



F. McArdle
Chief Executive

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

www.south-derbys.gov.uk

Please ask for: Alan Maher
Phone: (01283) 595722
Minicom: (01283) 595849
DX 23912 Swadlincote
Email: alan.maher@south-derbys.gov.uk

Our ref: AM
Your ref:

Date: 2 May 2014

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, on **Tuesday, 13 May 2014 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

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

Labour Group

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



AGENDA

Open to Public and Press

- 1 Apologies and to note any substitutes appointed for the Meeting.
- 2 To note any declarations of interest arising from any items on the Agenda
- 3 To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4 Report of the Head of Community and Planning Services. **3 - 99**

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.
- 7 Enforcement Action - Willington

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2013/1050	1.1	Ambaston	Aston	1
9/2014/0158	1.2	Midway	Midway	5
9/2014/0261	1.3	Weston	Aston	29
9/2014/0278	1.4	Swadlincote	Swadlincote	34
9/2014/0286	1.5	Findern	Willington & Findern	43
9/2014/0061	1.6	Melbourne	Melbourne	48
9/2013/1013	2.1	Ingleby	Repton	58
9/2014/0245	2.2	Ticknall	Repton	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. 9/2014/0150/FH

Applicant:
MR & MRS ROBERT BOSWORTH
5 MERE BECK
AMBASTON
DERBY
DE72 3GH

Agent:
MR ANTHONY BLEASDALE
ABC SURVEYING
11 CARSON ROAD
GAINSBOROUGH
LINCOLNSHIRE
DN21 2RE

Proposal: THE ERECTION OF AN EXTENSION AND
ALTERATIONS AT 5 MERE BECK AMBASTON DERBY

Ward: ASTON

Valid Date: 17/02/2014

Reason for committee determination

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

Site Description

The host property is a detached two-storey dwelling located within a small development of similar sized houses. The site was formerly part of a farm complex (Avenue Farm) and some of the houses here are conversions/adaptations from original farm outbuildings. This particular property though is a new build. Mere Beck is a no through road and the site and surrounding land is flat.

Proposal

The proposal is to erect a two-storey, brick built extension to the rear of the dwelling, in part replacing/building over an existing conservatory. The proposed extension would project out from the original rear wall by approximately 3.57m with a width of approximately 4.29m and an overall height to the top of the ridge of approximately 7m (5.17m to eaves). The proposal would have windows to the rear and sides (both at ground floor and first floor). The plans also show a new window in the 'original' side wall at first floor. That window would serve a bedroom. The development lies within the green belt.

Applicants' supporting information

None.

Planning History

391/1125 – Application for 6 dwellings on land at Avenue Farm
1094/0622 – Amended plans for plots 5 to 6 of the above approval.

Responses to Consultations

Objections have been received from the two immediate households. These objections are summarised as follows:

- a. Overlooking of living room caused by the new first floor side window;
- b. Loss of privacy to garden area;
- c. The extension overbears upon the living room (and the immediate outdoor space) causing a loss of light/aspect;
- d. Loss of privacy to conservatory and garden area;
- e. Overshadowing of immediate outdoor space exacerbated by loss of light to kitchen;

Development Plan Policies

The relevant policies are: Local Plan Housing Policy13; Local Plan Green Belt Policy 3; Supplementary Planning Guidance (SPG): Extending Your Home.

National Guidance

National Planning Policy Framework (NPPF), paragraphs 14, 17, 56 and Chapter 9.

Planning Considerations

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

- The impact on the character and appearance of the locality and the green belt;
- The impact on neighbours assessed against the Council's adopted standards

Planning Assessment

Impact on the character and appearance of the area.

The host dwelling was built in the mid 1990s as part of a development of 6 new dwellings. The character here is good sized detached dwellings, situated side by side. However they are fairly tightly packed together.

The proposed extension is to the rear, in the private amenity space associated with the property. Views into this rear space are limited to private views although supplementary guidance 'Extending your Home' states two storey extensions (to the rear) should not upset the basic shape and design of the house. The extension proposed is subservient to the original mass. Whilst the extension adds some length to the dwelling, it is a continuation of the existing form (same width, similar sized openings), lower in height to the main part of the house etc. There is no significant protrusion past the line of the building; as such the street scene is not unduly affected. Equally the openness of the green belt hereabouts would also be unaffected.

The impact on neighbours assessed against the Council's adopted standards

The new 'side' bedroom window would indeed overlook the most immediate amenity space at No 4 at close quarters. However, by obscure glazing that window any overlooking would be removed. This has been discussed with the applicants' agent and can be controlled by condition.

Loss of privacy caused by the new sun room side window has also been considered (although not raised as a concern). It does fall within the sector of view of the living room window at No4 but is a side window and as such its impact can be considered on its merits. Given there is a fully glazed conservatory here already, the change in circumstance is not seen to be more significant or unduly adverse.

In regards loss of privacy to the conservatory at No 6, plans have been amended to show a standard window in the new gable end (changed from a balcony with full height doors). Considered against the SPG requirements, the conservatory would not be unduly overlooked as no part of it would fall within the sector of view. Whilst it is acknowledged this same window would cause some loss of privacy to the adjacent garden spaces adjacent, the window is standardly orientated (i.e. rear facing) and positioned to look down its own garden. As there is already a window at first floor in the existing gable affording a similar outlook, it is considered that the proposal would not lead to any material adverse impact on the existing amenity levels.

In terms of overbearance, the SPG looks to protect the nearest ground floor primary space from an undue loss of light aspect (caused by the addition of a two storey form). The lounge window at No 4 is at first floor level and over 12m away – a distance usually seen to be acceptable if the room affected was a ground floor space.

Whilst the kitchen at No6 does benefit from some additional light through its side door, its primary aspect (a west facing window) is not affected by this development. SPG gives modest weight to side/secondary openings as this would be seen to unfairly disadvantage the applicant.

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. This permission shall relate to the amended drawing dated 04-04-14 showing in particular: replacement of juliet balcony feature with a standard window.

Reason: For the avoidance of doubt.

3. 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.

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

4. Before the first occupation of the extension hereby permitted the first floor window in the south facing elevation (serving the rear bedroom space) shall be fitted with obscured glazing and shall be permanently retained in that condition thereafter. That same window shall be fixed (ie non opening) unless the parts of the window which can be opened are more than 1.7m metres above the floor in the room in which the window is installed. The window shall be permanently retained in that condition thereafter.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

5. Prior to the commencement of the development hereby permitted the applicant shall confirm in writing to the Local Planning Authority, as a minimum , that:

(1) Floor levels within the proposed development will be set no lower than existing levels AND,

(2) Flood proofing of the proposed development has been considered by the applicant and incorporated where appropriate.

Reason: In the interests of flood protection.

Informatives:

In the event that condition 5 is insufficient and floor levels within the extension must be set 300mm above the known or modelled 1 in 100 year (annual probability 1% chance) river flood level or 1 in 200 year (annual probability 0.5% chance) tidal & coastal flood level (which has been demonstrated by a plan to Ordnance Datum/GPS showing finished floor levels relative to the known or modelled flood level), it is likely that a further planning permission would be required.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues 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 1.2

Reg. No. 9/2014/0158/RSD

Applicant:
MR MARK SWEET
STRATA HOMES MIDLANDS LTD
QUAY POINT
LAKESIDE
DONCASTER
DN4 5PL

Agent:
MR MARK SWEET
STRATA HOMES MIDLANDS LTD
QUAY POINT
LAKESIDE
DONCASTER
DN4 5PL

Proposal: THE ERECTION OF 66 DWELLINGS AND ASSOCIATED INFRASTRUCTURE, DEVELOPMENT OF NEW COMMUNITY FACILITIES AND SPORTS HALL AND CAR PARK WITH DEMOLITION OF EXISTING PAVILLION, AND INSTALLATION OF NEW PLAY AREA AND TWO NEW FOOTBALL PITCHES ON LAND OFF CHESTNUT AVENUE MIDWAY SWADLINCOTE

Ward: MIDWAY

Valid Date: 21/02/2014

Reason for committee determination

The item is presented to committee because this is a major development having received more than two objections, and the Council is the landowner.

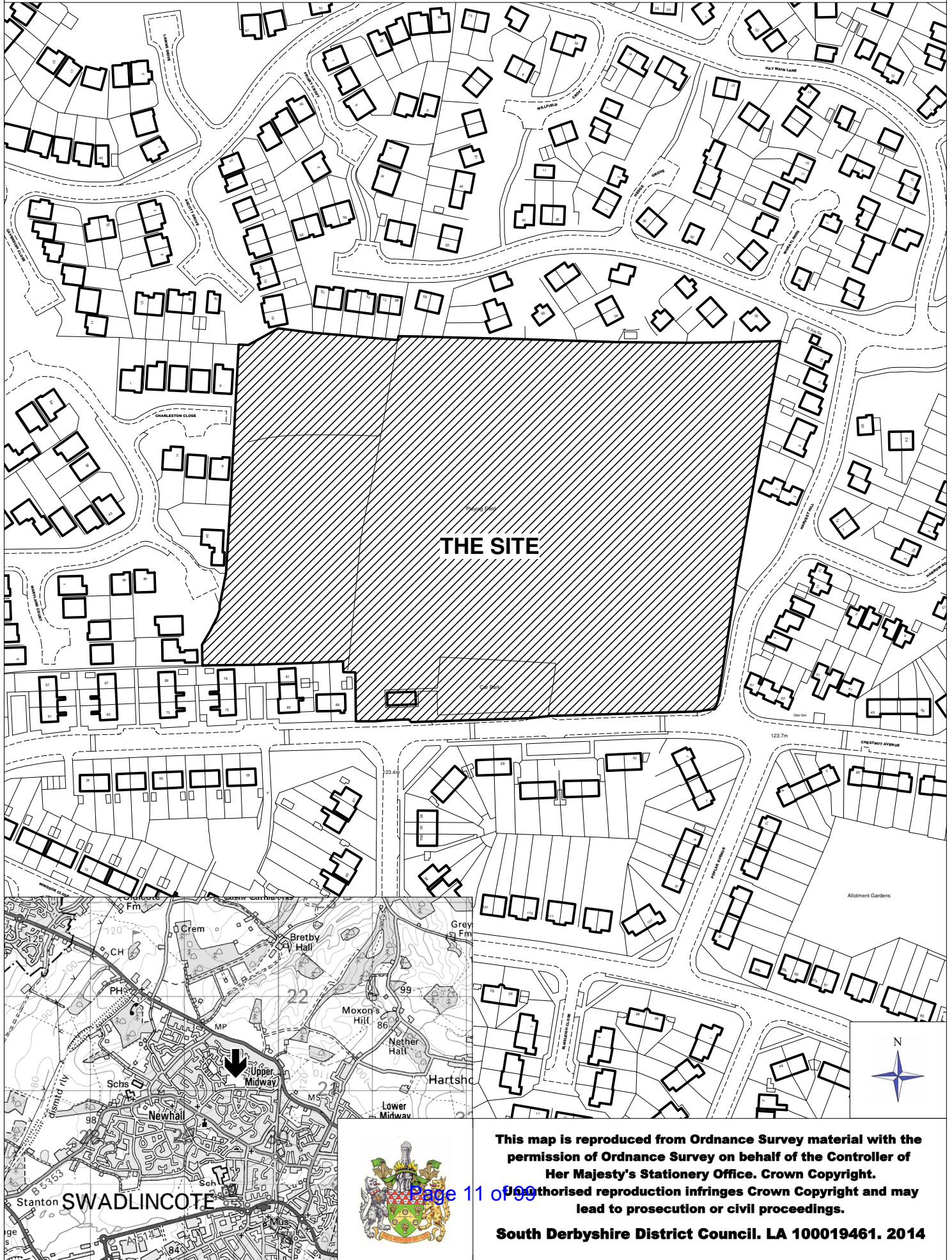
Site Description

The site extends to approximately 1.6 hectares and presently comprises public open space with one formally laid football pitch, further grassed space, a changing pavilion, parking area, a multi-use games area and a children's play facility. Chestnut Avenue lies to the south with Harvest Hill to the east, whilst further estate roads such as Springwood Farm Road, Claymar Drive and Charleston Close border the northern and western sides. All these roads provide a frame of residential development surrounding the site. The land generally slopes from north to south providing a fall of a number of metres, with some peripheral hedgerow and tree planting. A single hedgerow divorces the western third of the site where an open ditch also exists.

Proposal

The application is detailed, seeking permission for the erection of a new sports and community building as well as provision of two new sports pitches on re-graded ground. The children's play area and multi-use games area would be re-sited and

9/2014/0158 - Land off Chestnut Avenue, Midway, Swadlincote (DE11 0JX)



THE SITE

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

supplemented. In order to financially sustain this proposal, the application also includes 66 dwellings in a mix of 5 two-bed, 47 three-bed and 14 four-bed dwellings served from a new access road into the site (which would also serve the leisure and sports facilities). The dwellings are all 2 to 2.5 storeys with each dwelling having 2 parking spaces and for sale on the open market.

Amendments have been received throughout the course of the application seeking to address design, landscaping and highway concerns. Assessment proceeds on the basis of these changes and other documents originally submitted.

Applicants' supporting information

The Design and Access Statement explains the rationale behind the design of the proposal, having considered the local and wider historical and current design context, as well as secured by design principles and offering suitable landscaping to assimilate the development into its surroundings. It outlines the services and facilities available in the locality, such as schools and shops, noting a range of transport modes offer various means in which to access them. It recognises the existing context of the site and its use and sets out how it is considered the overall development represents a net improvement to the sporting and leisure opportunities offered.

The Planning Statement provides a review of relevant planning policy guidance, followed by an assessment of the proposed development having regard to the development plan and other material considerations. It highlights the previous consent for development of the smaller western parcel of land for residential purposes and the creation of a second football pitch and new club house. It also notes that this permission, extended in 2011, could still be implemented. The overall conclusion reached taking into account policy guidance and other material considerations, is that the proposal whilst there is conflict with saved policies of the Local Plan, the benefits arising outweigh the harm brought about.

A Transport Statement notes the immediate and wider highway context, with Chestnut Avenue carrying a 30mph speed limit and traffic calming measures. Footways line this and surrounding roads. Speed surveys have been undertaken either side of the proposed access to demonstrate reduced visibility splays are appropriate. Of the recorded accidents in locality, none have occurred in the immediate vicinity of the site with most focussed towards the priority routes of Newhall Road to the south and Springfield Road to the east. Pedestrian and cycle routes to surrounding services and facilities are considered safe, convenient and attractive, whilst bus services pass close to the site on a regular basis. As to traffic generation, modelling forecasts some 39 vehicle movements in the morning peak hour and 43 in the evening peak hour, with traffic splitting to the east, west and south to connect with arterial routes such as the A511, the A444 and the A514. Further modelling demonstrates the proposed junction would operate with significant spare capacity.

An Ecological Appraisal and Addendum highlights no statutory designated sites of international, national or local conservation importance are located within 5km of the site, although 5 non-statutory designated Local Wildlife Sites and 6 potential Wildlife Sites are located within 1km. However all are isolated from the site by existing areas of residential development, such that the development is unlikely to result in any adverse effects. No evidence of bats was observed in the existing pavilion, with it providing negligible potential for roosting bats due to its damp nature, limited suitable roosting

features and isolation from optimal bat foraging habitat. Existing hedgerow and trees offer potential nesting opportunities and removal of hedgerow and trees should occur outside of the bird breeding season whilst consideration is to be given to the provision of bird boxes, to be affixed to suitable retained trees to enhance nesting opportunities for birds in the local area as a biodiversity enhancement. Given the isolated nature of the site within built development and predominance of intensively managed amenity grassland, the site is considered to represent sub-optimal habitat for common reptiles and their presence is considered unlikely. Additional habitats are limited to the isolated sections of hedgerows and a small number of young to semi-mature trees, which are likely to be of some value to wildlife within a local context. It is noted the proposals will result in the loss of around 83% of one hedgerow, a 66 metre section from a second hedgerow, and the young and semi-mature tree groups and individual trees within the site. However in order to not only compensate for this loss incurred through proposals and ensure a net gain in biodiversity, a total of 250 metres of species-rich native hedgerow will be planted within the scheme alongside a considerable number of native trees.

The Tree Report notes the proposal would require the removal of portions of two groups of trees whilst the complete removal of 4 individual specimens. Remaining trees can be protected accordingly. The alignment of the new football pitch would require the removal of approximately 58 metres of low arboricultural value hedgerow, although appropriate replacement would be provided. Other elements of hedgerow would be removed too. However the small amount of trees and groups affected and requiring removal in order to facilitate the development are not considered from an arboricultural perspective to significantly reduce the overall amenity value that is provided at the present time.

The Phase 2 Geotechnical and Geo-environmental Site Investigation Report notes the majority of the site has not been built upon previously, with the site underlain by coal measures. It is noted the site lies on a secondary aquifer and there are no historical or active landfills within 500 metres. The coal seams under the site have been worked, initially by underground mining but subsequently by open cast. Following this the ground has been made to a depth of some 16 metres in places with topsoil laid. Trial boreholes evidence this made ground along with some seams of coal. It is recommended that pile foundations be used where made ground exceeds 2.5 metres, although elsewhere foundations need to be reinforced. Gas prevention measures are recommended too. Drilling and grouting of the coal seams is also likely necessary, although further investigation is needed to establish the exact extent. A mine shaft has also been identified on historical records although despite best efforts it has not been located. As such it is anticipated this is below the children's play area and will require capping once also drilled and grouted.

A Flood Risk Assessment and Drainage Strategy notes the site lies within Environment Agency Flood Zone 1 (low risk). Surface water drainage is normally put to Sustainable Urban Drainage Systems (SuDS) before consideration of watercourses or sewers. However due to impermeable ground and the nearest watercourse being some 1.2km distant, the only option is to provide an attenuated connection to the public sewer following imminent improvements downstream to increase capacity and alleviate localised flooding. A public surface water sewer crosses the site and the existing open ditch lacks connectivity to land to the north suggesting it is now redundant.

Planning History

9/2010/1127: Extension of time limit for implementation of 9/2007/1030 – Approved March 2011

9/2007/1030: Erection of 24 dwellings and new access road together with a new community building, car park and engineering work to re-grade sports pitches – Approved January 2008

Responses to Consultations

Sport England comments there are an existing senior football pitch and an unmarked area to the east that historically accommodated a second pitch. It is understood that the main users of the current site are Midway FC. The Council's Playing Pitch Strategy 2011 identifies the overall site as a potential focus for development of junior pitch facilities. Sport England has consulted with the Football Association (FA) who advises that whilst use of the wider area has been explored in the past, the FA is not actively involved in pursuing this. They note there are a number of quality issues with the existing sports facilities and it appears that ground conditions along with difficulties in managing and maintaining the site have effectively resulted in the extent of usable playing field receding over time. They note that whilst the proposal would result in the loss of the senior football pitch, further playing field land to the east as well as generous run-off areas, areas of informal open space, the children's play area and the current changing pavilion; the development would deliver a new senior football pitch, a new junior football pitch, a single badminton court activity hall, changing rooms and associated 'pavilion facilities', an informal small scale multi-use games area (MUGA) as part of the new playground facility and 48 car parking spaces to serve these new and improved facilities. It is considered that the new sports provision would provide a number of advantages over the current facilities at the site, subject to the new pitches being constructed to a high standard in accordance with up to date guidance and the indoor/ancillary facilities also being fit for purpose and built substantially in line with relevant guidance. In addition, although initial analysis suggested that there would be a quantitative loss in the overall playing field unit, significant parts of the site fall outside what can be defined as the current 'playing field unit' or comprise informal play space only, falling within the scope of exceptions under Sport England's playing fields policy. It is recognised the future site layout would be less flexible than the current provision with limited scope to adjust the pitch positions to relieve areas of excessive wear, although there would still be the potential to incorporate a range of mini-soccer pitches as a potential alternative. However the construction of the pitches to a significantly higher standard than existing would increase their durability, and provide an overall increase in capacity. The installation of suitable ball stop fencing/netting is recommended and the closer physical relationship with residential properties would improve security and surveillance of the pitches. Sport England also consider it necessary to ensure that phasing of the development enables and supports continuity of sports provision at the site. It is understood that consideration has been given to achieving this already, but they note it is important to obtain more precise details of the proposed phasing and interim arrangements. Overall Sport England considers the development would accord with exceptions in their playing fields policy and paragraph 74 of the NPPF and does not wish to raise an objection but requires that conditions are attached.

The Environment Agency raises no objection but notes that the surface water drainage scheme should be more than just underground storage, with features such as permeable paving to dwellings and open water storage for the football pitches expected when it comes to dealing with surface water under a requested condition.

Natural England raises no objection but notes the proposal is within an area which could benefit from enhanced green infrastructure (GI) provision, noting GI can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. They also direct the Council towards Standing Advice on protected species noting it should ensure it has sufficient information to fully understand the impact of the proposal before it determines the application. They also comment the proposal may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes, and the Council should consider securing measures to enhance the biodiversity of the site in accordance with paragraph 118 of the NPPF. Finally they note the proposal does not appear to be either located within, or within the setting of, any nationally designated landscape although the proposal should complement and where possible enhance local distinctiveness.

