vehicles shall have their wheels cleaned before leaving the site.

Reason: In the interests of highway safety.

19. The gradient of the new estate street shall not exceed 1 in 30 for the first 10m into the site and 1 in 20 thereafter.

Reason: In the interests of highway safety.

20. No building shall be occupied until a drainage scheme for the disposal of highway surface water has been completed in accordance with details first submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall take the form of a positive gravity-fed system, discharging to an approved outfall/public sewer, highway drain or watercourse, or a sustainable drainage system, which shall be managed thereafter in accordance with the agreed management and maintenance plan.

Reason: In the interests of highway safety.

21. Prior to the first occupation of any dwelling, the new estate street junction shall be constructed to Rosliston Road South. The access shall be laid out in accordance with the detailed design approved under condition 13 above, having a minimum width of 5.5m, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction. The area forward of the sightlines shall be cleared, constructed as footway and taken into the highway.

Reason: In the interests of highway safety.

22. Prior to the first occupation of any dwelling, the carriageway realignment and provision of the footway on Rosliston Road South in the vicinity of the application site shall be provided. The works shall be laid out and constructed in accordance with the detailed design approved under Condition 13 above.

Reason: In the interests of highway safety.

23. The internal layout of the site shall be in accordance with Derbyshire County Council's 6C's Design Guide and Manual for Streets.

Reason: In the interests of highway safety.

24. A swept path diagram of the site shall be submitted at reserved matters stage to demonstrate that emergency and service vehicles can adequately enter/manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

25. Notwithstanding the submitted details, the existing access to No.39 Rosliston Road South located between Nos. 37a and 41, shall be reserved for pedestrians and cyclists only. The route shall be constructed to adoption standards with measures to prevent vehicular use of the route. The existing dwelling shall be served via the new estate street.

Reason: In the interests of highway safety.

26. Unless otherwise agreed in writing by the Local Planning Authority, space shall be provided within the site for the parking of two vehicles per dwelling and maintained throughout the life of the development free of any impediment to their designated use.

Reason: In the interests of highway safety.

Informatives:

Derbyshire County Council's Flood Risk Management Team strongly recommends that a Sustainable Drainage System (SuDS) be incorporated with the design of the detailed development and the applicant is advised to contact the Flood Team for guidance on the drainage strategy before the submission of the reserved matters application. Please

contact Chris Rogers on 01629 538092 for further information and assistance.

The monitoring of the archaeological work required will be undertaken by Derbyshire County Council and the applicant is advised to contact Steve Baker in the first instance for advice on the production of the written scheme of investigation on 01629 539773 or [steve.baker@derbyshire.gov.uk](mailto:steve.baker@derbyshire.gov.uk)

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to August inclusive. If you are in doubt as to requirements of the law in this regard you should contact Derbyshire Wildlife Trust on 01773 881188

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

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 [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/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 pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk). Prior to the submission of reserved matters the applicant is advised to seek the advice of the Crime Prevention Design Adviser at Derbyshire Constabulary to agree a layout that would overcome some concerns with regard to the potential for crime. Please contact Keith Beswick on 0300 122 5392.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property. Derbyshire County Council recommends the applicant to consider making separate enquiries with broadband providers for the provision of broadband services for the development. Further information can be obtained from [http://www.openreach.co.uk/orpg/home/contactus/connectingyourdevelopment/downloads/developers\\_guide.pdf](http://www.openreach.co.uk/orpg/home/contactus/connectingyourdevelopment/downloads/developers_guide.pdf)

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

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

**Item** 1.2

**Reg. No.** 9/2014/1032/FM

**Applicant:**  
Mr Dave Holmes  
Threeways  
Lullington Road  
Coton In The Elms  
Swadlincote  
DE12 8EW

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

**Proposal:** THE ERECTION OF A REPLACEMENT DWELLING AND  
DETACHED GARAGE AND FORMATION OF NEW  
VEHICULAR ACCESS AT THREWAYS LULLINGTON  
ROAD COTON IN THE ELMS SWADLINCOTE

**Ward:** SEALES

**Valid Date:** 30/10/2014

**Reason for committee determination**

The application could be construed as partly contrary to the development plan and therefore requires careful consideration by the committee.

**Site Description**

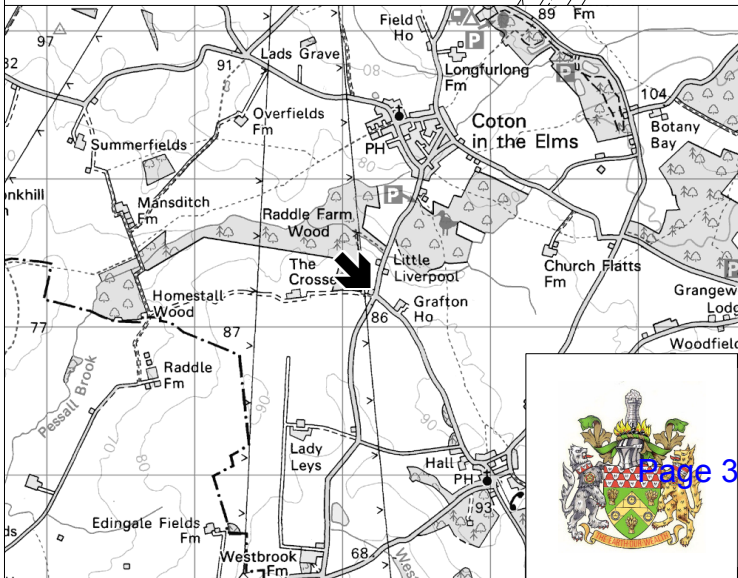
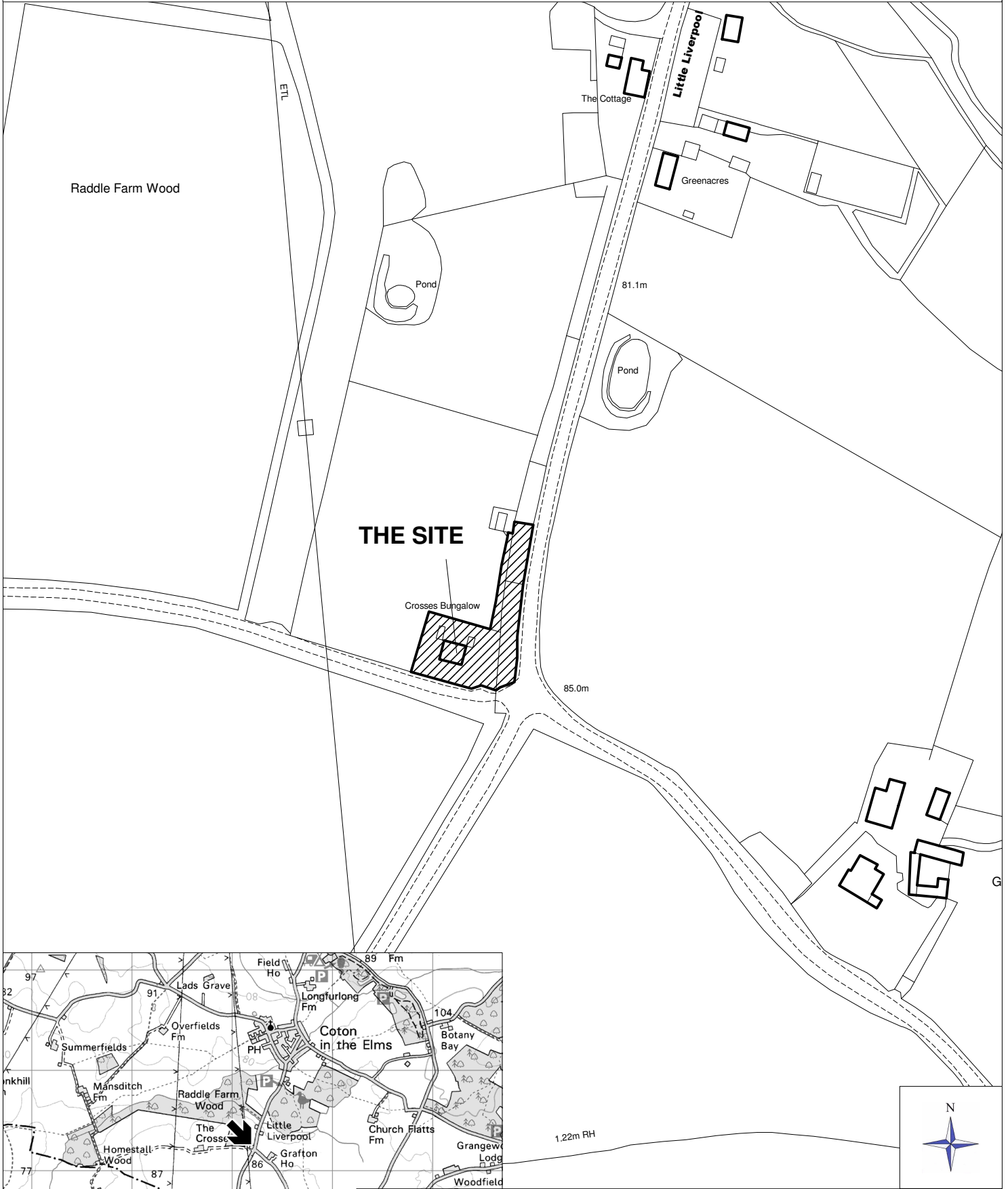
The existing dwelling known as Threeways (or Crosses Bungalow) is a single storey brick and tile property set within a good sized plot located at the junction of Little Liverpool, Lullington Road and a farm access track. The vacant dwelling is in a dilapidated state of repair with a part collapsed roof, exposing the property to the elements. The property has been badly vandalised and contributes very little to the surrounding rural area. The site lies outside the confines of Coton in the Elms and is within open countryside.

**Proposal**

The application is for the demolition of the existing dwelling and its replacement with a detached, part single and part two-storey, five-bedroom dwelling and detached double garage/loose box/store, together with the formation of new vehicular access off Little Liverpool Road. The proposed detached garage would be located to the northeast of the dwelling with its side elevation facing the road.

A new vehicular access would be created onto Little Liverpool Road and the existing access would be closed off.

9/2014/1032 - Threeways, Lullington Road, Coton in the Elms, Swadlincote DE12 8EW



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**South Derbyshire District Council. LA 100019461. 2014**



## **Applicants' supporting information**

The application is accompanied by a Design and Access Statement and a Bat and Bird Survey. These documents can be summarised as follows:

### Design and Access Statement

- The proposal is for one bespoke family dwelling
- The existing dwelling and garage has a total footprint of 94.7 square metres; the proposed dwelling and garage would have a total footprint of 306.2 square metres.
- The position of the new dwelling would maximise the site area and provide a more private dwelling
- The finished floor level would reflect the existing natural topography with a ridge height of 9.73m for the dwelling and 6.2m for the garage
- New boundary walls behind hedgerows would frame the garden
- Design and materials have been chosen to blend with the local vernacular
- Proposal would represent a positive addition to the local economy
- Foul drainage would be via a Klargester bio-disk treatment plant
- The new vehicular access would be safer than the existing
- The site has good connections to local facilities and the wider area

### Bat and Bird Survey

- No evidence of bats using the building
- The vandalism that has occurred to the building has opened the building to the elements and thereby reduced roosting opportunities for bats
- No requirement for emergence surveys
- Some evidence of birds nesting in existing garage
- New roosting opportunities for bats should be incorporated into the development
- Hedge replacement will provide opportunities for nesting birds.

## **Planning History**

None found.

## **Responses to Consultations**

The County Highway Authority considers that the proposed new vehicular access remains substandard but is an improvement over that available at the existing access. As such there are no objections subject to conditions.

Derbyshire Wildlife Trust considers that, as the building has been vandalised and opened up to the elements, it is unlikely that it would support roosting bats. A swallow's nest was recorded in the garage in 2012 but showed no signs of occupation during 2014. DWT supports the recommendation in the ecology report to incorporate suitable bat roosting opportunities into the new property and a suitably worded condition is recommended

Natural England has no objections with regard to the River Mease SSSI or SAC and advises that an Appropriate Assessment under the Habitats Directive is not required in

this instance. NE is also satisfied with the principle of the package treatment plant in the proposed location given the distance to the Pessall Brook which flows into the River Mease. The proposal for surface water to drain to soakaway should be secured by condition or legal agreement.

