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Date: 11 January 2016

Dear Councillor,

### **Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 19 January 2016 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

Councillor Roberts (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Atkin, Mrs. Farrington, Ford, Grant, Mrs. Hall, Stanton and Watson.

**Labour Group**

Councillors Dunn, Pearson, 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 AND PLANNING SERVICES **3 - 79**

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

- 5** 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.
- 6** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

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

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

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

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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, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 2015, 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>
9/2015/1063	1.1	Overseal	Seales	5 - 34
9/2015/0770	1.2	Midway	Midway	35 - 41
9/2015/0880	1.3	Willington	Willington & Findern	42 - 53
9/2015/0979	1.4	Newton Solney	Repton	54 - 64

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.**        9/2015/1063/OS

**Applicant:**  
**Providence Land Ltd.**  
**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 TO BE RESERVED) FOR THE ERECTION OF UP TO 70 DWELLINGS WITH ASSOCIATED PUBLIC OPEN SPACE, SUSTAINABLE DRAINAGE AND LANDSCAPING AT LAND AT SK2914 8297 ACRESFORD ROAD OVERSEAL SWADLINCOTE**

**Ward:**            **Seales**

**Valid Date:**     **16/11/2015**

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

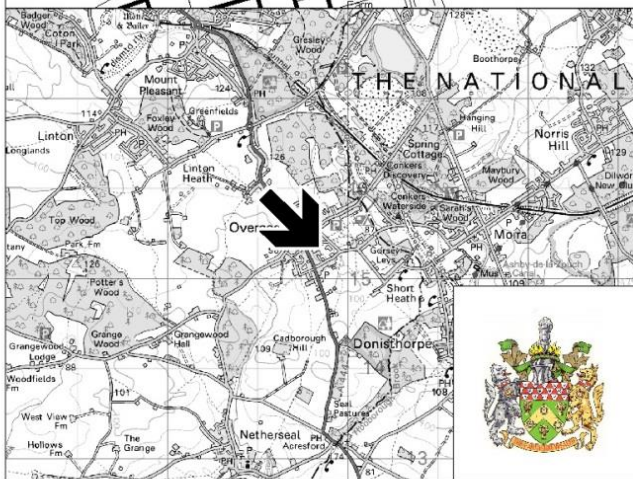
The item is presented to Committee as it is a major application where more than two letters of objection have been received and the application is contrary to the Development Plan.

#### **Site Description**

The site extends to some 4.7 hectares comprising two fields – one in arable use (northern) and one put to turf production (southern). Both fields have mature hedgerows along most of the perimeter. Some scattered trees are present in the hedgerows and self-seeded in the field margins. It lies next to the southern edge of Overseal, directly adjoining but outside the existing settlement confines. Public footpaths run adjacent to/within the northern and eastern boundaries. Vehicular access into the northern field is via a private track running to Acresford Road from the north west corner. Vehicular access into the southern field from Acresford Road is from a field gate in the south west of the Site and also from the field to the south east in the same ownership.

Acresford Road (A444) lies to the west, directly adjacent to the southern field whilst a ribbon of dwellings – mainly single storey, lie in-between it and the northern field. The ribbon of dwellings, predominantly two storey, along Moira Road lie beyond the northern boundary. The Shrubbery, an isolated dwelling set within woodland, lies to the southern boundary with a 2m high brick wall along part of this edge; whilst further

9/2015/1063 - Land at SK2914 8297 Acresford Road, Overseal DE12 6HX



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

largely isolated dwellings such as Grange Farm, Overseal House, 16 Acresford Road, Rookery Farm and 18 Acresford Road lie to the opposite side of the A444. Some of these are Grade II or II\* listed buildings. The site is relatively level but falls gradually away beyond the eastern boundary. The same happens to the land on the opposite side of Acresford Road, with a similar fall in levels beyond the Shrubbery to the south.

## **Proposal**

The application is made in outline with all matters of detail reserved for later consideration. The precise number of dwellings and density would be determined at the reserved matters stage but capacity for up to 70 dwellings is sought. An extensive area of formal and informal public open space (POS) would be incorporated to the southern boundary with further POS along the eastern and northern boundaries – all incorporating National Forest planting. A range of dwelling sizes, including bungalows, and tenures would be accommodated on the site and sufficient parking spaces provided (2 per dwelling plus visitor spaces). A mix of parking solutions would be provided throughout the site. It is proposed that none of the new dwellings would exceed two main storeys, and any utilisation of roofspaces with dormers would only take place in parts of the site which would not detract from residential amenities or the existing character of the village. The dwellings closest to Acresford Road would be limited to 1.5 storeys to integrate with the existing adjacent dwellings and conserve the setting of listed buildings. The indicative layout is also structured so that dwellings address the street to maximise surveillance of public areas and the orientation of buildings is used to create a clear demarcation between the private and public realm.

## **Applicant's supporting information**

A Planning & Sustainability Statement describes the site and the proposal, and rehearses the relevant Development Plan policies and paragraphs of the NPPF. It is considered the proposal represents an opportunity to deliver a high quality development in a sustainable settlement, with the site relating well to the existing built form and forming a logical village extension that infills between existing dwellings. It adjoins residential properties to the north, south and west and is contained to the east by a farmyard and mature boundary hedge. The proposal would be located where the principle of growth has been accepted in the emerging Local Plan and its evidence base, with Part 1 proposing development of a range of scales on appropriate sites including Key Service Villages such as Overseal. Having regard to the plan period for the 1998 Local Plan and the absence of a 5 year supply of deliverable housing, it is considered clear that the Plan is out of date in relation to housing provision and there are no specific policies in the NPPF that indicate development should be restricted. As such the presumption in favour of sustainable development applies. The Council has concluded in the Strategic Housing Land Assessment (SHLAA) that the site has no physical, environmental, access or ownership constraints and is potentially suitable. The proposal constitutes sustainable development that would deliver significant economic, social and environmental benefits, including a significant contribution to the Council's housing land supply against a backlog of need; a range and mix of house types and tenures; it being in an accessible location in relation to the village but also bus services to

nearby towns; it would provide housing without harming the local landscape, being sensitive to its location and responding positively to the distinctive character of the area; it would provide green infrastructure that would result in public open space and improvements in biodiversity; it would result in a package of infrastructure improvements for the local community and appropriate financial contributions to support local services and infrastructure; and the development would qualify for the New Homes Bonus which can be used to benefit the local community. It is advanced that as the site is surrounded by built development and the visual impacts would be very limited, any harm from the loss of countryside does not significantly and demonstrably outweigh the benefits set out above; and the proposal should be granted planning permission.

The Design and Access Statement (DAS) demonstrates how safe and suitable access can be achieved for all people and how the indicative layout follows the principles within Manual for Streets. The layout is considered to link well to the surrounding network of routes including Public Rights of Way (PRoW) into the village. The DAS addresses the design quality of the proposal and how it would support the promotion of healthy communities, and how it makes the most efficient use of the land whilst taking into account what is appropriate for the surrounding local built and natural environment. The extensive public open space results in a density of no more than 15 dwellings per hectare based predominantly on two-storey family houses.

The Public Open Space (POS) would provide a range of benefits including informal recreation, play, visual amenity, ecological protection/enhancement and space for sustainable drainage; with these spaces overlooked by buildings ('natural surveillance') and enclosed by active frontages. Existing trees of merit, as considered in a supporting Tree Survey, would be retained within the POS.

A Transport Statement demonstrates that the additional traffic generated by the proposal can be satisfactorily accommodated within the transport network, meaning the proposal would not result in a severe impact on the local road network. There would not be a need for major transport infrastructure to support the development; instead a new junction onto Acresford Road can be delivered by the scheme to ensure the existing road network would be able to function safely and with satisfactory levels of flows. The personal injury accident data for the local area has been reviewed and there are no existing road safety issues within the vicinity of the site. The site is also in an accessible location and within easy walking distance of a range of local services and amenities, and located within walking distance of bus stops which provide services to Swadlincote, Burton on Trent and Lichfield.

The Landscape & Visual Impact Assessment (LVIA) considers there would be no important landscape effects with the proposals complying with policies to contribute to the National Forest Strategy, retain boundary vegetation, respond to the context of the surrounding area and protect the character of the landscape. There would be a change for the two fields directly affected, but in the context of the defined landscape character the proposals do not fundamentally change this character. It is advanced that the site is less visible than existing development when seen from the surrounding countryside, with local views from the east limited to the adjacent fields before topography provides screening whilst substantial planting would add to this. To the south, mature trees within The Shrubbery and beyond screen close range



views on the approach into Overseal and provide a mature setting for the site in longer views. To the west, existing hedgerows and trees, together with existing development along Acresford Road provide a setting and context for the proposals. Intervening trees and hedges restrict views of the site to open high points such as Cadborough Hill. It is concluded that the development would not then be perceived as a major built incursion into open countryside. The visual impact assessment has identified some 'important' effects for adjacent properties on Acresford Road and Moira Road although effects would be reduced to a moderate level with proposed mitigation. However, none of the effects, whether initial or residual would be overbearing in terms of residential amenity. There would also be effects for users of Public Footpath 24 which runs to the rear of properties along Moira Road, but although the setting of this footpath would fundamentally change, it would be incorporated into the informal open space and although different, would not result in an unattractive route.

A Heritage Statement establishes that the proposed development as illustrated within the masterplan would not adversely impact upon the wider settings of any of the designated and non-designated heritage assets surrounding the site. The site forms a minor contribution to the wider settings of the surrounding heritage assets, however, the proposed illustrative layout incorporates appropriate landscaped buffers and additional planting throughout to ensure minimal visual impact. Furthermore, the key elements of the buildings' settings would remain unaltered by the development and as such would not adversely impact upon the experience or significance of the surrounding heritage assets. Whilst there would be alteration of some public views towards the heritage assets, in particular those from footpath 26 at the southeast corner of the site; long distance glimpses will be retained and the manner in which these views are experienced within an existing built context on Acresford Road would remain largely unaltered.

The Archaeological Desk Based Assessment confirms there are no designated archaeological heritage assets within the site or wider search area. A geophysical survey was carried out but no significant remains were identified. The results were characterised by Medieval ridge and furrow cultivation and possible Post-Medieval/ Modern agricultural features. The ridge and furrow demonstrates that the site was part of the open field system surrounding Overseal during the Medieval period. However, this is not considered to represent a constraint on development because these features would be of no more than local significance. There remains a low potential for any other as yet undiscovered archaeological assets, but the significance of any such remains should not preclude or constrain development.

A Flood Risk Assessment (FRA) and Drainage Strategy identifies that the site lies entirely within Flood Zone 1. The nearest watercourse is the Hooborough Brook located some 250m south and fluvial flooding is not considered to pose any risks to the site. Overland flows (pluvial flooding) generated by residential units on higher ground presents a very low risk of flooding, whilst groundwater presents no material risk. The underlying ground is a mixture of limestone, sandstone and mudstone and the site would be provided with dedicated surface water drainage with either attenuation or infiltration likely appropriate based on current evidence. Discharge rates would be limited to greenfield rates, whilst attenuation would be sufficient to hold run-off under a 100-year+ climate-change event. The detailed design of the surface

water drainage system would take into account downstream sensitivities of the River Mease catchment in terms of water quality. There is a foul gravity sewer running northwards along the Acresford Road beginning to the front of number 21, whilst there is also a foul sewer along Moira Road towards the junction with the A444. A pumping station is likely to be required within the development whilst indications suggest there is headroom at the Overseal works to accommodate the foul flows generated by the development, and Severn Trent Water has not made any statement to the contrary. On-site sewers would be offered for adoption. The new SuDS would be offered for adoption where possible to the sewerage authority, or the local or county authorities. Should these parties decline then the SuDS assets would be vested in a site management company.

A Habitat Appraisal, supported by a Bat Survey and a Great Crested Newt Survey concludes that the important natural features of the site would be conserved and enhanced – namely the hedgerows, trees and a pond. The Appraisal provides advice on how the site can be enhanced with native species that would provide a net gain in terms of biodiversity. It is not anticipated that protected species would be harmed by the proposals subject to mitigation to retain foraging corridors (hedgerows for bats), appropriate timing/monitoring for any removal of hedgerow (nesting birds), trees (bats) and other vegetation (newts). It is considered the impact on the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC) can be dealt with by conditions requiring developer contributions to address water quality and agreement of a detailed drainage scheme.

An Open Space Assessment sets out that, based on average household sizes for the Seales ward, approximately 165 people would occupy 70 dwellings. With saved policy seeking adequate provision in accordance with the National Playing Fields Association Standard of 2.4ha per 1000 people, this would result in a requirement for 0.4ha of public open space (POS) on this site. The evidence base for the emerging plan elevates this to 2.54ha per 1000 people, taking account of current District-wide deficits and is an aspirational standard supplementary local guidance. This would result in a requirement of 0.42ha, which is still within the amount proposed on the indicative layout. Furthermore, to comply with saved policy, National Forest planting should amount to 20% of the site area with almost 1ha of woodland should be created either on or off-site. The POS on the indicative layout is approximately 1ha, excluding the area for drainage. It is anticipated that some National Forest planting would be on site, within a woodland belt along the eastern boundary and within the POS and SuDS area. There is also extensive land to the south of the site that could provide for off-site planting. This objectives can be secured under a Section 106 agreement, as can further contributions for off-site outdoor sports and built facilities.

A Utilities Report finds there are no public sewers within the site, the nearest foul sewer running northwards up Acresford Road from a point just outside the north-west corner of the site. A combined sewer originates a short distance west of Acresford Road. Severn Trent Water has indicated that the first sewer has capacity for a larger scale of development subject to the means of transmitting those flows and potentially to further checks on the local sewer network's performance. Western Power records show low-voltage cables along Acresford Road and Moira Road passing or close to the site. No supply cables cross any part of the site itself. National Grid records show that a small diameter low pressure pipelines run along

Acresford Road and Moira Road. No pipelines cross any part of the site itself. South Staffordshire Water records show that supply mains run along Acresford Road and Moira Road. No pipelines cross any part of the site itself. BT records show a cable run along Acresford Road past the site and a pole-mounted cable crossing the south-west corner of the site before it crosses the road to Rookery Farm.

An Affordable Housing Statement and Heads of Terms for Planning Obligation sets out the intention for 30% of dwellings provided to be for affordable housing purposes with a 68%/32% split towards rented properties in a mix of 1, 2, 3 and 4-bed dwellings. There would also be contributions towards the provision of primary school places at Overseal Primary School, and secondary school/post 16 places at The William Allitt School, as well as contributions to changing room facilities and outdoor fitness equipment in the village. If required contributions towards off-site waste management provision and travel plan monitoring could be secured. On-site provision of POS (minimum 0.5ha) and Sustainable Urban Drainage Systems (SuDS), and commuted sums for their maintenance and management; along with provision of National Forest planting (minimum of 1ha) both on-site and, if appropriate, off-site on land under the same control could also be secured.

The Statement of Community Involvement (SCI) sets out that the applicant has undertaken some pre-application engagement including planning officers, the County Council, Derbyshire Wildlife Trust, Severn Trent Water and other relevant bodies. The applicant also held a public exhibition at St. Matthews Hall in Overseal in July 2015 providing an opportunity for discussion and questions to be asked. The various issues raised have informed both the previous application and the current application, with the proposed development area, scale to the front of the site, position of green buffers and other matters all influenced by the comments received.

## **Planning History**

9/2015/0496   Erection of up to 60 dwellings with associated public open space, sustainable drainage and landscaping – Refused October 2015 due to landscape and visual impacts and is currently subject to appeal.

## **Responses to Consultations**

The Environment Agency has no comments to make and advises consultation with the Lead Local Flood Authority (the County Council).