Derbyshire Wildlife Trust notes the proposed development will result in the loss of hedgerows, which are likely to support nesting birds during the bird breeding season, and the demolition of the existing pavilion which is considered to have potential to support roosting bats. In respect of the bats, further information provided satisfies the Trust that it is unlikely bats will be adversely affected and that the Council can now move to determine the application having fully taken European Protected Species into account in accordance with the requirements of the Habitats Regulations. The replacement native hedgerows to compensate for hedgerow loss are welcomed. However whilst the proposals suggest a net gain of some 70 metres, connectivity between the new hedgerows could be improved and there is scope for further native hedgerow planting along the western and southern boundaries providing greater biodiversity benefit. Details also need to be provided as to how these hedgerows will be managed in the long-term to maximise their biodiversity benefit. In addition it is recommended that features for nesting birds and roosting bats are incorporated into the new residential dwellings and the proposed community building and should be secured through condition. The Trust also seeks a condition to afford appropriate protection of nesting birds.

The County Highway Authority notes that the majority of layout issues initially raised have been addressed as part of revised drawings and whilst the access to the proposed car park is still shown emerging directly onto the new estate street, adjacent to the access to Road 2, this is an improvement over the original layout and providing that there is sufficient intervisibility between the 2 accesses a highway objection would not be sustainable on the basis of this layout. They raise no objection subject to the imposition of conditions to ensure acceptable impacts during construction, appropriate laying out of the estate streets and accesses, suitable visibility from accesses, adequate surface water drainage of the highway, and suitable parking provision and retention thereof.

The Coal Authority notes the presence of a mine entry on site and that the site has been subject to surface mining and further likely historic unrecorded underground coal mining activity at shallow depth. They note the submission of a Phase 2 Geotechnical and Geo-environmental Site Investigation Report concludes that these features pose risks to the proposed development and makes recommendations to address these matters or mitigate for them. The Coal Authority considers that the content and conclusions of the Report are sufficient for the purposes of the planning system and meet the requirements

of the NPPF in demonstrating that the application site is, or can be made, safe and stable for the proposed development. The Coal Authority therefore has no objection to the proposed development subject to the imposition of a condition to secure further intrusive site investigation and remediation prior to development.

The County Archaeologist comments the proposal area impacts two sites on the Derbyshire Historic Environment Record. These records relate to the locations of former mine spoil tips identified through aerial photographs and historic maps, and any below-ground remains of the former tips would be of no archaeological significance. It is therefore advised this site is not identified as a heritage asset and that there is no need to place an archaeological requirement on the applicant.

The County Developer Contributions Officer seeks provision of £1,888 towards the provision of a new Household Waste Recycling Centre, £68,394 towards 6 infant school places at Elmsleigh Infant and Nursery School; and £171,761 towards 10 secondary school places at The William Allitt School. It is also recommended that the homes are designed to Lifetime Homes standards; that the development makes provision for future installation of high-speed broadband; and consideration is given to the installation of sprinklers within the homes. The comments also recognise that the viability of development schemes will vary and that if the developer feels that the contributions sought would impact on viability to the point where the scheme would not go ahead, a full financial appraisal should be provided for review.

Severn Trent Water raises no objection subject to the imposition of a foul and surface water drainage condition.

The Council's Environmental Protection officer does not have any significant concerns with respect to contaminated land. However this does not fully eliminate the risk associated with site and surrounding land potentially affected by contamination. Potential ground gas sources are located on the site and due to the expected nature of the underlying ground conditions, made ground deposits may have the potential to present contamination issues. In view of these issues conditions are recommended to identify and remediate any potential land contamination on the site.

The Council's Environmental Health officer has no objections to the proposals.

The Police Crime Prevention Design Advisor considers the design element for housing reflects good standards although he comments on losing opportunities for casual supervision between plots 24-28 and the community building car park by way of the landscaping, the need to remove a hidden dip to the rear of 89 Chestnut Avenue by way of land levelling in creating the football pitch, existing issues with youths gathering and sitting on the wall at the bottom of Harvest Hill and potential conflict with plot 14, that all openings on the proposed community building be shuttered and a condition is added to ensure an intruder alarm system compliant with the current ACPO alarms policy is fitted.

The National Forest Company notes the loss of 114 metres of hedgerow of moderately high to high value, but the proposed replacement planting is welcomed and they request this is secured by condition along with hedgerow trees. They also welcome the retention of the majority of the trees on site and request a suitable condition to ensure adequate protection during construction. They also noted that extant and emerging policy seeks 20% of the site area to be set aside for woodland planting and landscaping, although content to apply this to only the residential element which extends to 1.59Ha (i.e. the

requirement would equate to 0.31Ha). They also advised the shortfall could be addressed by way of a financial contribution of £6,200 towards planting specimen trees within Midway. However they noted that no planning contributions are proposed given the community benefits that the scheme will deliver and amendments should therefore provide for significant further specimen tree planting within the development. Amendments received have largely satisfied this point, subject to condition, although they consider additional tree planting within the proposed hedgerow to the south of football pitch 2 could still be incorporated.

Responses to Publicity

8 objections have been received from local residents. These raise the following comments and/or concerns:

- a) loss of green space;
- b) what provision there is for a play area for children;
- c) increased pressure on schools in the locality;
- d) increased traffic on surrounding roads;
- e) specific on-street congestion around the children's play areas;
- f) road safety impacts;
- g) the access onto the site from Claymar Drive should be closed off to deter parking on that street during football matches;
- h) capacity of existing sewers and drains;
- i) why an existing hedgerow has already been substantially cut down and netted prior to permission being granted;
- j) impact on and loss of this environment and wildlife, particularly birds;
- k) overlooking and overshadowing from the proposed housing;
- l) the proximity of the football pitch and multi-use games area to residential properties, and resultant noise from supporters and inconvenience of balls going astray without suitable fencing/netting;
- m) the original application indicated the perimeter of the land would be secured by a high boundary brick wall, but this application indicates a wooden fence which is not sufficient in terms of security subject to wear and tear from footballs, etc;
- n) no bungalows proposed, out of character with the surrounding area;
- o) increased activity, particularly during times of football matches, and concerns over foul and abusive language;
- p) devaluation of existing properties;
- q) no reference of repair to existing boundary treatments; and
- r) the developer has already commenced works to an existing hedgerow.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 4 and 11 (H4 and H11); Transport Policy 6 (T6), Environment Policies 9 and 10 (EV9 and EV10), Recreation and Tourism Policy 5 (RT5) and Community Facilities Policy 1 (C1).

Emerging Development Plan Policies

The relevant policies are:

- Pre-Submission Local Plan 2014: Policy S1: Sustainable Growth Strategy, Policy S2: Presumption in Favour of Sustainable Development, Policy S4: Housing Strategy, Policy S6: Sustainable Access, Policy H1: Settlement Hierarchy, Policy H19: Housing Balance, Policy H20: Affordable Housing, Policy SD1: Amenity and Environmental Quality, Policy SD2: Flood Risk, Policy SD3: Sustainable Water Supply, Drainage and Sewerage Infrastructure, Policy SD4: Contaminated Land and Mining Legacy Issues, Policy BNE1: Design Excellence, Policy BNE2: Heritage Assets, Policy BNE3: Biodiversity, Policy BNE4: Landscape Character and Local Distinctiveness, Policy INF1: Infrastructure and Developer Contributions, Policy INF2: Sustainable Transport, Policy INF6: Community Facilities, Policy INF7: Green Infrastructure and Policy INF9: Open Space, Sport and Recreation.

National Guidance

- National Planning Policy Framework (NPPF): including (but not exclusively) paragraphs 6, 7, 8, 11, 12, 14, 17, 32, 39, 47, 49, 58, 61, 69, 70, 73, 74, 96, 103, 109, 118, 120, 121, 123, 129, 139, 173, 186, 187, 196, 197, 203, 204, 206, 215 and 216.
- National Planning Policy Guidance (NPPG).

Local Guidance and Evidence

- Housing Design and Layout Supplementary Planning Guidance (SPG).
- The Strategic Housing Market Assessment 2013 (SHMA).
- Section 106 Agreements – Guidance for Developers.

Environmental Impact Assessment

A formal Screening Request has not been received prior to the submission of this application. Accordingly the proposal has been screened under Regulation 7 of the Environmental Impact Assessment (EIA) Regulations 2011. The proposal is considered to fall within paragraph 10b of Schedule 2 to those Regulations, being an infrastructure project. However having taken into account the criteria of Schedule 3 to the Regulations, the proposal is not considered to give rise to significant environmental effects in the context and purpose of EIA. Accordingly the application is not accompanied by an Environmental Statement.

Planning Considerations

Planning legislation commands that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The saved policies of the SDLP presently form the Development Plan, although the NPPF is a significant material consideration. The emerging Plan is also gathering weight whilst replies from statutory and technical consultees, as well as third parties, are also material considerations. All these will carry varying degrees of weight.

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

- Policy weight and the principle of development;
- Loss of public open space;
- Impacts arising on local services and infrastructure;

- Affordable housing, commuted sums and viability;
- Highway impacts;
- Biodiversity and ecological impacts;
- Archaeology and coal mining legacy;
- Amenity impacts;
- Design and layout; and
- Drainage.

Planning Assessment

Policy weight and the principle of development

Whilst the applicant's Planning Statement considers the previous permission could be implemented, this is not the case as that permission expired in March. There is thus presently no material "fallback" although the fact that the previous decision was made under a similar policy background carries weight.

Paragraph 47 of the NPPF seeks *"to boost significantly the supply of housing"* providing a considerable emphasis on bringing forward high levels of housing provision as soon as possible. This is achieved through a rolling supply of deliverable sites sufficient to provide five-years worth of housing against projected requirements (a "5-year supply"). Where Local Planning Authorities have failed to deliver a 5-year supply, an additional buffer of 20% is required (effectively 6 years). Paragraph 49 of the NPPF states: *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites"*. Whilst the Council has no issue with land supply as such, and recent permissions have helped to improve the supply, there is still a shortfall at the present time. As such Housing Policy 4 cannot be considered up-to-date, although significant weight may be afforded to it given its strategic consistency with the NPPF (paragraph 215), and the proposal must be considered in the context of the presumption in favour of sustainable development (at paragraph 14). The presumption states:

"...where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *specific policies in this Framework indicate development should be restricted"* [Emphasis added].

It is important to note that the presumption is one in favour of *sustainable* development – not any development. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable and the courts have ratified this approach as well as confirming that Local Plan policies not related to the supply of housing are not automatically "stood down". Paragraph 6 of the NPPF states that *"the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development...means in practice..."*. Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). It is thus reasonable to conclude that conflict with other

parts of the Framework, and indeed Development Plan policies, could lead to the proposal being defined as unsustainable.

Therefore Members should first reach a view on whether the proposal is sustainable, or can be made sustainable through planning obligations and conditions, before considering whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising. The assessment so far establishes an 'in principle' acceptance of sustainability – the discussion below looks in detail at the impacts arising so a conclusion can be reached on whether the presumption should actually apply, and whether there are significant and demonstrable adverse impacts arising which should command a refusal.

Loss of public open space

Housing Policy 4 allows residential development within Midway provided it does not involve the development of open spaces, which make a valuable contribution to the character or the environmental quality of the area. This needs to be weighed against Recreation and Tourism Policy 4 which resists the redevelopment of existing recreational facilities unless, amongst other things, alternative provision of equivalent community benefit is made, or sports and recreation facilities can best be retained and enhanced through the redevelopment of a small part of the site. Similarly paragraph 74 seeks to ensure that development of existing playing fields is strictly limited unless the loss resulting would be replaced by equivalent or better provision.

The existing open space serves the adjoining residential development, and there is likely to be an expectation from those residents that it would be safeguarded for their benefit. However the estate is relatively well served with open space and there is need for better football pitches, play equipment and community facilities. The balance proposed is for a partial loss of open space to provide for residential development which can in turn fund the improved sports pitch, community and recreation provisions. The new community building will also give a much needed focal point for the local community, and this affords weight in favour of the proposal. Consequently a net public benefit is likely to arise from the development.

Impacts arising on local services and infrastructure

Paragraph 23 of the NPPF recognises that residential development can play an important role in ensuring the vitality of centres, whilst countering this is paragraph 70 which advocates consideration of the “pressures” development may bring. The Local Plan and the emerging Plan support this approach.

Representations raise some concern that the proposal would affect the capacity of surrounding roads. The Transport Assessment covers this matter, and the Highway Authority do not raise objection. In the overall context of Swadlincote and traffic flows through Midway and the surrounding area, the impact on the development is likely to be limited. The construction phase is also likely to have a short term effect. The effect on schools in the vicinity is also mentioned. In response the County note that the junior school (Springfield Junior) has capacity but seeks commuted sums towards providing 6 further spaces at Elmsleigh Infant and Nursery School (£68,394.06) and 10 secondary school places at The William Allitt School (£171,761.70). These requests are considered to meet the tests for imposing planning obligations as set out in paragraph 204 of the NPPF.

The development will inevitably create refuse and waste which will need to be handled through a Household Waste Recycling Centre (HWRC). The existing HWRC at Newhall (Bretby) is already over capacity, having exceeded its tonnage last year, and unable to expand. Additional housing will compound this problem. Consequently the County advise of a need for commuted sums (£1,888.26) towards the provision of a new HWRC for South Derbyshire. This is considered to be justified and meet the NPPF tests. Public open space, sports facilities and built facilities are all proposed within the site. This is unusual for a development of this scale, with commuted sums normally used in lieu of the latter two matters. However this development is unique in it enhancing existing provision of all three and it is therefore not considered appropriate to seek commuted sums here.

Remaining services and facilities, such as shops and public houses, would not have a *direct* pressure placed upon them. The proposal is instead considered to bring about benefits in this fashion and ensure the vitality of them. Indeed the vitality and longevity of many of the aforementioned local services is sustained by the proposal. It is thus not considered there is a specific capacity issue or impact on a local service or facility which cannot be addressed in order to make the development sustainable.

Affordable housing, commuted sums and viability

Larger proposals concerning residential development of land normally provide a proportion of affordable housing – up to 30% of the overall total. It is not intended to provide any here. The Strategic Housing Manager is aware of this intention and does not raise objection, noting that the proposal would still contribute towards overall housing supply.

Affordable housing and other commuted sums would normally be secured in a Section 106 agreement. Members will be aware however that there is a point where to provide all necessary requests, whilst dealing with land remediation or elevated building costs, makes the development unviable. Furthermore Members may decide that the greater public interest would be served by delivering 'other capital projects'. This is one such capital project which would deliver wider public benefit through improved sports, recreation and community facilities.

As noted at the beginning of this report, the Council is the land owner. It has been heavily involved with viability discussions as part of negotiations on purchasing the land. The viability evidence was subject to scrutiny when the applicant's net land offer reduced due to abnormal development costs following ground investigations. These abnormal costs have been reviewed by the Council's engineering consultants and found to be sound. Indeed the residential land area has been expanded to increase the net land value in order to generate a sufficient receipt for the leisure development. Consequently any requirement for commuted sums would be onerous and lead to both the development and wider benefits arising not going ahead or the Council having to bear the cost of the sums sought.

Highway impacts

The Highway Authority raises no objection to the proposal, noting that the majority of layout issues initially raised have been addressed as part of amended plans and whilst the access to the proposed car park is still shown emerging directly onto the new estate

street, adjacent to the access to Road 2, this is an improvement over the original layout. The conditions requested are all considered to be relevant and justified.

As to the concerns raised regarding the use of the pedestrian link from Claymar Drive, the link already exists. Whilst there would be a new pitch in close proximity, the location of the community building makes it more convenient for users to leave their vehicles in the intended car park. This car park is also of ample capacity given the playing standard of the facilities to be provided such that overflow parking is not anticipated. Again no objection is raised by the Highway Authority in this respect.

Biodiversity and ecological impacts

The Ecological Appraisal found no evidence of protected species and further work concluded no suitable habitat for roosting bats. Consequently there is not considered to be habitats of international, national or county importance that would be directly or indirectly affected by the proposals, with no protected species recorded. It is considered a decision can be made on this application without giving rise to conflict with the Habitat Regulations.

It is noted that works to hedgerows have taken place prior to determination. This is understood to have occurred on a precautionary basis to ensure that birds could not begin nesting within them, in turn delaying an early implementation of the development so to ensure timely delivery of proposed sports and recreation facilities. The Wildlife Trust and Natural England seek a range of mitigation/enhancement measures to reduce the impact of the works on local wildlife and increase the nature conservation value of the site in the long term. This should help represent a net gain in biodiversity. They seek conditions to afford protection to the remaining hedgerows and trees and protection for nesting birds. These requests are all considered reasonable and proportionate, in line with the NPPF.

Archaeology and coal mining legacy

The County Archaeologist notes the interest identified is associated with the former mining use and unlikely to give rise to subterranean interest. It is not considered there is a need to impose further investigation on the applicant. In terms of coal mining legacy, appropriate measures to mitigate the risk from shallow workings in various areas of the site are to be provided; along with drilling and grouting where required and careful use of strip/trench and piled foundations. The Coal Authority has no concerns here and also considers that due consideration should also be afforded to the potential risk posed by mine gas to the proposed development. Overall it is considered the site can be made safe and stable for future occupiers.

Amenity impacts

The Council's Housing Layout and Design SPG has been applied to the scheme. The proposal is in the majority compliant with the amended plans, but there is minor conflict with the standards between plots proposed around the square in the north-eastern corner and adjoining dwellings. The conflicts are in the order of 1 or 2 metres. However the SPG does allow for a relaxation of the standards where local factors provide suitable mitigation. In this case the proposed dwellings would sit some 2 to 2.5 metres than those existing properties affected, such that intervening boundary treatments provide a suitable manner of addressing privacy concerns. Permission can be

conditional on submission of finished floor and ground levels to ensure impacts are acceptable.

Attention is given to the proposed pitches and repositioned play equipment. The land is already used for similar activities although some dwellings may not be subjected to the same proximity at the present time. Nevertheless the Environmental Health officer raises no objections in principle and it is not considered the degree of use would cause unacceptable impacts on standards of amenity presently enjoyed by occupiers. The same is considered to be the case for occupants on Claymar Drive with pedestrian movements not considered to materially increase as a result of the proposal.

Attention is also given to the problem of balls clearing fences to adjoining gardens. This appears to be a problem that already occurs to some on occasion. However the new and repositioned pitches could increase the likelihood of this happening to immediate neighbours – particularly those to the south of the western pitch where levels would lead to the pitch surface being of similar height to existing boundary treatments. Proposed landscaping will reduce the likelihood of this inconvenience and ball netting to the southern end further can address this further. Whilst a further application is necessary for this fencing, the Council still has control of this land at the present time and can make it conditional of any sale that this further application be made. The Council (as recreation facility provider) could choose to provide further mitigating measures should it see fit to do so in the future.

Design and layout

The layout has been amended a number of times in line with Building for Life principles, moving away from separate accesses to each element of the development to a single access serving both the recreation and community facilities before moving into the residential portion of the site. This then terminates along short cul-de-sacs and within a shared surface square. Whilst attempts were made to front properties on to Harvest Hill, the ownership of a small strip of land and differences in levels has precluded this. As to the dwellings, these have also been amended to draw in the prevailing detail of the surrounding area with render used on key plots and to terminate views. Conditions can control finer details. As to the pavilion, this has evolved significantly from the original sketches to provide a building with a contemporary slant whilst drawing in and reflecting the traditional form of the new dwellings. Shutters will secure full height windows but be absorbed within the structure, whilst materials will draw the whole scheme together. This building will provide a focal point to the development. Overall the scheme only gains 13 points under Building for Life, but this is partly due to the lack of affordable housing and 1-bed units.

The pedestrian link from Claymar Drive to the site presently already exists and in order to promote permeability through from existing to proposed development, should be retained. As discussed above its use is unlikely to materially increase. The presence of new housing overlooking the new community building should improve surveillance, which would act as a significant deterrent to anti-social activity both here and on the relocated play area.

Drainage

The site has a considerable fall in levels from north to south of some 10 metres. It is unconstrained by Flood Risk mapping published by the Environment Agency, and there

are no records of surface water flooding on site. The focus is on surface water drainage arising from the development. In order for the football pitches to be improved they would be re-graded and drainage installed. Surface water run-off from the housing development can be dealt with under sustainable principles, and it is noted the Environment Agency are seeking suitable sustainable drainage systems alongside any underground storage. This matter, alongside foul water drainage, can be addressed by way of conditions.

Balancing exercise and determining whether the development *is* sustainable

There are a number of factors weighing strongly in favour of the proposed development. Central to these is the leisure and community provision of two pitches (one being a marked improvement on that existing in terms of surface quality and drainage), the community building allowing for sports and social use, and the extended and re-sited play equipment. In addition the provision of 66 dwellings towards the Council's 5-year supply and the wider housing needs of the District attracts further weight. The economic benefits arising also add some weight to this. The fact that there is not an unacceptable impact on highway safety and biodiversity, flood risk is not exacerbated elsewhere, and the site can provide for a suitable layout and design without significantly compromising residential amenity, is of significance as it demonstrates compliance with the NPPF as a whole.