Severn Trent Water has not yet commented on the proposal.

Coton in the Elms Parish Council has no objections.

## **Responses to Publicity**

One email of support has been received which 'likes the appearance of the planned development'.

## **Development Plan Policies**

The relevant policies are:

Saved Local Plan: Housing Policies 8B, 11; Environment Policies 1, 10; Transport Policy 6

Local Plan Part 1 (Submission Version): S6, H1, H19, SD1, SD4, BNE1, BNE3, BNE4, INF2, INF8

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs 7, 8, 14, 17, 47, 49, 56, 57, 109, 111, 119, 165, 186, 187

National Planning Practice Guidance (NPPG)

## **Local Guidance**

Housing Design and Layout SPG

## **Planning Considerations**

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

- Design and layout and compliance with Policy
- Highways

## **Planning Assessment**

### Design and layout and compliance with policy

The existing property is of a single storey, somewhat dated design and, for the most part, is hidden behind the boundary hedgerow that follows the line of the road. The property is currently vacant and, judging from its dilapidated appearance, has been so for some time. The property has been vandalised and stripped over the past few months, with the loss of lead and roof tiles. Part of the roof has collapsed exposing the building to water penetration and other elements. A domestic single garage within the



site is also in a state of disrepair and the associated garden land is overgrown and unkempt.

The proposed replacement dwelling would be positioned in a similarly central location within the site and be of a more traditional appearance with steeply pitched roofs, gabled extrusions and angular bay windows. A number of windows would have segmental brick arches with central keystones with others being positioned closely under the tog tooth corbelled eaves. The design of the proposed dwelling is considered to be appropriate for a larger family residence.

The proposed detached garage would provide parking for two vehicles and the size of the plot would also allow for ample manoeuvring space for four vehicles. The existing driveway would be closed off and the new splayed access created to the south of the proposed garage.

The proposed dwelling would be much larger than the original dwelling in terms of footprint, form and bulk, and, owing to its two-storey design, would be significantly more visible from the surrounding area particularly when approaching the site from Coton in the Elms and the Lullington direction. The most relevant adopted Local Plan Policy is Saved Housing Policy 8 (B), which supports replacement dwellings in the countryside provided that:

- (i) The form and bulk of the new dwelling does not substantially exceed that of the original;
- (ii) The design and materials are in keeping with the character of the surroundings;
- (iii) The new dwelling is on substantially the same site as the old; and
- (iv) There is no increase in the number of dwelling units.

As part of pre-application correspondence with the agent it was made clear that the proposed dwelling would not meet the first criterion of the above policy as the form and bulk of the proposal would exceed that of the original quite substantially. In this instance, however, there is a strong case to be made that the existing dwelling is neither attractive nor capable of providing a unit of accommodation that suits modern-day family living without extensive alterations, extensions and modernisation. It is considered that its replacement with the proposed dwelling would enhance the character of the rural area, improve the street scene to a considerable degree and result in a much tidier appearance of the site generally.

In terms of the emerging Local Plan Part 2, Policy BNE1 expects new development to be well designed and to follow a series of design principles, one of which is that it should respond to its context and have regard to valued landscape, townscape and heritage characteristics.

The site is fairly isolated in terms of neighbouring residents and therefore it is unlikely that the proposal would have any undue adverse impact in terms of privacy and amenity. The proposal is in compliance with Saved Housing Policy 11, criterion h) of Policy BNE1 of the emerging Local Plan and the Housing Design and Layout SPG.

In terms of national policy the proposal would meet the guidelines within the NPPF, particularly with regard to the delivery of housing and the importance of good design.

### Highway Issues

Prior to the submission of the application discussions were had with the County Highway Authority with regard to the formation of the new vehicular access. The existing vehicular access into the site leads off the farm track to the south of the site. Visibility to the north and south from the farm track is poor owing to the presence of field boundary hedges and the alignment of the road. The situation would be improved by the provision of the new vehicular access as it would be located further to the north and provide for longer sightlines in both directions. Whilst it would still not be ideal the County Highway Authority recognises that it would be an improvement and therefore finds it difficult to object on highway safety grounds.

The parking and manoeuvring space within the site would be adequate for a dwelling of this size and consequently there are no objections on highway safety grounds.

### Conclusion

Whilst the proposal clearly does not fully conform to adopted Local Plan Saved Housing Policy 8 (B), there is an argument for approving the submitted scheme in that it would result in a considerable improvement to the site and the surrounding area. The existing building and untidy nature of the site has a negative impact on the character of the area and it is considered the proposed replacement dwelling would remove this blight and go some way to improving the visual appearance of the local landscape.

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. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to

be retained, together with measures for their protection in the course of development.

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

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

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

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Prior to the commencement of development, details to show roosting opportunities for bats under the ridge tiles of the new roof of the proposed dwelling shall be submitted to and approved in writing by the Local Planning Authority and the works shall be carried out in accordance with the approved details.

Reason: In the interests of ecology.

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

Reason: In the interests of flood protection.

8. Prior to any other works commencing a temporary access shall be formed to the classified road on the eastern side of the site frontage. The access shall be located in accordance with the application drawing and provided with visibility sightlines of 2.4m x 40m to the north and 2.4m by 35m to the south, the area forward of which shall be cleared and maintained throughout the life of the development free of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

9. Prior to first occupation of the new dwelling the access shall be laid out in accordance with the application drawing and constructed as a splayed vehicular crossover in accordance with Derbyshire County Council's specifications for vehicular accesses. The access shall be provided with visibility sightlines of 2.4m x 40m to the north and 2.4m x 35m to the south, the area forward of which shall be cleared and maintained throughout the life of the development free of

any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

10. Notwithstanding the submitted drawing any gates shall be set back 5m from the highway boundary and designed so as to open inwards only.

Reason: In the interests of highway safety.

11. Prior to the first occupation of the new dwelling the car parking and manoeuvring space shall be laid out in accordance with the application drawing and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

#### Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 533190 or email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) for further information.

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

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

The applicant is advised that the length of hedgerow to be removed should be minimised as much as possible. Hedgerows are a Habitat of Principle Importance under the provisions of the NERC Act 2006. To compensate for the loss of hedgerow it is recommended that a replacement hedgerow is planted using native species in order to be of maximum biodiversity benefit.

It is further recommended that bird nesting opportunities are incorporated into the proposed development in order to promote maximum biodiversity benefits.

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

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

**Item** 1.3

**Reg. No.** 9/2014/1046/FH

**Applicant:**  
Mr R Minton  
68 High Street  
Repton  
Derby  
DE65 6GF

**Agent:**  
Mr Darryn Buttrill  
bi Design Architecture Ltd  
79 High Street  
Repton  
DE65 6GF

**Proposal:** THE ERECTION OF EXTENSIONS AND EXTERNAL ALTERATIONS AND THE DEMOLITION OF A SINGLE STOREY LEAN-TO AT 68 HIGH STREET REPTON DERBY

**Ward:** REPTON

**Valid Date:** 12/11/2014

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

This application is brought before Committee at the request of Councillor Stanton as local concern has been expressed about a particular issue.

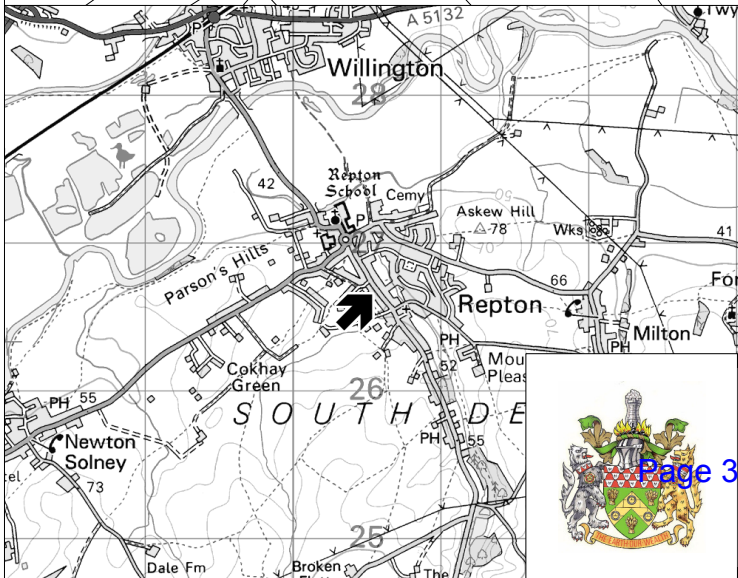
#### **Site Description**

The application property is a 2-storey detached dwelling situated on the main thoroughfare through the village and within the Repton Conservation Area. The property is a long narrow building that has a gabled elevation that fronts the highway. The property sits on an incline which starts at highway level and rises towards the rear garden – the difference in levels between the application site and the adjacent properties and their back gardens being approximately 3 metres.

#### **Proposal**

The proposal is for the erection of a single storey extension to the northwest side of the property to provide a corridor between the internal rooms and a single storey replacement extension and a porch canopy to the southeast side. The existing front door is to be replaced by a single light window to a pattern that matches the existing windows on this elevation. Other external alteration include the replacement of a boarded door on the south west side with a half glazed timber door, the replacement of a second boarded door with a single light window and the replacement of an existing window with a half-glazed door with the new canopy above.

#### **Applicants' supporting information**



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There is no supporting information since Design and Access Statements are no longer a requirement for householder applications in a conservation area.

## **Planning History**

There is no planning history that is of relevance to the current proposal.

## **Responses to Consultations**

Repton Parish Council objects to the proposal on the grounds that;

- it will result in a high extension up to the boundary line which will dwarf and overlook the neighbouring properties;
- the line of the development is too close to the party wall;
- the view from High Street will be changed and this is within the conservation area; and
- further development will not be in keeping with the Village Design Statement.

## **Responses to Publicity**

2 representations have been received covering the following:

- The neighbour is very concerned with the lean-to extension to the right hand side of the building. The designers claim it will not affect the look of the property but it will from the gardens of No's 60, 58 and 56 High Street.
- There is a concern that not only will the neighbour suffer further loss of privacy but, due to the lack of gap between the proposed lean to and the neighbour's property line, there will be issues with drainage, destruction of hedging during building and, for the sake of a corridor, loss of peace and privacy in the neighbour's garden.
- The property is currently faced with white pebble, the plans state brick and aspects of the property due to be altered also includes stone. The plans imply a third visible building material creating a patchwork of materials on one property.
- The character of this part of the High Street will be altered by the work. The lean-to will take away what little privacy the neighbour has in their small end terrace garden, creating the effect of further terracing along the High Street with its proximity to the property line. The proposed works will have a visual and noise impact (by having the sounds of a corridor right next door to the neighbour's property).
- The neighbour's property also lacks a corridor to link rooms but that is the nature of many properties in Repton. The lean-to corridor is a clumsy addition to the property, it affects the look of the area and the privacy of the neighbour's property.
- If approved the application will have an adverse impact on the immediate area.
- The objector lives at 58 High Street, a nearby property, and the extension will go straight up to the border of No. 60 and take away natural light and space that will impact on the objector's garden. Being so close it will also take away some privacy.
- The extension is not of a character expected in a conservation area. It will appear as an unusual "block" from the objector's garden and the view from High Street will be out of kilter with the rest of the local environment.

- The applicants have a poor track record of border maintenance. Several years have passed since a wall they own collapsed into 50 High Street and it has still not been repaired.
- The objector will be very concerned if permission is granted that will directly and negatively impact on his privacy and the character of the conservation area.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Saved Environment Policies 12 and 13 and Saved Housing Policy 13 of the Adopted Local Plan.

Emerging Local Plan: Policies BNE1 and BNE2.

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs 11-14 (presumption in favour of sustainable development), 57, 58 and 61 (requiring good design), 186 and 187 (positive decision-taking) and 196 and 197 (determining applications) and Chapter 12 (Conserving and enhancing the historic environment).

National Planning Practice Guidance (NPPG) – ID:21b-006 and ID:21b-014 (determining an application), ID:26 (good design), ID:18a-001 and ID:18a-018 (historic environment).