Natural England notes that the Council's screening exercise to check for the likelihood of significant effects on the River Mease SAC and SSSI has concluded that significant effects are unlikely to occur, either alone or in combination. On the basis of information provided, Natural England concurs with this view. Accordingly Natural England has no objections subject to the securing of contributions towards the River Mease SAC scheme, and conditions to secure details of the private drainage scheme including capacity of local sewers, confirmation of sewage treatment capacity, details of the SuDS for surface water drainage including the verification of their capacity, and a construction management plan. They also advocate consideration of the increase in traffic the development would bring to the A444, where Natural England has evidence of impacts on the integrity of the River

Mease through increased metal loads. Natural England also advises local input is sought on protected species, potential for biodiversity enhancement and green infrastructure.

Derbyshire Wildlife Trust (DWT) comment that whilst the habitat survey was constrained due to the time of year, the results are acceptable given the nature of the site and the lack of any kind of recognised ecological designation. The bat activity surveys have highlighted the presence of foraging bats within the site. The great crested newt report provides sufficient information upon which to draw conclusions regarding the potential impact; agreeing that impacts on great crested newt are unlikely. DWT support additional measures proposed to reduce the risk of any impact. The development is considered likely to have a minor adverse impact in the short term due to loss of part of two hedgerows and general disturbance. The impact on hedgerows can be addressed through mitigation/compensation within the site, and the loss of arable and/or species poor grassland is considered to be a minor impact. The open space/green infrastructure should include compensatory habitats to offset the losses elsewhere within the site and provide some overall biodiversity gain. The woodland planting should help to provide some additional habitat for wildlife in the long term. Conditions are recommended to require bat mitigation measures, a construction environmental management plan (CEMP); a Landscaping and Biodiversity Enhancement Plan (LBEP) and controls over when hedgerow can be removed.

The National Forest Company (NFC) considers the boundary hedgerows and trees of value such that they should be adequately protected during the construction period. The NFC also requests that the development is carried out in accordance with the proposals to provide of bat and bird boxes and maximise the wildlife value of the proposed balancing pond. The NFC notes that emerging policy suggests 0.94ha of woodland planting is necessary, provided either on-site, off-site or through a combination of both approaches; and the proposed quantum of 1ha is both welcome and should be appropriately secured through on and off-site planting. Finally they request that connections be made to the public footpath to the east of the site through the detailed layout submitted at reserved matters stage.

The County Planning Policy Officer seeks financial contributions towards education provision – £159,586.14 towards 14 primary school places to be provided at Overseal Primary School, and £171,761.70 towards 10 secondary school places at The William Allit School. They also seek informatives regarding high speed broadband and designing to Lifetime Homes standards.

The NHS Southern Derbyshire CCG seeks a financial contribution of £26,628 towards improvements of the Overseal Surgery by way of internal reconfigurations and/or extension.

The Strategic Housing Manager requests that 30% of the units (21 of 70) be for affordable housing purposes, with a 68%/32% split towards rented properties in a mix of 1, 2, 3 and 4-bed properties – the balance of shared ownership being in 2, 3 and 4-bed properties.

The County Archaeologist notes the site is c200m south of the historic core of the village and only about 80m from the 'Manor House' – a building of c1830 but on the site of an earlier building which may have medieval origins. Because of the proximity of the historic core there is some potential for medieval village remains within the site. The archaeological desk-based assessment and the geophysical survey identify evidence for archaeological remains, such that a condition is requested to secure a scheme of investigation and reporting.

The County Highway Authority previously considered a relocation of the 30mph speed limit beyond the site access could not be demonstrated as necessary to allow the development to take place. In addition, the Highway Authority considered the findings of the Transport Statement to be sound and the development would not have a significant adverse effect on capacity or safety of the local road network. This revised application is not considered to fundamentally alter these views. The Highway Authority considers the indicative access arrangement acceptable in principle in terms of location although it is considered that 10m radii rather than 6m should be provided, and means of preventing access from a private drive in the north-west corner should be secured. Other conditions are also sought to secure a construction management plan including wheel wash facilities, internal roads being designed in accordance with Manual for Streets, a footway being provided up to the access, sufficient parking spaces and bin collection points and timing of their provision, and specifics regarding gradients, visibility splays and surface water disposal.

The County Footpaths Officer raises no objection subject to inclusion of informatives.

Peak & Northern Footpaths question the accuracy of the route of public footpath 26 in part, beyond the site confines as shown on the plans, but welcome the links from the site to the PRow's which abut the site.

The Contaminated Land Officer raises no specific issues given records indicate no historical land uses or contaminative sources which would likely impact the site, although a precautionary condition is recommended.

The Environmental Protection Officer raises no objection but seeks conditions to control dust and noise, as well as hours of working, during the course of construction.

The County Flood Team notes that whilst the FRA recommends a ground investigation to assess the viability of infiltration as a method of surface water disposal, no such investigation has been presented at present. The Flood Team advises that should infiltration not be feasible then, the FRA's recommendations for disposing of water off-site should be followed in principle at the detailed drainage design stage. The Flood Team advises they have no objection subject to conditions to secure appropriate surface water drainage through use of infiltration or SuDS as a priority.

Severn Trent Water previously raised no objection subject to a condition in respect of foul and surface water drainage.

The Police Crime Prevention Design Adviser raises no objection noting the indicative layout responds well to the context in terms of natural surveillance and enclosure of private space. Footpath links around the site should be kept fairly open from a visual perspective, whilst the usual aspirations for side windows, etc. to overlook parking and courtyards are advanced. Furthermore any non-adoptable highway should have a scheme of lighting agreed.

## **Responses to Publicity**

Overseal Parish Council strongly objects on the following grounds:

- i) the site is outside the village boundaries and it is a large development which would affect the character of the village;
- ii) the school cannot cope with the inevitable numbers of children who would seek to attend;
- iii) the secondary schools are also unable to cope;
- iv) the medical facilities in the village are over-stretched;
- v) other public services are being reduced (e.g. the fire service is being cut back at present);
- vi) the access would be directly onto the A444, which is already badly congested;
- vii) ability for the new access to deal with refuse vehicles and a car exiting the site at the same time;
- viii) there are no footways on that side of Acresford Road, meaning that children would have to cross the traffic streams to the path on the far side;
- ix) for safety it would be necessary to construct a roundabout or install traffic lights at the access;
- x) it is unlikely children going to school would use the public rights of way across the fields;
- xi) a footpath also emerges onto Moira Road and users would have to cross at a point with reduced visibility;
- xii) listed buildings would be adversely affected;
- xiii) local publicity suggested there would be retail premises and public parking within the site;
- xiv) mining subsidence is still active in this part of the village and the balancing pond would be provided where there has been subsidence and it is understood that water drains into the former workings beneath; and
- xv) inaccuracies with the application, for instance the named school catchment.

38 objections have been received, raising the following concerns:

- a) there are other sites to use first over use of agricultural land;
- b) the site is beyond the periphery of the village boundaries;
- c) the village school is full;
- d) the senior schools in the area are at full stretch;
- e) local doctors and other local services are at capacity;
- f) bats roost in the trees;
- g) destruction of wildlife habitat;

- h) the danger of the A444 and its capacity is already a concern, especially with existing congestion;
- i) additional traffic on Moira Road;
- j) position of the access to the development;
- k) creation of accidents in the vicinity of the site;
- l) errors in supporting statement referencing incorrect school;
- m) underestimation of vehicle generation from the proposal;
- n) danger for increased use of footpaths and crossing of Moira Road and A444;
- o) footpaths not suitable to cope with increased use and would produce anti-social activity;
- p) extra pollution from vehicular traffic;
- q) utilities and sewers unable to cope with additional demand;
- r) soakaways not suitable for the ground conditions;
- s) listed buildings and non-designated heritage assets sit close to the site and it would take away from the status of these properties;
- t) entrance to the village framed by grand farmhouse style buildings and proposal would ruin the look and feel of the village;
- u) the housing would change the character of the village and its pattern of development, and not blend with its surroundings;
- v) the proposal would appear isolated from the village;
- w) the LVIA impacts are understated;
- x) proposed landscaping mitigation is inadequate and will take years to establish;
- y) height of and maintenance liabilities for landscaping buffer;
- z) loss of green space in the National Forest;
- aa) use of Green Belt land;
- bb) subsidence and ground movement on/adjacent to the site, and construction works/traffic could impact on existing residences;
- cc) impact on existing tourism in the vicinity;
- dd) loss of privacy;
- ee) previous application was refused;
- ff) effect on view; and
- gg) effect on property value.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 5, 8, 9 and 11 (H5, H8, H9 and H11); Transport Policies 6 and 7 (T6 and T7), Environment Policies 1, 9, 10, 11, 13 and 14 (EV1, EV9, EV10, EV11, EV13 and EV14), Recreation & Tourism Policies 4 and 8 (RT4 and RT8) and Community Facilities Policy 1 (C1).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).

### **National Guidance**

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

### **Local Guidance**

- Housing Design and Layout SPG
- S106 Agreements – Guidance for Developers
- River Mease SAC Development Contributions Scheme (DCS)

### **Habitat Regulations**

The Council is a 'competent authority' under the Habitats Regulations and, in determining applications for development, must only give permission where it can be demonstrated that any European wildlife site would not be adversely affected. The proposal, without mitigation, has the potential to contribute to adverse effects on the River Mease SAC in terms of poor water quality. However a screening exercise has concluded that no Appropriate Assessment is required subject to ensuring that the conditions requested by the County Flood Team and Natural England are included.

### **Planning Considerations**

This proposal is largely similar to that recently refused under delegated powers given that development would have appeared as an isolated 'outlier' to the village, in the majority detached from the existing edges of the settlement and largely separated from the built up form by way of an intervening field. Members should be particularly aware that the previous refusal was based solely on the environmental harm arising outweighing the social and economic benefits the proposal would bring about. In seeking to address the imbalance, this proposal now includes the intervening field and draws back all built form in the original field to the northern half of it only.

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

- Principle of development and weight afforded to policy
- Local infrastructure capacity and affordable housing
- Highway Safety



- Biodiversity and ecological impacts
- Drainage and flood risk
- Ground stability
- Design and amenity
- Heritage
- Landscape and Visual Impacts
- Financial considerations

## **Planning Assessment**

### Principle of development and weight afforded to policy

The site lies outside the settlement confines for Overseal, not catered for by way of saved policy H5 and beyond the scope and intentions of saved policy H8. H5 can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing, whilst H8 does not align with a proposal of this nature and thus the policy is not considered applicable. The proposal therefore conflicts with saved policy EV1. EV1 is not intended as a housing policy but as it has the effect of restraining delivery; it is a policy for the supply of housing in the eyes of the NPPF (paragraph 49). Recent appeal decisions have confirmed the policy falls into this category, aligning with recent case law. The presumption in favour of sustainable development is therefore engaged.

Notwithstanding this, the policy does accept that some development in the countryside is unavoidable, and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing, such that it can be afforded some weight in principle. The policy also goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide further consistency with the core principles and sections 6 (design) and 11 (natural environment) of the NPPF.

The decision rests on the application of the 'planning balance' when considering the above policies and the merits of the proposal. This test aims to strike the right balance between housing delivery and ensuring the environmental, social and economic dimensions, including meeting the needs of occupants and the existing community, which should be mutually beneficial. Whilst a lack of a 5-year supply might engage the presumption in favour of sustainable development, it does not automatically "stand down" local plan policies – merely challenges the weight which may be afforded to them. For the presumption in favour to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

## Local infrastructure capacity and affordable housing

The site is considered to be well connected to other settlements and services therein via various routes and modes of transport. Objections as to the existing capacity of the local highway network are noted but the response of the County Highway Authority indicates a lack of evidence to substantiate such a view. There is not considered to be a significant adverse effect on the capacity or safety of the local road network as a result, especially given the number of dwellings proposed when viewed in the round (i.e. as an adjunct to the existing population of the village and existing traffic utilising the A444 as a strategic route through the District). The impacts on the local public footpaths are noted but considered acceptable, and again the Highway Authority has not raised concern over an adverse safety risk to users where these routes cross the public highway.

The provision of up to 70 dwellings would place pressure on existing schools, healthcare, sports and built facilities. With regard to the consultation responses above, the education impacts can be satisfactorily accommodated subject to financial contributions of £159,586.14 towards a project at Overseal Primary School and £171,761.70 towards a project at the William Allitt School. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF.

The request from the CCG evidences there is a currently unmitigated impact arising from any such development proposals in Overseal at the present time. In this respect a sum of £26,628 is requested. This contribution is considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF.

Based on the indicative mix of housing (2 two-beds, 21 three-beds, 36 three-beds and 11 four-or-more beds), some 0.5 hectares of open space is required, including a LEAP. The indicative layout this could be comfortably achieved and exceeded representing an environmental gain in terms of biodiversity potential. Links to the existing footpaths can also be secured and the green buffer to the southern edge would provide an additional east to west route for walkers. Identified projects at Woodville Recreation Ground, presently unfunded in whole or in part, can be supported by off-site contributions towards outdoor sports and built facilities (circa £43,000 and £24,000 respectively, based on the indicative mix), which are again considered to be CIL/NPPF compliant.

Emerging policy sets a starting point of 30% of the dwellings to be for affordable housing purposes, whilst the NPPF advocates a need to provide a range of housing options. The SHMA also evidences such a need. There is an intention to provide 30% of the dwellings for affordable purposes giving rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision. This latter point is highly material and recent appeal decisions in the District have seen Inspectors afford significant weight to this element of housing provision alone.

## Highway Safety

The County Highway Authority notes that the site fronts onto Acresford Road with the access proposed just beyond the existing 30mph zone. With the posted limit of 40mph longer visibility splays are required, but it is considered these can be comfortably achieved such that there is no requirement to relocate the existing extent of the 30mph limit. Any delays in leaving the site due to traffic flows would be an inconvenience rather than a safety concern, and traffic turning into the site could actually assist in slowing other users on this part of the A444. A footway from the bellmouth to connect to the existing eastern footway can be secured by condition, as can greater radii than indicatively shown on the bellmouth; whilst any later detailed application can secure appropriate parking provision. A notable difference from the previous proposal is that Public Footpath 24 now falls within the application site and it extends to Acresford Road in the form of a private drive. The Highway Authority would not support its use in conjunction with the development and hence whilst the route of the PRow will need to be maintained free of obstruction and on its legal alignment, and its use by pedestrians should be encouraged; means of preventing its use for vehicular access into the site will need to be addressed through a condition.

## Drainage and flood risk

Severn Trent Water previously raised no objection to the principle of the development connecting to their infrastructure, whilst responses from the County Flood Team indicate that suitable drainage of the proposal can be secured by way of conditions. There is therefore not considered to be an elevated risk of flooding to existing property whilst foul drainage capacity appears adequate on the basis of the applicant's supporting information and the responses provided.

## Biodiversity and ecological impacts

The survey work undertaken and the response from the Wildlife Trust indicates that the impacts arising from the development would be acceptable subject to appropriate conditional control. The favourable conservation status of protected species would not be harmed such that the Council is considered to have discharged its duties under the Habitat Regulations. Long term enhancement can be secured by way of condition and landscaping detail at the reserved matters stage, and matters relating to hedgerows are discussed above.

The impact on the River Mease SAC has been explored in detail following local concern over the potential for a pathway between any attenuation pond(s) and the River Mease via the sub-strata. However the considerable distance between the site and the benefits of infiltration over sewer based discharge are considered to ensure that surface water would be of acceptable quality when entering the Mease. An appropriate SuDS solution, with treatment stages to improve water quality, can be secured by a suitable drainage scheme and a financial contribution. The foul water can also be drained to a public sewer within a feasible distance of the site and thus, subject to the financial contribution also addressing this matter, again it is considered the impact on the Mease would be acceptable and not significant. The total contributions would amount to some £17,200 based on the indicative housing mix. The need to secure a construction management plan is supported, but the concerns

over increased usage of the A444 is considered to be part of a wider strategic concern which needs to be delivered through the plan process in conjunction with the relevant highway authorities and Mease district authorities. The size and scale of this particular proposal is not considered to justify any action in itself when having regard to the CIL and NPPF tests.