Balanced against all this is the matter regarding viability and the lack of commuted sums towards education and waste handling, and the total lack of affordable housing provision on site or commuted sums towards off-site provision. The degree of weight behind these conflicts is a matter which Members may wish to decide for themselves, but it is felt to be of reasonable weight in that those dwellings erected will still create a pressure on local services and infrastructure which is not catered for. However the extent of this harm is curtailed by way of the development's relative size to the wider settlement. Of greatest weight however is the wider benefit that would ensue from the vastly improved community facilities which, after all, is the purpose of the development.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the following plans/drawings unless as otherwise required by condition attached to this permission:

- 29148/02/01 Rev I, 29148/04/01 Rev B and 5945-L-01 Rev D;

- Community Building 7927/001 Rev E and 7927/002 Rev J; and
- Housetype Drawings Geneva 10 Brick, Imola 12 Brick Rev A, Milan 10 Brick, Sassari 11 Brick, Sassari 13 Render, Zurich 10 Brick, Zurich 10A Brick (plot 41 only) and Zurich 15 Render.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), all garages and parking spaces to be provided in connection with the development shall not be used other than for the parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure adequate parking provision for the dwellings hereby approved remains in perpetuity in the interests of safety on the public highway.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), plots 53 to 66 inclusive shall not be enlarged or extended 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 protecting the amenities of adjoining residential property.

5. The windows shown on the approved plans/drawings as obscure glazed on plots 53 to 66 inclusive shall be so installed as such prior to the first occupation of the dwelling to which they relate and be retained obscured thereafter.

Reason: To maintain control in the interest of protecting the amenities of adjoining residential property.

6. Private individual and shared vehicular accesses to the new estate street 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 safety on the public highway.

7. The vehicular accesses to the car park and access road serving plots 24 to 29 shall be provided with intervisibility between the accesses for at least 2m back from the rear of the new estate street footway, the area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

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

8. Throughout the period of construction within any phase 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 or other extraneous material on the public highway.

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

9. No removal of vegetation or demolition or works to buildings that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless the hedgerow to be removed was covered with netting to prevent nesting birds prior to 1st March or 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 and then implemented as approved.

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

10. The playing pitches shall be, as far as is practicable, constructed and laid out substantially in accordance with the approved layout plan, and with the standards and methodologies set out in 'Natural Turf for Sport' (Sport England, 2011) and shall be made available for use in accordance with the timescale as specified within phasing details submitted and approved pursuant to condition 12 of this planning permission.

Reason: To ensure the satisfactory quantity, quality and accessibility of compensatory pitch provision which secures continuity of use and to accord with Development Plan Policy.

Pre-commencement

11. No development or other operations on the site 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 be implemented 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.

12. No development shall commence until details for the phasing of the development including the timescale for the provision and/or first use or occupation of the new sports pitches, community building/sports pavilion, roads (including permanent and temporary turning facilities), surface and foul water drainage, dwellings, car parking and landscaping have been submitted to and approved in writing by the Local Planning Authority. The details shall set out measures for ensuring continuity of the existing sports use of the facilities on site until the replacement on site facilities have been completed in accordance with the approved plans and further details submitted pursuant to conditions of this planning permission, or otherwise include arrangements for providing suitable alternative interim provision of an equivalent quantity and quality in a suitable location until replacement on site provision has been completed and is available for use. The development shall then proceed in accordance with the approved phasing arrangements.

Reason: To ensure the satisfactory quantity, quality and accessibility of compensatory provision which secures continuity of use and to accord with

Development Plan Policy, in the interests of highway safety, and in the interests of the visual and neighbouring amenities of the area.

13. No development shall commence until the following documents have been submitted to and approved in writing by the Local Planning:
- a. A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing fields which identifies constraints which could affect playing field quality; and
 - b. Based on the results of the assessment to be carried out pursuant to (i) above, a detailed scheme which ensures that the playing fields will be provided to an acceptable quality. The scheme shall include a written specification of soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

The approved scheme shall be carried out in full and in accordance with a timeframe agreed with the Local Planning Authority. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

Reason: To ensure the satisfactory quantity, quality and accessibility of compensatory provision which secures continuity of use and to accord with Development Plan Policy.

14. No development shall take place until a detailed design of a surface water drainage scheme for the site, based on sustainable drainage principles and incorporating drainage means for proposed highways and parking areas, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details and phasing arrangements (as approved under condition 13). The scheme to be submitted shall demonstrate:

- Surface water drainage system(s) to be designed in accordance with either the National SuDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical storm so that it will not exceed the run-off from the pre-developed site and not increase the risk of flooding off-site;
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm;
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements;
- Detailed design of the drainage for the two football pitches; and
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long-term operation to design parameters.

Reason: To prevent the increased risk of flooding, both on and off site, through the appropriate management of surface water drainage.

15. No development shall take place until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details and phasing arrangements (as approved under condition 12).

Reason: To ensure appropriate drainage for foul water in the interests of preventing pollution of the water environment.

16. No development shall commence until details of the finished floor levels of the buildings hereby approved and of the proposed ground levels of the site relative to adjoining land levels, along with details of any retaining structures where 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 level(s).

Reason: To ensure the development proceeds in a manner to minimise the opportunity for overlooking of adjoining property and in the interests of visual amenity.

17. No development shall commence within a phase until the intrusive site investigation as recommended by the submitted Phase 2 Geotechnical Site Investigation (ref: 35823-005 dated February 2014) has been carried out for that phase. In the event that the further site investigations confirm the need for remedial works to treat the mine entry and areas of shallow mine workings, such works shall be carried out and completed prior to development commencing in that relevant phase.

Reason: To ensure the safety and stability of the proposed development.

18. No development or other operations (other than that necessary to carry out investigation under condition 17 and demolition/site clearance) until space has been provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, and parking and manoeuvring of site operatives and visitors vehicles; laid out and constructed in accordance with detailed designs first submitted and approved in writing by the Local Planning Authority and maintained thereafter throughout the contract period free from any impediment to its designated use.

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

19. No development or other operations (other than that necessary to carry out investigation under condition 17 and demolition/site clearance) until a temporary access for construction purposes has been formed to Chestnut Avenue, laid out, constructed and provided with 2.4m x 43m visibility splays in either direction in accordance with detailed designs first submitted and approved in writing by the Local Planning Authority, the area in advance of the sightlines being cleared of all obstructions greater than 1m in height (0.6m in the case of vegetation) and maintained in accordance with the approved scheme throughout the contract period free from any impediment to its designated use.

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

20. No development shall commence within a phase until precise details, specifications and, where necessary, samples of the facing bricks, coping stones and render to be used in the construction of the external walls of the buildings (facing bricks, render and roofing tiles in the case of the community building) and boundary walls, as well as surfacing materials for vehicular and pedestrian circulation areas (including shared surfaces) have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved schedule of materials.

Reason: In the interests of the appearance of the dwellings, community building and wider development, and to ensure a high quality of finish in accordance with approved drawings.

21. Notwithstanding the approved plans, no development of the community building shall be commenced until a detailed specification for its internal layout, design and fitting out have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

1. Dimensions of the single court hall (including ceiling height), floor construction/surfacing, lighting and ancillary storage provision;
2. Layout and specification of the main changing accommodation that shall include a minimum of 4 showers per changing room, and layout and specification of the officials' changing room that shall incorporate shower facilities; and
3. Layout of the remaining community building / pavilion facility including storage area(s), toilets, kitchen and refreshments area.

The community building shall not be constructed other than in accordance with the approved details and shall be made available for use in accordance with the timescale as specified within phasing details submitted and approved pursuant to condition 12 of this planning permission.

Reason: To ensure the development is fit for purpose and to ensure sufficient benefit to the development of sport, and to accord with Development Plan Policy.

22. No development of the community building shall commence until details of security measures to be installed to the building have been submitted to and approved in writing by the Local Planning Authority. These measures shall be provided in full prior to the first use of the building hereby permitted thereafter retained.

Reason: In the interests of discouraging anti-social behaviour.

23. No development of the children's play facilities shall commence until details of the play equipment to be installed and a scheme for the position, type, angle, colour and baffling of external lighting has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented and maintained as such.

Reason: To ensure appropriate provision of recreational facilities, and in the interest of visual and neighbouring amenity.

24. No development of the community building (or the car park serving it) shall commence until a scheme for the position, type, angle, colour and baffling of external lighting has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be implemented and maintained as such.

Reason: In the interest of visual and neighbouring amenity.

25. If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

Pre-occupation

26. No premises, the subject of the application, shall be first used/occupied until a new estate street junction has been formed to Chestnut Avenue in accordance with the approved plans, laid out, constructed to base level and provided with 2.4m x 43m visibility splays in either direction, the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.

Reason: In the interests of highway safety.

27. No premises, the subject of the application, shall be first used/occupied until a 2m wide footway has been provided across the entire site frontage along Chestnut Avenue, laid out in accordance with the revised application drawings and constructed and lit to an adoptable standard in accordance with the 6C's specification.

Reason: In the interests of highway safety.

28. No dwelling, the subject of the application, shall be first used/occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with the revised application drawings to conform to the 6C's design guide, constructed to binder course level, drained and lit, in accordance with the 6C's adoptable specification for new housing development roads.

Reason: In the interests of highway safety.

29. No dwelling, the subject of the application, shall be first used/occupied until space has been provided within the application site in accordance with the approved plans for the parking of residents and visitors vehicles (including secure covered cycle parking), laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

30. Private individual and shared vehicular accesses to the new estate street 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, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

31. No dwelling, the subject of the application, shall be first occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved by the Local Planning Authority. The LEMP shall include:
- i. Description and evaluation of features to be managed;
 - ii. Aims and objectives of management;
 - iii. Appropriate management options for achieving aims and objectives.
 - iv. Prescriptions for management actions;
 - v. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - vi. Details of the body or organisation responsible for implementation of the plan;
 - vii. Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured; and
 - viii. Details of, where the results from monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

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

Reason: In order to provide a net gain in biodiversity and the interests of interest of visual amenity, particularly for areas of landscaping not within the confines of privately owned, domestic gardens.

32. No dwelling within the relevant phase shall be first occupied until the bin stores have been provided in accordance with the approved plans, and shall be retained thereafter free from any impediment to their designated use.

Reason: To ensure adequate bin storage and collection for the development hereby approved.

33. Prior to occupation of the development (or parts thereof) an independent verification report must be submitted, which meets the requirements given in Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
34. No dwelling within a relevant phase shall be first occupied until the bin stores have been provided in accordance with the approved plans, and shall be retained thereafter free from any impediment to their designated use.

Reason: To ensure adequate bin storage and collection for the development hereby approved.

Other

35. 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 trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. 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.

36. 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.

37. In the event that it is proposed to import soil onto site in connection with the development, this should be done to comply with the specifications given in Box 3 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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.

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, meetings and negotiations, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build

close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

- c. The Highway Authority recommends that the first 5m of proposed access driveways should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.
- d. Highway surface water shall be disposed of via a positive, gravity fed system (i.e. not pumped) discharging to an approved point of outfall (e.g. existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.
- e. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (tel: 01629 533190). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- f. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets, the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.
- g. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email – es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- h. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g:

street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

- i. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Economy, Transport and Environment Department of Derbyshire County Council before any works commence on any temporary construction access within highway limits, please contact Joanne Mason on 01629 538612 for further information.
- j. New housing should be designed to address safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.
- k. Derbyshire County Council strongly promotes Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy, applying the SuDS management train. The applicant should also seek to promote betterment or meet greenfield runoff rates taking into account the impacts of climate change. For more advice regarding the County Council's requirements please contact flood.team@derbyshire.gov.uk.
- l. The applicant is advised a separate application is necessary for the ball stop fencing/netting as indicated on the submitted plans. Details submitted under that application shall include the location, height, type and materials.
- m. The following link provides access to Sport England's 'Pavilions and Clubhouse Guidance, 2012' with which the proposals should substantially comply: <https://www.sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/pavilions-and-clubhouses/>. Sport England's 'Sports Halls Design and Layouts Guidance, 2012' may also be accessed via the following link: <http://www.sportengland.org/media/31363/Sports-Halls-Design-and-Layouts-2012.pdf>

Item 1.3

Reg. No. 9/2014/0261/FM

Applicant:
MRS JOANNE NICOL
SHOTTLE HALL
WHITE LANE
SHOTTLE
NR BELPER
DE56 2EB

Agent:
MR JOSHUA BOTHAM
BOTHAMS ARCHITECTURAL DESIGN
11 NORTON AVENUE
SOMERSALL
CHESTERFIELD
S40 3NG

Proposal: CONVERSION OF A BARN TO DOMESTIC ANNEXE
WITH THE ERECTION OF A CONSERVATORY AT 80
MAIN STREET WESTON ON TRENT DERBY

Ward: ASTON

Valid Date: 17/03/2014

Reason for committee determination

The application is reported to Committee at the request of Councillor Peter Watson because unusual site circumstances should be considered by Committee.

Site Description

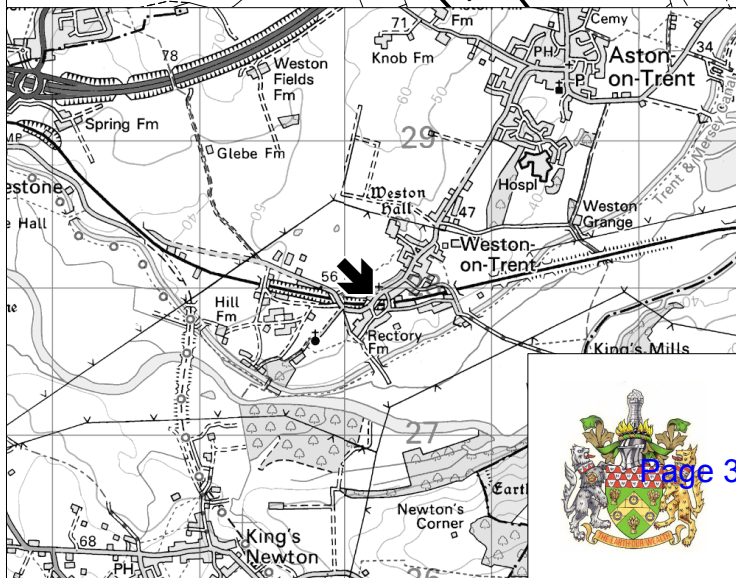
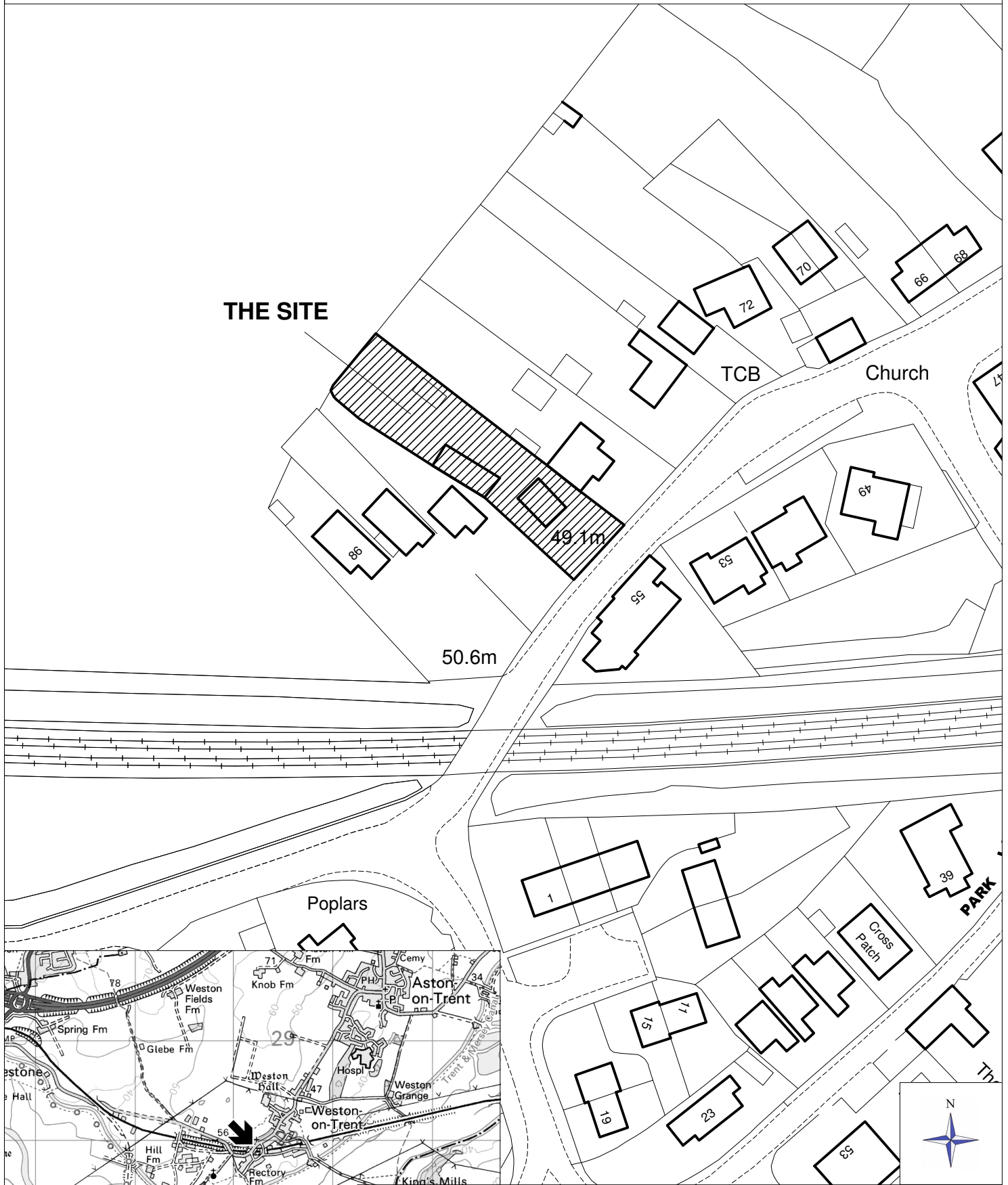
The application affects a traditional two-storey building set behind the existing dwelling. It was apparently originally used for business purposes but appears to have been used in more recent years for purposes incidental to the enjoyment of No 80 Main Street.

The principal elevation of the building faces towards the rear garden boundary of No 78 at a distance of some 8 m at the nearest point, widening to 9m at the far end, reflecting the building's canted alignment relative to the host and the adjoining dwellings.

Proposal

Members will recall the previous application and visiting the site last year and expressed concern about the layout of the conversion and its impact on neighbours (see planning history below). The application still proposes conversion and extension of the outbuilding to form self-contained ancillary living accommodation. A 4.6m x 4.3m conservatory is proposed to the rear. Vehicular access would be as existing.

The conversion scheme would use the existing door and window openings. The scheme now proposes a ground floor open plan living room and kitchen with single



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

storey conservatory extension, and the first floor accommodating two bedrooms, a bathroom and en-suite.

Applicants' supporting information

The annex would be occupied by the applicant's family.

Planning History

9/2013/1020 – The conversion of a barn to domestic annexe with two storey conservatory, refused by committee at its meeting on 11 February 2014 for the following reason:-

“The proposal includes the provision of the primary living space on the first floor of the converted building. This would be served by large windows in an elevated position overlooking the neighbouring property and amenity space at relatively close quarters to the extent that privacy for the neighbouring occupiers would be unduly compromised. As such the proposal would be contrary to Housing Policy 13 of the Adopted Local Plan and the Council's Supplementary Planning Guidance”.

9/1999/0940 – Two storey extension - permitted.

Responses to Consultations

Severn Trent Water Ltd has no comment.

The Highway Authority has no objection subject to a condition restricting occupation to members of the household at 8 Main Street.

The Contaminated Land Officer has no objection.

Responses to Publicity

The Parish Council objects on the basis that the development would be overpowering to the neighbours.

One neighbour makes the following comments:

- a) They are pleased the conservatory has been re-positioned to take account of the boundary between 80 and 82 Main Street.
- b) They have concerns with regard the impact of the julliet balcony for access onto the flat roof which would affect their privacy. It could be removed and the doors used for access.
- c) No.82's garden seating area is set back into their garden and would be overlooked by the proposed doors.
- d) As there is currently no opening in the rear, the doors are not in keeping with the character of the building.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Housing Policies 5, 7 & 11 (and its associated supplementary planning guidance), Transport Policy 6.

Emerging Local Plan Policies

Pre-Submission Local Plan 2014: Policy S2 (Presumption in Favour of Sustainable Development), Policy S4 (Housing Strategy), Policy S6 (Sustainable Access), Policy H1 (Settlement Hierarchy), Policy BNE1 (Design Excellence), Policy INF2 (Sustainable Transport).

National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)
Paras 11-14 (The presumption in favour of sustainable development)
Para 17 (Core principles)
Chapter 6 (Delivering a wide choice of quality homes)
Chapter 7 (Requiring good design)
Paras 186 & 187 (Decision-taking)
Para 196 & 197 (Determining applications)
Paras 203-206 (Planning conditions and obligations)

NPPG ID26 (Design), 21a (Conditions)

Planning Considerations

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

- The principle.
- Residential amenity.
- Impact on the character of the area.

Planning Assessment

The principle

The site lies in the village confine and residential development is thus supported in principle by saved Housing Policies 5 & 7. Paragraph 55 of the NPPF favours housing where it enhances or maintains the vitality of rural communities, including development in one village which may support local services in a village nearby. Weston has small scale local facilities including a bus service via Aston on Trent and is identified in the emerging local plan as a Local Service Village where limited development is considered to be sustainable. There is also a footway link to the larger settlement of Aston on Trent. In these circumstances, by re-using an existing building within the built up framework of the village the proposal represents sustainable development in principle.