## **Local Guidance**

Supplementary Planning Guidance:

- Extending Your Home (SPG)
- Repton Conservation Area Character Statement – Adopted 2013

## **Planning Considerations**

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

- The impact of the proposal on the house and the character and appearance of the conservation area; and
- The impact of the proposal on the amenities of the neighbouring properties.

## **Planning Assessment**

### The impact of the proposal on the house and character and appearance of the conservation area

The property has been identified as a building that contributes positively to the special architectural or historic character of the conservation area in the Adopted Repton Conservation Area Character Statement.

The proposed single storey extension on the northwest side of the property is sympathetic to and in scale with the host property. The proposed extension is to be set



back from the principle elevation that fronts High Street by approximately 10 metres and would only be visible when viewed directly from the front of the property. Due to its set back position, the proposed extension would not adversely affect the street scene, or the character and appearance of the conservation area, when travelling in either direction along High Street.

The proposed single storey extension to the southwest side of the property replaces an existing very small single storey lean-to that provides access to a staircase to the upper floor of the building. The replacement extension has been sympathetically detailed and is in scale with the host property and again this extension would not be readily visible from the public realm.

The proposed porch canopy would define the new main entrance to the property and although the loss of the front door on the principle street elevation would alter the character and status of this side of the building, the property would still retain its full permitted development rights and this change could be carried out without the need for planning permission and as such it would be difficult to justify that this change would be unacceptable in visual terms. The other ground floor window and door alterations on the southwest side of the building could also be carried out without planning permission and are considered acceptable with regard to the external appearance of the property.

The proposals are therefore considered to be acceptable in visual terms and have been judged to have no detrimental impact on the general character of the area or the character and appearance of the conservation area in line with the requirements of Saved Housing Policy 13 and Environment Policy 12 of the Adopted Local Plan and emerging policies in the latest version of the Local Plan.

#### The impact of the proposal on the amenities of the neighbouring properties

Land levels between the application property and the adjacent dwellings are relatively flat at street level but rise to the rear of the properties by approximately 3m. As a result, the application property has split floor levels throughout.

The proposed single storey extension on the northeast side, whilst close to the boundary of 60 High Street, would have a blank elevation facing this property. This elevation of the application property already has 3 bedroom windows overlooking No. 60, which are the only source of light to this room, together with secondary windows to the kitchen and dining room areas at ground floor level that also overlook the neighbour. The addition of the single storey extension would improve privacy at ground floor level and there would be no change to the current situation at first floor level.

There are rooflights proposed in this extension that have the potential to be overlooked from the upper floor windows of No. 60 however the proposed extension is a non-habitable corridor which would link the existing ground floor internal spaces and privacy could be preserved between the neighbours by conditioning that these are obscure glazed and non-opening. Non-opening rooflights would also reduce noise levels, which is a concern raised by one of the objectors.

The Council's SPG advises that single storey extension should be decided on their own merit with regard to preserving privacy between neighbours. The northeast side extension presents a blank elevation to the adjacent neighbour and would also be sited alongside the neighbour's existing single storey outbuilding and it is therefore

considered that privacy would be preserved and can be further enhanced by the conditioning of the rooflights.

The single storey replacement extension on the southeast side is to accommodate an enlarged non-habitable hall space that would provide access to the existing ground floor study as well as retaining access to the upper floor. The proposed extension would face the existing brick boundary wall of 70 High Street and this is at an adequate level to preserve privacy between the properties. The new porch canopy on this side would have no impact on the neighbour.

The proposals are therefore considered to be in conformity with the requirements of the Council's SPG and Saved Housing Policy 13 of the Adopted Local Plan with regard to preserving privacy between the application property and the surrounding neighbours.

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 occupation of the extension hereby permitted, the rooflights in the northwest side extension hereby approved shall be permanently glazed in obscure glass and non-opening.  
Reason: In the interest of protecting privacy between the application property and the adjacent neighbour.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.  
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.  
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The

joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

6. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the interests of the appearance of the building(s), and the character of the area.

7. Pointing of the existing/ proposed building(s) shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.

Reason: In the interests of the appearance of the building(s).

8. A sample panel of pointed brickwork 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building(s) 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 by 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.

**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>
9/2014/0406	Coton	Seales	Allowed	Delegated



## Appeal Decision

Site visit made on 17 November 2014

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

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

**Decision date: 16 December 2014**

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### **Appeal Reference: APP/F1040/A/14/2225383**

### **Land to the rear of 12 Mill Street, Coton-in-the-Elms, Swadlincote, Derbyshire DE12 8ES**

- 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 D Coaster against the decision of South Derbyshire District Council.
  - The application (reference 9/2014/0406, dated 25 April 2014) was refused by notice dated 23 June 2014.
  - The development proposed is the construction of a new dwelling.
- 

### **Decision**

1. The planning appeal is allowed and planning permission is granted for the construction of a new dwelling on land to the rear of 12 Mill Street, Coton-in-the-Elms, Swadlincote, Derbyshire DE12 8ES, in accordance with the terms of the application (reference 9/2014/0406, dated 25 April 2014), subject to the conditions set out in the attached Schedule of Conditions.

### **Main issues**

2. There are two main issues in this appeal. The first is the visual impact of the proposed development on its setting. The second concerns the effect of the proposal on the supply of available housing land in the locality.

### **Reasons**

3. Coton-in-the-Elms is a substantial village, with various local facilities, including a small village store and a primary school, among others. The village has connections to the surrounding area by bus service.
  4. The appeal site lies at the southern edge of the village, at the end of a small cul-de-sac that serves three dwellings, off Mill Street. The nearest properties to the appeal site are relatively modern though they are not very recently constructed. The proposed house would lie to the rear of a new house (leaving it with a smaller garden), but alongside another relatively new house. The gardens of this existing house and the proposed new house would extend beyond the buildings themselves but an existing paddock beyond the application site would be retained as such.
-

5. Thus, the proposed development would lie within the amenity area associated with existing residential property but would lie outside the village limits in a visual sense. It also lies outside the village confines boundary as shown on the adopted Local Plan.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the statutory Development Plan unless material considerations indicate otherwise. Development Plan policies are therefore especially important.
7. Local policies are intended to restrict development in the countryside, outside the confines of existing settlements, and the proposed development would conflict with saved Policies of the South Derbyshire Local Plan, specifically with Housing Policy 5 and with Environment Policy 1. It would also conflict with Policy H1 of the South Derbyshire Pre-Submission Local Plan, though that does not yet have the force of an adopted Development Plan.
8. Even so, the proposed development would have only a limited visual impact on its setting. The new house would form part of a small group of dwellings at the edge of the village, along a private drive, and would harmonise reasonably well with the setting, complementing the historic development pattern of the village. The proposed new house would be traditional in style, in keeping with its surroundings.
9. There is no dispute that the Council cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances Paragraph 49 of the 'National Planning Policy Framework' indicates that policies for the supply of housing should not be considered to be up to date. Paragraph 14 of the Framework advises that, in such cases, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
10. In this case, the appeal proposal would not comply with specific policies in the Local Plan (as noted above), though the harm that would be caused to the countryside would be limited, for the reasons given. The adverse impacts of the project would not be sufficient to significantly and demonstrably outweigh the benefit of providing an additional dwelling and thus making a small but real contribution to meeting the shortfall of housing within the district. In this instance, therefore, there is justification for granting planning permission despite the identified conflict with the Development Plan.
11. In reaching that conclusion, I have had regard to the appeal decision referred to by the Council, relating to land at Weston-on-Trent. In that case, however, it was found that significant harm would have been caused to the landscape character of the area and the balance of considerations was therefore different. Each case must be decided on its own merits, of course, and in the present appeal I am persuaded that the proposal would be acceptable.
12. I have, however, also considered the need for conditions and in imposing conditions, I have taken account of the conditions suggested by the Council in the usual way (including that relating to protected species), without prejudice to their main arguments in the appeal. I have concluded that conditions are necessary, to define the planning permission and to ensure that quality is



maintained, both in respect of the new building itself and the landscaping of the site. In relation to landscaping, boundary treatment car parking areas and access details, however, I have included wide ranging conditions to deal with these matters in the context of an overall scheme.

*Roger C Shrimplin*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:
  - drawing number 05 (Proposed House Design);
  - drawing number 06 (Proposed Site Plan);
  - unnumbered drawing (Topographical Survey).
3. No development shall take place until samples (or specifications) of the materials and drawings (at appropriate scales) of the construction details to be used in the construction of the external surfaces of the new development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, using the approved materials.
4. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. All these works shall be carried out as finally approved in detail. The details to be submitted shall include proposed and existing finished levels, means of enclosure and functional services above and below ground. The details of the hard landscape works shall include details of provision for car parking, boundary treatment and access design. The details of the soft landscape works shall include details of all existing trees in the vicinity of the proposed development (and details of the method of protecting them during the course of the work); planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers or densities where appropriate) and implementation programme.
5. 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 the implementation programme approved by the local planning authority. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
6. Prior to first occupation of the dwelling hereby permitted, the area shown on the approved landscaping scheme as being dedicated to car parking and manoeuvring shall be laid out and brought into use as such. It shall be retained and used for no other purpose thereafter.
7. Prior to the commencement of any other operations, the revised access at Mill Street shall be laid out and brought into use, as shown on the relevant application drawing (number 06). Nothing above 0.6 metre high shall be located or allowed to grow within the visibility splays shown on the drawing.
8. The development hereby permitted shall be carried out in accordance with the recommendations made in the Phase 1 Habitat and Protected Fauna Survey dated 11 March 2014 with regard to protected species.

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<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 5</b>
<b>DATE OF MEETING:</b>	<b>20 JANUARY 2015</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash (ext 5926)</b>	
<b>SUBJECT:</b>	<b>Town and Country Planning (General Permitted Development) Order 1995 (as amended) Article 4 Direction affecting Victoria House, 33 High Street, Woodville (under guidance contained in National Planning Practice Guidance)</b>	
<b>WARD AFFECTED:</b>	<b>Woodville</b>	<b>TERMS OF REFERENCE: PO1</b>

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## **1.0 Background**

1.1 On 5 August 2014 the Planning Committee resolved to:

- serve an immediate Article 4 Direction to remove permitted development rights that (among other things) would allow demolition of the building without the need for express planning permission; and
- that authority be delegated to the Head of Planning Services to consider any representations received, and to confirm the Direction in consultation with the Chair and Vice Chair.

A copy of the report for that meeting is attached at Appendix 1.

1.2 Consultation on this Direction was undertaken as defined in the legislation over a 6 week period by way of direct notification to interested parties, a site notice and a press notice with the latest publicity (the press notice) expiring on 26 September 2014. This report summarises and addresses representations received through consultation and makes the following recommendation.

## **2.0 Representations received**

2.1 The National Planning Casework Unit (NPCU) responded on behalf of the Secretary of State with no request for the matter to be referred to him for consideration, instead reminding the Council of the need to advise when the Direction is or is not confirmed.

2.2 The landowner has provided a copy of their representation to the NPCU. This sets out the history of contemporary discussions between the landowner and Council officers relating to development of the property as well as the chronology of progress around the Prior Notification for demolition to which this Direction prevents. The landowner

considers that the Direction does not relate to “exceptional circumstances”, as advocated in national guidance, and that they have seen no evidence that the demolition would cause material harm in the interests of local amenity or proper planning of the area. They advance that the building, if left empty, would gradually fall into disrepair and that the best option is to redevelop the site with a modern development. They also note that officers have accepted that retail development would be acceptable in principle. Finally they make a position statement in that in the event the Direction is confirmed, they reserve the right to make a claim for compensation should a future planning application for demolition be refused based on additional costs associated with satisfying archaeological matters under the Prior Notification and loss of profit from a missed retail opportunity. The full representation is attached in Appendix 2.

### **3.0 Relevant legislation and guidance**

3.1 Articles 4, 5 and 6 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (“the GPDO”); and Sections 107 and 108 of the Town and Country Planning Act 1990 (“the Act”).

3.2 The National Planning Practice Guidance (NPPG) also provides relevant advice.

### **4.0 Assessment**

4.1 The landowner refers to a now out-of-date document. There is no longer an “exceptional circumstances” test under national guidance. The NPPG now states that *“the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. The potential harm that the direction is intended to address should be clearly identified”*. The principle of the Direction and the report to the Committee on 5 August is considered compliant with this guidance, and the views as to the degree of harm arising and the importance of this building to the area remains unchanged. The previous report to Committee is attached as Appendix 2.