National Forest woodland planting can be secured on and off-site to the standard specified in emerging policy, and this would help to assimilate the proposals into their surroundings. Existing hedgerows and boundary trees are not considered to pose a significant constraint to detailed design and protection can be afforded to these features during construction. Some hedgerow would be lost to facilitate access but compensation can be secured by way of condition. Given the nature of the site frontage and the ability to retain the majority of hedgerow without causing visibility conflicts means very little removal would be necessary, helping to retain the existing character felt along this route and screen higher ridge lines set some distance back from this thoroughfare.

### Ground stability

Whilst the site does not fall within a high risk area for Coal Mining legacy (as defined by Coal Authority mapping), there is documented evidence of fissures to the north-west and south of the site. Indeed Grange Farm, The Shrubbery and the A444 itself have all suffered subsidence or collapse in the past. However the last significant movement appears to be in the early 1990s, not long after the former deep coal mining in this area is known to have ceased.

It must be recognised that to withhold permission on such grounds, there needs to be evidence of a risk in the first instance. Anecdotal reports of issues arising on site fall far short of being able to substantiate a problem. The lack of a Coal Authority high risk designation further supports the stance that the matter is not a significant issue, in the round. Moreover it is also relevant to ask what mitigation or remediation could be applied should subsequent investigation find there are issues on the site. There are two obvious and highly material considerations in this respect. Firstly, there are a wealth of technical solutions which can be implemented to resolve coal mining legacy features, such as removal of shallow features, grouting or foundation design. Secondly, the proposal is in outline and does not have to deliver the maximum of 70 dwellings; hence any issues could simply be isolated and avoided. Indeed a combination of these approaches would likely resolve any concerns from the point of view of the Coal Authority, such that this should not be a concern for Members in the determination of the application.

### Design and amenity

Detailed design matters would be reserved for consideration under a later application. Nevertheless the indicative masterplan achieves an outward facing development with surveillance out towards roads and POS. The views from the public footpath across the site would experience some additional constraint but the southern POS helps to maintain views across the site towards existing heritage buildings and the landscape beyond. This matter is discussed further below but is not considered to constitute grounds for withholding permission on design grounds.

Overall the design of the site provides no fundamental concerns as to achieving appropriate parking provision, minimum separation standards, and providing secure design and natural surveillance.

### Heritage

The proposal has an impact on the setting of 16 Acresford Road and Overseale House (Grade II and Grade II\* listed buildings respectively). There is also an impact on undesignated heritage buildings such as The Shrubbery, 18 Acresford Road and Rookery Farm. These dwellings help to frame a 'gateway' into Overseal from the south. The intervisibility between the site and the listed buildings has been reduced by the construction of a row of mid-20th century bungalows on the eastern side of the road. The Shrubbery sits within a planted landscape and is relatively prominent due to the topography and the open fields adjacent, and is particularly visible from Footpath 24 looking across the site. However the impact on this setting is not one of a designed vista and is somewhat incidental. There is also an impact on the setting of 18 Acresford Rd and Rookery Farm.

It is considered the proposals would have a moderate to slight impact on the settings affected, and it is welcomed that the layout under this submission has been considerably 'pulled back' from the A444 and the Shrubbery. Furthermore dwellings to the A444 frontage would be limited in height (secured as such by condition). These amendments are considered to help to preserve the settings. There is an impact with an incidental view from Footpath 24 towards the heritage assets, designated or otherwise, but in light of the amendments and with reference to the degree of impact remaining; it is considered the harm is less than substantial and thus the benefits of the scheme must be weighed in the balance.

### Landscape and visual impacts

The site carries no statutory or local landscape designations and, despite comments received, the site is not designated as green belt. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by appeal decisions, is to first determine what value the landscape has before reaching a balanced response to the proposals. A recent high court ruling has also shed light on this approach, and it is necessary for the site to have some physical feature or association which elevates it above being just open countryside.

In a landscape context Overseal is located on a rising crest towards Mount Pleasant to the north with the Mease valley to the south and east along with its associated tributaries. The site itself sits on a shallow ridge which falls away to the west of Acresford Road and beyond the eastern edge of the site towards Shortheath. This topography and public footpaths provide some visual access and appreciation of the site but its confinement behind hedgerows or arable use prevent incidental use of it. The site is therefore considered to contribute to the open countryside character of the local area solely on a visual basis, and thus fall short of being a locally valued landscape for the purposes of the NPPF.

When moving south out of the village development beyond the Valley Road/Moira Road junction is ribbon in nature, becoming increasingly sporadic beyond the row of 1970s bungalows and 18 Acresford Road. The listed buildings, 18 Acresford Road, Rookery Farm and the Shrubbery all provide a 'gateway' indication of entering the settlement by way of their relationship to the highway or their design and prominence. The woodland around the Shrubbery also contributes to this experience. The proposal however would sit back and away from the prominence of these features, as well as the main thoroughfare of the A444. The position, and the limitation of development to just one side, of the new access road would also give the impression of a further ribbon of development extending along a thoroughfare. Any depth created by dwellings behind would be limited or 'hidden' behind the frontage dwellings created. The existing ribbon character is not considered to be fundamentally eroded on a visual dimension.

In terms of the public footpaths, Footpath 26 intercepts Footpath 24 before passing between bungalows on Moira Road. These routes already pass through built up confines within the village such that walkers would continue to experience the same for a short distance further before emerging from the built up part of the site into the open landscape. Glimpses and views across the site itself towards the designated and undesignated heritage assets and the open landscape behind (viewed between 18 Acresford Road and Rookery Farm) would be retained such that this element of the walkers' experience would not suffer demonstrably.

Whereas the segregated nature, depth and density of the previous scheme did not sit comfortably in its context, and the intervening (north) field provided a concept of 'in the village, then out, then back in again'; the revised scheme now presented ensures a natural infill between the ragged edges of the settlement overcoming the appearance of isolation. Given the above discussion as to the value of the landscape, it is considered that the degree of harm arising is notably tempered by the revisions to the scheme which have been pursued since the refusal.

### Financial considerations

Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that any local financial considerations are a matter to which local planning authorities must have regard to in determining planning applications; as far as they are material for the application. The weight to be attached is a matter for the decision maker. The New Homes Bonus is a material consideration which must be considered amongst the economic benefits of the development.

### Summary

The assessment identifies that highway safety, infrastructure, ecological, drainage and other technical impacts would be acceptable, subject to conditions or obligations where necessary; and a detailed design could provide for an outward facing development and appropriate layout. The provision of up to 70 dwellings towards housing needs must be afforded significant weight at the time of writing given the current shortfall under the 5-year housing supply, and the fact that up to 30% of these would be affordable also adds further weight in its own right. The economic benefits of the development also attract weight in favour, including short term

employment and onward investment in the supply chain during construction, and continued investment in local services and facilities by occupiers of the resulting development. The modest increase in the overall population of the village would help to sustain this rural community, in line with the first limb of paragraph 55 of the NPPF. The contributions towards education, healthcare and recreation needs – whilst predominantly to mitigate the impacts of the proposal – bring about fringe benefits through updated or improved quality of services, etc. The surplus of open space, a play area available for both existing and prospective residents, and on and off-site woodland planting are recognised as environmental and social benefits arising from the development.

Balanced against these benefits are the landscape and visual impacts. The overall value of the site cannot be any greater than local, and even then there is little evidence to suggest the site carries a particular feature or association which might elevate its status. The revised proposals have sought to positively respond to concerns raised under the previous proposal, ensuring the development is now read as part of the village as opposed to an isolated outlier; whilst the stepping back from heritage assets has further reduced any limited harm arising to their respective settings. Hence whilst a degree of environmental harm arises, it is not considered sufficient to significantly and demonstrably outweigh the benefits of the development. Hence, with regard to the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered the development represents a balanced approach to sustainable development.

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

## **Recommendation**

**GRANT** permission subject to:

- A.** the completion of a legal agreement under Section 106 of the 1990 Planning Act to secure the financial contributions as set out above towards mitigating impacts on education provision, healthcare provision, recreation provision (built and sports facilities), and the River Mease SAC; and
- B.** the following conditions:
  - 1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required before any development is commenced with respect to the following reserved matters:
    - a) access
    - b) appearance;
    - c) landscaping;
    - d) layout; and
    - e) scale.

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

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

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

3. The details submitted pursuant to the reserved matters listed at condition 1 shall broadly be in accordance with the indicative layout plan (ref: 0169/012 Rev A) and sections 6-10 of the Design and Access Statement (November 2015) and shall specifically include the following:
  - a) the design of the internal layout to accord with the guidance contained in "Manual for Streets" issued by the Department of Communities and Local Government;
  - b) details of pedestrian links to the public footpath to the eastern and northern edges of the site together with a timetable for implementation;
  - c) the provision of an access to Acresford Road incorporating 10m radii;
  - d) the provision within private land of bin stores at the end of private drives/courtyards;
  - e) details of the lighting to private roads and courtyards;
  - f) the provision of bungalows or houses to a maximum of 1.5 storey height on plots arising within the area marked as such on the indicative layout plan (ref: 0169/012 Rev A); and
  - g) new tree planting to reflect the site's location in the National Forest to minimum of 20% of the total site area, to be delivered on-site in broad accordance with the indicative layout plan, and/or off-site on land within the applicant's control (as shown on 1431.9 Rev 0).

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design.



4. No removal of hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

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

5. The landscaping details required pursuant to Condition 2 above shall include a Landscaping and Biodiversity Enhancement Plan (LBEP) that identifies the establishment of new areas of benefit to wildlife, and a timetable for implementation. These LBEP should include the creation of wildflower areas and wetland habitats around the SuDS and at the margins of hedgerows. Any loss of hedgerow should be fully compensated for by planting of new hedgerows within the site. The approved measures shall be implemented in accordance with the timetable.

Reason: In the interests of enhancing the biodiversity value of the site.

6. The sole means of vehicular access into the site shall be via the new estate street. Measures shall be taken to prevent vehicular access from Acresford Road along the private drive and route of Public Footpath 24 which runs between numbers 9 and 11 Acresford Road, and such measures shall be included in the details submitted pursuant to condition 1.

Reason: In the interests of highway safety and for the safety and enjoyment of users of the public footpath.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any Statutory Instrument amending, revoking and/or replacing it; the garage accommodation/parking space provided pursuant to reserved matters approval shall not be used other than for the garaging and parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure an appropriate level of parking provision is provided and thereafter maintained for the life of the development, in the interests of highway safety.

8. The proposed access driveways/parking spaces to the public highway shall be no steeper than 1 in 14 for the first 5m from the nearside highway boundary and 1 in 10 thereafter.

Reason: In the interests of highway safety.

9. No construction works shall take place on the site other than between 8:00am to 6:00pm Monday to Friday, and 8:00am to 1:30pm on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

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

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

Reason: In the interests of highway safety.

#### Pre-commencement

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

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

12. No development shall take place including any works of demolition until a Construction Management Plan or Construction Method Statement has been submitted to and been 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:

- a) Parking of vehicles of site operatives and visitors;
- b) Routes for construction traffic;
- c) Hours of operation and delivery windows for third party suppliers for the construction phase;
- d) Pedestrian and cyclist protection;
- e) Proposed temporary traffic restrictions;
- f) Arrangements for turning vehicles;
- g) All necessary measures to avoid potential impacts on the River Mease SAC along with suitable mitigation as required.

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

Reason: In the interests of highway safety and to protect the River Mease SAC, recognising that even initial stages of development could cause unacceptable impacts on the public highway and SAC.

13. No ground works within the site shall commence 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 temporary access shall be retained in accordance with the approved scheme throughout the construction period free from any impediment to its designated use.

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

14. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
  - (i) the programme and methodology of site investigation and recording;
  - (ii) the programme for post investigation assessment;
  - (iii) provision to be made for analysis of the site investigation and recording;
  - (iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - (v) provision to be made for archive deposition of the analysis and records of the site investigation; and
  - (vi) nomination of a competent person or persons/organisation to undertake the works set out within the WSI.
- (b) No development shall take place other than in accordance with the archaeological WSI approved under (a).
- (c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

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

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

Reason: To ensure that the visual impact of the development is minimised as far as possible, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions and their efficient operation thereafter.

16. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015), specifically including pollution prevention measures and demonstrating sufficient capacity to accommodate flows from the development; has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the first occupation of any dwellings.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

17. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

18. No development shall take place until such time as a surface water drainage scheme that incorporates an appropriate number of surface water treatment stages to protect the receiving waterbody from adverse impacts from the development has been submitted to, and approved in writing by, the Local Planning Authority.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

19. No development shall commence until a scheme for the disposal of highway surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure appropriate treatment of surface water to minimise potential impacts on the River Mease SAC. The scheme shall be implemented in accordance with the approved details and retained and maintained accordingly thereafter.

Reason: To ensure the adequate and sustainable drainage of the public highway, in the interests of highway safety, and to improve and protect water quality, recognising that initial stages of development must secure appropriate levels and falls for the drainage system to properly function.

20. The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the local planning authority. Such a scheme shall include evidence that the treatment works and public sewer(s) designated to receive flows has sufficient capacity to do so. The scheme shall be implemented as approved.

Reason: To safeguard against pollution of the natural environment, recognising that initial stages of development must secure appropriate levels and falls for the drainage system to properly function and that off-site infrastructure may require further investigation and/or upgrading.

21. No development shall commence until a construction phase dust mitigation scheme has been submitted to and approved in writing with the Local Planning Authority. The approved mitigation shall be implemented prior to works commencing and thereafter retained throughout the construction phase.

Reason: To ensure an appropriate standard of amenity for existing occupiers, recognising the potential for works to cause unacceptable impacts on existing occupiers from the outset.

22. No development shall commence until a noise mitigation scheme to include the impact of noise from construction activities on existing properties, and the noise from the A444 on the proposed dwellings, has been submitted to and approved in writing with the Local Planning Authority. Any approved mitigation for construction activities shall be implemented prior to works commencing and thereafter retained throughout the construction phase, whilst any approved mitigation for occupiers of the dwellings shall be incorporated into the design of the development/dwellings and thereafter retained as such.

Reason: To ensure an appropriate standard of amenity for both existing and proposed occupiers, recognising the potential for works to cause unacceptable impacts on existing occupiers from the outset.

23. No development involving the construction of a street shall commence until details of the proposed arrangements for future management and maintenance of the proposed street have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: In the interests of highway safety and long term maintenance.

Prior to occupation

24. No dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the details approved pursuant to Condition 3.

Reason: In the interests of highway safety for prospective occupants during the course of construction works on site.

25. A dwelling shall not be first occupied until space has been provided within the site for the parking and manoeuvring of residents' and visitors' vehicles associated with that dwelling, laid out in accordance with the scheme approved pursuant to condition 1 above, or as subsequently revised and approved in writing by the Local Planning Authority pursuant to an application made in that regard. The facilities shall be retained throughout the life of the development free from any impediment to their designated use.

Reason: In the interests of highway safety.

26. Private driveways/parking spaces to the proposed access road, the subject of condition 1, shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on either side of the accesses at the back of the footway/margin, the splay area being retained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

27. Prior to the first occupation any dwelling a new street junction shall be constructed and footway implemented on the Acresford Road frontage in accordance with designs first submitted to and approved in writing by the local planning authority.

Reason: In the interests of highway safety.