Residential amenity

In response to the committee's concerns with regard to overlooking, the ground floor would have the primary living space and the first floor would have the bedrooms. The proposal meets the relevant test in supplementary planning guidance to protect neighbours from overlooking. In particular the bedroom windows proposed on the first

floor would not be within the sector of view of the windows on the rear elevation of No.78. There is 2m high screening on this boundary to prevent overlooking from the ground floor windows. The doors on the north western elevation would not significantly overlook the rear private garden of No.82 due to the building's position set 5.5m beyond the rear of this property. The proposed development therefore complies with Saved Housing Policy 11 and its supplementary planning guidance in relation to guidelines for protecting existing neighbours' habitable room windows.

The conservatory is proposed 650mm from the boundary with No.82 as a result of an issue over the ownership of land. The Juliet balcony would not provide access to the flat roof and if it were to be used as an outdoor amenity space any balcony would not be permitted development, and as such would be under the control of the Local Planning Authority.

The building is proposed as residential annex linked to the main dwelling. Notwithstanding this a condition to control occupation such that it does not form a new planning unit is necessary, as the building's relationship with the host dwelling, and its vehicular access and parking arrangements, would only be acceptable on the basis of common family occupation.

Impact on the character of the area

Being set behind existing housing there would be little impact on the character of the area. Nevertheless the design of the scheme respects the existing fabric of the building and its openings, which accords with Saved Housing Policy 7 and Chapter 7 of the NPPF.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no's PL01 Rev B and PL03 Rev C received on the 3rd April 2014.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. The living accommodation hereby permitted shall be occupied solely by members of the household of 80 Main Street Weston on Trent or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.

Reason: Although the conversion of the building erection to provide 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 particular location. Since the extension 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.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues 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. 9/2014/0278/RSD

Applicant:
MR BOB LEDGER
SOUTH DERBYSHIRE DISTRICT
COUNCIL
CIVIC OFFICES
CIVIC WAY
SWADLINCOTE

Agent:
FRANKLIN ELLIS ARCHITECTS
THE OLD PUMPHOUSE
NO 5 THE ROPEWALK
NOTTINGHAM
NG1 5DU

Proposal: THE ERECTION OF ONE, TWO AND THREE BEDROOM
BUNGALOWS AND HOUSES WITH ASSOCIATED
PARKING, GARDENS AND ACCESS ON LAND AT
SK2918 2894 PENNINE WAY SWADLINCOTE

Ward: SWADLINCOTE

Valid Date: 21/03/2014

Reason for committee determination

The District Council is the applicant and therefore the proposal is for Regulation 3/4 development.

Site Description

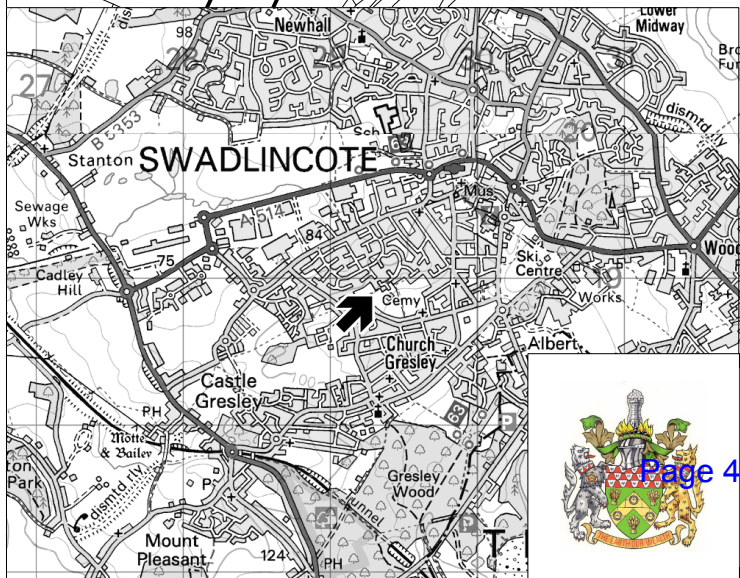
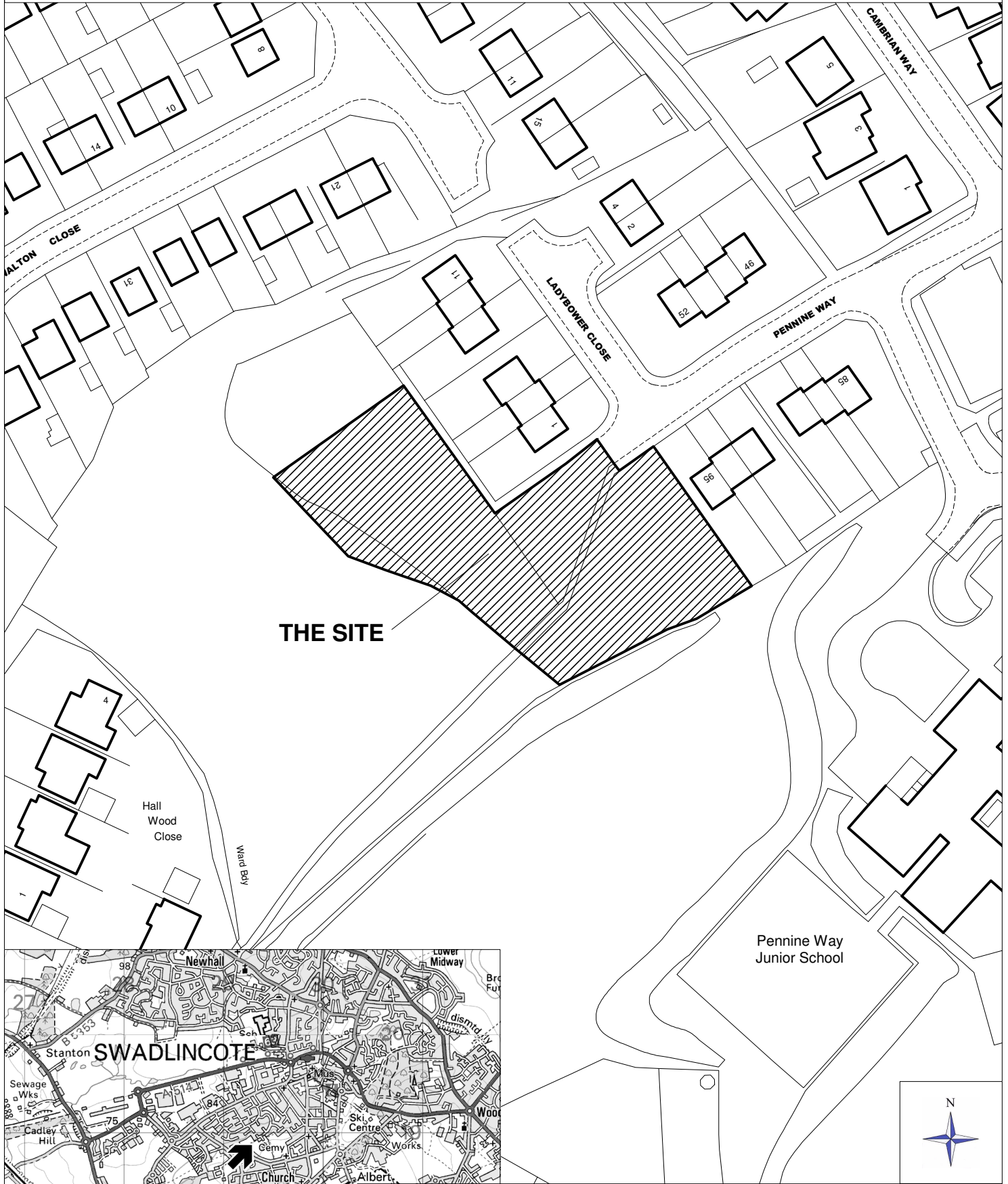
The application site is located within the built-up area of Church Gresley at the end of Pennine Way between existing houses on the southern side of Pennine Way and the western side of Ladybower Close. Public footpath No. 132 crosses the southern part of the site diagonally on a northeast/southwest axis before continuing on to join Gresley Wood Road to the southwest. The site rises up from Pennine Way and is partly characterised by wild, overgrown woodland which is largely unmanaged.

Proposal

The application, which is for a 100% affordable housing scheme, is for the erection of ten dwellings providing a mix of one, two and three bedroom units in five, one and two-storey blocks. A single vehicular access is proposed off the existing turning head and two car parking spaces per dwelling would be provided. The route of the public footpath would be retained on its original line. A number of trees would be lost as a result of the proposal but these have little value, being mainly small self-set Ash and shrubs.

The proposal is one of a number throughout the District being put forward by the Council for affordable housing schemes that would be developed and managed by the Council rather than involving social housing landlords.

9/2014/0278 - Land at SK2918 2894 Pennine Way, Swadlincote (DE11 9EY)



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

Applicants' supporting information

The proposed scheme contributes towards Members' objectives to the delivery of 50 new affordable Council homes as part of the Council's New Build Programme agreed at Housing and Communities Services Committee on 18 April 2013.

A Design and Access Statement has been submitted in support of the application which covers all the key criteria involved in the design process and principles on which the scheme is based. It also addresses planning issues, including policy considerations and community involvement. The proposed layout is bespoke to the site in order to accommodate the route of the public footpath, lending it a distinct character mixing public and private areas. The proposal has also been assessed under the Building for Life criteria and scores a total of 15.5, which would achieve a silver standard.

Planning History

None relevant to this application.

Responses to Consultations

The Ramblers Group is pleased to see that the public right of way will remain clear on completion of the work and presumes it will be provided with an appropriate multi-user surface.

The Peak and Northern Footpaths Society has no objections but comment that the County Council must authorise any changes to the surface of the public footpath and that the whole width of the path must remain unobstructed at all times during and after the development unless a temporary closure order is obtained. The Society hopes that the developer will make improvements to the path where it runs off site as well as on site, since the future occupiers will use the path as a link to facilities etc.

The Crime Prevention Design Adviser has made recommendations with regard to boundary treatment in order to define public and private spaces and protect the amenities of adjacent residents. He suggests a metal railing of 1.2m high. He also makes suggestions with regards to windows serving habitable rooms and rear garden access.

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

The County Public Rights of Way Officer requests that the applicant is made aware of the legal alignment of the public footpath and is advised of the legal requirements relating to the footpath.

The County Highway Authority has no objections subject to conditions in respect of future maintenance/management of the access road/driveway; construction of the new access; storage of plant and materials; provision of wheel cleaning facilities; reinstatement and demarcation details for the highway boundary; gradient of private drives; provision of access, parking and manoeuvring spaces; and the submission of details for the construction of the public right of way.

The Coal Authority has no objections subject to a condition in respect of intrusive site investigation works prior to works commencing on site.

Responses to Publicity

Two representations have been received which make the following points:

- a. Loss of wildlife habitat;
- b. Pleased to see public footpath retained;
- c. Increased noise and disturbance from construction traffic
- d. They are already suffering school traffic 3 times a day.

Development Plan Policies

The relevant policies are:

Adopted Local Plan:

Housing Policies 4, 11; Environment Policies 8, 9, 10; Transport Policy 6; Recreation and Tourism Policy 8

Emerging Local Plan:

Spatial Strategy Policies S2, S4, S6; Housing Policies H1, H19, H20; sustainable Development Policies SD1; Built and Natural Environment Policies BNE1, BNE3, BNE4; Infrastructure Policies INF2, INF6, INF8

Housing Design and Layout SPG

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 17, 30, 47, 49, 50, 56, 57, 58, 59, 60, 61, 69, 75, 109, 118, 186, 187, 196, 197, 203, 206, 215

National Planning Policy Guidance (NPPG)

Planning Considerations

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

- The Development Plan and the NPPF
- Design and Layout
- Impact on residential amenity
- Highway and Public Footpath Considerations
- Ecology
- Noise

Planning Assessment

The Development Plan and the NPPF

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

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

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

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

The application site lies within the built-up area of Church Gresley and therefore the proposed development accords with Local Plan Saved Housing Policy 4, which supports residential development provided that the site is substantially surrounded by development; would not result in a prominent intrusion in the rural area; does not involve the loss of good agricultural land; does not constitute ribbon development; would not place excessive demands on services, is of suitable scale and character and would not involve the development of open spaces, gaps and landscape features which make a valuable contribution to the character or environmental quality of the area.

Similarly, the proposal accords with Emerging Policy H1 relating to the settlement hierarchy, which identifies the site as being within the urban area adjoining Swadlincote where residential development is preferred owing to the proximity to existing services and facilities, and consequently the ability to provide for sustainable developments.

Whilst the site is currently undeveloped and constitutes an open space within the built environment, the part of the site proposed has the least value and the small loss of trees has not attracted an objection from the Council's Tree Officer who advises that the development would have no impact on the woodland. The important factors in this regard are the retention of the public footpath and its incorporation into the layout of the development to ensure the route is not compromised and the retention of the vast majority of existing trees. The retention of the route of the public right of way has been achieved by positioning the proposed housing blocks either side of the definitive route, which would allow continued pedestrian access through to Gresley Wood Road and beyond. It is considered, therefore, that the principle of the development is acceptable both in terms of national and local planning policy.

Design and Layout

As stated above the layout of the proposed development was determined predominantly by the route of the public footpath and also to ensure that the loss of trees would be minimal. Two car parking spaces would be provided per dwelling and these are shown

as being either to the side or front of the dwellings. Two blocks of semi-detached dwellings would be positioned to the rear of existing houses on Ladybower Close, with the remaining three blocks being positioned to the south of the new vehicular access. The proposed layout would result in a development that would appear less dense than the existing built form of neighbouring dwellings, being more suited to its current character of green space.

The dwellings would be constructed using brick and coloured horizontal boarding to the front elevations to add interest and respond to its proximity to the adjacent woodland setting. The frontages of Blocks A and B would be plain, whilst C, D and E would have front gabled extrusions. The side elevations to Blocks A and C would have feature windows. The designs of the housetypes are relatively simple and modest but of high quality, and would meet design advice in the NPPF and the Housing Layout and Design SPG.

Impact on Residential Amenity

The side elevation to block A would be 4.8m from the side elevation of No.95 Pennine Way, but as there are no windows within this elevation there would be no overlooking issues from the proposed new dwelling. Nos. 1, 3 and 5 Ladybower Close have habitable room windows that face part of the site where it is proposed to position plots 7 to 10. The windows in the side elevation of Plot 10 (block E) would serve a ground floor w.c. and a first floor bathroom, which are not habitable rooms. Whilst these windows would be expected to contain obscure glazing it is proposed to include a condition to ensure standards are met.

Highway and Public Footpath considerations

The Highway Authority has been consulted on the proposals, both informally at pre-application stage and formally on the current application. The Authority is satisfied that many of the original issues have been resolved but it is considered that the width of the footpath should be appropriately conditioned. The tracking drawing indicates that a service vehicle could enter and leave the site in a forward gear.

Ecology

A recently undertaken ecology survey did not identify any issues with regard to protected species in or around the site. That said, there are many mature trees within the immediate surroundings which, more than likely, would attract bats and for this reason is it proposed to include a condition that requires the provision of bat boxes within the eaves of the dwellings.

Conclusion

To summarise, the proposal is acceptable in principle as the site is within the built-up area of Church Gresley and is therefore in accordance with Local Plan Saved Housing Policy 4 and in compliance with the sustainability objectives of the NPPF. The design and layout of the proposal is in keeping with the character of the area and there would be no loss of residential amenity. The route of the public right of way would be retained on its original definitive line.

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

Recommendation

GRANT permission under Regulation 3/4 subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the character and appearance of the locality generally.
3. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
Reason: In the interests of the appearance of the area.
4. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
Reason: In the interests of the appearance of the area.
5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
Reason: In the interests of the appearance of the area.
6. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

7. Prior to the commencement of development details for the provision of bat boxes within the development shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: In the interests of protected species.

8. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

9. The development hereby approved shall be constructed in accordance with the finished floor levels annotated on Drawing No.PL5006 Revision D unless otherwise agreed in writing by the Local Planning Authority.

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

10. Prior to the commencement of development details of the surface materials for all hard landscaped areas, including the surfacing materials to delineate the route of Public Footpath No. 132, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with the approved details.

Reason: To ensure the surface materials are appropriate for the locality.

11. No development shall be commenced until details of the proposed arrangement for future management and maintenance of the proposed access/driveway within the development have been submitted to and approved by the Local Planning Authority. The driveway shall thereafter be maintained in accordance with the approved management and maintenance details or until such time as a private management and maintenance company has been established.

Reason: In the interests of highway safety.

12. Prior to any other works commencing, the new access shall be constructed into the site, laid out and constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

13. Before any other operations are commenced (excluding site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, materials, parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

14. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site. All construction vehicles shall have their wheels cleaned before leaving the site.
Reason: In the interests of highway safety.
15. Prior to any other works commencing, a scheme for any reinstatement works within the existing highway which may be required and a means of demarking the highway boundary shall be submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of highway safety.
16. The gradient of the private driveway into the site shall not exceed 1 in 20 for the first 5m into the site from the highway boundary and 1:12 thereafter..
Reason: In the interests of highway safety.
17. Prior to the first occupation of any dwelling, the access, parking and manoeuvring space shall be laid out and constructed in accordance with the application drawing PL5012 Revision A and maintained thereafter free of any impediment to its designated use.
Reason: In the interests of highway safety.
18. Prior to the first occupation of any dwelling, Public Right of Way No.132 shall be laid out, and constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority, having a minimum width of 1.8m and being demarked in a manner to distinguish its route from the surrounding manoeuvring space.
Reason: In the interests of highway and pedestrian safety.

Informatives:

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

The access road/driveway within the site is to remain private and will not be adopted by the Highway Authority as publicly maintainable highway. The developer is advised to inform any purchasers or successors in title of this fact and ensure that they do not at any time, either alone or jointly with others, seek the adoption of the private access which will be resisted by the Highway Authority.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

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

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

Pursuant to Section 149 and 151 of the Highways Act 1980, the applicant/developer must take all necessary action to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

The grant of planning permission does not entitle developers to obstruct public rights of way affected by the proposal. Development, in so far as it affects the right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of the Town and Country Planning Act 1990 for the diversion or extinguishment of the right of way has been made and confirmed. Nor should it be assumed that because planning permission has been granted an order will invariably be made or confirmed. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained from Derbyshire County Council Rights of Way Section. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Please contact 01629 533190 for further information.

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

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

Item 1.5

Reg. No. 9/2014/0286/Z

Applicant:
MR CHRISTOPHER LINDLEY
C/O AGENT

Agent:
MR CHRISTOPHER LINDLEY
DPDS CONSULTING GROUP
GLENEAGLES HOUSE
3 VERNON GATE
DERBY
DE1 1UP

Proposal: APPLICATION FOR A LAWFUL DEVELOPMENT
CERTIFICATE FOR A CHANGE OF USE FROM CLASS
A4 (DRINKING ESTABLISHMENT) TO CLASS A1
(FUNERAL DIRECTORS) AT THE WHEEL INN 25 MAIN
STREET FINDERN DERBY

Ward: WILLINGTON & FINDERN

Valid Date: 27/03/2014

Reason for committee determination

The item is presented to committee at the discretion of the Planning Services Manager, given the level of public interest.

Site Description

The site lies to the southern end of Findern village, on Main Street as it turns into the village from the south and towards The Green. The public house is a two-storey rendered building of traditional appearance which frames the highway edge, with the vehicular access lying to the east serving a considerable car park with beer garden to the south. The site is generally surrounded by residential properties of varying ages and status (19 Main Street to the eastern boundary is Grade II listed).

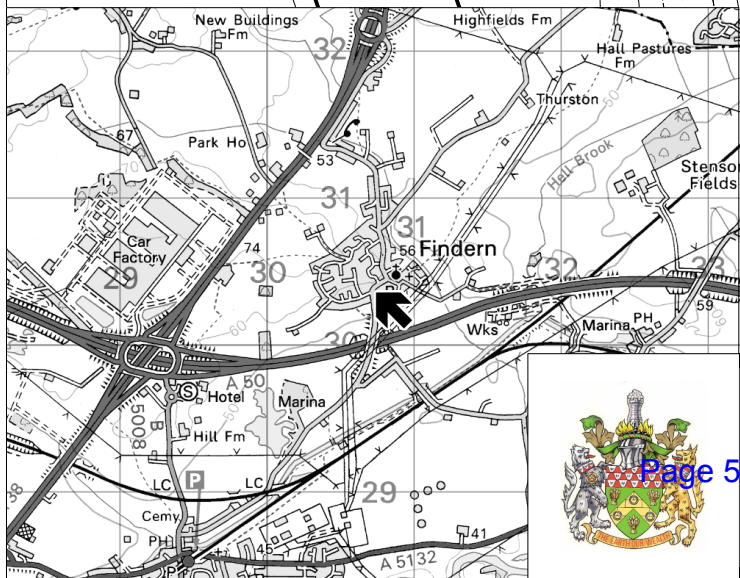
Proposal

It is proposed to change the use from a public house to a funeral directors. No operational development is proposed.

Applicants' supporting information

A covering letter is provided. This outlines the nature of the application and its differing nature to a conventional planning application. It asserts the current lawful use. It also outlines a rapid and continual turnover of tenants in the last 5 years, and that since it

9/2014/0286 - The Wheel Inn, 25 Main Street, Findern, Derby DE65 6AG



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

was first marketed in July 2013 there have been 167 requests for sales particulars, 7 viewings and 3 offers. It is considered the only offer that has met the vendor's requirements is that from a prospective user as a funeral directors.