4.2 The argument of the building falling into disrepair does not weigh heavily in the recommendation below. The landowner is obliged and likely to maintain the building to a reasonable degree, and with it in a watertight and reasonably well maintained condition a period of vacancy is not of concern. Ultimately without consent to demolish it will likely either fall to another use or be sold on to a more willing third party. Furthermore whilst it is not denied that officers have accepted that retail development would be acceptable in principle, this was advice on a matter of principle and pre-application discussions made it clear that it was preferential to see the existing building converted for such a use instead of it being replaced.

4.3 The representation made does not alter the stance as to the value of the building and the purpose of the Direction as set out in the August report.

### **5.0 Financial Implications**

5.1 Turning to the risk of compensation, this is discussed in the August report. The key tests for compensation are that it relates to expenditure associated with abortive work or other loss or damage directly attributable to the withdrawal of permitted development rights, as defined by Sections 107 and 108 of the Act. Any claim must also be made within 12 months of the refusal of a planning application. In addition to this, claims can only be made against the refusal of a planning application submitted within 12 months of the effective date of the Direction (i.e. before 13 August 2015).

- 5.2 In terms of abortive work it would be for the landowner to demonstrate that work undertaken in order to satisfy the County Archaeologist under the Prior Notification has been abortive. The County Archaeologist's representation under that Notification was that the principle of demolition (as detailed in the method statement at that time) was not acceptable and further evidence needed to be prepared. If a planning application for redevelopment of the site is made, involving demolition of the building in the same manner, the response from the County Archaeologist would undoubtedly be the same. It is therefore tenuous to suggest that the costs of preparing the additional evidence are "abortive" since they will be necessary costs in order to establish an acceptance on this point – whether it be through Prior Notification or a planning application.
- 5.3 In terms of lost profit, this is a weak argument. The test under Section 107 of the Act is that the loss or damage has to have been sustained and it is directly attributable. Not only can there be no loss or damage sustained at this point, given that the premises cannot be used lawfully for retail, but it would be virtually impossible to demonstrate a directly attributable cost. This is because there is no evidence that a retailer is currently standing in the wings to take on this site; no certainty that a planning permission could and would be implemented; and the inherent and variable delays to development and level of profit caused by other legislative requirements, availability of finance, market forces and other influences. In short it is virtually impossible to estimate costs which represent a direct impact given the numerous influences.
- 5.4 The risk of compensation is not considered to weigh heavily in the balance.

## **6.0 Recommendation**

- 6.1 That the Direction be confirmed without modification.

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<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM:</b>
<b>DATE OF MEETING:</b>	<b>5 AUGUST 2014</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	<b>EXEMPT PARAGRAPH NO: 6</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash (ext 5926)</b>	
<b>SUBJECT:</b>	<b>Town and Country Planning (General Permitted Development) Order 1995 (as amended) Article 4 Direction affecting Victoria House, 33 High Street, Woodville (under guidance contained in National Planning Practice Guidance)</b>	
<b>WARD AFFECTED:</b>	<b>Woodville</b>	<b>TERMS OF REFERENCE: PO1</b>

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### **1.0 Reason for Exempt**

- 1.1 The Direction proposed would affect the rights to development otherwise granted deemed planning permission by virtue of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the GPDO"), prior publication of which may prejudice the effectiveness of the Direction.

### **2.0 Recommendations**

- 2.1 The Committee is requested to authorise the following in respect of Victoria House, at 33 High Street, Woodville:
- Serve an immediate Article 4 Direction to remove permitted development rights that (among other things) would allow demolition of the building without the need for express planning permission; and
  - That authority be delegated to the Head of Planning Services to consider any representations received, and to confirm the Direction in consultation with the Chair and Vice Chair.

### **3.0 Purpose of Report**

- 3.1 To seek the authorisation of the Committee to proceed with the Article 4 Direction in the interests of the local amenity of the area which would otherwise be harmed



by the demolition of the building, as could currently take place without express planning permission.

#### 4.0 Detail

- 4.1 Victoria House represents the last remaining part of the former Brunt and Bucknall Brewery on the High Street frontage, with buildings to the side and rear having been first put to alternative uses after the second World War and then demolished to allow for the creation of Viking Business Park in the 1990s. It is a uniform red brick building with a slate tile roof, gable detailing including one gable inscribed with a date stone "B.B. and Co. / 1896", double height windows serving a single internal space with basement below, and iron railings to the frontage which define the curtilage to the building and contribute to its setting. There is a rear projection which was extended in the 1990s (ref: 9/392/1117). The Brunt and Bucknall Brewery was the first to be established in Swadlincote in 1832. It was also the longest lived, surviving until 1927. This building is understood to have been a bottling store and is referenced as such in local publications. It is recorded in the Derbyshire County Council Historic Environment Record.
- 4.2 Victoria House is not a listed building, nor is it within a Conservation Area. Nevertheless the Development Control Archaeologist (DCA) observes that the building is of local significance, with architectural and evidential value in relation to the brewing industry of the 19<sup>th</sup> and 20<sup>th</sup> Century. The Derbyshire Conservation and Design Officer observes that whilst the building has architectural merit and is of local historic significance, it is considered English Heritage are unlikely to recommend the building be included on the national statutory list given it no longer has any "group value". Notwithstanding this, it is considered to be a building of substantial merit to the historical amenities of the area and positively contributes to the public realm given its dominant streetside location. Furthermore it appears to have survived largely unaltered during its nearly 120 year standing. Representations received under advertisement of the prior notification (see below) provide observations that this building is the only remaining building from the historic brewery with little else of historic interest left in Woodville despite significant industrial and commercial activity in the past.
- 4.3 Officers entered into pre-application discussions as to the re-use of the building in 2013, but following these discussions no further contact was had with the owner. In June 2014 the Council received a prior notification under Schedule 2, Part 31 of the GPDO of the intention to demolish the building. This action is significant in clearly setting out an intention for the future of the building and raises an immediate threat to its survival. In such circumstances the Council can either (1) confirm no objection and allow demolition; (2) not intervene allowing an automatic "grant" of permission to accrue after 28 days; or (3) seek further information as to the method of demolition and restoration of the site. At time of writing, given the Development Control Archaeologist considers a proper scheme of archaeological recording is undertaken, the third option has been activated. However once the applicant provides an appropriate scheme which satisfies the DCA, it would be unreasonable to delay determination further. In this light there is a degree of urgency when considering the appropriate manner of Article 4 Direction if it is decided to protect the building from demolition.

- 4.4 English Heritage advises that Article 4 Directions can increase the public protection both of designated and non-designated heritage assets. They may be used to require planning permission for the demolition of a non-designated heritage asset by removing demolition rights. The glossary to and paragraph 135 of the National Planning Policy Framework (“the NPPF”) allude to the use of “Local Lists” to elevate the status or importance of heritage assets which might not be afforded statutory interest. Whilst a Local List has not yet been finalised, this building is certainly a suitable contender given the above historical significance and contribution to local amenity.
- 4.5 National Planning Practice Guidance (“the NPPG”) advises that provided *“there is justification for both its purpose and extent, an Article 4 Direction can... cover an area of any geographic size, from a specific site to a local authority-wide area; remove specified permitted development rights related to operational development or change of use; and remove permitted development rights with temporary or permanent effect”*. It also advises that *“the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area [and] the potential harm that the Direction is intended to address should be clearly identified”*.
- 4.6 The NPPF states *“in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”*. The scale of the harm arising has already been set out above. Balanced against this harm is the applicant’s evidence of a marketing exercise. It is claimed there has been no meaningful interest in the premises. However this marketing has been focussed towards a retail use only – not reflecting the last lawful use of the premises as a soft play centre under planning permission ref: 9/2004/1491. It is not considered unreasonable that an alternative use for the building might be found (such as offices or residential) which is viable, has comparable or better outward impacts, and allows for the building to be retained. Furthermore representations received under the Prior Notification demonstrate a number of parties are interested in taking on ownership or a lease of the building for uses other than retail. At this point in time it is considered that the harm arising through the total loss of this heritage asset would outweigh the benefits arising through demolition and redevelopment of the site.
- 4.7 An Article 4 Direction with immediate effect may be made where there is an urgent, justified requirement for protection because the Local Planning Authority believes that development, to which the Direction relates, would constitute a threat to the amenities of the area. The loss of this building would represent a significant step in the evolution of Woodville, removing one of the few surviving heritage assets. Woodville carries a strong industrial past, not only in terms of the significance of the Brunt and Bucknall Brewery as outline above, but also the former pottery kilns and works. Making a Direction in respect of Victoria House is considered appropriate in regard to the protection of the amenities of the area in terms of its local historic significance.

- 4.8 The effect of the Direction would be to require the submission of a planning application for express permission for demolition that would otherwise benefit from permitted development rights (deemed planning permission) under Part 31, Classes A and B.
- 4.9 The Direction would come into force immediately on a provisional basis for 6 months. Following the serving of notices, including notification to the Secretary of State, there is a 21 day period to allow for full public consultation. After fully considering the representations received and after 28 days, if the Secretary of State has not intervened and it is considered appropriate, the Direction can be confirmed under delegated powers. If it is not confirmed within 6 months it will lapse.

### **5.0 Financial Implications**

- 5.1 The costs relating to the issue of the Article 4 Direction can be contained within the current revenue budget provision within Community and Planning Services. However, there is no budget provision to cover the costs of any compensation claims arising from the issue of the Direction.
- 5.2 If the Local Planning Authority refuses planning permission for development which would have been permitted development if it were not for an Article 4 Direction, or if permission is granted subject to more limited conditions than permitted development rights would normally allow, then the Local Planning Authority may be liable for compensation.
- 5.3 Compensation can be claimed for abortive work expenditure or other losses *directly attributable* to the withdrawal of permitted development rights, as defined by Section 107 of the 1990 Act.
- 5.4 Any claim must be made within 12 months of the refusal of a planning application. In addition to this, claims can only be made against the refusal of a planning application submitted within 12 months of the effective date of the Direction.

### **6.0 Corporate Implications**

- 6.1 Protecting local amenity contributes towards the Corporate Plan theme of Sustainable Development.
- 6.2 In accordance with the Council's Constitution and Scheme of Delegation, the decision to make an Article 4 Direction rests with the Planning Committee. The decision is amenable to the normal requirements of local authority decision making (lawfulness, rationality, reasonableness and procedural fairness). The decision is open to challenge through judicial review. An application for judicial review must be made on grounds of illegality, irrationality or procedural impropriety.

### **7.0 Community Implications**

- 7.1 Built development that is protected for its value to local amenity, which enhances the character of an area and therefore is of community benefit for existing and

future residents, helps to achieve the vision for the 'Vibrant Communities' theme of the Sustainable Community Strategy.

## 8.0 Summary

- 8.1 The Article 4 Direction mechanism is the only way to control demolition at the property, as this type of activity could otherwise go unregulated.
- 8.2 The Direction would help to preserve the building in the interests of the amenity of the area in terms of its local historic significance.