28. No dwelling shall be occupied until such time as the areas of land for off-site tree planting, shown on plan ref: 1431.9 Rev 0, have been planted in accordance with a detailed scheme which shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: To deliver National Forest objectives and assimilate the development into the National Forest.

Other

29. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the Local Planning Authority.

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

30. 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 first occupation of the dwellings or the completion of the development, whichever is the sooner; and any plants which within a period of five years from the completion of the development die (ten years in the case of trees), are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of visual amenity and to secure appropriate open space provision for occupiers of the dwellings hereby approved.

31. The footpath links required pursuant to Condition 3(b) above shall be provided in accordance with the approved details and timetable.

Reason: In the interests of facilitating safe and suitable access to the public open space by all users.

Informatives:

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

- b) In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to overcome the previous reason for refusal, and 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.
- c) 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.
- d) 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.
- e) Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Environmental Services Department at County Hall, Matlock.
- f) Car parking provision should be made on the basis of 1.5, 2 or 3 parking spaces per 1, 2/3 or 4/4+ bedroom dwelling respectively. Each parking bay should measure 2.4m x 4.8m (larger in the case of spaces for use by disabled drivers and 3m wide in the case of spaces captive to a dwelling/wall/fence to at least one side) with adequate space behind each space for manoeuvring; whilst each space within garages should measure at least 3m x 6m.
- g) Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and/or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council for Highway, Developer and Street Works. Works that involve road closures and/or are for duration of more than 11 days require a three months' notice. Developer's Works will generally require a three months' notice. Developers and Utilities (for associated services) should prepare programmes for all works that are required for the development by all parties such that these can be approved through the coordination, noticing and licensing processes. This will require utilities and developers to work to agreed programmes and booked slots for each part of the works. Developers considering all scales of development are advised to enter into dialogue with Derbyshire County Council's Highway Noticing Section at the earliest stage possible and this includes prior to final planning consents.



- h) Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - [es.devconprocess@derbyshire.gov.uk](mailto:es.devconprocess@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- i) The application site is affected by two Public Rights of Way (Footpaths 24 & 26 Overseal, as shown on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock.
- Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.
  - If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 580000 for further information and an application form.
  - If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.
  - Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.
  - To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping-up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.
- j) The applicant is advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management (IAQM) for advice on how dust assessments should be performed. The assessment of the impacts of construction on local air quality should be undertaken following a risk based approach, as outlined in the IAQM document 'Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance'.
- k) The County Council Flood Risk Management team do not consider below ground storage tanks or oversized pipes to be classed as sustainable

drainage features. The County Council encourages that site surface water drainage is designed to manage surface water as close to the surface as possible, prioritising infiltration as a means of surface water disposal and where possible applying the SuDS management train. The County Council would prefer the applicants to utilise existing landform to manage surface water in mini/sub-catchments.

- l) The County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed.
  
- m) Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from the County Council (e.g. an outfall that encroaches into the profile of the watercourse, etc) to make an application for any works please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).

Item 1.2

Reg. No. 9/2015/0770/NO

**Applicant:**  
**Mr Mark Sweet**  
**Quay Point Strata Homes Yorkshire Ltd**  
**Lakeside**  
**Doncaster**  
**DN4 5PL**

**Agent:**  
**Mr Mark Sweet**  
**Strata Homes Yorkshire Ltd**  
**Quay Point**  
**Lakeside**  
**Doncaster**  
**DN4 5PL**

**Proposal:**           **ERECTION OF BALL STOP FENCING TO PERIMETER  
OF FOOTBALL PITCHES ON RECREATION GROUND  
AT CHESTNUT AVENUE MIDWAY SWADLINCOTE**

**Ward:**               **Midway**

**Valid Date:**       **04/09/2015**

*Members will recall this application was deferred from the 15 December 2015 committee in order to investigate alternative treatments/solutions. The report remains as it appeared on the agenda for the August committee; however, additional discussion in respect of the above matters appears within the report in italics.*

**Reason for committee determination**

The application is reported to Committee under Regulation 3, as the works are being undertaken on behalf of the Council.

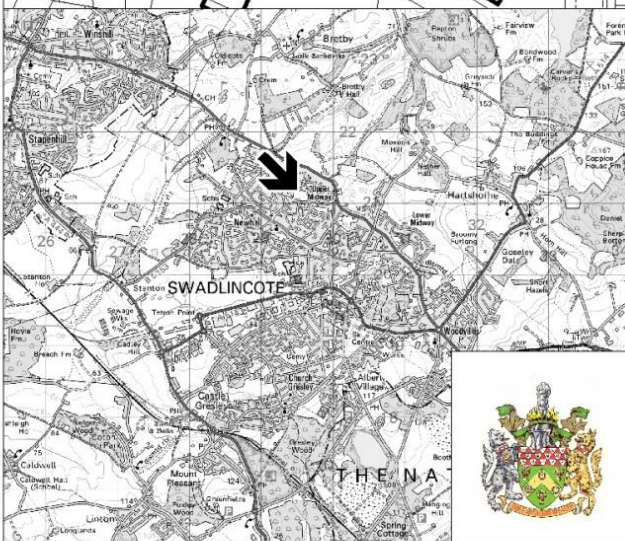
**Site Description**

The site forms part of the community facility approved as part of planning application 9/2014/0158. The site consists of two football pitches and is bounded on all sides by residential properties.

**Proposal**

Consent is sought for the erection of ball stop fencing around the certain perimeters of the site. The proposed fencing is designed to be erected where there is the most risk of balls landing in neighbouring gardens from the football pitches.

9/2015/0770 - Recreation Ground, Chestnut Avenue, Midway DE11 0EL



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## **Planning History**

9/2014/0158 - The erection of 66 dwellings and associated infrastructure, development of new community facilities and sports hall and car park with demolition of existing pavilion, and installation of new play area and two new football pitches – Approved with Conditions - 15/05/2014

## **Responses to Consultations**

The Coal Authority has no comments to make.

The County Archaeologist advises that the proposed works would have no archaeological impact.

South Derbyshire District Council's Open Space Officer has requested amendments to extend the line of the fencing in certain areas and reduce the height of the fencing.

## **Responses to Publicity**

Two neighbour comments have been received which can be summarised as:

- a) Concerns about the proximity of the ball stop fencing to the existing dwellings.
- b) The football pitch needs to be reduced to stop balls coming into neighbouring properties completely.
- c) "Prison fence" appearance of fencing next to peoples windows.

Five further neighbour comments have been received following a re-consultation on amended plans and the following points have been raised:

- a) It is unclear how far the fencing will be from Charleston Close and Claymar Drive.
- b) Fencing should be erected around Claymar Drive to prevent people using the area to access the site.
- c) Cosmetic fencing should be erected at Claymar Drive to stop people observing the sports at this point.
- d) The fencing is an eyesore and is "prison like" in appearance.
- e) People already use the properties on Ascott Drive as a short cut to the fields, causing damage to the properties fencing.
- f) There is no fencing proposed to the properties on Ascott Drive. Therefore, these properties are not protected from damage.
- g) The pitch has been reduced. However, if the pitch was not so centred in the site it would negate the need for the fencing, or would mean that the fencing could be positioned as far away from the residential properties boundaries as possible.
- h) 6m fencing is too high.
- i) It was presumed that a brick wall would be erected along the boundary to reduce damage to neighbouring properties fencing and to address flooding issues.

## Development Plan Policies

The relevant policies are:

- South Derbyshire Local Plan 1998 Saved Recreation and Tourism Policies R1 and R 4.
- Emerging Development Plan Policies (Submission Local Plan Part One) include: S2 – Presumption in Favour of Sustainable Development

## National Guidance

National Planning Policy Framework (NPPF) paragraphs:

- 6-8 - Sustainable Development
- 14 - Presumption in favour of Sustainable Development
- 17 - Core Planning Principles
- 56 - Requiring Good Design

National Planning Practice Guidance (NPPG) ID 26 Design

## Planning Considerations

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

- Principle of the fencing
- *Justification and rational of proposed ball-stop fencing*
- Height and position of the fencing
- Other issues

## Planning Assessment

### Principle of the fencing

Consent has previously been obtained for the use of the site as a community facility with football pitches as part of planning application 9/2014/0158. The proposed erection of the ball stop fencing is proposed to limit the number of balls that could potentially be kicked into the gardens of neighbouring residential properties and therefore, the principle of the fencing would be acceptable as it would result in better amenity value for local residents.

### *Justification and rational of proposed ball-stop fencing*

*Following concerns raised at the last planning committee meeting, the applicant has provided further information with regard to the justification of the proposed ball stop fencing, and a rationale as to why the proposed fencing has been chosen.*

*The adjacent housing requires protection from ball games which would be played on the Chestnut Avenue Playing Fields. This would consist of both scheduled matches*

*(for both senior and junior football) and informal play, as the site would be fully open to all for use at any time. Once operational, the site would not be staffed and is essentially a public recreation ground. Therefore it is necessary for a solution to be sought to adequately protect residents adjacent to the site (both existing and new dwellings) from nuisance and potential damage caused by stray footballs.*

*Depending on the sports to be played, ball stop fencing can range from 25m in height (e.g. for golf balls) to 3m in height for a 5-a-side multi-use games area or tennis court. The minimum required height for ball protection on the site at Chestnut Avenue has been deemed to be 4m, which would appear to be appropriate for football played on a grass pitch. If the proposed fencing is any lower than this, then the fencing would become ineffective.*

*As part of the design process, a number of options have been considered:*

- Option 1: No fencing to be erected – The presence of no fencing would leave the adjacent properties (which are a mix of back gardens, side & front elevations) fully exposed to stray footballs. There is a significant nuisance factor and a high likelihood of property damage, with potential for risk of costs to the Council. This would not be an effective solution.*
- Option 2: Ball netting – The perimeter protection offered by ball netting would prevent stray balls from leaving the site, and is often used on private sports grounds where the use is controlled and overseen. However this would not be a preferred solution for a public site as the netting is of a fragile construction and easily damaged. In instances such as this, chain-link type fencing is sometimes used but once damaged this also generates a problem as the integrity of the net/fence is compromised. The repair for this is costly and requires specialist contractors. The netting is also capable of being climbed, of which there has been instances of this happening on other unstaffed sites. Due to the risk/hazard and potential long term and recurring costs (in terms of repair & maintenance) this would not be an effective option.*
- Option 3: Ball stop fencing – This is a rigid construction of post-mounted weld-mesh panels designed to act as a rebound barrier. The fencing is durable, considerably difficult to vandalise and is not possible to climb. It is commonly used around public sports grounds due to its vandal-resistant nature and has recently been granted planning permission for/installed at Occupation Lane, Woodville and Woodville Recreation Ground. There are few companies that offer fencing that meet these specifications and as such there is very little variation in design or specification. On a public recreation ground this is considered to be the best option, with low long-term maintenance implications.*

#### Height and position of the fencing

Amendments have been sought that reduce the pitch by 1m in width in order to accommodate the position of the fencing. This has enabled the fencing to be moved further away from the boundary of neighbouring properties and the fencing has been

reduced from 6m to 4m in height. This helps to reduce the feeling of overbearing and overshadowing that was previously posed by the possibility of a 6m high fence.

The ball stop fencing is not opaque boundary treatment and allows light to pass through, therefore, there would not be an issue posed whereby the fencing could block out light to neighbouring properties and would not be visually harmful. The fencing would therefore be of an appropriate scale and would be well integrated with the neighbouring surroundings.

### Other issues

It has been raised as a concern by local residents that the visitors to the facility may wish to park on the hammerhead of Claymar Drive in order to watch the sport, instead of using the allocated parking facilities, and that there should be boundary screening erected to obscure the view from this position and stop this from happening.

There would not be the scope to request this as part of the application, as consent is sought for the erection of the proposed fencing and it would not be possible to use this as an instance to address issues that are outside of the control of the application.

On the basis that the facility accommodates sufficient parking for visitors on match days and that there is ample space available for viewing the sport within the facility, it would appear unlikely that this hammerhead would be used for this purpose and in addition, it would not appear to be reasonable to request that this area is screened.

### Conclusion

The erection of the proposed fencing would result in better amenity value for local residents, as there would be fewer instances of balls being kicked into residents' garden space. *Following the additional information as set out above, it is evident that the proposed ball stop fencing would be the most effective solution to avoid potential damage and loss of amenity to neighbouring residents.* The fencing at 4m in height would be less visually intrusive and overbearing and would therefore comply with policies R1 and R4 of the Local Plan.

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

### **Recommendation**

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

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



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

2. The development hereby permitted shall be carried out in accordance with plan/drawing Location Plan 01, received on 19th August 2015; plan/drawing 29148/02/01 Rev N (Amended Plan); and plan/drawing 29148/14/05 (Amended Plan); unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

Informatives:

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

Item 1.3

Reg. No. 9/2015/0880/FM

**Applicant:**  
Ritchie Taylor  
Central House  
Hermes Road  
Lichfield  
WS13 6RH

**Agent:**  
Mr James Bird  
Henry Mein Partnership  
12 Clarendon Street  
Nottingham  
NG1 5HQ

**Proposal:** CHANGE OF USE OF GROUND FLOOR FROM RETAIL (USE CLASS A1) TO RESTAURANT (USE CLASS A3) AND FIRST FLOOR TO RESIDENTIAL (USE CLASS C3) TO FORM 4 NO. APARTMENTS AT 2 THE CASTLE WAY WILLINGTON DERBY

**Ward:** Willington & Findern

**Valid Date:** 21/09/2015

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

The item is presented to committee as the proposed development does not accord with the Councils SPG.

#### **Site Description**

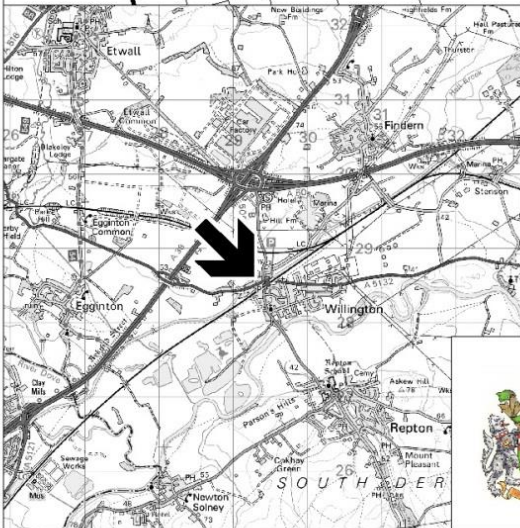
The application site relates to a two storey mock tutor property situated within the village centre of Willington and relates to the former Co-Op retail unit and the hairdressing salon on the northern side of The Castle Way opposite the post office. The building is split over two floors with the retail units located on the ground floor.

The site benefits from two access points which runs to a rear car park and is operated on a one way system due to the restricted width of the access. The building is surrounded by residential properties differing in scale and design. The car park is large enough to accommodate the parking and manoeuvring of 9 cars.

#### **Proposal**

The application proposes the change of use of the two retail units (use class A1) to a restaurant (use class A3) and the change of use of the first floor to four apartments. The restaurant proposal would not incorporate a walk-in takeaway element but would provide a delivery service. No extensions would be proposed to the building, however some of the existing windows on the upper floors would be blocked up whilst others created to facilitate the residential accommodation. In addition, a

9/2015/0880 - 2 The Castle Way, Willington DE65 6BT



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stainless steel extraction duct/flue would be sited on the rear elevation of the property which would run from ground floor up beyond the eaves of the property by 900mm and would be approximately 450mm in width, fixed to the wall by brackets.

The main changes would be to the internal layout of the building that would split the ground floor between the dining area, bar area and 'back room' space for offices, kitchen and storage, along with the conversion to flats of the upper floors. The shop front would be retained and the existing Co-Op decals within the windows would be replaced with frosted/obscured film up to 1.8m in height (above ground level) in order to reduce visibility in to and out of the restaurant. Signage would be dealt with under a separate advertisement consent application.