Planning History

9/2013/0592: Display of illuminated and non-illuminated signage and lighting –
Approved September 2013

9/2007/0881: Gazebo, replacement canopy and insertion of doors and a window –
Approved September 2007.

Responses to Publicity

No consultation is required on applications for a Certificate of Lawfulness (also known as a Lawful Development Certificate ("LDC")). However it is understood Findern residents have undertaken a leaflet drop creating 199 representations of which only 2 are in support. The objections raise the following concerns:

- (a) it is the only pub in the village, and allowing the change would leave residents having to travel elsewhere;
- (b) the pub forms a meeting place for the community and a focus of the village;
- (c) the pub has room to expand and could diversify as a hub for other community events in addition;
- (d) that without a pub the village will suffer socially and economically;
- (e) a funeral directors is inappropriate for this location and not required in the village;
- (f) young children will be passing this proposal every day;
- (g) the pub has not been run/managed in ways which optimise its potential, nor has there been the promised investment which would have encouraged tenants or potential purchasers;
- (h) there has been no selling board erected;
- (i) the change of use would contravene the Council's own stated policies on retention of vital community facilities and be contrary to national guidelines;
- (j) an extended period of active marketing as a public house should be pursued before consideration for change of use;
- (k) the access to the car park has restricted visibility in both directions and slow moving large cars would compound this issue;
- (l) additional and slow moving cars would cause further congestion and disrupt the local bus service;
- (m) the proposed business would be in a residential area;
- (n) potential noise from constant use of refrigeration units and coming and going of vehicles in night hours;
- (o) potential aromas from any cool storage facilities;
- (p) its location in a small village will demonstrably change the character of the village for the worse;
- (q) the siting of alternative recycling facilities when moved from the car park;
- (r) the impact on the value of dwellings within the village;
- (s) the land has a covenant requiring a pub to remain;
- (t) an application has been made to register the pub as an Asset of Community Value and any change of use should not be permitted until that application has been considered; and

- (u) that this is just a step towards changing the status of the site before progressing towards development of housing.

Findern Parish Council objects on the following grounds:

- i) road safety and highway issues of large slow moving vehicles entering/exiting the highway on a busy blind bend;
- ii) danger for the school children walking past the entrance/exit going to and from school;
- iii) The Wheel is the only pub within the centre of the village which is easily accessible to all including disabled people; and
- iv) it is a good community asset.

Councillor Ford registers very strong objection to the application, noting The Wheel is the only public house in the village and as such should be given protection as a community asset. Whilst the pub has had a chequered past, it now appears to be rising steadily again, and a funeral directors is totally inappropriate in a village setting in such a prominent position.

Councillor Hood and her Consort strongly object to the application, commented that Punch Taverns have neglected Findern over the last few years.

Relevant legislation

- Section 192 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”);
- The Town and Country Planning General Permitted Development Order 1995 (as amended) (“the GDPO”); and
- The Town and Country Planning Use Classes Order 1987 (as amended) (“the UCO”).

Procedure and relevance of Planning Policy

Section 192(2) of the 1990 Act provides that if the Council are supplied with information satisfying them that the use would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application. In making a decision it is therefore appropriate to ask *“if this proposed change of use had occurred on the application date, would it have been lawful in planning terms?”* In doing so consideration is given to whether the proposal is “development” for the purposes of the 1990 Act, but also whether it would fall outside the provisions of the GPDO and UCO or involve a breach of any existing planning condition or limitation which constrains what can be done on the land.

Consequently an application for an LDC is not an application for planning permission. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. Planning policy and the planning merits of the use, operation or activity in the application, as well as covenants, are therefore not relevant.

Planning Considerations

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

- Whether the existing use falls within Use Class A4 of the UCO;
- Whether the proposed use falls within Use Class A1 of the UCO; and
- Whether permitted development rights are intact and allow for the change of use under the GPDO.

Planning Assessment

This application seeks a formal confirmation that the intended development already benefits from planning permission for a change of use, granted by way of the GPDO. If so, an application seeking planning permission for the development in question is not required and the development may proceed without further reference to the Local Planning Authority.

Existing use

The Wheel is long established as a public house and previous planning applications and local representations and knowledge substantiate this. Whilst regard has been given to the periods of closure in the last few years, these are not sufficient to constitute “abandonment” of the use resulting in a “nil use” at the present time. Hence when having regard to the UCO, the use falls firmly under Use Class A4.

Proposed use

The UCO specifically lists “*the direction of funerals*” as falling under Use Class A1. Notwithstanding this regard has been given to appeals which have established that a chapel of rest or embalming premises on its own would be a sui-generis use or B1 industrial use respectively. The applicant has provided clarification that the proposal is to use the premises for the administration and direction of funerals, and any chapel or embalming would be ancillary to that primary function. Consequently the use class falls under Use Class A1.

The change of use

Part 3 to Schedule 2 of the GPDO allows “*development consisting of a change of use of a building to a use falling within Class A1... from a use falling within Class A4...*”. Prima facie the proposed development is allowed for by the GPDO. As there is no Direction or condition on a previously implemented planning permission which restricts such a change of use, the proposal would be lawful if commenced on the date of application. The LDC should therefore be granted.

It should also be noted that conditions cannot be attached to LDCs, although the content of the Certificate should be precise. The site shall be specified by way of the site plan submitted whilst the particular use within the Use Class concerned (i.e. a funeral directors within Use Class A1) shall also be stated. This would ensure that only a use of this character would be allowed under the certificate.

Conclusion

The applicant has demonstrated, on the balance of probability, that the proposed change of use of the building and associated land from a public house (use class A4) to a funeral directors (use class A1 where embalming of bodies and a chapel of rest are

ancillary to the overall primary use of the premises for the undertaking of funerals) would be permitted by Class A Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) if commenced on the date of the application.

Recommendation

GRANT of a Certificate of Lawfulness for the reason set out in the conclusion above.

Item 1.6

Reg. No. 9/2014/0061/FX

Applicant:
MRS DAVID KUMAR
THE MELBOURNE ARMS
CUISINE INDIA
92ASHBY ROAD
MELBOURNE
DERBY
DE73 8ES

Agent:
MR PAUL MCLOCKLIN
MONTAGUE ARCHITECTS LTD
9 VERNON STREET
DERBY
DE1 1FR

Proposal: THE CONVERSION OF FORMER PUBLIC HOUSE AND RESTAURANT TO A SINGLE DWELLING AND THE ERECTION OF FOUR DWELLINGS ON LAND AT 92 ASHBY ROAD MELBOURNE DERBY

Ward: MELBOURNE

Valid Date: 06/02/2014

Reason for committee determination

The application is reported to Committee because part of the site lies outside the village confine.

Site Description

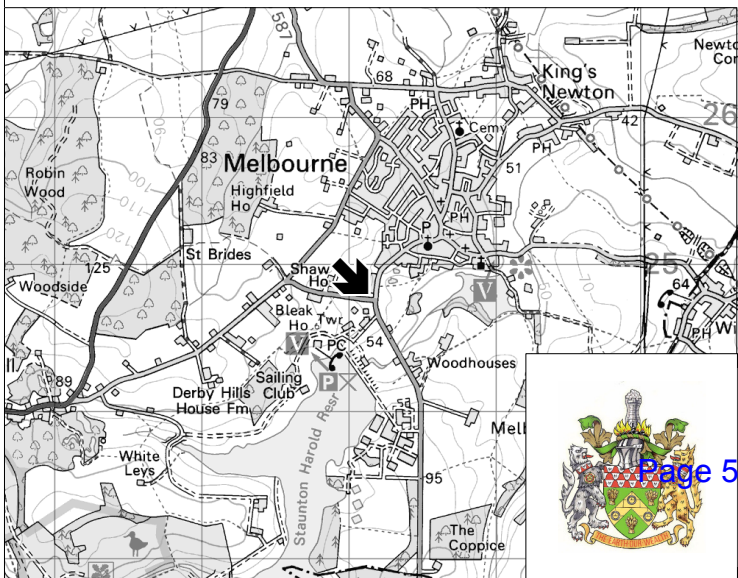
The site lies at the corner of Ashby Road and Robinsons Hill and is currently a public house and restaurant. The site includes a tarmac surfaced car park and beer garden with play equipment. The traditional host building has been incrementally extended over the years.

The recently extended Melbourne Conservation Area encompasses the application site.

Proposal

The application proposes demolition of modern extensions and conversion of the host historic building to a single dwellinghouse. In addition 4 new dwellings and garages are proposed. The garages and two houses would be located in the area currently used as beer garden. This part of the site lies outside the village confine as defined in the adopted Local Plan.

9/2014/0061 - Land at 92 Ashby Road, Melbourne, Derby DE73 8ES



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

The new dwellings would include rooms in their roofs with 2.5 storey gables on the rear elevations.

The existing vehicular access would be modified to serve the development with a new private drive.

Applicants' supporting information

The scheme has been designed to retain the dominance of the former listed public house and takes account of the recent conservation area designation.

Planning History

9/2009/0083 - The renewal of 9/2003/1509/F for two storey 11 bedroom block extension

9/2007/1138 & 1139 – Extension

9/2003/1509 & 1497 - two storey 11 bedroom block extension

9/2003/0738 – 19 bedroom detached annex (withdrawn)

9/2002/0040 & 9/2001/1119 – Pitched roof and alterations

9/1993/0004 & 5 - Restaurant extension

The building was de-listed by English Heritage last year, following which the site was included in the extended conservation area.

Responses to Consultations

Severn Trent Water Ltd and the Highway Authority have no objection subject to conditions.

Responses to Publicity

The Parish Council has no objection.

Melbourne Civic Society objects for the following reasons:

- a) The building is an historic public house and should be retained as such. Its loss would detract from one of Melbourne's many amenities and attractions.
- b) Plots 2-4 are far too close together and there would be a clutter of parked cars.
- c) The design of the new dwellings is uninspired and should be of modern design, with a variety of materials and colours.
- d) The proposed street elevation to Robinsons Hill and fragmented ownerships would lead to harmful visual impacts.
- e) It is possible that the host building would be subject to pressure to demolish and replaced with two more houses.

One neighbour objects to the dwelling fronting Robinsons Hill on the grounds of destruction of the approach to Melbourne, making it appear like a housing estate.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Housing Policies 5, 8 & 11 (and its associated supplementary planning guidance), Saved Environment Policies 1 & 13, Transport Policies 6 & 7.

Emerging Local Plan Policies

Pre-Submission Local Plan 2014: Policy S1 (Sustainable Growth Strategy), Policy S2 (Presumption in Favour of Sustainable Development), Policy S4 (Housing Strategy) Policy S6 (Sustainable Access), Policy H1 (Settlement Hierarchy), Policy BNE1 (Design Excellence) Policy BNE2 (Heritage Assets), Policy INF1: (Infrastructure and Developer Contributions), Policy INF2 (Sustainable Transport), Policy INF6 (Community Facilities) and Policy INF9 (Open Space, Sport and Recreation).

National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)
Paras 11-14 (The presumption in favour of sustainable development)
Para 17 (Core principles)
Chapter 6 (Delivering a wide choice of quality homes)
Chapter 7 (Requiring good design)
Chapter 12 (Historic Environments)
Paras 186 & 187 (Decision-taking)
Para 196 & 197 (Determining applications)
Paras 203-206 (Planning conditions and obligations)

NPPG ID26 (Design), 21a (Conditions), 23b (Obligations), 18a (Historic environment)
ID3 (Housing land availability)

Planning Considerations

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

- The principle.
- Impact on the character of the conservation area.
- Highway safety and transport.
- Residential amenity.
- Planning contributions.

Planning Assessment

The principle

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that "if regard is to be had to the development plan for the purpose of any determination to be

made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

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

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

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

In terms of the current Local Plan, Saved Housing Policy 5 defines a village confine within which about half the site lies. As such residential development is supported in part by the development plan. The emerging Local Plan Policy H1 identifies Melbourne as a ‘Key Service Village’ within which small scale development is favoured in principle. The remainder of the site stands to be considered in the light of existing site circumstances and in particular its sustainability credentials. The site is enclosed by classified roads on two sides and is also previously developed land. The village also has a good range of services and facilities. It is therefore not the case that the occupiers of the new dwellings would be reliant on the private car for travel. Paragraph 29 of the NPPF recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. In terms of the overall environmental element of the sustainability assessment, although partially outside the village confine, the site has been progressively built up with paraphernalia to the extent that it would difficult to argue that the site was integral to the outlying countryside beyond.

Impact on the character of the conservation area

The environmental impact of the proposal also needs to be considered in the light of the beneficial demolition of the existing restaurant and previous planning permission for a large bedroom block. Dominance of the historic building is preserved by the scheme, and the highest intensity development would be in the northwest corner where it would have least visual impact. The repeated form of the three proposed dwellings there is masked by the proximity of the historic building, and their wide gable span is mitigated by the proposed house and garaging across the south side of the site.

The Civic Society’s concern about the land on the south side of the garages block for units 1, 3, 4 and 5 is shared. Appropriate landscape and boundary treatment conditions would ensure that this sensitive part of the site is appropriately controlled.

Overall the development would bring about an enhancement to the character and appearance of this prominent part of the conservation area, in accordance with Local Plan Saved Environment Policy 12 and Chapter 12 of the NPPF and its associated guidance.

Highway safety and transport

On the advice of the Highway Authority and on the basis that there would be a single point of access, balanced against the lawful use of the site, there would be no adverse safety issues arising. The garaging and parking proposed is appropriate to the scale and nature of the development. The site is readily accessible to local services and public transport by people of all mobility. As such the proposal is in accord with Local Plan Saved Transport Policies 6 & 7, which remain consistent with the NPPF.

Residential amenity

The only adjoining neighbouring property (no 86 Ashby Road) is in the applicant's control and is thus within the scheme for the purpose of assessing impact on amenity. Otherwise the development accords with the supplementary planning guidance to Saved Housing Policy 11. The development would satisfy the criteria of the policy to provide reasonable living conditions throughout the development.

Planning Contributions

On the basis of the Council's Section 106 Guidance for Developers and the County Council's published Developer Contributions Protocol the following contributions are justifiable for this development:

Primary school - £2,279.80 per dwelling = £11399

Secondary school - £2,576.42 per dwelling = £12882.10

Post-16 education - £1,117.67 per dwelling = £5588.35

Open space –30 people (30 beds) x £372 for recreation open space, £220 for recreation outdoor facilities and £122 for built facilities = £21420

Healthcare 5 dwellings x £551 = £2755

Conclusion

The scheme would represent an enhancement to the conservation area and would secure the after use of the principle building in a form more compatible with its setting. As such the environmental role would not be demonstrably offended and therefore in the context of a key service village the proposal represents 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

Subject to the applicant providing a unilateral undertaking under Section 106 of the Town and Country Planning Act to secure the contributions identified in the report, **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. This permission shall relate solely to the plans submitted with the application, unless as otherwise required by condition attached to the permission and unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt.

3. Notwithstanding the submitted details, the windows to the Ashby Road elevation of Unit 5 shall be repaired or replaced to precisely match the existing.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

4. Notwithstanding the submitted details, the three rooflights to the south elevation of the bedroom and en-suite in the east wing of unit 1 shall be omitted.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

5. The precise type and size of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflights shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

6. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls, boundary walls and roofs of the buildings, which shall be covered with small plain clay tiles, have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

7. Large scale details to a minimum scale of 1:10 of eaves, verges, external joinery, including horizontal and vertical sections, precise configuration of opening lights and cill and lintel details, shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The details shall be constructed in accordance with the approved drawings.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

8. All boundary walls shall have a traditional style of shaped clay or stone coping the details including a sample of which shall have been previously agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

9. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

10. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

11. Gutters and downpipes shall have a black finish.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

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

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

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

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

14. Following removal of the render from the existing building, a specification for making good the underlying brick and stonework shall be agreed with the Local Planning Authority before any of the work so specified is carried out. If partial or complete re-rendering is agreed to be an appropriate means of making good, a specification for the re-rendering, including the extent of re-rendering, shall be agreed in writing with the Local Planning Authority before the work is carried out.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwellings hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwellings and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be 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 appearance of the conservation area, having regard to the setting of the development.

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

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

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

17. Notwithstanding the submitted details, a scheme of hard and soft landscaping shall be submitted to the Local Planning Authority for approval. The approved hard landscaping works shall be carried out prior to the occupation of any part of the development or in accordance with a programme previously agreed in writing with the Local Planning Authority.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

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

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

19. A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for the landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority before development begins. The landscape management plan shall be implemented as approved.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

20. Further to Condition 19 above the area shown hatched on the attached plan 9/2014/0061 shall not be used as private garden.

Reason: To ensure that the development is in keeping with the character and appearance of the conservation area.

21. Prior to any other operations commencing, space shall be provided within the site curtilage for the storage of materials, site accommodation, loading and unloading of materials, parking and manoeuvring of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out in accordance with a scheme first submitted to and approved in writing by the local Planning Authority

Reason: In the interests of highway safety.

22. Prior to the first occupation of any dwelling, space shall be provided within the site curtilage for the parking and manoeuvring of vehicles within the site, laid out and constructed in accordance with the application drawing (2134-10) and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

23. Prior to the first occupation of any dwelling, the access shall be modified in accordance with the application drawing (2134-01). The access shall be constructed as a splayed vehicular crossover and the redundant crossover area reinstated as footway, all in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

25. Notwithstanding the submitted drawings, a bin store shall be provided within private land in the vicinity of the entrance to the shared private driveway, in accordance with details that shall be submitted to and approved in writing by the local planning authority before development begins. The facility shall be provided prior to the first occupation of any of the dwellings and shall be retained thereafter free from any impediment to its designated use.

Reason: To prevent bins obstructing the footway and collection vehicles standing on the highway for longer than necessary causing an obstruction or inconvenience for other road users.

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

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

Informatives:

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

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should 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 dished channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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

This permission does not authorise vehicular access to the site from Robinsons Hill. The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

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

Item 2.1

Reg. No. 9/2013/1013/FH

Applicant:
MR MIKE AHERNE
HILL TOP BARN
MAIN STREET
INGLEBY
DERBY
DE73 7HW

Agent:
MR DAVID BOWN
DAVID BOWN BUILDING SURVEYORS
7 ASH VIEW CLOSE
ETWALL
DERBY
DE65 6JY

Proposal: THE ERECTION OF AN EXTENSION AT HILL TOP BARN
MAIN STREET INGLEBY DERBY

Ward: REPTON

Valid Date: 08/01/2014

Reason for committee determination

This application is brought before the Committee at the request of Councillor Stanton as unusual site circumstances should be considered by the committee and that the proposal is for a very small extension to a former farm building in an enclosed courtyard.

Site Description

Hill Top Barn is a curtilage building to the principal Grade II listed building, Ash Farmhouse, which is located to the east side of the converted farm buildings. The site is on the outskirts of the village of Ingleby.

Proposal

The proposal is for a single storey rear (north side) infill extension to the property.