## 9.0 Background Papers

Prior notification application file ref: 9/2014/0559;

The Town and Country Planning (General Development Development) (England) Order 1995 (as amended);

The National Planning Practice Guidance website ([planningguidance.planningportal.gov.uk](http://planningguidance.planningportal.gov.uk)); and

English Heritage Guidance ([www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/](http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/))

*"We act for the owners of Victoria House, Lear Investments/MY Real Estate, and have received notification from South Derbyshire District Council of their intention to make an Article 4 Direction in respect of this property. The Article 4 Direction will remove the permitted development rights under any building operation consisting of demolition of Victoria House. We understand that you have received a copy of the proposed Article 4 Direction. As part of your consideration on whether it is appropriate to allow the proposed Direction to proceed, could you please take into account these representations on behalf of our client. Our representations provide background information on the subject site and our reasons for making the case that the Article 4 Direction should be cancelled.*

*PlanIT were instructed by M7 Real Estate to provide planning Consultancy advice on the potential reuse of Victoria House in August 2013. At that time the tenant of the building was about to relinquish its lease and our Client was considering options for attracting a new occupier. A local commercial agent, Innes England, had been employed to market the property and initial expressions of interest had been received from retail developers on the basis of demolishing Victoria House and replacing it with a new retail unit.*

*On the 22nd October 2013 a site meeting took place with Mr Chris Nash, Area Planning Officer and the Council's Conservation Officer to discuss the potential for retail development on the site. At the time of that meeting it was confirmed that Victoria House was not a building on the English Heritage Statutory List and was not on the Council's local list of historical buildings. The officers did however express their preference for a scheme which retained part of the existing structure. It was agreed that the marketing exercise would be extended to try to attract interest from a retail occupier who would be prepared to retain and convert the building. A copy of the marketing literature is attached to these representations; you will note that it was on the basis of a refurbishment proposal. The marketing exercise was not successful on the basis of a refurbishment and retail developers made it clear that the building was not suitable for conversion and that their interest continued to be on a demolition and new build basis. In the meantime, PlanIT prepared and submitted a Retail Sequential Assessment to the local planning authority and the Officers confirmed that the principle of a retail unit (circa 500 sqm. gross) on the subject site would be acceptable.*

*The marketing campaign continued over many months and in June 2014 it was decided to submit an application for prior notification to demolish the Victoria House building. That application was submitted to South Derbyshire Council on the 18th June 2014. The application included a Method Statement to explain the demolition process.*

*On the 14th July 2014 South Derbyshire District Council confirmed that demolition should not proceed until a method statement for a historic building recording had been agreed with the local planning authority. Our client subsequently commissioned the preparation of a method statement for recording the demolition works. The method statement was submitted to the Derby and Derbyshire Development Control Archaeologist for comment; discussions were ongoing to agree the final method statement and the last communication was from the County Archaeologist dated 14th August 2014 which included suggestions for amending the method statement. In the meantime, our client has received the proposed Article 4 Direction to which these representations refer.*

*I now turn to the substance of our Client's representations and the reasons why the Article 4 Direction should be cancelled. You will be aware that Government advice is that "local planning authorities should consider making Article 4 Directions only in those exceptional circumstances where evidence suggests that the exercise of permitted development rights would harm local amenity or the proper planning of the area" (reference para. 2.1. Replacement Appendix D 2 Department Environment Circa 9/95 - General Development Consolidation Order 1995).*

*The Circular advice echoes paragraph 200 of the National Planning Policy Framework which directs that there must be clear justification for removing national permitted developments rights. The Framework says:*

*"The use of Article 4 Directions to remove national permitted rights should be limited to situations where it is necessary to protect local amenity or the well being of the area (this could include the use of Article 4 Directions to require planning permission for the demolition of local facilities ....."*

*We have seen no information or evidence from the local planning authority that the demolition of Victoria House would cause material harm in the interest of local amenity or proper planning. Victoria House is not a listed building and is not within a conservation area. At the time of our initial engagement with the local planning authority Victoria House had not even made its way onto a local list of historical buildings and we are unsure if it has since been added to such a list. The consequence of leaving the building empty is that it will gradually fall into disrepair. The building does occupy a prominent position within the Woodville High Street and we consider that the best option for proper planning would be to redevelop the site with a modern development; the Council offices have previously accepted that retail development on the site would be acceptable in principle.*

*We wish to put your authority on notice that in the event that the Article 4 Direction is confirmed, our Client reserves the right to make a claim for compensation should a future planning application to demolish Victoria House be refused planning permission. That compensation claim will take account of additional costs which my client has incurred preparing a Historic Building Record Method Statement and the loss of profit from the missed retail opportunity as a consequence of not being able to exercise the permitted development rights on demolition."*



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<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>20 JANUARY 2014</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>DIRECTOR OF COMMUNITY AND PLANNING SERVICES</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>Nicola Sworowski (ext 5983)</b>	
<b>SUBJECT:</b>	<b>Town and Country Planning (General Permitted Development) Order 1995 (as amended) Article 4 Direction affecting Swadlincote Town Centre (under guidance contained in National Planning Practice Guidance)</b>	
<b>WARD AFFECTED:</b>	<b>Swadlincote</b>	<b>TERMS OF REFERENCE: PO1</b>

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## **1.0 Recommendations**

1.1 The Committee is requested to authorise the following in respect of Swadlincote town centre:

- Serve an Article 4 Direction (based on the Schedule and Plan appended to the end of this report, allowing for minor correction of addresses where necessary) to remove permitted development rights that (among other things) would allow for exterior painting of buildings, demolition and erection of walls, replacement of windows and doors, and changes to roofs within part of the Conservation Area without the need for express planning permission; and
- That authority for confirmation of the Direction is delegated to the Planning Services Manager in accordance with paragraph 3.47 of this Report.

## **2.0 Purpose of Report**

2.1 To seek the authorisation of the Committee to proceed with the Article 4 Direction in the interests of the local amenity of the area which would otherwise be harmed by extension or alteration of buildings or creation of boundary treatments as could currently take place without express planning permission. Also to advise the Committee of likely future intentions with respect of affording owners and occupiers a degree of flexibility back for the alteration of buildings.

## **3.0 Detail**

## Overview

- 3.1 Swadlincote Town Centre has seen major investments and enormous improvements over the past decade. It is essential to continue to build on these investments and further grow and improve. In February 2014 the Council was successful in being awarded a round 1 grant from the Heritage Lottery Fund (HLF). This is an important step towards being awarded the full grant of £413,900 subject to a successful round 2 bid. This grant would be combined with funding from both the District and County Councils of over £50,000, volunteer time of £2,600 and also private investment through the third party grants expected to be in the region of £150,000. In total this should bring in investment of over £600,000 to the Town Centre.
- 3.2 This investment is important for the town and essential if it is to grow and develop in a way that enhances and educates people about its special historic character and attractive green spaces. The Article 4 Direction sits within the Conservation Area Management Plan and this document is a key requirement for the HLF second round bid.
- 3.3 Many Conservation Areas have distinctive qualities that can easily be lost through piecemeal alterations to traditional features. Many such works carried out by owners or occupiers are classified as “permitted development” under the provisions of the Town and County Planning (General Permitted Development) Order 1995 (as amended) (“the GPDO”). This means that they can be carried out without the need for express planning permission, even in Conservation Areas.
- 3.4 Permitted development for dwellings and for commercial buildings and flats varies. Alterations allowed to residential properties include changes to the size of door and window openings, and the removal of local roofing materials or designs of chimney stack and local wall finishes. Shop owners can change the colour of shopfronts and paint walls, even where brickwork was not originally painted, and can remove parts of boundary walls.
- 3.5 An Article 4 Direction enables the Council to require owners and/or occupiers of specific properties to apply for planning permission for certain alterations, where there is concern that the character of the conservation area is under threat.
- 3.6 Local Development Orders (“LDOs”) give a grant of planning permission to specific types of development within a defined area. They streamline the planning process by removing the need to make a planning application, creating certainty and saving time and money for those involved.
- 3.7 In order to protect and preserve those traditional and historic elements of the environment within the Conservation Area, which are special to the character of Swadlincote, two actions are proposed:
  - creation of an Article 4 Direction, to remove permitted development rights from specific properties within the Area, (i.e. to withdraw a general planning permission granted by the GPDO); and

- subsequent introduction of an LDO to restore the permitted development rights allowing for the exterior painting of buildings already painted but limited to a palette of colours that would be acceptable to the Council.

Listed buildings would not be included as alterations to them are already controlled under separate legislation.

- 3.8 The proposed Article 4 Direction is specifically aimed at both residential properties and commercial properties. Within the Swadlincote Conservation Area there are 39 residential properties that are of traditional form, although only 4 retain their original sash windows. Of these residential properties, most fall within terraced rows, with one or two exceptions. It is the rhythm of repeated elevations, unified roof finishes and consistent boundary treatments which are the most important element of the design of terraced rows, particularly in oblique views along the streets.
- 3.9 The vast majority of the historic properties within the Conservation Area are in commercial and past industrial use and although these tend to have survived with many more original features intact, these are under threat from unsympathetic alterations, even where they have received grant assistance in the past. This is illustrated by Appendix A.
- 3.10 The buildings that would be included within the Article 4 Direction all in some way make a contribution to the local character of the place because they share common traditional characteristics such as traditional roof materials and eaves details, boundary treatments, door surrounds and chimney stacks. Many of the commercial properties have original or restored Victorian shopfronts, but not all. It is proposed to include all of the traditional commercial buildings, where there is potential to restore shopfronts, as there is a continual process of enhancement in Swadlincote, and many more opportunities for restoring shopfronts and continuing the excellent work of town centre regeneration.
- 3.11 An LDO would allow for sympathetic application of paint to already painted elevations of properties, allowing for contrast with a considerable range of pre-approved colours, but with sufficient control to ensure harsh or unsympathetic treatments are resisted in the wider interests of the appearance of the Conservation Area. Details of the LDO are yet to be specified and will be presented to Committee at a later date.

#### Case for the Article 4 Direction

- 3.12 An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the Council for that development. English Heritage advises that Article 4 Directions can increase the public protection both of designated and non-designated heritage assets, and help the protection of the setting of all heritage assets, including listed buildings.

- 3.13 The Article 4 Direction would cover the retail/commercial centre of the town, including the buildings along High Street, West Street, The Delph, Belmont Street and Midland Road, and residential properties along Church Street. Most of the buildings along the High Street are shops, but there are a mixture of tenancies and a number of office and residential uses. The predominant building material is brick, with terracotta or stone dressings, with a few examples of painted and rendered brick. Roofing is mostly of Welsh slate, with a few examples of clay tiles. The buildings of High Street were constructed during a short timeframe during the late Victorian period and share common details and a consistent character, which unifies the street frontage. They were largely built as commercial properties and therefore retain key characteristics – broad frontages with large shop windows, a steady rhythm of identical shopfronts, repeated first floor sash windows, entrances to flats and passages between groups of buildings.
- 3.14 Victorian and Edwardian shopfronts survive and there are a large number of restored shopfronts, largely based on photographic evidence, which have replicated the Victorian details. The 19<sup>th</sup> century shopfronts have particular characteristics such as the use of glazed brick for stall risers, the use of curved glass to frame entrances, the use of encaustic tiles for recessed shop doorways, decorative spandrels, plate glass first floor shop windows and clerestory glazing.
- 3.15 Many original timber panelled doors have been retained or reinstated under arched doorcases. These generally provide access to residential accommodation above the retail units, and are separate from the shop front entrances. At first floor level many of the original timber windows survive, or have been reinstated with grant assistance. In addition to the sash and casement windows there are occasional examples of large, first floor plate glass shop windows, which reflect the commercial prosperity of the town during the last decades of the 19<sup>th</sup> century.
- 3.16 Along West Street the properties are more individual in character, larger in scale and there are a number of landmark properties. These reflect a much longer and older phase of development and redevelopment. Church Street contains a mixture of commercial and residential properties. Many of these were terraced houses, which were adapted as demand for shops grew, and these are often smaller in scale, with smaller and more intimate shopfronts than those along the High Street. Terraced houses have unified and bespoke details, such as the use of encaustic tiles, moulded terracotta and moulded stone, ornate decorative details and sash windows.
- 3.17 The NPPF states at paragraph 200 that *“the use of Article 4 Directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area...”*.