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

The Design and Access Statement outlines the proposal. This application has been made following the withdrawal of planning application 9/2015/0452 due to the change in circumstances where the hairdressing salon became available. The document also specifies the proposed opening hours of 5pm 11pm Sunday to Thursday and 5pm – 11:30pm Friday – Saturday.

An 'Information for proposed extractor system' document provides further details on the extract duct/flue proposed which has been altered from a 225mm duct to a 450mm duct and incorporate a baffle grease filter and an actuated twin heavy duty carbon filter collectively designed to neutralise odour particles by up to 90-95%. The duct would also incorporate a fan and silencer which work together to prevent noise disturbance. The fan and ducting have been situated to maximise the full extraction potential and the duct, grease and carbon filters would all be maintained and cleaned in accordance with manufacturer's specifications including weekly wash downs and replacement filters through the year.

The applicant states that an underground grease interceptor would be installed to prevent grease from entering the mains sewer, and it is proposed to provide a commercial waste bin and two recycle bins which would be emptied/collected at least weekly.

### **Planning History**

9/2015/0452 – Change of use from Class A1 retail to Class A3 restaurant with installation of extractor chimney – Withdrawn 08/09/2015

### **Responses to Consultations**

The Contaminated Land Officer has no comments to make.

The County Flood Risk Team has no comments to make.

The Environmental Health Officer has no objection subject to informatives regarding the need to contact and register with the Environmental Health Section on food hygiene and health and safety matters.

The Pollution Control Officer has no objection to this application in principle, provided that the development is conditioned by opening times and delivery times. In addition, it would be necessary for the applicant to provide a noise assessment which should identify all noise attenuation measures that may be appropriate to reduce the impact of noise for prospective occupiers.

The County Highways Authority note that two vehicular accesses exist, with one at each side of the building, with nine car parking spaces to the rear. A one-way system currently operates through the site with vehicles entering at the eastern access and exiting from the western side of the building. It should be noted that visibility at both accesses is substandard and that the Highway Authority would not wish to see an increase in their use. However the existing retail uses could resume at any time and continue to exist in planning terms. Bearing in mind the number of vehicular movements which could potentially be generated by the existing use of the building, it is not considered that the proposed uses would result in an increase in traffic generated by the site. They note that the majority of movements would occur during the evening but the current use generates evening traffic and a significant reduction in daytime traffic would result. The applicant proposes to restrict the use of the car park to residents and staff only and the Highway Authority endorses this, and seeks a condition to this effect. It is likely that the proposal may result in some increase in the demand for on-street parking at certain times of the day; however this is not considered to be sufficient to warrant refusal and on-street parking occurred regularly with the previous use. Furthermore, parking restrictions do exist on a number of surrounding roads. Therefore The County Highway Authority raises no objections to the proposal subject to conditions being included.

### **Responses to Publicity**

There have been eight comments received regarding the application which have raised the following points:

- a) The parking to the rear of the site may be adequate for the proposed residential use and the proposed restaurant use but there will be nowhere for customers to park. The car park to the rear cannot support the proposed uses.
- b) Parking remains an issue in the area.
- c) Green Close is already subject to illegal parking, the proposal will exacerbate this issue.
- d) The condition of the roads in the area is already poor.
- e) The previous retail business left the premises as there was not sufficient capacity for deliveries to be made. Will this become a re-occurring problem with the proposed use?
- f) The proposal will result in an increased risk on an already busy road.
- g) There will be an increased risk of people parking in the pavements in the area and blocking the pavements.
- h) The proposed restaurant would be too close to existing residential properties.
- i) The proposed use would have a terrible effect on local residents due to smells and noise from the extractor fan and customers/staff leaving.
- j) The proposed use would create an increase in noise and smell pollution.

- k) Residents will not be able to open their windows due to the smells.
- l) Concerns with regard to noise as customers leave at closing time and staff who will be leaving at around 1pm. Residents who live adjacent to the car park will not be able to open their windows due to the noise.
- m) There are up to fifteen food outlets in Willington, another Indian Restaurant is one mile away. Is another restaurant needed in the area?
- n) The proposed establishment will overlook existing residential properties with the glare from the lighting until 11pm.
- o) The proposed use would be open too late.
- p) The steel extractor flue to the rear would be unsightly and the properties located to the rear of the site will be blighted.
- q) The proposed flats are a good idea and will assist with buyers in the area. It would be useful if the whole building were to be converted into flats.
- r) The opening at the rear of the site should be closed up.
- s) The proposal will cause major issues in Willington and request that members visit the site.
- t) An Indian restaurant in the village would be good.
- u) The limited parking opposite in the designated car parking, is already woefully inadequate to support both existing residential and business needs. This situation will be exacerbated and will inevitably entail parking in prohibited areas.
- v) The inadequate parking situation will cause substantial issues in the village whereby accesses to neighbouring properties could be blocked and cause a potential safety hazard to passing pedestrians and vehicles.

### **Development Plan Policies**

The relevant Saved Local Plan policies are: Housing Policies 5 and 11, Shopping Policy 3 and Transport Policy 6,

Emerging Local Plan Part 1 2014: S1 – Strategic Growth Strategy, S2 – Presumption in Favour of Sustainable Development, S3 – Environmental Performance, S6 – Sustainable Access, H1 – Settlement Hierarchy, E2 – Other industrial and business development, SD1 – Amenity and Environmental Quality, SD2 – Flood Risk and INF2 – Sustainable Transport.

### **National Guidance**

Relevant National Planning Policy Framework paragraphs and chapters include:

- Paras 6-10 (Achieving sustainable development)
- Paras 11-14 (The presumption in favour of sustainable development)
- Para 17 (Core principles)
- Para 19 (Building a strong competitive economy)
- Para 23 (Ensuring the vitality of town centres) Para 28 (Supporting a prosperous rural economy)
- Para 51 (Delivering a wide choice of high quality homes)
- Para 196 & 197 (Determining applications)

Chapters of the National Planning Practice Guidance (NPPG) which are relevant are: ID:32 (Air quality), ID:26 (Design), ID:21a (Conditions), ID:9 (Duty to cooperate), ID:2b (Ensuring the vitality of town centres) and ID:30 (Noise).

## **Planning Considerations**

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

- Principle of change of use to restaurant (ground floor)
- Principle of change of use to residential flats (first floor)
- Highway safety
- Residential amenity
- Overall design

## **Planning Assessment**

### Principle of change of use to restaurant (ground floor)

The existing site comprises a retail (A1 use) unit and a smaller hairdressing salon (A1 use) within the settlement boundary and close to the village core where there is a mix of businesses and residential dwellings. The retail unit has been vacant for over 6 months and the hair dressing salon has recently become available. There has been no interest for a retail operation. The prospect of a village centre use to replace the existing unit is acceptable, and gains significant support from paragraphs 19, 23 and 28 of the NPPF. The proposed change of use would be of benefit to the local community in drawing in visitors to the village. The business would compete with other food establishments in the local area; however healthy competition is encouraged within the NPPF as it ensures businesses operate to the best of their ability to maintain a healthy trade, in turn attracting onward investment in the village and supporting businesses.

Chapter 3 of the NPPF states that planning should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development, as well as promoting the retention and development of local services and community services in villages. This is supported by saved policy S3. Willington contains a range of services and has regular bus and train services, the stops for which are within walking distance of the site. While most journeys are likely to be made by private car, the site is accessible by alternative modes of transport and therefore considered to be a sustainable location.

### Principle of change of use to residential flats (first floor)

The change of use of the first floor to four flats would include the creation of three, two bedroom flats and a one bedroom flat. The site is contained within the village confines of Willington and would therefore be compliant with saved policy H5. The development would create additional much needed residential accommodation within a key service village and would encourage the re-use of the building. This housing provision is afforded significant weight under the terms of the NPPF and in the absence of the 5-year housing supply.

## Highway Safety

The Highway Authority notes the existing situation/use and as a consequence offers no objection on highway safety grounds as the existing access is well established and a one way system would remain to ensure no conflict with vehicles is created. The locality does benefit from a public car park (adjacent to the canal and pub) and parking on the highway, as well as a modest car park to the rear that can accommodate 9 vehicles and could be used for smaller delivery vehicles (which are more likely compared to the former Co-Op retail use). Indeed, for the very reason of its village centre location and the aforementioned constraints, a proportion of the custom would likely arise from passing pedestrian trade.

The existing site benefits from a historic unconditioned retail use, with no planning conditions to restrict opening hours or restrictions on deliveries. Therefore, it is noted that another retail use could open up in the unit without the need for planning permission and operate 24 hours a day. The proposed use would not operate during the day, and would only be open in the evenings which would be significantly less than the current use and could contribute to reducing parking pressures in Willington during the day. This planning gain should be recognised.

Overall the proposed development would comply with the requirements of Transport Policy 6 and paragraph 32 of the NPPF as it is close to an existing road network and provides adequate provision for access, manoeuvring and parking.

## Residential amenity

The site comprises an existing business use which was readily used by the community and is close to the existing centre where other well established businesses are located. This tapers the degree of 'tranquillity' which is possible to neighbouring dwellings, as does the highway network.

A key concern raised by local residents is the issue of noise and odour given the type of restaurant proposed. Members should divorce their decision from the type of restaurant being considered and instead focus on the planning use. An extractor duct/flue would be positioned on the rear wall away from residential properties and would extend above the eaves of the building to ensure emissions are set into the atmosphere above and not at ground level. The lower part of the duct/flue would be a succession of filters, fans and silencers which work together to neutralise odours by up to 90-95% and push residual emissions up and away from the site whilst reducing any potential for noise disturbance. The fans would only be operational whilst the cookers are in use. The level of disturbance caused by odour nuisance is considered to be low given the extraction equipment proposed.

As previously noted, it is possible that another retail use could open up in the unit without the need for planning permission and operate 24 hours a day. The opening hours would be reduced from midnight to 11pm Sunday to Thursday and 11:30pm on Fridays and Saturdays which is in line with nearby drinking establishments and the Indian Restaurant located in Repton, used as a benchmark given the similarities between the sites and its village setting.



The car park can only accommodate 9 vehicles and it is likely that customers would be staying for a period of time, reducing the frequency of comings and goings compared to the previous use. Furthermore the business would not operate a takeaway collection but a takeaway delivery service only. The level of noise generated is acknowledged to likely cause some disturbance due to the proximity of residential properties, but it is not expected to exacerbate the noise levels associated within the former use and therefore the amenity of neighbouring occupiers would be preserved to a reasonable degree. It must also be noted that separate legislation covers issues of noise and odour for which enforcement action can be taken if certain levels are breached.

It should be noted that permitted development rights could facilitate the use of the first floor at the present time for up to two flats – without the need for a planning application. The change of use to residential accommodation would require internal alterations and the creation/blocking up of some of the first floor window, but there would be no external changes to the front facing windows on the elevation facing Castle View, which are separated by a highway from the neighbouring residential properties. In instances such as this, the SPG advises that the minimum separation distances may be relaxed.

The proposed changes to the rear elevation include the removal of a rear facing window to accommodate the extractor flue and the creation of a window to serve a bedroom on the rear elevation. In addition, the fire escape door is to be removed and a new window created in its place. The rear facing windows preserve a 21m separation distance in compliance with the SPG.

The western elevation has two side facing first floor windows, one secondary window which would serve a kitchen/living area and a window to serve a bedroom. The proposed kitchen/living area window is proposed to be obscurely glazed to avoid overlooking the front amenity area of 4 The Castle Way. The proposed bedroom window looks out onto a blank elevation of the same dwelling containing a window to a hallway/landing. As this is not a habitable room there is not considered to be an impact which justifies withholding permission.

The eastern elevation facing Green Close consists of an existing window which would serve a bedroom and be secondary to that room. This would be fitted with obscured glazing. A window would be created to serve a further bedroom and whilst this window does not meet the minimum separation distances set out in the SPG; the window would be obscurely glazed by two-thirds to ensure that the windows would not be a source of overlooking to existing residents (similar to permitted development requirements). Whilst this might reduce the outlook of prospective occupiers, the room served is a bedroom so time spent within is likely to be limited.

### Overall design

The proposal would have a negligible impact on the character and appearance of the building and wider streetscene, with the obscure films proposed to the front windows protecting neighbouring residents from loss of privacy and providing an enhancement on the existing decals. A condition should be attached to ensure the duct/flue is painted black to fit more comfortably on the rear of property and minimise

its visual impact. The removal of various windows and the creation of other windows would have a negligible impact in terms of the overall design of the building.

### Conclusion

The proposed change of use would bring an unoccupied building back into use and would provide an additional facility to the village. The creation of four residential units would provide additional residential accommodation within the heart of a key service village and close to public transport and other services. Whilst it is acknowledged that there are concerns with regard to the issue of parking within the vicinity of the area, it is also noted that there is a car park to the rear of the property which can be controlled and that the existing use is unconditioned in terms of opening times. The proposed restaurant would not operate during the day time, whilst it would be likely to generate a lesser frequency of movements throughout the evenings due to the nature of customers staying longer at the premises.

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

### **Recommendation**

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

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

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

2. The development hereby permitted shall be carried out in accordance with plan/drawing 7177 P 05 received on 21st September 2015, and amended plan/drawing 7177 P 03A received on 2nd December 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. The restaurant kitchen extraction system (including flue) installed shall be that as specified in the Design and Access Statement: Appendix A 'Kitchen Extractor Details'. Where such a system requires replacement in full or in part, details of the alternative system shall first be submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenity of local residents.

4. The restaurant premises shall not be open to customers except between the hours of 1700 and 2300 Sunday to Thursday and 1700 and 2330 hours Friday and Saturday.

Reason: In order to protect the amenity of local residents.

5. No deliveries shall be taken at or despatched from the restaurant premises except between the hours of 8am and 6pm Monday to Friday, and 8am and 1pm Saturdays. There shall be no deliveries on Sundays or Public Holidays.

Reason: In the interests of protecting the amenity of local residents.

6. No walk-in takeaway facility shall be provided at the restaurant premises.

Reason: To protect the amenity of the area and to maintain highway safety.

7. The side facing kitchen/living room window to flat 3 on the western elevation and the side facing secondary bedroom window to flat 4 on the eastern elevation shall be obscurely glazed prior to first use of the respective flat and thereafter permanently maintained as such.

Reason: To protect the amenity of the neighbouring property and to avoid overlooking.

8. The bottom two-thirds of the side facing bedroom window to flat 1 on the eastern elevation shall be obscurely glazed prior to first use of the respective flat and thereafter permanently maintained as such.

Reason: In order to protect the amenity of the neighbouring properties and to avoid overlooking.

9. The use of the car park shall be restricted to residents of the flats hereby approved and staff employed at the restaurant premises only, with no provision made for customer parking.

Reason: In the interest of highway safety.

10. Any gates shall be set back at least 10m into the site from the highway boundary and open inwards only.

Reason: In the interest of highway safety.

11. Prior to the first occupation of any flat or the restaurant business being first taken into use, the car parking and manoeuvring space shall be laid out in accordance with the approved plans/drawings and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interest of highway safety.

12. Prior to first occupation of any flat or first use of the restaurant premises, signs shall be provided at the vehicular accesses to the site and to each parking bay in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority, restricting the use of the car park to residents of the flats and staff employed in the restaurant only; and to promote the use of a one-way system through the site with vehicles accessing at the east access and exiting at the west access in order to avoid conflict between vehicles.

Reason: To minimise conflict between vehicles attempting to access and egress simultaneously or needing to reverse onto the busy classified road, in the interest of highway safety.