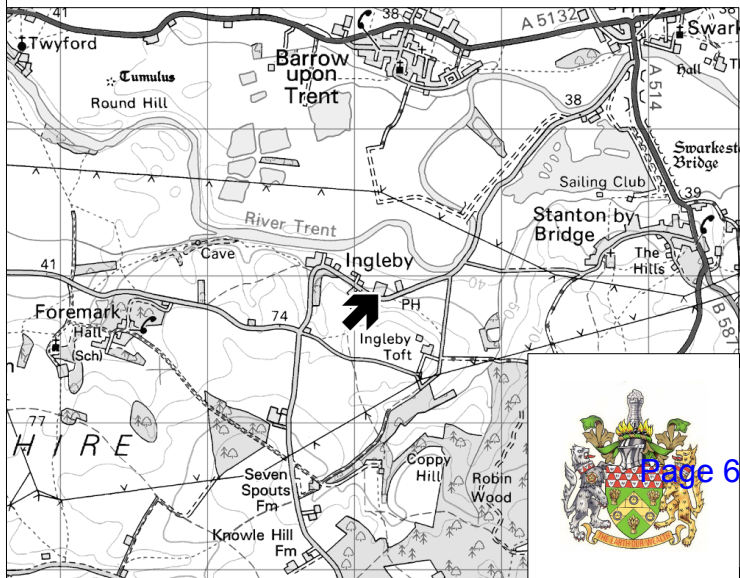
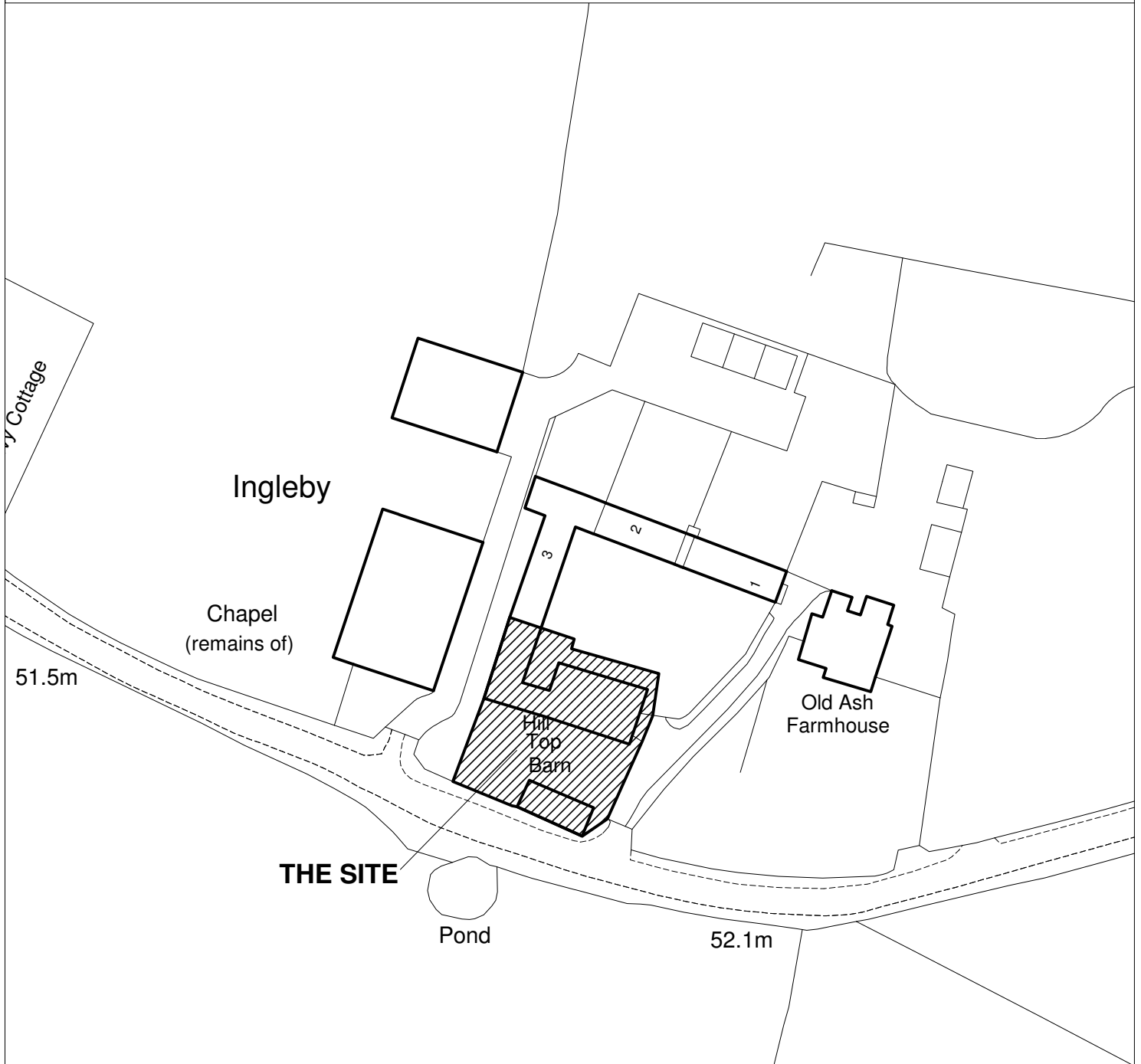
Applicants' supporting information

There was no supporting documentation with the original submission.

A supporting statement was submitted with the amended plans and is summarised as follows:

The main issues of concern, raised by the Council's Conservation Officer, are the principal of extending beyond the existing back wall of the applicant's property into the courtyard and the proposed arrangement of the roof: the Council's preference being for an extension of the existing line of cat slide roof at the rear. This, however, would result

9/2013/1013 - Hill Top Barn, Main Street, Ingleby, Derby DE73 7HW



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

in a 1.2 metre eaves height from the existing ground level at the northern wall of the extension and thus would make it impossible to walk at normal head height over the whole floor area of the extension. The suggestion that the floor could be lowered to make up the difference would be expensive to construct, would leave the new work at risk of damp penetration, would mean re-routing the existing drains and would involve constructing steps down into the extension which would not be user-friendly, particularly for disabled people. For these reasons the applicant has rejected this suggestion and the amended drawings submitted on 5 March 2014 represent the applicant's final position on the matter.

Another concern is that the property is a listed building and/or the proposed development would impact in a detrimental manner upon such a building. If Hill Top Barn was ever listed (and there must be a doubt about this as there is no plan identifying the listed curtilage and it does not appear in the list description) it was only so as a "curtilage building" to Ash Farm. That association has long ceased and together with the considerable alterations, extensions and changes of use of all these various farm buildings allowed by the authority since the date of listing (1986).

It is not accepted that the proposed extension (both the originally submitted and the amended scheme) will impact upon the character of the (dubiously listed) building. If it is a question of it affecting the setting of Ash Farm then it is some 44 metres from the former farmhouse itself and lies at an oblique angle to its main elevation and as such would not be seen in the same visual context as Ash Farm.

The Council's resistance to the development is also because it would intrude into the "courtyard" at the rear of the Hill Top Barn, which has no special recognition or protection. The fact remains that this area of the courtyard is owned by applicant and forms part of his private curtilage and he would be free to erect some form of boundary treatment along the line of what he owns.

There is no reasonable or rational view for resisting this development and the revised hipped roof arrangement has been devised to improve on the originally conceived roof arrangement. This will soften the general effect and be more in keeping with Hill Top Barn which utilises hipped roofs in the main.

Planning History

9/0697/0272/F – The extension and conversion into 4 dwellings of the barns at Old Ash Farm, Ingleby – approved with conditions on 2nd September 1997. Conditions 14, 15 and 16 required planning approval for enlargements and/or extensions, buildings in curtilage and any means of enclosure and external alterations including new windows and satellite dishes respectively. The conditions were imposed as the Local Planning Authority considered that, [14] having regard to its setting, further extension of the buildings could have a detrimental effect on their appearance and character as former farm buildings, contrary to Housing Policy 7 of the Revised Structure Plan; [15] to ensure any structures within the curtilage of the buildings were appropriate to the character and appearance of the buildings; and [16] to ensure any alterations were appropriate to the character and appearance of the buildings.

9/2005/0879/FH – Erection of walls – refused on 20/09/05 – the erection of a wall in the rear courtyard would create a domestic style subdivision of the courtyard area surrounding a building which forms an integral part of the courtyard grouping of

agricultural buildings around a common open farmyard, to the detriment of the listed building.

9/2007/0631/L – Boundary walls and gates to front of Hill Top Barn (adjacent highway and to enclose front courtyard) – approved with conditions on 30/07/07.

9/2010/1130/L – Single storey extension to front (south) side of property – approved with conditions on 14/02/11.

Responses to Consultations

The DC Archaeologist advises that the proposal site is an area of archaeological interest adjacent to the site of a former medieval chapel of ease and within the medieval core of the village. However, the location of the proposed extension, tucked into the yard area of Hill Top Barn (part of a converted complex of barns associated with the Grade II listed Ash Farmhouse) is unlikely to have archaeological significance. This area is likely to have undergone significant disturbance in the context of the original construction of the barns, use of the farmyard and the more recent conversion of the barns to residential use. There is therefore no need to place an archaeological requirement upon the applicant.

Responses to Publicity

There have been no responses received.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Environment Policy 13, Saved Environment Policy 14 and Saved Housing Policy 13 of the Adopted Local Plan.

Supplementary Planning Guidance ‘Extending your Home’ and ‘Historic South Derbyshire’.

National Guidance

The National Planning Policy Framework (NPPF): Paragraphs 17 (Core planning principles), 57, 58 and 61 of Chapter 7 (Requiring good design) and 129, 131 and 132 of Chapter 12 (Conserving and enhancing the historic environment).

Planning Considerations

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

- The impact of the proposal on the character of the host property and the setting of the farm group as a whole and the principle listed building (Ash Farmhouse);
- The impact on known archaeological or other heritage features of significance; and
- The impact on the neighbours’ amenities.

Planning Assessment

Old Ash Farmhouse and its outbuildings represent a very typical South Derbyshire farm group. Such farms are an essential element of our local rural scene and an integral part of the countryside, worthy of protection both in their own right and as part of the district's identity and character. The Georgian farmhouse, slightly apart and aloof from the buildings, is complemented by the simple brick and stone outbuildings; neither is complete without the other.

The present proposal (as amended) is for a small hipped roof extension in a corner of the farmyard. The principle of an infill here, filling the recess, was supported by Council Officers, but the present proposal is larger and is considered harmful. It interrupts the strong linear form of the buildings around the courtyard and has a roof which sits awkwardly between the roofs around it, while being detached from them all.

In barn conversion schemes, the District Council has from time to time given permission for sympathetic extensions on the rear elevations. The presence of rear gardens inevitably domesticates the appearance of traditional farm buildings to a greater or lesser extent, making the relevant elevations less "pure" and thereby more accommodating of alteration. Each case varies, but these elevations are commonly outward facing and of open aspect, where extensions would have no impact on the significant central open courtyard of a typical, tight grouping. There have been extensions of this kind at Old Ash Farm, including an existing substantial extension at the home of the present applicant.

The District Council's Officers accepted that the recessed area on the courtyard side of the applicant's home could be infilled by a continuation of the adjacent lean-to roof without harm to the character of the buildings; this would have provided a room 4.9 x 5.1m, which is a fair size. The low eaves height which led to this being ruled out by the applicant was the result of him requiring the room to be extended out far enough for a room 7.25m long, to house a snooker table. An alternative suggestion was therefore offered converting two existing bedrooms into a generous games room, and adding one extra bedroom in the recess. This suggestion was rejected by the applicant.

The latest amendment is an improvement on the original plans submitted on 8 January but in the Conservation Officer's opinion is still harmful to the essential character of the buildings. The character of farm buildings is usually defined by simplicity, and it is this characteristic of bold simplicity that makes them complementary to the farmhouse that is usually detached or semi-detached on the periphery of them. A typical set of farm buildings, as at Old Ash Farm, comprises simple forms, plain volumes, use of local materials, and a strong linear arrangement around a central fold yard. This complementary relationship is recognised by the notion of curtilage listing. The proposed extension, with valleys all around it, would sit uncomfortably with the simplicity and larger scale of the adjacent roofs.

The agent's letter of 4 March argues the acceptability of the proposal largely by default, because he considers the curtilage listed status of Hill Top Barn to be "dubious". In the Authority's opinion there is no doubt that the building is listed through being in the curtilage of Old Ash Farmhouse at the time of its listing in 1986. The District Council's stance on this issue is entirely consistent with other local authorities in general, and English Heritage.

The agent further claims that the central courtyard has no special recognition or protection. This is untrue. It is covered by restriction of permitted development rights by

virtue of being within the curtilage of a listed building. Boundary fences, except as approved under the original conversion scheme, would therefore require planning permission in the interest of preserving the character of the whole.

In conclusion, the proposed extension is not a major proposal, but is nonetheless considered harmful. In the context of a listed farm group, and of a barn conversion that has already been extended by the present owner, it is suggested that the present proposal is unjustified. The amended proposal does not therefore conform to the requirements of the NPPF or Saved Environment Policy 13 of the Adopted Local Plan.

In view of the comments above, the proposed single storey rear extension, as amended, does not conform to Saved Housing Policy 13 in that it is not of a sympathetic style that is in keeping with the existing property or the barn conversion complex as a whole and as such would be detrimental to the general character of the area, which includes the setting of the principal Grade II listed Ash Farmhouse.

The amended proposal has been judged not to adversely affect the amenities of the neighbouring properties with regard to overlooking and protecting privacy in conformity with Saved Housing Policy 13 and the Council's supplementary planning guidance 'Extending your Home'.

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

Recommendation

REFUSE planning permission for the following reason:

1. Saved Environment Policy 13 of the Adopted South Derbyshire Local Plan seeks to protect listed or other buildings of architectural or historic importance from the adverse effects of unsympathetic development.

Paragraphs 17 and 129 of The NPPF (National Planning Policy Framework) advise Local Planning Authorities to protect heritage assets from harmful development. Paragraph 131 of The NPPF advises that when determining planning applications, the Local Planning Authority should take account of the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 132 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation - significance can be harmed or lost through alteration or development within its setting.

The Council's adopted supplementary planning guidance 'Historic South Derbyshire' provides guidance and design advice for works to listed buildings. The guidance states that all new works to listed buildings should compliment the character of the existing building in terms of design, materials, scale and detailing.

Hill Top Barn is a curtilage listed building and forms part of a group of converted farm buildings surrounding an open courtyard. The development was carefully designed to reflect the agricultural character of this farm group which forms part

of the historic setting of Ash Farmhouse, the principal Grade II listed building, located to the east side of the complex.

The latest amendment, received on 5th March 2014, is an improvement on the original plans submitted on 8th January but is still harmful to the essential character of the buildings. The character of farm buildings is usually defined by simplicity, and it is this characteristic of bold simplicity that makes them complementary to the farmhouse that is usually detached or semi-detached on the periphery of them. A typical set of farm buildings, as at Old Ash Farm, comprises simple forms, plain volumes, use of local materials, and a strong linear arrangement around a central fold yard. This complementary relationship is recognised by the notion of curtilage listing. The proposed extension, as amended, with valleys all around it, would sit uncomfortably with the simplicity and larger scale of the adjacent roofs.

The form of the amended rear extension is therefore uncharacteristic to the simple linear form of the existing farm buildings and will produce a complex roof scape at variance with the traditional character of the group. The proposed roof form has the potential to result in an unsatisfactory and awkward lead detail and there is insufficient detail to show how the new roof will connect with the existing roof form. As such, the impact of the proposed development on the character of the curtilage building and the setting of the principal listed building and the farm group as a whole cannot be fully assessed.

There has been no attempt to match the eaves and verge details or the form and pattern of the windows of the existing property in the amended extension, which is contrary to the requirements of the NPPF with regard to the conservation of the historic environment and the Council's supplementary planning guidance. There is also a declaration that the existing guttering is black uPVC when the existing downpipes on the property are cast iron.

By virtue of its form and detailing, the proposed extension, as originally submitted and as amended, would have a detrimental effect on the character of the curtilage listed building and that of the setting of the principal Grade II listed Ash Farmhouse and the farm grouping as a whole.

The proposed development would therefore be contrary to the above-mentioned Development Plan Policy, Paragraphs 17, 129, 131 and 132 of the National Planning Policy Framework and the Council's supplementary planning guidance.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner, including having a pre-application site visit and discussions, through seeking to resolve planning objections and issues and suggesting amendments to the proposal in order to overcome the reasons for refusal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item 2.2

Reg. No. 9/2014/0245/FM

Applicant:
MR STUART BANKS
C/O AGENT

Agent:
MR ERIC LEE
ERIC LEE ARCHITECTURAL
SERVICES
THE STABLES
ROBINSONS HILL
MELBOURNE
DERBY
DE73 8DJ

Proposal: **THE ERECTION OF A DWELLING AND GARAGE ON**
LAND SOUTH OF WOODBINE COTTAGE ASHBY ROAD
TICKNALL DERBY

Ward: **REPTON**

Valid Date: **19/03/2014**

Reason for committee determination

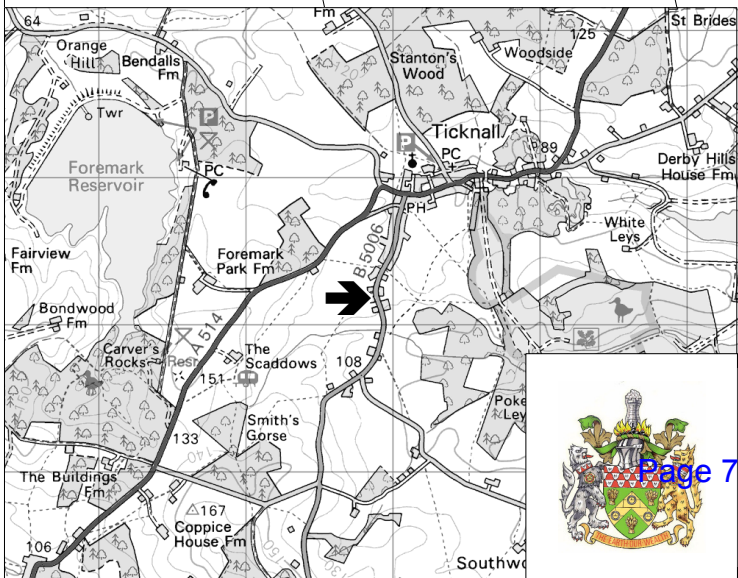
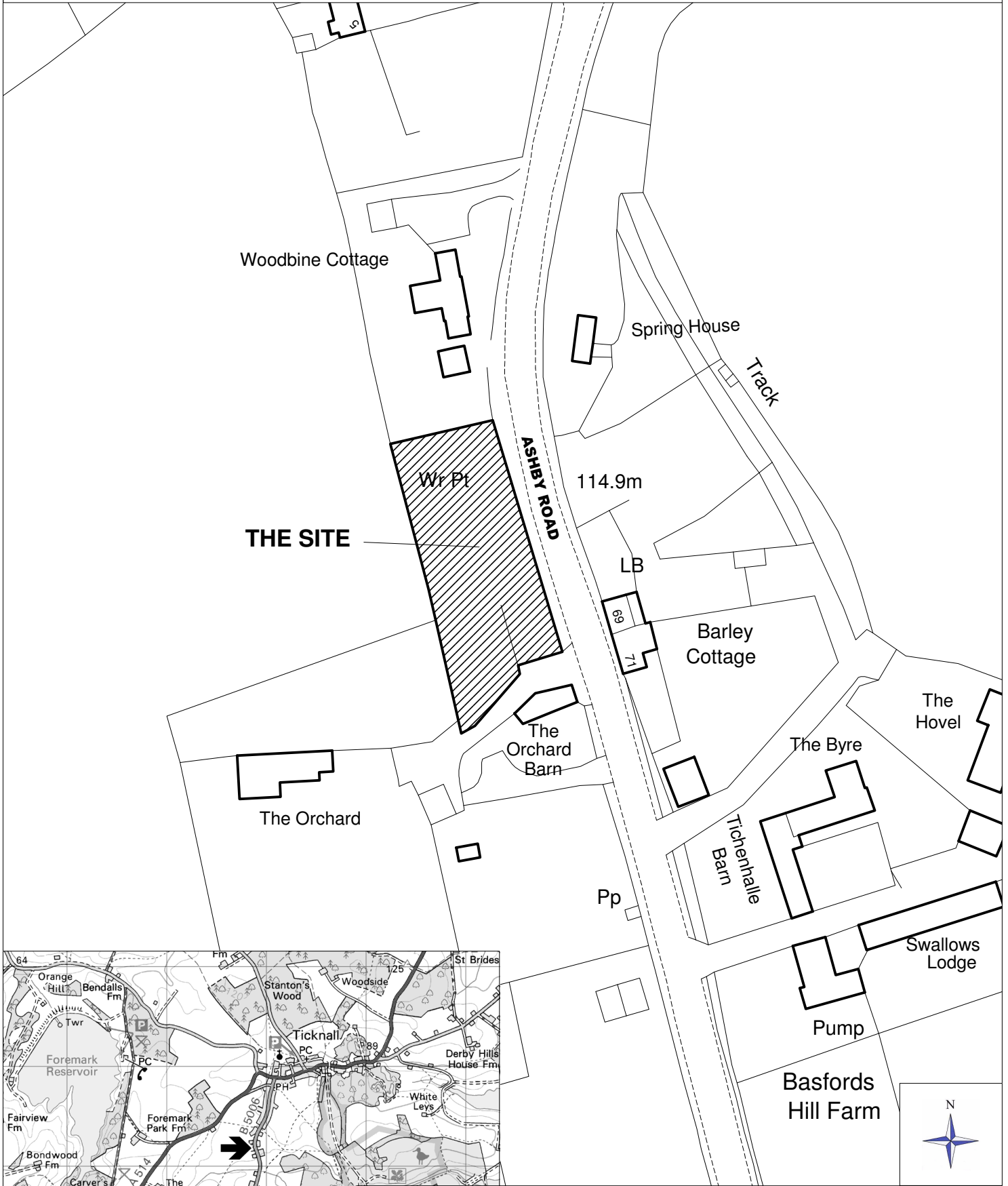
This application is reported to Committee at the request of Councillor Stanton because local concern has been expressed about a particular issue.

Site Description

The site comprises a small parcel of previous undeveloped land lying south of Woodbine Cottage and west of Ashby Road. Fields lie to the west and a private access track to the south, serving two existing dwellings. It has been used for a number of years as an allotment and orchard as ancillary residential land. There is a dilapidated structure situated towards the southern end of the site close to a gate onto the private access. The boundaries of the site are framed by mature hedgerow, with the hedgerow fronting the roadside some 1.8 metres in height and in the majority continuous along its length. A number of trees add to the hedgerow along the southern and western boundaries.

A Grade II listed pillar fountain lies on the highway verge between the site and the carriageway, with the highway subject to a 30mph speed limit with a bend towards the north and a fall in levels to the south. Orchard Barn lies across the private access to the south and The Orchards lies to the south-west. On the opposite side of the highway and off towards the south-east there is a further pair of cottages.

9/2014/0245 - Land south of Woodbine Cottage, Ashby Road, Ticknall, Derby DE73 7JJ



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

Proposal

It is proposed to erect a single dwelling and detached double garage on the land. The dwelling provides for three bedrooms and is L-shaped allowing gable widths to be kept low. The principal accommodation is to be provided within the two storey element parallel with the highway, with the living/dining element forming a single storey projection to the rear. Vehicular access would be achieved from the existing access track, with a turning and parking area provided off this. A pedestrian access through the hedgerow in front of the house would also be provided, leading onto the highway verge.