- 3.18 National Planning Practice Guidance (“the NPPG”) advises that provided *“there is justification for both its purpose and extent, an Article 4 Direction can... cover an area of any geographic size, from a specific site to a local authority-wide area; remove specified permitted development rights related to operational development or change of use; and remove permitted development rights with temporary or permanent effect”*. It also advises that *“the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area [and] the potential harm that the Direction is intended to address should be clearly identified”*. It goes on to say that *“there should be a particularly strong justification for the withdrawal of permitted development rights relating to... cases where prior approval powers are available to control permitted development [and] the installation of micro-generation equipment.”*
- 3.19 A photographic building record of all properties within the Conservation Area was undertaken by the Council in 2005. Since that record was undertaken, a number of alterations have occurred which have damaged the special character of the Conservation Area. The difference in the detail is illustrated at Appendix A. These alterations have occurred because planning permission was not required. They include painting brickwork, painting glazed brick stall-risers, and the introduction of garish colours into the streetscene. Repainting shopfronts can dramatically affect and alter the traditional appearance of an historic building, particularly if the fascia is treated differently, with the elevation becoming disjointed. In many instances these alterations can be controlled through the removal of permitted developments rights for the minor operation of painting.
- 3.20 A number of residential properties have also been altered by the removal of original sash windows, the introduction of concrete roof tiles in place of slate and the alteration of the traditional boundary walls and replacement with concrete. Now that residential properties are included in new grant initiatives, it will be important to protect the public investment in the streetscape and the historic town centre.
- 3.21 Boundary walls are particularly vulnerable in Swadlincote. These are generally built from local brick, often of stock bricks, with the locally available clay or salt-glazed copings. Salt-glazed copings are no longer manufactured. Whilst these details were once commonplace in Swadlincote, so many have been removed over the years that they are becoming a rarity. Many walls have recently been reinstated and new copings added to enhance the Conservation Area and restore enclosure where this was lost. Boundaries or enclosures within the Conservation Area do not require express planning permission for total demolition unless they are over 1 metre high on the highway frontage, or 2 metres high on any other boundary. In practice this means that most of the walls within the Conservation Area could be demolished following a prior notification for such works. This is a significant threat to the character of the Conservation Area and to the programme of reinstatement of boundaries, which the Council and funding partners have supported with grant-aid and have identified as a priority.
- 3.22 The special historic and architectural interest of the buildings and spaces in this area was recently recognized by undertaking an appraisal of the special qualities of Swadlincote town centre. The Swadlincote Conservation Area Character Statement (SCACS) was adopted in October 2014.

- 3.23 Strenuous efforts have gone into protecting the character of Swadlincote town centre and in enhancing its special interest, through grant schemes funded by local partners and property owners. The Council offers free pre-application advice on all aspects of design and conservation issues relating to the historic environment. In many instances this advice, combined with grant initiatives in partnership with the County Council and English Heritage, has led to building owners undertaking detailed restoration and enhancement. It is important that all of that investment is protected through the control of inappropriate works and works which undo or undermine the grant-aided projects and any future grant-aided work. The introduction of a requirement for planning permission to alter or demolish walls will protect the investment that has gone into the public realm and protecting this overlooked area of significance and will enable each proposal to be assessed on its own merits; with potentially more walls and copings being restored/reinstated.
- 3.24 The removal of permitted development rights does not apply to all buildings in the Conservation Area, but only to those where the special architectural or historic interest is vulnerable. The following selection criterion has been used to identify buildings that should be included within the Article 4 Direction:
- all properties that date from before circa 1930 that survive in anything like their original condition (i.e. with roofing materials and walling materials preserved); and
  - modern buildings with a traditional Victorian style shopfront design (in this case, the Direction applies to painting only).
- 3.25 In practice, therefore, most of the mid-late 20<sup>th</sup> and 21<sup>st</sup> century buildings are not included in the Article 4 Direction, unless they have been designed in such a way as to replicate historic details. For the majority of the mid-late 20<sup>th</sup> century buildings, there is no specific requirement for the retention of traditional, rich or Victorian colours. In addition these buildings tend to have larger fascias incorporated into the design, tend to be self-regulating as a result of the landlord control, and there is a much greater consistency in the treatment of elevations. A number of these sites are also included in the list of priority sites for redevelopment.
- 3.26 There are specific areas where there is not considered to be a local problem requiring additional control, such as the introduction of solar panels and satellite antennae. There is no history of solar panels being provided for the south-facing roofs of the commercial properties along High Street. Satellite antennae have been erected intermittently on a few domestic properties along Church Street, but they are generally quite discreet and small.
- 3.27 Residential terraces along Hill Street, Russell Street and Alexandra Road are generally tucked out of sight from the main views and have already been extensively altered by the removal of traditional doors and windows. As these properties have generally been excluded from grant initiatives, there has been no history of public investment. There are considered to be sufficient controls within the current provisions of the GPDO to control demolition and the larger alterations to these terraced properties.



- 3.28 Commercial properties are afforded some permitted development rights, with some also applicable to residential property. The District Council seeks to control the use of appropriate period colours to renders and stucco, painted stonework/brickwork, all joinery work to both original and new shop fronts and for picking-out, window/door joinery. It also seeks to prevent the inappropriate painting of existing un-painted brickwork.
- 3.29 Churches are also excluded from the Article 4 Direction. Emmanuel Church is grade II listed, whilst West Street Methodist Church and Hill Street Baptist Church have both received grant-aid funding for restoration works and there is not considered to be any threat to these.

#### Effect of the Article 4 Direction

- 3.30 Reference should be made to the Schedule and Plan at Appendix A. These would form part of the Direction, indicating each address affected, the type of property, the permitted development rights to be removed and the relevant Schedule, Part and Class of the GPDO. The Schedule has been established to remove as few rights as possible taking into account existing restrictions on Conservation Area properties within the GPDO, and where the execution of works would be considered to have a detrimental impact on the character and appearance of the Conservation Area.
- 3.31 For ease of reference the following quoted Parts and Classes are firstly grouped to those which apply to both residential and commercial property, before dealing with just commercial permitted development rights. The Schedule includes properties in both residential and non-residential use (for planning purposes non-residential use includes shops, estate agents, restaurants/cafes, public houses, takeaways, offices, opticians, halls and mixed use premises).
- 3.32 In order to assist readers of the following paragraphs, the specific permitted development rights to be removed are grouped into residential only, residential and commercial, and commercial only. Each section is accompanied by relevant extracts of the GPDO for ease of reference.

#### Residential Properties

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class A**

**Permitted development**

**A. The enlargement, improvement or other alteration of a dwellinghouse.**

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (i) it would consist of or include—
  - (i) the construction or provision of a veranda, balcony or raised platform,
  - (ii) the installation, alteration or replacement of a microwave antenna,
  - (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
  - (iv) an alteration to any part of the roof of the dwellinghouse.

**A.2.** In the case of a dwellinghouse on article 1(5) land, development is not permitted by Class A if—

- (a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;
- (b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or
- (c) the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse.

**Conditions**

**A.3.** Development is permitted by Class A subject to the following conditions—

- (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

3.33 Doors and windows often reveal the age of a building and their loss can have a most damaging impact on the character and appearance of the individual building or a group, if it is part of a terrace.

3.34 There is a serious threat to the character of the area by the removal of original sash windows and their replacement with inappropriate designs and materials. There has been a successful, widespread campaign to reinstate sash windows along the High Street. Other prominent residential areas with terraces along Church Street and West Street have equal, if not greater, architectural interest and would have originally had sash windows. The terraces selected within the Conservation Area still retain some sash windows. The insertion of modern uPVC double glazed units requires significantly thicker frames to be inserted which appear bulky and out of character with the building, and often alter the size and pattern of the actual glass panes and the depth of the window disrupting the original proportions of the window.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class C**

**Permitted development**

**C. Any other alteration to the roof of a dwellinghouse.**

**Development not permitted**

**C.1.** Development is not permitted by Class C if—

- (a) the alteration would protrude more than 150 millimetres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;
- (c) it would consist of or include—
  - (i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
  - (ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.

3.35 With the exception of a few examples of clay tiles, the predominant roof covering material within the area is natural slate (Welsh), with this applied to almost all properties providing uniformity to the appearance of the roof-scape throughout the Conservation Area. There are a few examples of concrete roof tiles; this is not a traditional roof covering and is unsightly and detrimental to the character and appearance of the Conservation Area.

3.36 The Direction seeks to control any alteration to the roof covering of the residential properties within the area covered by the Direction, as this would have a detrimental impact on the character and appearance of the Area. The Direction also seeks to prevent any loss of the traditional chimneystacks and original chimneypots that still remain, many of which have been reinstated or repaired with grant aid (see Class G below). Chimneys are often highly decorative within Swadlincote.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class D**

**Permitted development**

**D. The erection or construction of a porch outside any external door of a dwellinghouse.**

**Development not permitted**

**D.1.** Development is not permitted by Class D if—

- (a) the ground area (measured externally) of the structure would exceed 3 square metres;
- (b) any part of the structure would be more than 3 metres above ground level; or
- (c) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.

3.37 Many of the terraced houses are set back within small front gardens and have highly decorative doorcases and inset porches. Whilst there are currently no porches attached to these frontages along Church Street, these could be significantly disfigured with porches.

**Schedule 2, Part 1 (Development Within The Curtilage Of A Dwellinghouse)**  
**Class G**

**Permitted development**

**G. The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.**

**Development not permitted**

**G.1** Development is not permitted by Class G if—

- (a) the height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or
- (b) in the case of a dwellinghouse on article 1(5) land, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which—
  - (i) fronts a highway, and
  - (ii) forms either the principal elevation or a side elevation of the dwellinghouse.

3.38 The decorative chimneys and pots are part of the special character of the Conservation Area, often decorative with ornate pots. These sit on multiple roofs and at different levels. Many of these have been repaired or reinstated with grant aid. The town sits on hilly terrain and the loss of chimney stacks would affect the wider townscape and roofscape, as seen from a number of vantage points.

**Residential and Commercial Buildings**

**Schedule 2, Part 2 (Minor Operations)**  
**Class A**

**Permitted development**

**A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.**

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
  - (ii) in any other case, one metre above ground level;
- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;
- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater.

**Schedule 2, Part 31 (Demolition Of Buildings)**  
**Class B**

**Permitted development**

**B.** Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure.

**Development not permitted**

**B.1** Development is not permitted by Class B where the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area).

3.39 Along Church Street, the residential properties share boundary walls and unifying details. These are all too easily lost through the partial demolition of walls to create off-street car parking or pull-ins. The proposed removal of permitted development rights for demolition of boundary walls for residential properties along Church Street seeks to protect an important characteristic of the conservation area, as recognized in the Character Appraisal. This requirement extends to those commercial properties along High Street, where the public realm has changed to reveal the backs of terraces fronting Ernest Hall Way. Many of these have been repaired and restored with grant aid.

3.40 The Direction would remove permitted development rights with regard to all types of enclosure for the traditional properties affected in the Area, ensuring that the Council can control the design and materials used for any walls, fences or other types of enclosure.

**Schedule 2, Part 2 (Minor Operations)**  
**Class C**

**Permitted development**

**C.** The painting of the exterior of any building or work.

**Development not permitted**

**C.1.** Development is not permitted by Class C where the painting is for the purpose of advertisement, announcement or direction.

**Interpretation of Class C**

**C.2.** In Class C, “painting” includes any application of colour.

**Schedule 2, Part 42 (Shops Or Catering, Financial Or Professional Services Establishments)**  
**Class A**

**Permitted development**

**A. The extension or alteration of a shop or financial or professional services establishment.**

**Development not permitted**

**A.1.** Development is not permitted by Class A if—

- (e) any alteration would be on article 1(5) land;
- (f) the development would consist of or include the construction or provision of a veranda, balcony or raised platform;
- (g) any part of the development would extend beyond an existing shop front;
- (h) the development would involve the insertion or creation of a new shop front or the alteration or replacement of an existing shop front; or
- (i) the development would involve the installation or replacement of a security grill or shutter on a shop front.

**Conditions**

**A.2.** Development is permitted by Class A subject to the following conditions—

- (a) any alteration shall be at ground floor level only;
- (b) any extension shall, in the case of article 1(5) land, be constructed using materials which have a similar external appearance to those used for the building being extended; and

3.41 A number of retail premises have been considerably extended to the rear in the past, of which many are visible from public aspects such as Civic Way or the Pipeworks development. Whilst the height and extent of any extensions are already controlled by way of the limitations quoted above, as well as how much curtilage remains undeveloped, there are numerous examples where unsympathetic brick, render or tile choices, as well as eaves and verge details, have been implemented. Furthermore partial demolition of properties within a Conservation Area is possible, including existing extensions, without the need for any prior consent from the Council. In this light it is felt important to control such works in the interests of securing appropriate materials and detailing to any extensions erected.

3.42 The proposed removal of permitted development rights for painting seeks to protect the character of the Conservation Area, which can be easily harmed by garish colours and disjointed colour schemes and by painting brickwork or render which has historically been painted with a soft or neutral colour palette, or painting previously unpainted brickwork, which can affect the unified character of terraced rows. The Direction would remove permitted development rights with regard to all types of painting from affected properties in the Area, ensuring that the Council can control the colour used for any walls, windows, doors and shopfronts.