13. Prior to the first occupation of any flat a noise assessment of, and mitigation strategy for, noise likely to affect the flats hereby approved shall be submitted to and approved in writing by the Local Planning Authority. This shall include noise from the surrounding road network, the proposed restaurant, noise and vibration from the proposed extraction system and any other local noise sources that are deemed significant to the site; and identify all noise attenuation measures that may be determined appropriate to reduce the impact of noise on the residential properties on the site and achieve the requirements of BS8233:2014 for internal noise levels. Consideration shall also be given to achieving adequate summer cooling and, if deemed necessary, alternative ventilation measures shall be identified and incorporated into the noise assessment report. All approved noise control measures shall be implemented and retained thereafter.

Reason: In the interest of the amenity of residents of the development.

14. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

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

15. The proposed extractor flue/duct shall be painted or coated in black prior to the first use of the restaurant premises.

Reason: In order to minimise the visual impact in the interests of the appearance of the area.

#### Informatives:

- a) The developer should contact the Environmental Health Section on all matters relating to food hygiene and health and safety.
- b) Food businesses must register with the local authority at least 28 days prior to opening for business.

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

Item 1.4

Reg. No. 9/2015/0979/FM

**Applicant:**  
**Mr Peter Marples**  
**The Manor House**  
**Morley Manor**  
**Morley**  
**Derby**  
**DE7 6DG**

**Agent:**  
**Mr Justin Smith**  
**Justin Smith Architects**  
**Friar Gate Studios**  
**Ford Street**  
**Derby**  
**DE1 1EE**

**Proposal:** **DEMOLITION OF EXISTING DWELLING; ERECTION OF A REPLACEMENT DWELLING WITH DETACHED SUNKEN GARAGE; CHANGE OF USE OF AGRICULTURAL LAND TO GARDEN TO CONTAIN TENNIS COURT, SUMMER HOUSES, GREENHOUSE, WALLED GARDEN AND HA-HA; AND PARTIAL WIDENING OF DRIVEWAY AND CONSTRUCTION OF REPLACEMENT GATES/WALLS AT ENTRANCE TO THE PROPERTY KNOWN AS NEWTON PARK NEWTON ROAD NEWTON SOLNEY BURTON ON TRENT**

**Ward:** **Repton**

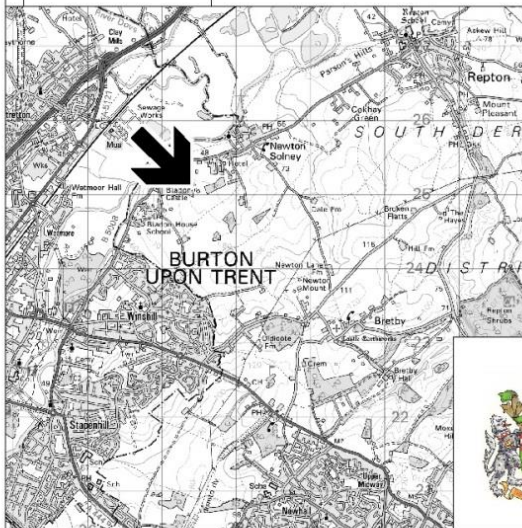
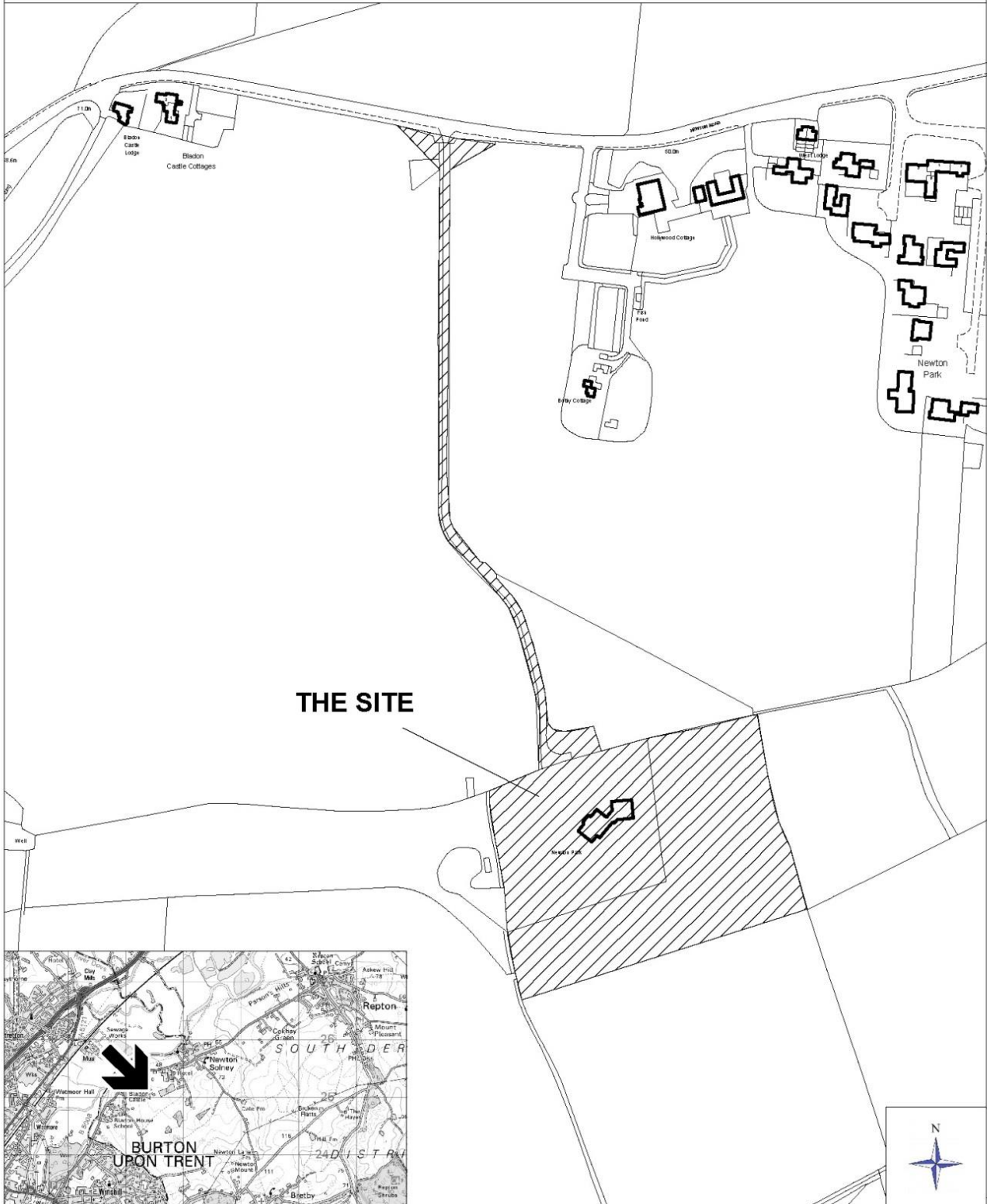
**Valid Date:** **23/10/2015**

**Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager.

**Site Description**

The site comprises a large existing 1970s dwellinghouse in mock Georgian style, with generous attached garage and outbuilding. It also comprises a basement in part, with sunken patio area. The dwelling is set in a generous, largely open, garden with woodland to the west and east (protected by a Tree Preservation Order (TPO)). Part of the site is beyond the existing residential curtilage and agricultural land put to arable use. This land continues beyond the south of the site. To the north the landscape falls towards Newton Road and the River Trent beyond and is put to pasture, having a parkland essence to it and forming the setting to the Grade II\* Bladon Castle nestled within woodland to the west of the site. The existing access onto Newton Road is gated with a low wall and metal railings.



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The total ownership takes in the pasture 'parkland' and agricultural field to the south, extending to just over 53 acres. The existing garden to the property extends to approximately 4 acres. A public footpath runs south-west to north-east to the south of the site, touching the corner of the ownership parcel, allowing unobstructed views towards the rear of the existing dwelling. The driveway falls within the Newton Solney Conservation Area, whilst the dwelling and garden sits adjacent but outside of it.

## **Proposal**

It is proposed to demolish the existing dwelling, garage and outbuilding and erect a contemporary new dwelling of exceptionally high architectural quality, to provide an exemplary example both spatially and materially. It would extend to 3 storeys with the maximum height aligning with the ridge height of the existing dwellinghouse. The second floor would be limited to a small projection above the greater mass of the ground and first floors. A separate single storey annexe with garaging below ground, along with sunken vehicular access would sit to the immediate west of the dwelling, between it and the woodland. Two summerhouses would be erected within the extended residential curtilage, one of which to be placed within extended woodland planting across the site. A sunken kitchen garden, tennis court and other incidental structures would be provided within the landscaped garden – placed so not to compete with the principle building.

Living spaces would be located along the southern elevation to maximise solar gain in the winter months, whilst large openings with strategically placed solar shading would ensure that heat gain can be controlled. Materials would comprise a mixture of slate and stone cladding,

## **Applicant's supporting information**

Aside from the proposed plans, a Design Report sets out the concept for the replacement dwelling and draws on pre-application work undertaken to determine the generous extensions and resulting volume which might be added to the existing dwelling under permitted development allowances.

## **Planning History**

The dwelling was originally permitted in outline as an agricultural workers dwelling in 1972, with full permission given the following year. The attached garage was added under permission in 1988. A further permission for the conservatory was obtained in 1997.

An application to lift the agricultural occupancy condition in 1989 (ref: 9/0589/0141) was withdrawn. A Lawful Development Certificate was issued last year (ref: 9/2015/0535) for unrestricted occupation of the property contrary to the agricultural occupancy condition. It was clear at the time of this decision that the dwelling had not been occupied by an agricultural worker for a number of decades.



## Responses to Consultations

The County Archaeologist notes the proposals take in an additional area of agricultural land to the east and south of the current garden. There are known archaeological assets within the vicinity of the site such as ridge and furrow (although where on land under arable cultivation surviving earthworks are unlikely), and the former Newton Park – a medieval park later formalised as an area of parkland associated with a small country house known as Newton Park and dating from 1798. Historic mapping shows the proposal site lying just outside this area of parkland to the south. To the west of the site are further designated heritage assets at Bladon Castle. It is considered unlikely that the proposals would have a significant impact on below ground archaeology given there are no known assets within the site and because of the relatively small size of it. No objection is lodged and no conditions requested.

## Responses to Publicity

A site notice was erected at the access onto Newton Road and the Parish Council notified. 3 representations have been received, raising the following comments:

- a) question whether the proposed design is in keeping with other properties in the area, located within the adjacent conservation area;
- b) the proposal would be in an elevated position and is a key feature in the landscape;
- c) the scale and height would have a significant impact on the local landscape, and alter the characteristics of the area;
- d) impacts on amenity through overlooking, overbearance and lighting late into the evening;
- e) consideration should be given to limiting internal lighting, particularly at night, to avoid a “lighthouse” effect;
- f) need for further screening;
- g) there is a watercourse to the west of the proposal which has been overlooked;
- h) the amount of impermeable area would potentially impact the local hydrology;
- i) extended curtilage could provide opportunity for future development in open countryside; and
- j) permitted development rights should be removed to limit future development.

## Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 8 and 11 (H8 and H11), Environment Policies 1, 12, 13 and 14 (EV1, EV12, EV13 and EV14).

## Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access),

SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity) and BNE4 (Landscape Character and Local Distinctiveness).

## **National Guidance**

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

## **Local Guidance**

- Housing Design and Layout SPG (2004)
- Better Design for South Derbyshire (2010)
- Newton Solney Conservation Area Character Statement (CACS)

## **Planning Considerations**

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

- Principle of development
- Scale and design
- Heritage

## **Planning Assessment**

### Principle of development

The site lies outside the settlement confines for Newton Solney and constitutes the erection of an isolated dwelling in the countryside. The NPPF points to the need for special circumstances to be necessary for such development to proceed, and these exist in the way of saved policy H8 which facilitates the replacement of existing dwellings. Saved policy EV1 also provides for the principle of the proposal given it is considered to be unavoidable in this context. Both these policies align with the balanced approach to sustainable development and the core principles of the NPPF, and can be afforded some weight.

The decision rests on a 'sustainable balance' when considering the above policies and the merits of the proposal, with it important to strike the right balance in ensuring the environmental, social and economic dimensions are achieved in a mutual fashion. Given the alignment with the NPPF the presumption in favour of sustainable development applies and permission should only be withheld where any other adverse impacts would significantly and demonstrably outweigh the benefits of the proposals.

### Scale and design

The existing dwelling is not considered to be worthy of retention given it is not a heritage asset and represents a now dated approach to design as it was at the time. Given its prominence in the landscape and commanding position over the

surrounding land, it is considered there is opportunity for considerable enhancement through its replacement with a scheme representing a contemporary approach to architecture. With this in mind an objective of the design approach has been to ensure that the form and appearance of the dwelling will still appear contemporary in 40 or 50 years.

The extent of the built footprint is considerably larger than the existing dwelling. This conflicts with a qualitative element of H8. However it is a very material consideration that extensive extensions could be achieved to obtain a similar quantum under permitted development rights, and the emerging policy in the Local Plan Part 2 consultation gives a direction of travel – in that these rights would be taken into account in such situations. In this respect the quantum of floorspace can be accepted.

The massing of the proposal is acknowledged to be greater than the existing, and this would be inevitable if the proposal were extended as discussed above. However the proposal carries a flat roof to the first floor and a further projection to provide a second floor in part. This projection is limited in size so not to over emphasise the horizontal massing of the building whilst providing sufficient vertical ‘breakage’ of the otherwise horizontal lines of the proposal. Hence whilst there would in effect be a greater eaves height comparable to the existing conventional two-storey dwelling; the limited mass above this point provides an acceptable balance. This in turns helps to ensure it does not over-dominate its setting in its elevated position.

The materiality responds to the local vernacular in the predominant use of stone, providing a modern ‘echo’ to the 1700s approach of Bladon Castle, along with extensive use of glazing to provide a more ‘lightweight’ feel to the structure. The proportionality of windows to solid walls works positively to this effect. Conditions can be imposed to secure to agree the finer detail of these materials.

Ancillary and incidental structures proposed carry the same design evolution and positively work with the main dwelling and the wider setting. Amendments have secured changes to the location and the design/screening of these elements so the landscape architecture is considered appropriate, but it is considered necessary to restrict further development within the curtilage (as well as extensions/alterations to the main dwelling) so to ensure the design ethos of the proposal as a whole is not eroded or harmed over time.

In terms of impacts on existing living conditions for neighbouring properties, the dwelling is wholly compliant with the SPG with a considerable separation to the nearest neighbour. Intervening planting, both existing and proposed, would help to soften its appearance in the landscape and aspects from other properties, whilst the orientation of facades with a greater level of glazing is away from those dwellings limiting night time disturbance from lighting. Indeed the nature of the proposal seeks to minimise energy consumption so the need for internal lighting would be minimised.

## Heritage

As noted the existing building is of limited architectural interest such that its demolition would not be detrimental to the setting of the Conservation Area. On balance the proposed dwelling would be substantial and have a visual impact on the landscape, in particular on the adjacent historic open parkland of Newton House which forms part of the Conservation Area. This parkland makes a positive contribution to the character of the area and helps link the village with its two historic country houses of Newton Park and Bladon Castle. Notwithstanding this, it is not considered the proposals would impact on the significance of the setting of the adjacent listed buildings. This is due to the house being set to the rear of the formal park area adjacent to the mature woodland. As such, despite its elevation within the landscape, it does not appear prominent within the formal park area.