Applicants' supporting information

A Planning Statement provides a review of relevant planning policy guidance, followed by an assessment of the proposed development having regard to the development plan and other material considerations. It considers that local planning policy is out of date, that a 5 year housing supply is absent and that national planning policy prevails and affords a presumption in favour of the development. It makes particular discussion of highway safety, conservation area/visual impacts and sustainability as follows:

- Prima facie therefore the proposed development is at odds with the relevant policies of the local plan. However, two further and important considerations also need to be taken into account and weighed in the balance, these being:
 - a) the age and relevance of the adopted plan having regard to the advice in the National Planning Policy Framework (NPPF) and,
 - b) the emergence of the authority's own replacement Local Plan.
- Age and relevance of the existing (adopted) Local Plan: The local plan policy is quite old (1998) and although some of its policies, including ENV 1 and Housing Policy 5, were "saved" in 2007, it was clearly written in very different circumstances than prevail today. It is most relevant to note that the adopted local plan had an "end date" of 2001, i.e. some 13 years ago. The NPPF makes it clear what weight should be given to "old" plans or policies where they are not in conformity with the national advice. Paragraphs 214 and 215 of the NPPF state, "214. *For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.*
215. *In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).*" Since the local plan was adopted well before 2004 it is necessary to consider its policies having regard to the degree of consistency with the NPPF.
- Of most relevance here is the advice set out at Paragraph 49 of the National Planning Policy Framework (NPPF). This states, "*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.*" Currently, and indeed for some time, there has been no demonstrable five year supply of housing land in the South Derbyshire area. In a report produced as

recently as July 2013 the Council itself admitted that there was only some 2.63 years (i.e. only just over half the minimum requirement) supply of housing land. It follows that subject to the Council being satisfied that what is proposed here comprises sustainable development then under the advice in Paragraph 49 of the NPPF there should be a presumption in favour of it and therefore the existing policies set aside.

The Replacement Local Plan - Of relevance to this proposal is Policy S2, "Presumption in Favour of Sustainable Development, which states, *"Planning applications that accord with the policies in this local plan (and where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the council will grant permission unless material considerations indicate otherwise - taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the national planning policy framework taken as a whole; or specific policies in that framework indicate that development should be restricted."* The plan goes on to set out a "settlement hierarchy" whereby in general the larger and more sustainable locations are to be preferred. Policy S4 "Settlement Hierarchy" states, inter alia, that, *"3. Appropriate sites of a range of scales up to and including strategic site will be promoted within and adjoining the Key Service Villages; 4. Appropriate sites of a local scale (up to 10 dwellings) will be promoted within and adjoining the Local Service Villages; 5. Small sites of a scale appropriate to their site circumstances and rural location including infill sites and conversions of existing buildings will be promoted in the other Rural Villages and Rural Locations."* Within the table that accompanies this policy Ticknall is regarded as a, "Local Service Village" from which it can be seen that the emerging policy favours the development of sites for up to ten dwellings which can either be located, "within and adjoining" such settlements. Applying this to the current proposal it can be submitted that although the site in question is not within the current limits to development it can, in any reasonable definition of the phrase, be considered as "adjoining the settlement": it is certainly not at all evident that the term "adjoining" is to be taken as being limited to those areas of land which physically abut the defined limits of development in the adopted plan. Indeed there is an argument that the site already lies within the village based upon any reasonable application of the phrase.

- In applying the guidance in paragraph 49 of the NPPF it is of course necessary to demonstrate that the development would be sustainable if it is to secure the policy presumption in its favour. Walking distances to the various services provided in the village are quite modest. It follows that if the planning authority is to realise its own ambition in this regard then sites on the edge like this one will need to come forward and be developed and in doing so will reinforce the strong sustainability credentials of the village.
- With regard to visual amenity, there are sites within the village and the Conservation Area in particular which are visually important and whose presence defines the character of the village as much as the individual buildings and their relationship with one another. This site is however not one of this. It is normally seen in three quarter view when entering or leaving the village and in both vistas there is built development beyond. In addition the frontage is defined by a mature

but well maintained and “domestic” hedgerow and there rear boundary is delineated by a significant hedgerow reinforced by mature trees. As a consequence of all this the site is enclosed and its small size and long established use give it a domestic appearance. There are no views through to the open countryside beyond and a clear and very marked distinction between the two areas. The proposed dwelling is very modest in scale. The siting at the northern end of the land will reinforce the massing between it and Woodbine Cottage. The dwelling itself is well-proportioned and takes many signals from the local vernacular.

- With regard to highway safety, the dwelling will be served by an existing access track which has served an existing garage and off street parking facility which has until recently been rented out to a local resident who used it on a regular basis. The proposed dwelling will not therefore generate or result in any material increase in both the volume and nature of the traffic that can legitimately use these facilities. The proposal includes turning facilities which would represent an improvement upon the existing facilities and would allow all vehicles visiting the site to enter the highway in forward gear. Services such as postal deliveries and refuse collection already occur and serve the dwellings in the vicinity.

Planning History

9/1986/0379: Erection of a single dwelling – Refused and dismissed at appeal.

9/1988/0509: Erection of 6 terraced dwelling – Refused and dismissed at appeal.

Responses to Consultations

The County Highway Authority objects to the proposal noting that the access width is insufficient to allow two vehicles to pass and visibility in both directions appears to be restricted by the hedgerow to the north and the adjoining property (Orchard Barn) to the south. They consider that the proposal would result in an increase in the number of vehicles movements at the access and that this increased use would be of detriment to highway safety.

Severn Trent Water raises no objection.

Responses to Publicity

Ticknall Parish Council objects for the following reasons:

- i) they believe that allotments are protected from development;
- ii) housing policies are 'saved' and therefore are still current policy;
- iii) whilst the applicant argues that "adjoining" includes "close to but not abutting", the proposal is neither within nor adjoining a key service village;
- iv) the access is already very dangerous;
- v) the plan shows widening of the exit thereby crossing over the neighbour's property without consent to do so;
- vi) the proposed vehicular access is not within the red line on the plan;
- vii) the proposed entrance to the garage is shown further up the neighbours drive than the position of the current gate; and
- viii) the pillar fountain is Grade II listed and as such should be protected.

5 objections from neighbouring residents have been received, raising the following comments:

- a) a previous planning application was rejected and the situation has not materially altered;
- b) the proposal is in a Conservation Area;
- c) the proposal is outside the built up framework of Ticknall;
- d) the land is currently an orchard and provides a green area in keeping with the nature of the village;
- e) the site is long and narrow yet the garage and house are at opposite ends suggesting future infill;
- f) the proposed site entrance is at a dangerous location, on a bend at the top of the hill;
- g) there are already 10 properties accessing Ashby Road within 90 metres to the south;
- h) the exit would have a seriously restricted view both north and south;
- i) this road has a problem with traffic speeding in both directions and there is an observed increase in the number of HGVs;
- j) the drive was put in to serve a farm many years ago when traffic speeds and volume were much lower;
- k) there is no pavement on this side of the road to serve the pedestrian access and the dangers from traffic are apparent;
- l) the existing gateway is extremely rarely used at present;
- m) there was never a garage on site as claimed, just an old wooden shed that has decayed away and removed over 10 years ago;
- n) increased traffic and noise from cars will impact on their privacy;
- o) the garage drive will overlook their property;
- p) if approved, they seek restrictions on erection outbuildings or extensions;
- q) the hedge to be removed for the driveway does not belong to the applicant;
- r) the applicant does not have access further up the driveway beyond the existing gate;
- s) the closer proximity of the garage would cause additional noise and nuisance to an occupant;
- t) the driveway is inadequate for construction traffic and its use as such would cause disturbance and damage, as well as obstruction; and
- u) a new house and garage will have a far greater impact on the surrounding dwellings than their refused extension.

A single representation in support has been received, commenting that they consider it will enhance this particular piece of land and the design is pleasing and very much in keeping with other properties close by.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 6 and 11 (H6 and H11); Transport Policy 6 (T6); and Environment Policies 9, 10, 12 and 13 (EV9, EV10, EV12 and EV13).

Emerging Development Plan Policies

The relevant policies are:

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

National Guidance

- National Planning Policy Framework (NPPF): with particular reference to paragraphs 6, 7, 8, 11, 12, 14, 17, 32, 39, 47, 49, 58, 61, 69, 70, 96, 109, 118, 120, 129, 131, 132, 134, 186, 187, 196, 197, 203, 204, 206, 215 and 216.
- National Planning Policy Guidance (NPPG).

Other Material Considerations

- Housing Design and Layout Supplementary Planning Guidance (SPG).
- Ticknall Conservation Area Character Statement (Draft).

Planning Considerations

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

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

- Weight afforded to Development Plan policies;
- Whether the proposal conserves and/or enhances the Conservation Area;
- Other heritage impacts
- The principle of a single dwelling in this location;
- Impact on highway safety;
- Biodiversity impacts; and
- Design and amenity.

Representations raising concern over future aspirations should permission be granted are not afforded any weight as this is speculative and such a proposal would be considered on its own merits, if an application were to be made.

Planning Assessment

Weight afforded to Development Plan policies

Paragraph 47 of the NPPF seeks “*to boost significantly the supply of housing*” providing a considerable emphasis on bringing forward high levels of housing provision as soon

as possible. This is achieved through a rolling 5-year supply of deliverable sites. Paragraph 49 of the NPPF states *“housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply...”* [emphasis added]. Whilst the Council has no issue with land supply as such, and recent permissions have helped to improve the supply, there is still a shortfall at the present time. As such Housing Policy 6 cannot be considered up-to-date. However paragraphs 215 and 216 of the NPPF do highlight that the weight which may be afforded to policies depends on their consistency with the NPPF.

Paragraph 55 of the NPPF is relevant stating *“...housing should be located where it will enhance or maintain the vitality of rural communities...”*. It also states that Councils *“...should avoid new isolated homes in the countryside unless there are special circumstances...”*. Taking cues from recent appeal decisions and the context of surrounding sporadic development on the edge of Ticknall, it is not considered this proposal constitutes an “isolated home”. In essence Housing Policy 6 can be afforded full weight in allowing the principle of a dwelling in this relatively sustainable location. Consequently full consideration of the proposal against the terms of this policy is necessary and is discussed below.

Turning briefly to remaining policies, the above emphasis is material. It is important to note that the presumption in favour (as outlined at paragraph 14 of the NPPF) is one in favour of *sustainable* development – not any development. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable in the wider realm (i.e. the NPPF taken as a whole as advocated by paragraphs 6 through 8). The courts have ratified this approach as well as confirming that Local Plan policies not related to the supply of housing are not automatically “stood down”. It is thus reasonable to conclude that conflict with the Framework, and indeed the remaining Development Plan policies quoted above, could lead to the proposal being defined as unsustainable.

Whether the proposal conserves and/or enhances the Conservation Area

Regard is first had to the character of the site and surrounding area. The Ticknall Conservation Area Character Statement provides good definition of this, noting *“a pattern of long narrow plots or paddocks, used as allotments or orchards skirting and echoing the road alignment...”* and that *“this alignment is accentuated and the hedgelines reinforced by a dense leafy approach as some of these long enclosed paddocks on the west side are still in use as orchards and a copse plantation...”*. Furthermore it states *“the buildings that line the southern extremity of the village all encroached onto the edges of open fields and common land”*. The dismissed appeals are also highly material with the inspectors’ comments of particular use: *“the development... would undesirably consolidate the otherwise attractively sporadic pattern of development in this part of the village to the detriment of its character”*; and *“this proposal could serve as a precedent for similar proposals beyond the confines of villages...[and] similar roadside development in the vicinity would serve to transform a pleasantly haphazard collection of cottages into a ribbon of dwellings intruding into the countryside beyond...”*. It was considered development would neither preserve nor enhance this character and on the dismissed proposal for a single dwelling the inspector made particular note that as the site lies on the outside of a bend in the road, the views across it and open countryside beyond *“form an important feature in the vista enjoyed by those leaving Ticknall”*.

It is of considerable weight that the character as described at the time of those appeal decisions remains materially identical today. In brief therefore, the sporadic nature of development with intervening green gaps along Ashby Road should be preserved, with the green gaps of equal merit to the dwellings which already exist. A new building on this prominent site would be intrusive and destroy the distinctive contribution made by the existing gap to the character of this part of the Conservation Area. The proposal would therefore neither preserve nor enhance it and the degree of harm brought about is considered to be substantial, leading to a refusal in principle.

Turning to the design, on its own merits there is little concern as to the form and general detailing of the dwelling. The shallow depth of the ranges is in keeping with traditional dwellings in the Conservation Area, and the garage similarly attracts little objection on this basis. However these factors are not considered to outweigh the harm brought about in the first instance.

Other heritage impacts

The proximity of the proposal to the Grade II listed pillar fountain is noted. These feature in prominent roadside locations throughout the village. The structure would remain, although the proposed pedestrian gate would site immediately adjacent to it. There would be a degree of harm arising here in that the otherwise green backdrop to its setting would be undermined by the insertion of a gateway. However subject to a discrete gate design, it would be comparable to similar proximities of pillar fountains and boundary features elsewhere in Ticknall. It is not considered the recommendation turns on this point.

The principle of a single dwelling in this location

Returning to the above discussion regarding Housing Policy 6, the proposal needs to be tested against all the criteria in this policy. The policy states *“new housing development will be permitted provided it represents the infilling of a small gap, for normally not more than two dwellings within small groups of houses, and it is in keeping with the scale and character of the settlement”*. The supporting justification states *“it is recognised that in certain circumstances the development of individual plots may be appropriate”* [emphasis added].

Whilst it is considered the proposal would constitute the infilling of a small gap, it is for not more than two dwellings within a small group of houses, and is in keeping with the scale of dwellings in Ticknall; for the reasons already discussed under conservation matters above, the proposal is not in keeping with the character of the settlement. This is therefore a circumstance where the development of an individual plot is not appropriate and the proposal fails to comply with Housing Policy 6.

Impact on highway safety

The applicant has provided a topographical survey to assist in assessment on this point, as well as considerable commentary on the existing and/or former use of the land. Road speeds here command visibility splays in the order of 43 metres in each direction. The topographical survey confirms only 11.5 metres can be achieved to the south and 5 metres to the north. This is due to Orchard Barn and the hedgerow respectively. Some 13 metres of hedgerow would need to be removed to the north (and the remaining

hedgerow cut back) in order to achieve the necessary splay in that direction, but the required splay to the south cannot be achieved. Traffic approaching the site generally appears to be travelling at or exceeding the posted speed limit and representations reassert this observation. The applicant considers the northern splay can be improved by removing the hedgerow, but the Highway Authority considers that improvements will need to be more than resetting a few metres of hedge. A speed survey is requested to establish 85th percentile speeds in both directions before evidence is then submitted indicating that the appropriate visibility splays can be achieved each way.

The applicant holds a different approach, citing the former use of the garage and adjacent land for the parking of a vehicle. It is claimed that the movements associated with this are commensurate with that of a dwelling and that no material intensification in the use of the access would occur. In considering these points it is first necessary to determine what weight can be afforded to this claimed established/lawful use.

The focus is not on the existence or not of a garage (if indeed it were a garage), but the use of the access. It is not contested by the applicant that the building has been in a poor state and has not been actively used for parking a vehicle within for some time. However it is maintained the drive has been used until comparatively recently (2009) for the parking of a car belonging to a nearby resident. Immediate neighbours dispute this with one having resided adjacent to the site since 2001 and stating they have never observed any parking on the land. This same neighbour confirms the structure had collapsed by 2001 and is likely to have collapsed some considerable time before this. Consideration is therefore given to whether the use has been abandoned.

Hartley v Minister of Housing and Local Government [1970] first set out the tests for abandonment. *SSETR v Hughes (2000)* provided some useful clarity on how abandonment was to be assessed, setting out objective “tests” – including the owner’s intentions. There is some disagreement as to whether these tests are met or not, with the applicant contesting there has been no intention to abandon the access. Whilst it is considered, when assessed in the round, that there is a case for arguing abandonment here, it is not felt this matter is determinative in the assessment. Attention instead turns to whether a material intensification of the access would occur.

The use of the land for the parking of a vehicle has clearly not occurred for some time. Hence when considering intensification in the short term, it is clear there is a material impact by introducing movements associated with a three-bedroomed dwelling. Even if a longer timeframe were considered, it is reasoned that the movements associated with the parking of a single vehicle would be considerably more limited than that associated with two adults and any dependents (i.e. additional trips arising through attending social functions, school runs, visitors and/or dependent’s own vehicles when of driving age). It is therefore considered a material intensification would occur, and cues have been taken from recent appeal decisions is reaching this conclusion. As a consequence the concerns regarding visibility are sustained and result in a reason for refusal as set out below.

The Highway Authority also has concerns as to the access width. It is presently substandard at only 3m wide, but given the land lies beyond the application site and is not indicated to be within the applicant’s control confirmation is required that sufficient rights exist to the grass next to Orchard Barn as shown on the proposed plans. Notwithstanding that representations query whether the applicant even has the right to traverse this access further west than the existing gateway, it is not unreasonable to

conclude that even if the grass could not be moved there is sufficient space within the application site to achieve the necessary width and realignment. Hence despite the Highway Authority's concerns it is not recommended a refusal runs on this ground.

The query over access rights is noted. Whilst not normally material to a planning decision, if the neighbours' assertions over the extent of access possible along the track beyond the existing gate are correct, then the applicant might not be able to implement the plans as submitted or provide a satisfactory means of vehicular access and parking. However a decision does not turn on this point as should the access rights either as existing or achieved through negotiation with relevant landowners not facilitate implementation of the proposed plans, the applicant would not be able to comply with conditions attached to any permission given. This is no different to establishing at a later date that the proposal cannot comply with other legislation and the applicant having to seek amendments or an alternative proposal to resolve this conflict.

Further consideration is given to pedestrian access and suitability. The Highway Authority also objects to the proposed access, with the chosen location likely to encourage visitors, delivery vehicles and so forth to stop on a section of Ashby Road where forward visibility is substandard, as denoted by the central double white line system. This would require other road users to cross to the opposite carriageway to pass a parked vehicle. In addition the grassed verge directly outside the application site is narrow and unsuitable for pedestrian activity elevating the potential for pedestrians to cross to use the footway on the opposite side, again in an area with restricted forward visibility. In looking to overcome the latter point, is not considered requiring the provision of a footway up to a safe crossing point would be appropriate given the character and listed pillar fountain discussions set out above, and at this point in time the uncertainty whether required the footway width or crossing visibility is feasible in principle. It is therefore considered that the pedestrian access would have a detrimental impact on highway safety and the safe and efficient movement of traffic on Ashby Road, and further supports a refusal of the application.

Biodiversity impacts

The proposal would result in considerable loss of trees and hedgerow to the southern boundary, as well as loss of approximately 13 metres of roadside hedgerow. Combined this has a material impact on biodiversity presently offered by the site and conflicts with Environment Policy 9. This impact could be worsened if a more central position were chosen to overcome the southern visibility splay conflict as, on the assumption quoted distances above were sufficient following a speed survey, substantially more hedgerow would need to be removed. This would also further compound the impact on the character of the area and the value this green break offers. Advice has been sought from the County Archaeologist on the value of these hedgerows but evidence is not considered to be sufficient to classify them as "important" under the Hedgerow Regulations. Whilst the value of this hedgerow should not be simply dismissed, the site is sufficiently large to provide some compensation and net biodiversity enhancement through a scheme of replanting (as indicated upon the plans). This would be in accordance with Environment Policy 10 and paragraph 118 of the NPPF such that biodiversity impacts could be properly mitigated for.

Design and amenity

As discussed above the scale, form and detailing of the proposed dwelling and garage is considered to be acceptable, subject to conditions. The development would provide for a safe, functional and convenient layout; suitable private amenity space; and reasonable amenities in terms of light, air and privacy for both existing and new dwellings with no identified breach of the SPG. The temporary impacts arising from the construction phase are not considered to be sufficiently grand to warrant specific control, nor are obstruction of private accesses a planning consideration.

Balancing exercise and determining whether the development *is* sustainable

Members should first reach a view on whether the proposal is sustainable, or can be made sustainable through planning obligations and conditions, before applying the presumption in favour of development. If the presumption applies consideration then turns to whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising.

The above assessment identifies there are substantial negative impacts arising from the development, contrary to provisions of the Development Plan and the NPPF. In this light the development is not considered to be sustainable, and the presumption should not apply. Indeed the adverse impacts on the character of the Conservation Area and highway safety, as well as the potential for such development to be repeated elsewhere in the village or District, are considered to significantly and demonstrably outweigh the benefits arising from the provision of a single dwellinghouse.

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

Recommendation

REFUSE permission for the following reasons:

1. The site lies within the Ticknall Conservation Area, in an area characterised by a pleasantly haphazard collection of cottages interspersed by a pattern of long narrow plots or paddocks, used as allotments or orchards, skirting and echoing the road alignment. This alignment is accentuated and the hedgelines reinforced by a dense leafy approach, especially from the north where views across the site to open countryside beyond form an important vista when leaving Ticknall, reinforcing the importance of such green interruptions to the built form in defining the character of the area. The proposal would undesirably consolidate this otherwise attractively sporadic pattern of development in this part of the village to the detriment of its character, neither preserving nor enhancing the Conservation Area. In addition the proposal could act as a precedent for similar proposals beyond the confines of villages serving to transform this pattern of development into a ribbon of dwellings intruding into the countryside beyond. The degree of harm arising is therefore considered to be substantial, contrary to saved Environment Policy 12 of the South Derbyshire Local Plan 1998 (SDLP1998) and paragraphs 17 and 133 of the National Planning Policy Framework (NPPF).
2. Whilst it is considered the proposal would constitute the infilling of a small gap, for not more than two dwellings within a small group of houses, and is in keeping

with the scale of dwellings in Ticknall; the proposal is not in keeping with the character of the settlement for the reasons outlined under the first reason for refusal. The proposal is therefore contrary to saved Housing Policy 6 of the SDLP1998 and paragraphs 17 and 58 of the NPPF.