**Procedure for the Article 4 Direction**

3.43 The immediacy of any threat and potential compensation liability are considerations in determining whether to use a non-immediate or immediate Direction. An immediate Direction is not considered to be justified in this circumstance as there is not understood to be an immediate threat to properties within the Conservation Area, and it could also give rise to claims for compensation – especially given the large number of landowners affected.



3.44 The GPDO provides for the making of a “non-immediate” Article 4 Direction where permitted development rights are only withdrawn upon confirmation of the Direction following local consultation. Before April 2010 the Secretary of State confirmed certain Article 4 Directions, but it is now for the Council to perform this action. The Secretary of State will only exercise their powers in relation to Article 4 Directions if there are very clear reasons why intervention is necessary.

3.45 As soon as practicable after the Direction has been made, the Council should give notice by:

- publication of the notice in at least one newspaper circulating in the locality to which the Direction relates;
- by site display at no fewer than two locations within the area to which the Direction relates, for no less than 6 weeks;
- by serving the notice on every owner and occupier affected by the Direction unless the number of owners or occupiers affected makes individual service impracticable; and
- by notifying the County Council.

The notice must specify a period of at least 21 days in which any representations may be made. The Secretary of State (SoS) should be notified on the same day that the notice of an Article 4 Direction is first published or displayed locally. Given there is a need to display site notices for a minimum of 6 weeks, and the potential need to consider any representations made in confirming the Direction, an overall consultation period of 6 weeks is recommended.

3.46 In addition to the above, the notice must specify the date on which it is proposed that the Direction will come into force. This must be at least 28 days, but no longer than two years, after the start of the 21 day consultation period. However the Direction cannot have effect unless it has also been confirmed by the Council, after fully considering representations received and if the Secretary of State has not intervened. Without prior confirmation the Direction cannot have effect and any material changes to the Direction resulting from consultation in intervention by the SoS will require re-consultation. In this respect it is proposed that the date the Direction should come into force be set as 6 months from the date of the notice so to allow sufficient time for consultation, subsequent consideration and reporting of representations, any longer period as may be specified by the SoS, and modification and/or confirmation of the Direction.

3.47 It is proposed that if the SoS has not intervened and no material changes to the Direction are required as a result of representations received, the Direction be confirmed under delegated powers in consultation with the chair and vice chair of the Committee. In any other case the matter would be referred back to Committee.

3.48 The Council must ratify the process and serve notice locally and notify the SoS as soon as practicable after the Direction has been confirmed, giving details of the date the Direction will come into force.

#### **4.0 Financial Implications**

- 4.1 Article 4 Directions cannot apply retrospectively to address development which has previously occurred, nor to development that has been commenced at the time that a Direction comes into force. Extant planning permissions would also be unaffected. In this respect the Direction would have no financial bearing on such circumstances.
- 4.2 The Economic Development Manager has been consulted on the proposed Direction. He advises that an attractive and high quality town centre environment is a key aim of the Swadlincote Town Centre Vision and Strategy (2012). Recognising the wider value of its historic buildings and landmarks can help Swadlincote to compete for footfall with neighbouring centres and online retailing, providing wider financial benefits and resilience. However he also recognises there could be instances where the Direction might lead to additional costs and constraints on town centre businesses, many of which are small independent enterprises. In order to provide for an appropriate balance so not to stifle enterprise, it will be important to consider their needs sympathetically in implementation of the Direction and any subsequent LDO, and to offer grant support wherever funding for improvement programmes can be secured.
- 4.3 Any planning application required as a consequence of an Article 4 Direction is exempt from the usual planning application fee.
- 4.4 The costs relating to the issue of the Article 4 Direction can be contained within the current revenue budget provision within Community and Planning Services. However, there is no budget provision to cover the costs of any compensation claims arising from the issue of the Direction.
- 4.5 If the Local Planning Authority refuses planning permission for development which would have been permitted development if it were not for an Article 4 Direction, or if permission is granted subject to more limited conditions than permitted development rights would normally allow, then the Local Planning Authority may be liable for compensation.
- 4.6 Compensation can be claimed for abortive work expenditure or other losses *directly attributable* to the withdrawal of permitted development rights, as defined by Section 107 of the 1990 Act. Any claim must be made within 12 months of the refusal of a planning application. In addition to this, claims can only be made against the refusal of a planning application submitted within 12 months of the effective date of the Direction.

## **5.0 Corporate Implications**

- 5.1 Protecting local amenity contributes towards the Corporate Plan theme of Sustainable Development.
- 5.2 In accordance with the Council's Constitution and Scheme of Delegation, the decision to make an Article 4 Direction rests with the Planning Committee. The decision is amenable to the normal requirements of local authority decision making (lawfulness, rationality, reasonableness and procedural fairness). The decision is open to challenge through judicial review. An application for judicial review must be made on grounds of illegality, irrationality or procedural impropriety.

## **6.0 Community Implications**

- 6.1 Built development that is protected for its value to local amenity, which enhances the character of an area and therefore is of community benefit for existing and future residents, helps to achieve the vision for the 'Vibrant Communities' theme of the Sustainable Community Strategy.

## **7.0 Summary**

- 7.1 The Article 4 Direction mechanism is the only way to control the painting of buildings, demolition of curtilage walls, removal of roofscape features and the use of unsympathetic materials in extensions, as this type of activity could otherwise go unregulated.
- 7.2 The Direction would help to preserve the intrinsic qualities of buildings and curtilage features within the Swadlincote Conservation Area in the interests of the amenity of the area in terms of local historic significance.

## **8.0 Background Papers**

Swadlincote Conservation Area Character Statement (2014);

The Town and Country Planning (General Development Development) (England) Order 1995 (as amended);

The National Planning Policy Framework  
([www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2))

The National Planning Practice Guidance website  
([planningguidance.planningportal.gov.uk](http://planningguidance.planningportal.gov.uk)); and

English Heritage Guidance ([www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/](http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/article4directions/))

Illustrative justification for Article 4(1) Direction – Examples from 2005 and 2014

**SWADLINCOTE TOWN CENTRE**

**ARTICLE 4(1) DIRECTION – SCHEDULE**

Note: where this Schedule refers to commercial properties, this may include flats to the upper floors which are not separately listed. Every attempt has been made to identify each and every instance. In addition some current use classes specified are based on an informal decision as opposed to an established and known lawful use through passage of time or planning permission.

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
<b>BELMONT STREET</b>				
1	Extreme Gamez	A1	Painting and extensions	Part 2 Class C Part 42 Class A
10	Moza HQ Indian Restaurant	A3	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
Brook House	Hughes and Owen Dental Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>CHURCH STREET (Odd)</b>				
3, 5, 7, 17, 19, 21, 23, 25 & 27		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
1	Sweet Shop & Convenience Store	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
9	The Blue Brick Salon	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
11	The Biz	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
13	Love Hair	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
15	<Vacant – formerly Bliss Bridal Wear>	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
<b>CHURCH STREET (Even)</b>				
6, 10, 12, 14, 16, 18 & 20		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
8a	Reflections Beauty	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
34	Buckler Spencer Chartered Accountants	A2	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>COPPICE SIDE</b>				
12-16		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
Unit 1 The Pipeworks	Subway	A1	Painting	Part 2 Class C
Unit 18 The Pipeworks	Swadlincote Veterinary Surgery	D1	Painting and means of enclosure	Part 2 Classes A and C
Unit 20 The Pipeworks	The Tall Chimney	A4	Painting	Part 2 Class C
<b>ERNEST HALL WAY</b>				
1, 2, 3, 4 & 5		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>GROVE STREET</b>				
48	South Derbyshire Voluntary Services Centre	B1(a)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>HIGH STREET (Odd)</b>				
1	Ministry of Design	A1	Painting	Part 2 Class C
3	Firefly Tattoo Studio	Sui-generis	Painting	Part 2 Class C
5	The Air Ambulance Service	A1	Painting	Part 2 Class C
7	British Heart Foundation	A1	Painting	Part 2 Class C
9	<Vacant – formerly Jewellers>	A1	Painting	Part 2 Class C
11-13 (First Floor)	Anarchy Tattoo Studio	Sui-generis	Painting	Part 2 Class C
11-13	Thomson Travel	A2	Painting and extensions	Part 2 Class C Part 42 Class A
15-17	Boots PLC	A1	Painting and extensions	Part 2 Class C Part 42 Class A
19	Cadley Cauldwell Estate Agents Ltd.	A2	Painting and extensions	Part 2 Class C Part 42 Class A
23	William Hill	A2	Painting and extensions	Part 2 Class C Part 42 Class A
23a		Sui-generis (flat)	Painting and extensions	Part 2 Class C



Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
25	Reach South Derbyshire	A1	Painting and extensions	Part 2 Class C Part 42 Class A
27	Card Factory	A1	Painting and extensions	Part 2 Class C Part 42 Class A
29	Happy Homes YMCA Charity Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
33	Max Spielmann The Photo Expert	A1	Painting and extensions	Part 2 Class C Part 42 Class A
35-39	Telegraph News Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
41	HSBC Bank	A2	Painting and extensions	Part 2 Classes A and C Part 42 Class A
45	Hallmark Cards	A1	Painting and extensions	Part 2 Class C Part 42 Class A
49	Newton Fallowell	A2	Painting and extensions	Part 2 Class C Part 42 Class A
49 (rear of)		Sui-generis (flat)	Painting	Part 2 Class C
49a	Hairs and Graces	A1	Painting and extensions	Part 2 Class C Part 42 Class A
51-53	Swinton Insurance	A2	Painting and extensions	Part 2 Class C Part 42 Class A
55	Friston Small	A2	Painting and extensions	Part 2 Class C Part 42 Class A
55a		Sui-generis (flat)	Painting	Part 2 Class C
57	S. Colliers Butchers Ltd.	A1	Painting and extensions	Part 2 Class C Part 42 Class A
59	Lloyds Bank	A2	Painting and extensions	Part 2 Class C Part 42 Class A
61-63	Jon Paul Formal Menswear	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
61-63 (off Pipe Yard Passage)	The Cutting Room	A1	Painting, means of enclosure and extensions	Part 2 Classes A and C Part 42 Class A
61-63 (off Pipeyard Passage)	Slinkki Tattoo Studio	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
67	Foresters Arms (with managers flat above)	A4	Painting	Part 2 Class C
69	Empire Computers	A1	Painting and extensions	Part 2 Class C Part 42 Class A