There would be an impact on the setting of the Conservation Area and it can be seen from within it; but these views are generally close to the site although there is also a view from the footpath to the north of Newton Road, as it runs towards the church. The site is particularly visible here; otherwise it tends to be hidden from view. As there would be an impact on the setting of the Conservation Area its significance should be preserved. In this respect the dwelling presently on site is not in keeping with the character of the Conservation Area and appears out of place; whilst the scale and massing of the proposed building is relatively similar to the existing and it responds in style to the 1960s development of Newton Park (constructed within the formal garden space of the parkland and the historic walled garden). Therefore the form of the design would be appropriate within this setting with the strong horizontals contrasting with the organic vertical structure of the woodland. Again the detailing and finish would need to be conditioned to ensure that it would not detract from the setting of the parkland or wider Conservation Area. The same is the case for the proposed ancillary structures within the curtilage, whilst the orchard element should not be formally structured to ensure it sits comfortably within the natural parkland character. The modern gate design would also relate to the proposal but would need careful consideration of materials.

Hence whilst there would be an impact on the parkland setting and the setting of the Conservation Area, it is considered the proposed design would be in keeping and appropriate with the character of the area. As such it preserves the setting of heritage assets.

## Other matters

Existing trees and biodiversity can be protected and enhanced by way of conditions. The change to the degree of hard surfaces on the site is not considered to be so substantial to alter the drainage characteristics in the vicinity.

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

## Recommendation

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

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings 002 Rev A, 003, 101 Rev H, 200 Rev F, 201 Rev G, 202 Rev F, 203 Rev F, 204 Rev F, 205 Rev F, 223, 224, 226 Rev A and 228; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. The annexe hereby permitted shall be occupied solely by members of the household of the replacement dwellinghouse hereby permitted or by their guests or domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.

Reason: Although the erection of additional accommodation to be used in conjunction with the existing dwelling is acceptable, the Council would not normally be inclined to allow the formation of a separate residential unit in this locality. Since the annexe includes all the domestic facilities necessary for the establishment of a separate self-contained unit, the Council hereby seeks to make it clear that separate occupation is not authorised by this permission.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any statutory instrument which amends, replaces or revokes that Order; the dwelling hereby permitted shall not be altered, enlarged or extended; no hard surfaces, buildings, gates, walls or other means of enclosure (except as authorised by this permission and/or required by any condition attached thereto) shall be installed/erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, the nature of the property and its long term energy and efficiency performance, having regard to the setting and size of the development.

5. No construction of a particular building or structure shall commence until details of the finished (floor) levels to that building or structure, and of the surrounding ground levels to it, have been 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 ensure the visual and landscape impact of the buildings hereby approved reflects that considered in assessment of the proposal, and to ensure the setting of heritage assets is not harmed.

6. No construction of a particular building or structure shall commence until details precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the verandas, patios, walls, windows and doors, roofs of the buildings (including balconies, guard rails/screens and solar shading solutions), entrance gates and walls, and of incidental surfaces within the residential curtilage, have been submitted to and approved in writing by the Local Planning Authority. Where brick, stone or block is to be used on external faces of the dwelling, annexe and garage, summer houses or garden store; a sample panel of pointed brickwork/stonework/blockwork no less than 1 metre square shall be prepared for inspection and approval in writing by the Local Planning Authority prior to incorporation of such materials into the dwelling/building. Thereafter the development shall be constructed in accordance with the approved details.

Reason: To safeguard the appearance of the existing building and the locality generally, and to preserve and enhance the appearance of the conservation area.

7. Notwithstanding the approved plans, no construction of the summer houses, garden stores and other incidental structures and boundary treatments as shown on the approved layout plan, shall commence until further details (including elevations, floor plans and/or cross-sections where necessary) have been submitted to and approved in writing by the Local Planning Authority. The summer houses and garden store shall be broadly in accordance with the indicative designs shown on plan ref: 227 provided with the application, and be single storey only. Their construction shall proceed in accordance with the approved details.

Reason: Whilst the principle of these buildings/structures is acceptable, insufficient details of the height, appearance and materials of these items has been provided; in the interests of the appearance and character of the area and the setting of the dwelling hereby permitted.

8. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no boundary treatments shall be erected until plans/drawings indicating the positions, design, materials and type of boundary treatments to be erected have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be erected/completed in accordance with the approved details before the development is first 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.

9. No excavation of existing ground on the site or construction of a building or structure shall commence until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft 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. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out no later than the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years for trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure that the adjacent woodland and other trees are not compromised by way of construction activities on the site, in the interests of the character and appearance of the area.

10. No construction of the dwelling or other building shall commence until large scale drawings to a minimum scale of 1:10 of eaves, parapets and window and door reveals have been submitted to and approved in writing by the Local Planning Authority. These features shall be constructed in accordance with the approved drawings.

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

11. No external lighting shall be erected or installed unless prior to its erection/installation precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve the amenities of the area and prevent dark sky glow.

12. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the dwelling unless prior to their incorporation in the building details of the type, number, position and finish of such features have been submitted to and approved in writing by the Local Planning Authority. Any such features shall be incorporated in accordance with the approved details and thereafter maintained as such.

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

Informatives:

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



## **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>
9/2015/0465	Netherseal	Seales	Dismissed	Delegated
9/2015/0633	Swadlincote	Swadlincote	Dismissed	Delegated
9/2015/0673	Linton	Linton	Dismissed	Delegated
9/2015/0848	Willington	Willington & Findern	Allowed	Delegated

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## Appeal Decision

Site visit made on 17 November 2015

**by Louise Nurser BA (Hons) Dip Up MRTPI**

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

Decision date: 14 December 2015

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**Appeal Ref: APP/F1040/W/15/3132895**

**The Coach House, 68 Main Street, Netherseal, Swadlincote, Derbyshire DE12 8DB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Ian Woodward against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0465, dated 19 May 2015, was approved on 28 July 2015 and planning permission was granted subject to conditions.
  - The development permitted is use of the Coach House as a separate unit of residential accommodation.
  - The condition in dispute is No 1 which states that: *'Within one month of the date of the decision the window serving the kitchen/diner in the east facing elevation shall be permanently glazed with obscure glass.'*
  - The reason given for the condition is: *'To avoid overlooking of adjoining property in the interests of protecting privacy'.*
- 

### Decision

1. The appeal is dismissed.

### Procedural matters

2. It had been arranged that I would undertake the visit with representatives of both the Local Planning Authority and the appellant present. The Local Planning Authority representative did not attend. I undertook the site visit as an Access Required Site Visit. This meant I was able to access the site on my own with the permission of the appellant. This has not prejudiced the Council in my determination of the appeal.

### Main Issue

3. The main issue is whether the disputed condition is necessary and reasonable, having regard to the living conditions of existing and future occupants of Elm Cottage, no. 70 Main Street in relation to the privacy of the garden.

### Reasons

4. The appeal property is a small self contained first floor open plan flat, located at the rear of no 68 Main Street in a converted coach house. Number 68 is the last of a terrace of older properties within the village of Netherseal. Both no 68 and the neighbouring Elm Cottage have large attractive gardens. However,

due to the configuration of the properties Elm Cottage's garden kicks back behind the converted coach house and no 68 Main Street.

5. Consequently, the garden to no 70 is directly overlooked by the window in the living area of the flat. At my site visit I was aware that a small dining table was positioned directly under the only window in the living area of the converted flat. It was clear to me from the position of the chairs and table that there would be a clear view over into the neighbouring garden. Given the attractiveness of the view, and the relative lack of natural light in the room, I consider it likely that the occupants would spend a significant length of time sitting and relaxing at the table.
6. I accept that there would be little overlooking when the occupants of the flat were sat on their sofa, or when cooking. I am aware that a significant proportion of the garden to Elm Cottage would remain private. However, for the reasons set out above I conclude that the majority of the garden can be overlooked. Consequently, the privacy of the occupants of the neighbouring property when enjoying their garden would be compromised by overlooking from the converted property.
7. Saved Policy 11 of the South Derbyshire Local Plan 1998 (LP) requires developments not to impact on the privacy of the occupants of neighbouring properties. Whilst the policy predates the Framework, it is consistent with the objective of ensuring a good standard of amenity for all existing and future occupants of land and buildings. I have also been referred to the South Derbyshire District Council Housing Design and Layout Supplementary Planning Document. However, I do not consider the reference to views into windows directly applicable. Therefore, I have accorded it little weight in my consideration of the appeal and have relied on the policy of the adopted development plan which remains consistent with the policy of the Framework.
8. Consequently, I consider that the condition remains both necessary and reasonable to ensure that existing and future occupants of Elm Cottage are able to maintain reasonable levels of privacy within their rear garden in line with the objectives of Saved Policy 11 of the LP and the Framework.

*Other matters*

9. I have determined the appeal on the basis of local and national policy, consequently, the Parish Council's objection to the scheme has not been determinative in my consideration of the proposed removal of the condition.

**Conclusion**

10. For the reasons above I dismiss the appeal.

*L Nurser*

INSPECTOR

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## Appeal Decision

Site visit made on 10 November 2015

**by Elizabeth Pleasant BSc(Hons) DipTP MRTPI**

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

**Decision date: 14 December 2015**

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**Appeal Ref: APP/F1040/D/15/3135828**

**39 Potters Croft, Swadlincote, Derbyshire DE11 0WD**

- 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 Andrew Harper against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0633, dated 8 July 2015, was refused by notice dated 14 September 2015.
  - The development proposed is erection of a garage with a study over.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The Council's reason for refusal did not refer to the effect of the development on No 37 Potters Croft. I note that the occupiers of this property have made representations and I consider these to be relevant considerations in the determination of this appeal.

### Main Issues

3. The main issues in this case are:
  - The effect on the character and appearance of the area;
  - The effect on the living conditions of the occupiers of 37 and 41 Potters Croft, with particular regard to outlook and light;
  - The effect on highway safety.

### Reasons

#### *Character and appearance*

4. Potters Croft is a residential cul-de-sac which is characterised by a mix of detached and semi-detached properties predominantly fronting onto the street with modest front gardens and driveways. Garages are either integral to the houses, lean-to extensions or detached structures situated at the end of driveways.
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5. The proposed garage/study would be particularly prominent as it would be sited adjoining the pavement on Potters Croft, at a point where there is a slight bend in the road. By reason of its large size and in particular its height and position on the road frontage, the appeal proposal would be an unduly dominant and uncharacteristic form of development which would be an incongruous feature of the street scene.
6. I conclude that it would have a harmful effect on the character and appearance of the area and conflict with paragraphs 58 and 64 of the National Planning Policy Framework (the Framework) which seeks to ensure that new development responds well to local character and distinctiveness.

*Living Conditions*

7. The rear gable wall of the garage/study would abut the side boundary fence which encloses the rear garden of the neighbouring property No 41 Potters Croft. It would also be sited in relatively close proximity to the rear elevation of this property. No 41 already has the side gable of No 37 stretching across the whole width of its rear garden boundary. By reason of the scale and height of the appeal proposal it would further enclose and dominate their garden and have an overbearing impact on the outlook from their rear ground floor windows.
8. The proposed garage/study would also be sited immediately adjacent to the front garden of the neighbouring property 37 Potters Croft. It would lie to the south of, and within close proximity to the front living room window of this dwelling. Whilst I am mindful that this property has a modest sized Rowan tree in their front garden, this tree is not in leaf all year around, and the scale of the proposed garage/study and its solid nature would have an overbearing effect on the outlook and light available to the living room window of No 37.
9. The scale and position of the appeal proposal in such close proximity to Nos. 41 and 37 would be overbearing and lead to a loss of outlook and light to their respective windows. I conclude therefore that it would have a significant and harmful effect on the living conditions of the occupants of No 41 and 37 Potters Croft and conflict with the aims of paragraph 17 of the Framework which seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

*Highway Safety*

10. The proposed garage would take access directly off Potters Croft with its entrance adjoining the pavement. I note that the appellant is willing to install roller style doors which would operate remotely and I am satisfied that these details could be conditioned and would therefore prevent any obstructions to the highway. However the position of the proposed garage adjoining the pavement and on a bend in the road would mean that drivers of vehicles emerging from the proposed garage would have their visibility of oncoming vehicles and pedestrians severely restricted. I do not consider that the mitigation measures suggested by the appellant would be sufficient to overcome the significant and harmful effect the proposed development would have, to both pedestrians and other vehicles using the adjacent highway.
11. I note that traffic speeds are likely to be slow and the volume of traffic is not likely to be significant, however the emerging visibility from the garage would

be so restricted that I conclude that the appeal proposal would have a significant and harmful effect on highway safety. It would therefore be in conflict with Transport Policy 6 of the South Derbyshire Local Plan and paragraph 32 of the Framework, which aim to ensure that development has a safe and suitable means of access.

**Other Matters**

12. I have had regard to other garages in the area which have been drawn to my attention but none of these appear to abut or take access directly onto the highway. In most cases they are of a much smaller scale. Consequently I do not find them to be comparable examples to the appeal proposal and in any case each proposal should be treated on its own merits. It is on this basis that I have considered the proposal.
13. I note that the current occupiers of No.41 do not object to the proposal, however I must take into account the effects on the future occupiers of the property.
14. I recognise that the appellant has concerns over the way the local planning authority handled his application. However, this is not a matter for me and does not therefore alter my decision.

**CONCLUSION**

15. For the above reasons and taking account of other matters raised I conclude that the appeal should be dismissed.

*Elizabeth Pleasant*

INSPECTOR

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## Appeal Decision

Site visit made on 1 December 2015

**by Elaine Worthington BA (Hons) MTP MUED MRTPI**

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

Decision date: 15<sup>th</sup> December 2015

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**Appeal Ref: APP/F1040/W/15/3136373**

**Land rear of Shortwood, Water Fallows Lane, Linton Heath, Swadlincote, DE12 6PF**

- 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 Lord E Baxter against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0673, dated 14 July 2015, was refused by notice dated 11 September 2015.
  - The development proposed is the erection of five single storey dwellings and waste treatment plant.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue in this case is whether the proposal is a sustainable form of development and would provide a suitable site for development having regard to policies which seek to protect the open countryside, including its effect on the character and appearance of the area and protected trees.

### Reasons

3. The appeal site is part of Shortwood's garden area and comprises mowed grass with a number of mature trees to the boundaries some of which are subject to a Tree Preservation Order (TPO). It is within a small cluster of large mainly detached dwellings set in substantial grounds. Whilst there are houses along the road in Linton Heath, the site is outside the defined boundary for Linton village as set out in the South Derbyshire Local Plan (Local Plan). It is therefore in the countryside in policy terms.
  4. The Council accepts that it is unable to demonstrate a five year supply of housing land. Paragraph 49 of the National Planning Policy Framework (the Framework) indicates that where local planning authorities are unable to demonstrate a five year supply of deliverable housing sites, relevant housing supply policies should be considered out of date.
  5. Housing Policy 6 of the Local Plan is referred to by both parties and relates to housing in other rural settlements. However since the appeal site is not within a settlement I consider its relevance to be limited. Nevertheless, Housing Policy 5 is cited in the Council's statement and restricts new housing development in Linton to that which can be accommodated within the village
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confines as defined on the Proposals Map. Housing Policy H8 is referred to in the officer's report and restricts housing development outside settlements to that necessary for the operation of a rural based activity, where it can be demonstrated that a countryside location is necessary and unavoidable and where the site is well related to existing farm buildings or other dwellings. Additionally, Environment Policy 1 of the Local Plan resists new development outside settlements unless it is essential to a rural based activity or unavoidable in the countryside.