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
69a	Redz Barber Shop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
71	Nomad Tattoo and Retail	Sui-generis	Painting	Part 2 Class C
75	Fortune Garden	A5	Painting	Part 2 Class C
77	USA Chicken	A5	Painting	Part 2 Class C
79	John Mills Curtains and Blinds	A1	Painting and extensions	Part 2 Class C Part 42 Class A
<b>HIGH STREET (Even)</b>				
4	<Vacant – formerly Select>	A1	Painting and extensions	Part 2 Class C Part 42 Class A
6	Greggs	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
8-10	St. Giles	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
12 & outbuildings at rear	Hillfield Animal Home Charity Shop	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
16	Birds Bakery	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
16A	Prince and Bates Opticians	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
16A	Sixteen A Dental Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
18	Scrivens Opticians and Hearing Care	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
18A Flat 1 & 2		Sui-generis (flats)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
20	McQueens	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
22	Smith Partnership	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
24	Go Mobile	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
26C	<Vacant – formerly pawnbrokers/pay day loan shop>	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
26	Specsavers Opticians	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
26B	Cashino Gaming	Sui-generis	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
28	Yum Yum Sweet Company	A1	Painting and extensions	Part 2 Class C Part 42 Class A
28A	Swadlincote Jewellery Workshop	A1	Painting and extensions	Part 2 Class C Part 42 Class A
30-32	Mind	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
38-40	Co-op Travel	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
42	Your Move	A2	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
44	Clintons	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
46-48	Peacocks	A1	Painting, means of enclosure, demolition and extensions	Part 2 Classes A and C Part 31 Class B Part 42 Class A
52	Santander	A2	Painting and extensions	Part 2 Class C Part 42 Class A
56	AGE UK Derby & Derbyshire	A1	Painting and extensions	Part 2 Class C Part 42 Class A
58	Toxic Cherry	A1	Painting and extensions	Part 2 Class C Part 42 Class A
60	The Money Shop	A2	Painting and extensions	Part 2 Class C Part 42 Class A
62	Nelsons Insurance Brokers	A2	Painting and extensions	Part 2 Class C Part 42 Class A
64-66	Weddings R Us, Flowers R Us and Parties R Us	A1	Painting and extensions	Part 2 Class C Part 42 Class A
<b>HILL STREET (Even)</b>				
2	Swadlincote Footcare Clinic	D1	Painting and means of enclosure	Part 2 Classes A and C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
4	American and UK Nails	Sui-generis	Painting and means of enclosure	Part 2 Classes A and C
6	Swadlincote Chiropractic Clinic	D1	Painting and means of enclosure	Part 2 Classes A and C
12	P3	B1	Painting and means of enclosure	Part 2 Classes A and C
<b>MARKET STREET</b>				
	Wesleyan Church Hall	D1	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
	The Sir Nigel Gresley PH	A4	Painting	Part 2 Class C
<b>MIDLAND ROAD</b>				
2	<Ground floor vacant (former estate agents); first floor as estate agents>	A2	Painting	Part 2 Class C
4-6	Buttercups Giftware	A1	Painting	Part 2 Class C
8	<Vacant – formerly The Aquatic Pet & Garden Warehouse>	A1	Painting	Part 2 Class C
12	David Elks Opticians	D1	Painting	Part 2 Class C
14	Sweeney Swad the Barbers	A1	Painting	Part 2 Class C
18	Barclays Bank	A2	Painting	Part 2 Class C
22, Bank House	<Vacant – formerly South Derbyshire Mental Health Association >	B1(a)	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
	Constitutional Club	D2	Painting, means of enclosure and demolition	Part 2 Classes A and C Part 31 Class B
<b>WEST STREET (North side)</b>				
8 & 8a	<Vacant>	A1	Painting, demolition and means of enclosure	Part 2 Classes A and C Part 31 Class B
12 & 14	The Fairer Choice	A1	Painting, demolition and means of enclosure	Part 2 Classes A and C Part 31 Class B
20	Ward and Brewin Funeral Services	A1	Painting	Part 2 Class C
22-24	New Empire Casino Lounge	Sui-generis	Painting	Part 2 Class C
	Autoquip	A1	Painting	Part 2 Class C

Address	Business Name	Current Use Class	GPDO Restrictions	Classes/Parts (of Schedule 2) to be removed
<b>WEST STREET (South side)</b>				
17	The Bear	A4	Painting	Part 2 Class C
19	Rainbow	A5	Painting	Part 2 Class C
21	New Empire	A4	Painting	Part 2 Class C
23 & 23a	Timms Solicitors	A2	Painting and means of enclosure	Part 2 Classes A and C
25	Lloyds Cycles	A1	Painting and means of enclosure	Part 2 Classes A and C
27		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
29	Teddy's Baby Boutique	A1	Painting and means of enclosure	Part 2 Classes A and C
31	Home Instead Senior Care	B1(a)	Painting and means of enclosure	Part 2 Classes A and C
33	Design Hair by Imogen	A1	Painting and means of enclosure	Part 2 Classes A and C
35	Pupils School Wear	A1	Painting and means of enclosure	Part 2 Classes A and C
37 & 39		C3	Enlargement/improvement/alteration, alterations to roof, erection of porches, hard surfacing, chimneys/flues, means of enclosure and demolition	Part 1 Classes A, C, D, F and G Part 2 Classes A and C Part 31 Class B
43	Ethos Hairdressing	A1	Painting	Part 2 Classes A and C
43A		Sui-generis (flat)	Painting	Part 2 Class C
47	Andrew Charles of Visage	A1	Painting	Part 2 Classes A and C
47A & 47B		Sui-generis (flats)	Painting	Part 2 Class C



## JUSTIFICATION FOR ARTICLE 4 (1) DIRECTION - EXAMPLES from 2005 and 2014



Changes to paint colours can dramatically affect the appearance of a traditional shopfront. The shop unit and elevations at 71 High Street (above), photographed in 2005 and 2014, were restored with grant-aid from the local partnership scheme. The change from an estate agency to a tattoo parlour required a change of image - the black with pink highlights is a bold contemporary twist. Although not included in the palette of approved colours, the requirement for planning permission for this colour scheme would have involved an assessment of whether this would be a positive step in the conservation area.

The shop at 20 High Street (below) was also restored with grant assistance. Left - the shop in 2005 and right - the shop in 2014. Planning permission is currently not required for a change to the colour scheme. If the Article 4 had been in place, the present hot pink colour scheme is unlikely to have been approved.



More damaging than the colour scheme, which is reversible, is the painting of the glazed brick stall-riser, which was installed with grant aid. Removal of paint from glazed bricks and joints could damage the face of the bricks. Currently planning permission is not required for painting masonry.







2005 - left and 2014 - right. A willingness on the part of the shopowner at 71 High Street has transformed the shopfront and improved its street presence. The main shopfront has been restored with a new mullion and recessed doorway with a hand-painted fascia, but it is the change to the colour scheme and internal lighting which has had the greatest impact.



The comprehensive restoration of No. 49 High Street (left) involved rebuilding the chimney stack, reinstating sash windows and installing a new shopfront with glazed brick stall-riser. Photographs from 2005 and 2014. Re-painting and changes to the advertisements could easily affect the character of this restored building.

Restoration of the Edwardian shopfront at 18 High Street (right - 2014 and far right - 2005) also involved extensive works to remodel the entrance doorway to the flats and restore the arched stone decorative doorcase. As planning permission is not needed for painting, this could easily be disfigured by painting.







The repair and restoration of the Edwardian shopfront at Nos. 56-58 High Street involved the cohesive painting of the shops to restore the simple character. In removing the large “detached” fascia panel, this has enhanced the character of the shopfront. Above - 2014 and right - 2005. Painting could easily alter this restored appearance by creating a disjointed shopfront.



Left - 2005. Enhancement work to 51-53 High Street, grant-aided under the Partnership scheme, involved reinstating sash windows to the first floor (right - 2014). Repainting these windows a dark colour or painting the restored brickwork could make a significant difference to the character of the area.

Right and far right - 2014 and 2005. The painting of brickwork does not need planning permission but can make a significant difference to the appearance of the conservation area.







Before and after - No.5 High Street in 2005 (left) and in 2014 (right)  
 Although the paint scheme has unified the shopfront, the rather dramatic yellow advertisements inside the glass are permitted development.

Boundary walls behind retail units are particularly vulnerable to alteration. The walls behind shops on the south side of High Street (below) were reinstated and restored with grant-aid. This important work could easily be undone by small-scale demolition. An Article 4 Direction would require planning permission to be submitted for alteration and demolition.



Passages leading from the High Street, between the buildings, are often lined with simple brick walls disguising yards. Demolition of these walls would lead to significant loss of enclosure and local character.







Above left - salt-glazed, bull-nosed copings to dwellings at Church Street are a rare survival and salt-glazed saddleback copings have been restored (above right) at 12-16 Coppice Side under the recent partnership scheme. At present, sections of these walls could be removed without planning permission.



Left - Ernest Hall Way. The back walls of properties fronting High Street have largely lost their boundaries. Future plans to potentially restore boundary walls to this frontage, to provide enclosure to the frontages, need a degree of protection so that they cannot be demolished without applying for planning permission.

Right - the replacement of Welsh slate roofs with concrete tiles is a major loss to historic character. This example on Church Street stands out in a uniform roofscape. Alterations like this, to domestic properties, are currently permitted development.



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<b>REPORT TO:</b>	PLANNING COMMITTEE	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	20 JANUARY 2015	<b>CATEGORY:</b> DELEGATED/ RECOMMENDED
<b>REPORT FROM:</b>	Director of Community and Planning Services	<b>OPEN/EXEMPT PARAGRAPH NO:</b>
<b>MEMBERS' CONTACT POINT:</b>	Richard Rodgers	<b>DOC:</b>
<b>SUBJECT:</b>	TPO389	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	LINTON	<b>TERMS OF REFERENCE: DC01</b>

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## **1.0 Recommendations**

1.1 That this tree preservation order be confirmed.

## **2.0 Purpose of Report**

2.1 To consider confirmation of this tree preservation order (TPO).

## **3.0 Detail**

3.1 This preservation order was made on 1 August 2014 in respect of a number of mature trees situated alongside Main Street and Coton Lane, Rosliston.

3.2 The TPO was made as the trees make a significant contribution to the immediate village environment and additionally have wider landscape value. The future of the trees is uncertain given development proposals detailed in planning application 9/2014/0372.

3.3 Comments relating to the proposed Order have been received and are summarised as:

- Councils should, since they are both responsible for both making and confirming the Order, deal thoroughly, conscientiously and fairly with any objection. Trees should be assessed in a structured and consistent way taking into account visibility, individual impact and wider impact. In regards the 'confirmation' stage the Council could enter into further consultation allowing those who have made objections to view any officer report and submit further comment before the Committee makes its decision.

- Trees should be easily identifiable (in regards their location) on a scaled Ordnance Survey base and/or location identified in the 1st Schedule. The map annexed to the TPO does not have a scale and the 1st Schedule does not describe the location of the trees.
- The trees do not score 16+ points in a TEMPO (Tree Evaluation Method for Preservation Orders) assessment to definitely merit a TPO. They are outside of the village development boundary and do not therefore contribute to the amenity value of the village. It is neither considered to be an important 'gateway'.
- This recent TPO has been made to frustrate a planning application.

3.4 In answer to the comments, officers have responded below.

- Whilst additional consultation may be of some benefit, the reasons for the Order are explained in the standard covering letter sent to all landowners / interested parties. Indeed Local Authority Officers do not enter into the process lightly and most TPOs are supported by a detailed Tree Officer report and TEMPO assessments, as is the case here. Objections to TPOs are reported to the Planning Committee before any decision to confirm an Order is made. That report is published on the Council website at least 7 days before the Committee meeting.
- The trees (T1 to T5) have been plotted on a scaled Ordnance survey based plan included with the TPO. The scale of the plan though is undeterminable. There are however landmarks and geographical features which gives some context to the locality. The trees are additionally identified in regards their species in Schedule 1. The subject of the order therefore is not in doubt. The TPO is not seen to be flawed in that regard.
- All of the trees here have been assessed and scored using TEMPO. T1 (Sycamore) has been scored as 14; T2 as 15. Collectively the oak trees score 18 mainly due to their expected retention span of 20-40 years. Under TEMPO a tree scoring between 12-15 is defensible as a TPO. Anything over 16 definitely merits a TPO whilst anything scoring 7-11 does not merit a TPO. The fact that the trees are outside of the village confine is irrelevant. There are a number of houses in the immediate as well as a footway providing a pedestrian link from those houses to the village centre.
- In respect of frustrating a planning application, the Council is obligated to protect trees of value in the landscape. Saved Environment Policy 9A in the adopted Local Plan states that: *'Development will not be permitted which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting'*. In the justification for the policy it adds: 'Trees and woodlands ...make a valuable contribution to the environmental quality of an area. The character of many villages and settlements ... is enhanced by single, as well as, groups of trees. They are a vital element of the landscape and of great importance to nature conservation.' Later it states that 'Threatened by development ... measures need to ensure the

continued management, protection and replacement trees need to be pursued.'

#### **4.0 Planning Assessment**

4.1 It is expedient in the interests of amenity to make the trees the subject of a tree preservation order in accordance with prevailing policy.

#### **5.0 Conclusions**

5.1 It is expedient in the interests of amenity to preserve.

#### **6.0 Financial Implications**

6.1 None.

#### **7.0 Corporate Implications**

7.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

#### **8.0 Community Implications**

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

#### **9.0 Background Information**

9.1 1 August 2014 Tree Preservation Order

9.2 Letter of objection from received 22 August 2014 - Design Construction Management Services Ltd.



South Derbyshire District Council Tree Preservation Order 389  
Land at SK2416 7131 Coton Lane, Rosliston, Swadlincote

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