6. In so far as these policies seek to restrict housing development outside the defined settlement limits, they should be considered out of date. As such, in itself, the appeal site's location outside the Linton settlement boundary does not necessarily exclude its development for housing in policy terms. The presumption in favour of sustainable development is set out at paragraph 14 of the Framework and indicates that where relevant policies are out of date, 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 as a whole. Paragraph 7 of the Framework establishes the three dimensions to sustainable development; economic, social and environmental.
7. In terms of the economic role of sustainable development the proposal would provide short term construction employment and the future residents of the houses would support local services through expenditure. With regard to the social role, the proposal would add to the housing stock and meet an acknowledged requirement for more homes. It would support housing choice by providing bungalows with private gardens and off street parking that would be suitable for the elderly, the disabled, those looking to downsize, or families. The appellant indicates that the new homes would be deliverable and completed within 18 months of approval. The appellant believes the proposal would encourage inward migration and prevent outward migration thus aiding the future supply of labour in the area. He also advises that the future occupiers would add to the local age mix of the population and community spirit in Linton and Linton Heath and would have good access to nearby leisure walks thereby supporting health and well being.
8. Paragraph 55 of the Framework advises that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. The appeal site is separated from both Linton Heath and Linton by fields. As such, it is somewhat out on a limb and at some distance from the main road and Linton. However, since it is within an existing cluster or pocket of development and close to other residential properties, it is not isolated in the countryside.
9. The appellant estimates the site to be 400 metres east of the centre of the village of Linton and within walking distance of it. Linton has a range of services including a convenience store, butchers, village hall, takeaways and pub and has been classified as a key service centre in the Council's emerging local plan. The Council regards the site to be around 900 metres from a convenience store, whilst the appellant considers the village store/post office is 0.6 miles away using the footpath from Linton Heath into Linton. There is a primary school some 0.6 miles from the site and two secondary schools within



- 4.4 miles. A wider range of shops and services are available in nearby Swadlincote which is estimated to be around 3 miles away. There is a bus stop close to the site in Linton Heath which is served by a half hourly service to Swadlincote and Burton upon Trent, and another to Ashby de la Zouch. Opportunities for cycling also exist. Additionally, each dwelling would have an office to allow homeworking and thus reduce the need to travel to work.
10. Despite reservations about the unlit nature of the access to the main road and a lack of footpaths, the Council accepts that the site would be relatively accessible to local services. Paragraph 29 of the Framework recognises that different policies and measure will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
  11. In this instance, I am satisfied that the future occupants of the proposed development would have some alternative to the use of a car. Furthermore, although they would be reliant on a car to some degree, it is only a short distance to Swadlincote which has a range of services. As such, the proposal would not necessarily lead to unduly long car journeys. Thus overall, I do not regard the site to be isolated in the countryside and am satisfied that the proposal would to some extent enhance or maintain the vitality of the rural community.
  12. Turning to the environmental role of sustainability, I appreciate that the site is not of identified special landscape character or importance, or of particular ecological value. It slopes downwards towards the south west boundary and there are mature trees on the south, west and north boundaries of the site. As a result it is enclosed and well screened from public vantage points including the nearby public footpath and from neighbouring properties.
  13. Although timber clad buildings were initially proposed, in response to concerns from the Council the design of the proposed houses have been amended to reflect the traditional style of the houses nearby and in particular the granny annex at Shortwood. The houses would incorporate matching materials and replicate the details of the host dwelling (including sash windows, stone heads and slate roofs). The formal character of the houses aims to retain original design links with the main house and its formal garden. This being so, and since the other dwellings nearby display a mix of designs, in itself, I am not convinced that the design of the proposed dwellings would appear unduly out of place on the site.
  14. However, the houses nearby are for the most part large properties set within generous grounds. In contrast, the appeal proposal would introduce a number of more modest dwellings in much smaller plots which would be somewhat at odds with the prevailing pattern of development and character of the cluster of buildings in which they would sit. Moreover, whilst the site is garden land and is well enclosed by existing trees and vegetation, it relates closely to the surrounding open countryside to the north and the adjacent wooded area at Foxley Wood.
  15. The proposed houses would lead to an encroachment of built development into currently open land that is defined as countryside. They would substantially increase the number of dwellings within the existing cluster and extend the current pocket of development further into the countryside and closer to the adjacent open fields and Foxley Wood. Thus the houses would result in the

- urbanisation of the site and, despite the existing screening, this intrusion would be appreciated in some limited and glimpsed public views and from the neighbouring properties.
16. I appreciate that clusters of residential properties in the countryside are a feature of the nearby area and am not convinced that the proposal would adversely affect the appearance of the edge of the settlement or the approach to Linton to any significant degree. Nevertheless, the proposal would unacceptably undermine the site's rural character and detract from its appearance.
  17. Additionally, a number of mature trees, particularly towards the south west side of the site and along its boundary here are protected by a TPO. These make a significant contribution to the leafy character and appearance of the site and also to that of the wider wooded area at adjoining Foxley Wood which the appeal site relates closely to. Together these form part of the setting of the wider landscape and of Linton Heath.
  18. The proposed site layout drawing shows the protected trees and their root protection areas (RPAs). Although the Council is concerned about the proximity of the proposed dwellings to the trees, from the submitted plan it seems to me that the proposed dwellings themselves would not be located within any of the RPAs of the protected trees. This is with the exception of the house on Plot 1 the foundations for the corner of which would be likely dissect the outer edge of the RPA of the tree shown as T5 on the site layout plan (T27 on the TPO Plan). However, this would be marginal. That said, the submitted site layout shows that the much of the initial section of the proposed access driveway would be within a significant proportion of the RPAs of a good number of the mature trees along the boundary of the site.
  19. The planning application form indicates that the proposed materials for the vehicle access and hard standing would be golden amber stone rolled on concrete whilst still wet. The submitted Tree Report indicates that if trees are to be retained, during the design and construction phase, appropriate techniques such as those outlined in the constraints and recommendations section of the report should be employed to minimise risk of damage to the tree root areas. In particular where the construction of permanent hard surface within the root area of trees is required, it advises that ideally a non-dig design should be used to avoid root loss or damage caused by excavation. The appellants confirm that a no dig method is intended.
  20. Even so, given its close proximity to the trees, the use of this access by the vehicles associated with the five houses proposed would be likely to put some considerable pressure on the root systems of the protected trees here. The compaction of the soils and damage to the soil structure from the vehicular traffic would be likely to prevent water and air from reaching the roots of the trees thereby starving them of vital resources and leaving them vulnerable to decay. Additionally, I have seen no details as to how the concrete surface of the driveway would be drained, or how the services that the appellants indicate would run along the access would be accommodated or installed. I am mindful that any excavation within the RPAs could damage the root structures of the trees, and that unsatisfactory drainage arrangements could waterlog them.

21. All these factors would be detrimental to the health of the affected trees and would be likely to ultimately lead to their loss. Whilst I acknowledge that the preservation and retention of these trees is of the utmost importance to the appellant in relation to his own property, in the absence of any further information on these points, I cannot be satisfied that the protected trees would be safeguarded. These trees are part of the site's mature leafy appearance and their loss would harm its established character and distinctiveness. It would also compromise the site's wider landscape setting and relationship with adjoining Foxley Wood. The scheme's unacceptable impact on the protected trees would exacerbate its harmful effect on the character and appearance of the countryside that I have considered above.
22. This would be contrary to Environment Policy 9 of the Local Plan which indicates 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. Whilst I note the appellant's concern that this policy is not referred to in the decision notice, it is cited in the Council's committee report as a relevant policy and so I have considered it here. Whilst not part of the proposal before me, I also note the appellant's intention to widen the access to form a pathway and provide a passing place should the scheme be successful. This could add to the unsatisfactory impact on the protected trees that I have described.
23. I have also considered the Council's concern that the proximity of the trees to the proposed houses would lead to future pressure for them to be lopped or removed. The trees are to the south west of the proposed houses and are of a significant height. The Council is concerned that they would cast shade over the site for a large part of the day and in particular overshadow the front parking and amenity space of the dwellings. The risk of falling branches on parked cars is also cited. Part (ii) of Housing Policy 11 of the Local Plan is permissive of new housing development, subject to it providing reasonable amenities in terms of light, air and privacy for both existing and new dwellings. One of the core planning principles of the Framework to secure a good standard of amenity for all existing and future occupiers of land and buildings.
24. However, the fronts of the houses on plots 2 to 5 would be some distance from the trees on the south west boundary of the site (and are located outside their RPAs). The bungalows would be dual aspect, their frontages are shown for parking and they would have rear garden areas. Although the proposed house on plot 1 would be much closer to the band of trees, its frontage would face west into the site. As such, I am not convinced that the trees would be so close to the proposed houses such that they would fail to provide adequate living conditions for future residents in terms of daylight and sunlight. Thus, whilst I appreciate the Council's concerns (particularly with regard to Plot 1) that the proximity of the proposed houses to the trees would lead to increased pressure for their removal or lopping in the future (which would detract from the character and appearance of the area), I am not convinced that this in itself is a reason to resist the scheme. However, this does not alter the harm that would arise to the trees from the proximity of the proposed access.
25. I note the appellant's view that the scheme's retention of existing trees and hedgerows and additional planting along with the provision of bird and bat boxes would safeguard the biodiversity of the site and encourage wildlife. I am also aware that the site would utilise rain water harvesting. However, overall for the reasons set out above, the proposal would have an adverse visual

- impact on the countryside and so would fail to protect or enhance the natural environment. Consequently, it would not accord with the environmental dimension of sustainable development.
26. Bringing matters together, although the roles of sustainability should not be undertaken in isolation, paragraph 8 of the Framework is clear that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously. The proposal's contribution to housing land supply counts in its favour as does its role in reducing the pressure to develop other green field sites. However, along with the economic and social gains considered above, these benefits of the proposal are limited by the relatively small scale of the proposal for five dwellings. Thus its role in building a strong and competitive economy, and supporting a strong, vibrant and healthy community would not be substantial.
27. I have also had regard to the appellant's point that additional buildings such as a swimming pool and changing room could be constructed on the site, in addition to the existing tennis court. Be that as it may, I have seen no evidence to indicate that there is a significant probability that this fallback position would be constructed should this appeal be dismissed and in any case such development would not be as substantial as the proposal before me. The scheme would see the removal of the broken and outdated septic tank on the site, which would be a benefit in terms of smell and flies. However, I see no reason why this could not be replaced in the absence of the appeal proposal. These considerations therefore add very little weight in its favour.
28. Moreover, for the reasons given, environmental gains would not be realised and the scheme would fail to result in positive improvements in the quality of the built, natural and historic environment anticipated by paragraph 9 of the Framework. As a result, the proposal does not amount to sustainable development. I confirm in any event, that the adverse impacts of granting permission in this case would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. I therefore conclude on this issue that the proposal would not be a sustainable form of development and would fail provide a suitable site for development having regard to policies which seek to protect the open countryside, including its effect on the character and appearance of the area and protected trees. This would be contrary to Environment Policy 1 of the Local Plan, criterion (iii) of which seeks to safeguard and protect the character of the countryside, the landscape quality, and wildlife and historic features. In so far as it seeks to ensure that new development outside settlements protects the character of the countryside and landscape quality, I am satisfied that this criteria aligns with the core planning principle of the Framework to recognise the intrinsic character and beauty of the countryside. The proposal would also be at odds with paragraph 55 of the Framework and would fail to support paragraph 109 of the Framework which seeks to protect and enhance valued landscapes.

**Conclusion**

30. For the reasons set out above, I conclude that the appeal should be dismissed.

*Elaine Worthington*

INSPECTOR

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## Appeal Decision

Site visit made on 1 December 2015

**by Paul Singleton BSc (Hons) MA MRTPI**

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

Decision date: 21 December 2015

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**Appeal Ref: APP/F1040/D/15/3138855**  
**35 Orchard Close, Willington, Derbyshire DE65 6DJ**

- 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 Mrs Alice Wilmot against the decision of South Derbyshire District Council.
  - The application Ref 9/2015/0848, dated 5 September 2015, was refused by notice dated 3 November 2015.
  - The development proposed is a first floor level bedroom extension.
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### Decision

1. The appeal is allowed and planning permission is granted for a first floor level bedroom extension at 35 Orchard Close, Willington, Derbyshire DE65 6DJ in accordance with the terms of the application, Ref 9/2015/0848, dated 5 September 2015, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans; Location Plan, Block Plan, Existing and Proposed First Floor Plan, Existing and Proposed Ground Floor Plan and Section, Existing and Proposed Front and Side Elevations, and the details set out in the Design Statement submitted with the application.
  - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

### Main Issue

2. The main issue is the effect on the living conditions of the occupiers of number 36 Orchard Close, having regard to the outlook from the principal ground floor windows.

### Reasons

3. The proposed extension will increase the height of the existing side wall of the ground floor of the appeal property to eaves level and project forwards to the existing building line at first floor level. Although this will bring the first floor massing of the dwelling in closer proximity to No 36 Orchard Close the detailed
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siting of the two houses in relation to one another and at the head of the cul-de-sac is such as to minimise any harm that might otherwise arise.

4. My observations on site support the appellant's suggestion that the proposed first floor addition would be in view from the lounge of No 36 only when standing next to the window. Even then, the first floor extension would be seen only in the upper right portion of the view and would move out of view on stepping back 1 metre or so inside the room. From neither of these positions would the proposal have a significant adverse effect on the open aspect which this window enjoys across the head of the cul-de-sac and through the gaps between the dwellings opposite.
5. The single storey side annexe to No 36 comprises a ground floor bedroom with an en-suite bathroom. A person in the bedroom would need to stand in or very close to the window to see all of the proposed first floor addition; again, this would occupy only part of the view, with some 60% of the available view being to the left of the front façade of No 35, across the access and parking areas to the two houses and into the turning area of the cul-de-sac. A viewer in this position would be aware of the additional height of the side elevation but I do not consider that this would be unduly dominant or imposing in that view. On stepping back by about 1 metre from the window, the view of first floor level extension would quickly be lost as the viewing frame is reduced.
6. The proposal would not meet the standard separation distances set out in the Council's Supplementary Planning Guidance - Extending Your Home (2004) (SPG). However, the SPG is a not a policy document; its purpose being to provide guidance for house extensions and, amongst other things, to ensure that extensions avoid an unreasonable impact on the living conditions of occupiers of nearby dwellings. Although the SPG advises that two storey extensions should not breach the specified minimum distances, it also states that it is always necessary to consider proposals on their merits. My assessment in this case is that, whilst the standard distances would be breached, the proposal would not be overbearing when seen from the ground floor windows of No 36 and would not have an unreasonable impact on the outlook enjoyed by the occupiers of that dwelling.
7. The SPG notes that, where elevations are opposite each other and separated by public areas such as a road, the separation distance standards may be relaxed. The space immediately outside of the two windows concerned is not part of the public road but, because of the layout of the properties and the absence of any kerbs or boundary fences, it has the appearance of a shared access and parking area and parked cars are likely to feature in views from ground floor windows of No 36 at many times of the day. Accordingly, this is a situation where the rigid application of the standard distances may not be fully justified.
8. For these reasons I find that the proposal would not give rise any harm to the living conditions of the occupiers of the neighbouring dwelling and would not conflict with Housing Policy 13 of the South Derbyshire Local Plan (1998) which provides support for house extensions provided that the proposal is not detrimental to the amenities of adjacent properties. Although the Local Plan predates the publication of the National Planning Policy Framework (the Framework) I consider the policy to be consistent with policies in Section 7 of the Framework with regard to good design and, therefore, give it full weight. I

also find that there would be no conflict with paragraph 64 of the Framework as suggested by the Council. I have had regard to the National Planning Practice Guidance but nothing in that guidance has led me to a different conclusion as to the acceptability of the appeal proposal.

**Conditions**

9. For the avoidance of doubt and in the interests of proper planning a condition is need to ensure compliance with the approved plans and the details set out in the design statement submitted with the application. A condition requiring that the external materials used in the extension shall match those of the existing property is also needed to ensure a satisfactory quality of design.

**Conclusions**

10. For the reasons set out above and having regard to all matters raised I conclude that the appeal should be allowed.

*Paul Singleton*

INSPECTOR