3. The site existing access is substandard in terms of available visibility to drivers and access width. Whilst it is reasoned that there is sufficient land within the applicant's control to provide the desired width, road speeds command visibility splays which cannot be achieved over land within the control of the applicant or a public Authority, with the shortfall severe in both directions. It is not considered that the claimed use of the access has been substantiated, nor is it in any case comparable to the proposed use. As such a material intensification of the use of the access arises to the detriment of highway safety. Whilst visibility to the north could be improved by removal of hedgerow, which would bring about further harm adding to the first reason for refusal; visibility to the south is permanently constrained by an adjoining property. The proposal is therefore contrary to saved Transport Policy 6 of the SDLP1998 and paragraph 32 of the NPPF, as well as contrary to saved Environment Policy 9 of the SDLP1998 and paragraph 118 of the NPPF if the maximum possible visibility splays are enforced.
4. The proposed pedestrian access is likely to encourage visitors, delivery vehicles and so forth to stop on a section of Ashby Road where forward visibility is substandard. This would require other road users to cross to the opposite carriageway in order to pass a parked vehicle. In addition the grassed verge at this point is narrow and unsuitable for pedestrian activity elevating the potential for pedestrians to cross to use the footway to the opposite side, again in an area with restricted forward visibility. It is therefore considered that the pedestrian access would have a detrimental impact on highway safety and the safe and efficient movement of traffic on Ashby Road, contrary to saved Transport Policy 6 of the SDLP1998 and paragraph 32 of the NPPF.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2013/0075 & Enf notice	Repton	Repton	Dismissed	Delegated
9/2013/0250	Egginton	Etwall	Dismissed	Delegated



Appeal Decisions

Site visit made on 6 February 2014

by **Andrew Dale BA (Hons) MA MRTPI**

Date 27 February 2014

Appeal A Ref: APP/F1040/C/13/2204007

Land lying to the west of Main Street, Repton, Derbyshire DE65 6FB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by South Derbyshire District Council.
 - The appeal is made by Mrs N Lowe.
 - The notice was issued on 24 July 2013.
 - The breach of planning control as alleged in the notice is the erection of a detached timber building along with the formation of a hardstanding area with timber retaining walls without planning permission.
 - The requirements of the notice are to:
 - (1) Remove the detached timber building and timber retaining walls from the land.
 - (2) Remove the hardstanding from the area hatched on the attached plan, appendix GJR1 from the land.
 - (3) Permanently remove all material resulting from complying with the above from the land.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal B Ref: APP/F1040/A/13/2205457

136 Main Street, Repton, Derby DE65 6FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Lowe against the decision of South Derbyshire District Council.
 - The application ref. 9/2013/0075, dated 1 February 2013, was refused by notice dated 28 March 2013.
 - The development proposed is "A barn conversion with kitchen extension on the side."
-

Decisions

Appeal A Ref: APP/F1040/C/13/2204007

1. It is directed that the enforcement notice be corrected by altering the text "section 171A(2)" to the text "section 171A(1)" in the first paragraph that starts **This notice**. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/F1040/A/13/2205457

2. The appeal is dismissed.

Procedural matters concerning the enforcement notice under Appeal A

3. It is clear that the breach of planning control is within the meaning of paragraph (a) of section 171A(1) of the 1990 Act as amended i.e. carrying out development without the required planning permission. The reference to paragraph (a) of section 171A(2) in the first paragraph of the enforcement notice is therefore a source of confusion as that section of the Act relates to what constitutes taking enforcement action. Reading the written representations I am satisfied that the parties have not been misled by the enforcement notice and that I can correct it in the manner indicated without giving rise to any injustice to the parties.
4. The enforcement notice is dated 24 July 2013, not 12 July 2013 as indicated on the appeal form and within the appellant's statement.
5. The site address for Appeal A in the heading above is taken from the enforcement notice, although I accept that it could equally have read 136 Main Street, Repton (as provided at section D of the appeal form).

Procedural matters concerning the planning application under Appeal B

6. The similar descriptions of the proposed development provided on the planning application form (set out in the heading above) and the Council's decision notice make no mention of the intended use. I understand that the proposal relates to the conversion and extension of a barn to form a two-bedroom dwelling.
7. I have considered the representations made by the parties about the submission of certificate A in the light of sections 65, 79 and 327A of the Town and Country Planning Act 1990 and article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.
8. A certificate of ownership was completed. Whilst it transpires that the wrong certificate may have been originally submitted, it does not render it no certificate at all or make the application a nullity. The application was entertained and determined by the Council and an appeal has been submitted within the six-month deadline from the determination of the application. Whilst not all the owners and those with an interest in the land were notified at the time of the application and appeal, it is apparent that the correct procedures – the service of certificate C and notices in two local newspapers – were put in place during December 2013. Two responses to those procedures were received by the Planning Inspectorate and these have been taken into account. On the basis of the information before me, I find that there has been no prejudice to any party. Therefore, the determination of the appeal would not undermine the purpose of section 327A of the 1990 Act.

Background

9. Appeal A concerns a small timber building sited on an area of hardstanding and partly surrounded by timber retaining walls. To the north is a single storey brick-built barn that was erected as a stable/storage building pursuant to a planning permission granted in 1997 (ref. 9/0697/0196/F). Appeal B relates to that barn although I note that the small timber building was actually included

in the proposed residential curtilage (red edge) as a garage for the barn conversion. The Design and Access Statement says that "The position of the parking area and garage keeps the cars away from Main Street which is not ideal for parking."

10. The unauthorised timber building and the brick-built barn stand on agricultural land and can be approached via a vehicular access through the grounds of the Woodend Private Day Nursery/appellant's dwelling or via a private track which joins Main Street between nos 140 and 142 Main Street. There are two fields here under the control of the appellants. They occupy ground which rises to the west and extend in total to about 0.6 ha, measuring off the enforcement notice plan and the plans submitted with the planning application.
11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all development proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan includes the South Derbyshire Local Plan (LP) adopted in 1998. The National Planning Policy Framework (the Framework) is an important material consideration. This advises at paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The Council mentions an emerging Local Plan but given the stage (draft version out for consultation late last year) it has reached, I subscribe very little weight to it.

Appeal A, the appeal on ground (a) and the deemed planning application

12. I consider the main issue here to be whether the development enforced against represents acceptable development in the countryside.
13. Whilst the appeal site is situated behind a ribbon of predominantly residential development along the western side of Main Street, the surroundings are distinctly rural and the site lies outside the defined village boundary for Repton. The appeal site is, in policy terms, within the countryside.
14. As such, LP Environment Policy 1 explains that outside settlements new development will not be permitted unless it is essential to a rural-based activity or unavoidable in the countryside and the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside. This development plan policy is consistent with the Framework which recognises the intrinsic character and beauty of the countryside and the need to support thriving rural communities within it and requires good design.
15. There is about 0.6 ha of land given over to a rural-based activity. From what I was shown at the site visit this appears to include the maintenance and care of the pasture and the keeping of three goats, two miniature ponies and some chickens. It is claimed in the appellant's statement that the timber building is required to house expensive agricultural machinery – a trailer and mower. It is a relatively small structure with a restricted door height. At my site visit I saw that there was an attachment (a topper) for a tractor at the front end of the building with hay taking up most of the internal space.

16. The authorised purpose-built stable/storage building is actually several times larger than the unauthorised timber building and has sufficient door height in its eastern wing to comfortably accommodate a tractor and other machinery. In my experience, this building should be ample for the needs of the rural-based activity here given the minimal extent of that activity, the small size of landholding and the limited amount of machinery necessary to maintain the land.
17. Whilst it is proposed that the stable/storage building should be converted to a dwelling, it is nonetheless sufficient, suitable and available for the maintenance and lawful use of the associated land. I do not see how a claim can be reasonably made that the timber building is essential to the rural-based activity here or is otherwise unavoidable in the countryside, if at the same time the larger and more suitable permitted outbuilding is being put forward for an alternative residential use or possibly being used “for the owners’ hobbies and housing of pet” as indicated at part 14 of the planning application form relating to Appeal B.
18. My study of the aerial photography submitted by both main parties reveals that a building of similar size to the timber building stood in the northernmost field in 2009 but not in 1999. There is no conclusive evidence, for instance a lawful development certificate, to demonstrate that this former building was lawful. Therefore, I have been able to attach only very limited weight to this other building which, in any event, was removed from that field some time ago.
19. The unauthorised timber building is redolent of a domestic garage on account of its size, design, appearance and materials. The picture is muddled by the inclusion of the building as a garage in the application site for the conversion of the barn to a dwelling. Be that as it may, the timber building is visually at odds with its countryside location, even though I accept that it is not prominent from public viewpoints along Main Street and that further boundary screening is offered.
20. I find that the hardstanding and timber retaining walls are intrinsically linked to the provision of the timber building on land that was previously part of the sloping field to the west. No retaining structures or hardstanding were visible on this part of the site in 1999 or 2009. The hardstanding and timber retaining walls have an urbanising effect on this area of countryside and detract from the landscape quality of the site.
21. In all, I find that the unauthorised development is not essential to the rural-based activity or unavoidable in the countryside, whilst there is a moderate degree of harm to the character of the countryside and landscape quality. This conflicts with LP Environment Policy 1 and the Framework. I conclude that the development enforced against does not represent acceptable development in the countryside.
22. There is conflict with the development plan and I find no material considerations of sufficient weight to justify planning permission. Thus, the appeal on ground (a) does not succeed and the deemed planning application is refused.

Appeal A, the appeal on ground (g)

23. The issue under ground (g) is whether the compliance period is too short. A period of 60 days has been given. The appellant has requested a period of 12 months. Determining the time needed to comply with the requirements of an enforcement notice will always be a case-specific exercise.
24. The appellant explains that the building was erected to store items that were previously stored in the former building on the northernmost field. It is stated that the appellant will need to find somewhere else to store the valuable equipment and this is likely to be subject to the need for planning permission. A period of 12 months is requested to find an alternative solution.
25. I have already addressed under the ground (a) appeal the question of the former building that was demolished. I agree with the thrust of the Council's case under ground (g) that the existing brick-built outbuilding should be more than sufficient to cater for the essential agricultural needs arising on such a small parcel of agricultural land. The removal of the timber building and the associated hardstanding and timber retaining walls would be a relatively straightforward operation and it should be possible for it to be completed within the period set by the notice. Should any unforeseen circumstances occur, the Council has powers to extend the period for compliance with the notice at its own discretion. Taking all matters into account, I conclude that the appeal on ground (g) should not succeed.

Appeal B, the section 78 appeal

26. I consider the main issue here to be the effect of the proposed barn conversion on highway safety along Main Street.
27. In addition to the representations from the main parties, I have taken into account those from Bancroft Consulting Limited (BCL), Derbyshire County Council as local highway authority (LHA) and third parties.
28. It is proposed that the barn conversion be served by the private access which joins onto Main Street between nos 140 and 142 Main Street, rather than by the access which passes through the grounds of the nursery/appellant's dwelling. Main Street is a classified road subject to a 30 mph speed limit.
29. LP Transport Policy 6 at part A says, amongst other things, that planning permission will not be granted for development which interferes with the free and safe flow of traffic. Part B expects all proposals for development to incorporate adequate provision for access, parking, manoeuvring and off-street servicing.
30. In my view, that LP policy is consistent with section 4 of the Framework when read as a whole. I acknowledge that paragraphs 35 and 39 of the Framework have no direct relevance to the main issue, but I interpret paragraph 32 similarly to the Council. The wording can only be interpreted as it is written. The second bullet point says that decisions should take account of whether safe and suitable access to the site can be achieved for all people. There is no reference in that particular sentence to it applying only to schemes which generate significant amounts of movement. Where such schemes do, the first sentence of the paragraph expects them to be supported by a Transport Statement/Assessment. The third bullet point is a reference to the residual cumulative impact on the network often some distance from individual

- application sites. The Inspector's appeal report (at paragraph 238 on pages 32 and 33) from Barrow Upon Soar supplied by the appellant alludes to this overall approach i.e. "... the need for safety at the site access itself and residual cumulative impacts on the network that must be severe if development is to be prevented or refused."
31. The document, Guidance on Transport Assessment, is primarily aimed at determining whether an assessment may be required and if so, what the level and scope of that assessment should be. It is of little relevance to this case.
 32. Manual for Streets (MFS1) and Manual for Streets 2 (MFS2) however both provide relevant guidance. The starting point in terms of visibility for a 30 mph speed limit would be 2.4 m (x) by 43 m (y). Based on the speed readings and visibility splay calculations provided by BCL, I accept that the y-distance can be increased to 52 m to the south and reduced to 42 m to the north. As this is not a slow-speed situation, I agree with the LHA that the x-distance should be 2.4 m. The relevant visibility standards I apply to this case for the access are 2.4 m by 52 m to the south and 2.4 m by 42 m to the north.
 33. BCL says that on-site measurements show that visibility splays of about 2.4 m by 12 m to both the north and south can be achieved to a point 1 m away from the nearside kerb along Main Street without encroaching onto third party land. The LHA says that to the carriageway edge the emerging visibility over controlled land is 9 m to the north and 12 m to the south. In either of those scenarios, I regard the visibility at the point of access to be severely substandard in both directions.
 34. On-street parking along the western side of Main Street also hinders visibility further. In accordance with MFS1 and MFS2, ideally parking should be outside the visibility splays but in some circumstances where the speeds are slow, some encroachment may be possible. I do not consider that the speeds along Main Street can be described as low. This roadside parking adds to my concerns about the physical limitations of the access.
 35. MFS2 indicates that unless there is local evidence to the contrary, a reduction in visibility below the recommended level will not necessarily lead to a significant problem. I accept that there have been no recorded accidents on this part of Main Street in this last five years. There appears to have been an incident on the access drive itself on 6 November 2013, the full and exact details of which are not before me. I note also that there are other accesses onto Main Street close to the subject access but that in itself is not a good reason for allowing additional use of an existing access with severely substandard visibility. Whilst I accept that drivers would tend to emerge cautiously, I do not believe the local evidence presented justifies a situation where only about one quarter of the desired visibility splays can be provided in each direction in relation to a fairly busy, classified road.
 36. There appears to be agreement between the LHA and BCL that the subject access serves the barn and parking for two dwellings. Those dwellings may also from time to time take advantage of roadside parking on Main Street given its convenience in relation to the front doors of those dwellings. As the appellant can easily access the barn and fields on foot from the property at 136 Main Street and utilize the other vehicular access from time to time, I have

some difficulty in accepting the evidence presented that the lawful use of the barn as two stables with associated storage, restricted from trade and business, generates eight daily vehicular movements along the subject access track.

37. In any event, it is apparent that some of the claimed vehicular activity is generated by the keeping of animals on the two fields. Insofar as I can see there would be no legal restriction preventing the appellant carrying on with some use of the fields if the barn was put to use as a dwelling as proposed. In such a scenario some of the claimed existing vehicular activity would not necessarily be extinguished. Moreover, occupiers of the proposed dwelling are unlikely to make use of roadside parking given the separation distance between it and Main Street. I consider that the Council and LHA were correct to conclude that the proposal would result in a material intensification in the use of the subject access.
38. The appeal report on Barrow Upon Soar is not a directly comparable case. The Highway Authority did not object to that proposal. The highway safety issue appeared to involve a junction some distance from the site where residual cumulative impacts on the network were considered. The identified deficiency in visibility there was relatively minor.
39. In all, I consider that an additional dwelling would materially intensify the use of this private access road which has severely substandard visibility where vehicles emerge onto Main Street. This would compromise both the safety of those drivers and the safety of other road users. I conclude that the proposed barn conversion would have an adverse effect on highway safety along Main Street and thereby conflict with the aims of LP Transport Policy 6, MFS1 and MSF2 and the Framework.
40. There is conflict with the development plan and I find no material considerations of sufficient weight to justify planning permission. Thus, this appeal does not succeed.

Andrew Dale

INSPECTOR

Appeal Decision

Site visit made on 25 February 2014

by Stephenie Hawkins BSocSc(Hons) MPhil MSc MRTPI

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

Decision date: 25 March 2014

Appeal Ref: APP/F1040/A/13/2207901

Egginton Hall, Church Road, Egginton, Derby DE65 6HP

- 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 Kevin Ellis against the decision of South Derbyshire District Council.
 - The application Ref 9/2013/0250, dated 24 January 2013, was refused by notice dated 30 May 2013.
 - The development proposed is a new dwellinghouse.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. As far as relevant, I have taken the Planning Practice Guidance, issued on 6 March 2014, into account in reaching my decision. This cancels the Technical Guidance to the National Planning Policy Framework, as referred to in the decision notice in respect to flood risk. However, it does not, in my view, constitute a material change to the approach to flood risk as relevant to this appeal.

Main Issues

3. The main issues are whether the proposed dwelling would:
 - be acceptable given its location within the countryside; and
 - be located in an area at risk from flooding, and, if so, whether it would, as a consequence, be acceptable.

Reasons

Development in the countryside

4. The appeal site comprises a triangular shaped plot of land accessed from the access road to Egginton Hall. There is a mature tree within the site and trees are adjacent to the site's boundaries, within the rear gardens of dwellings on Fishpond Lane to the north west and a playing field to the south east.
5. The appeal site falls just outside the village confines, as shown on the Proposals Map of the South Derbyshire Local Plan (LP), adopted May 1998. Whilst this is not challenged by the appellant, he contends that the site should

be included within the village confines, due to improved flood defences. However, as pointed out by the Council, village confines are the result of a strategic planning decision and a review of the village confines is not, therefore, a matter for this appeal. For the purposes of this appeal, the development plan shows the site as beyond the village confines and, as such, it falls within the countryside.

6. In the interests of preserving the character and appearance of the countryside and protecting the best agricultural land, Environment Policy 1 and Housing Policy 8 of the LP seek to restrict new development in the countryside. New housing is restricted to that necessary to the operation of an established, viable, long term rural based activity. These policies are consistent with the National Planning Policy Framework (the Framework), the core principles of which require the intrinsic character and beauty of the countryside to be recognised and rural communities to be supported. In this instance, a case has not been made that the proposed dwelling is necessary to the operation of a rural based activity.
7. The appellant contends that the site is not suitable for agricultural use, as it is extensively covered by concrete bases from Nissen huts that were developed on the site during World War II. The appellant goes on to contend that the site should therefore be considered as brownfield land. Some concrete bases were evident on my site visit. However, the site is being used for the ad hoc growing of Christmas trees and the remains of the Nissen huts, the use of which the appellant states ceased in 1950, have, to me, largely blended into the landscape. Consequently, I do not consider the site falls within the definition of previously developed land as defined by the Framework. Moreover, I consider it is intrinsically part of the countryside. From the adjacent playing field the site forms part of the wider open landscape, contributing to a soft edge to this part of the village, with only glimpses of built form on Fishpond Lane through the trees. Regardless of the design of the proposed dwelling, it would materially harm the character and appearance of this part of the countryside, by virtue of being built form clearly visible through the loose range of trees within the playing field.
8. For the reasons given above, I conclude that the proposed dwelling would not be acceptable given its location within the countryside. As such it would be contrary to Environment Policy 1 and Housing Policies 5 and 8 of the LP, which seek to restrict new housing development to that which can be accommodated within village confines or to that which is necessary in a countryside location to support an established rural activity.

Flood risk

9. The Environment Agency has advised that the appeal site falls within Flood Zone 2, with the access within Flood Zone 3. The appellant suggests that the site falls outside of the areas at risk of flooding and that the access, which is existing, is being raised as part of flood defence works. In this respect, the appellant draws my attention to Environment Agency current and design flood maps. However, these maps show part of the site, and its access, to be at risk of flooding. Consequently I conclude that the proposed development would be located in an area at risk from flooding.
10. Given the site's location within an area at risk from flooding, in line with the Framework, the proposal should be subject of a Sequential Test to demonstrate

whether or not there are reasonably available sites appropriate for the proposed dwelling in areas with a lower probability of flooding. However, I have been provided with little substantive evidence in this respect. Whilst the appellant contends that the appeal site is the only suitable site, another being constrained by a Tree Preservation Order, I have no evidence of the geographical area examined, the sites considered, or the methodology used to compare sites. On the basis of the evidence before me, I cannot conclude that the requirements of a Sequential Test have been met.

11. The Environment Agency advises that had the Sequential Test been met, a site specific Flood Risk Assessment (FRA) would then have been required. This would need to demonstrate that the development would be safe for its lifetime and would not increase flood risk elsewhere. As advised by the Environment Agency, it should, amongst other things, set out details of the proposed development and flood risk management measures, such as floor levels and escape routes, as touched upon in the appellant's submission. Whilst I note the appellant's submission in respect of a FRA, as the Sequential Test has not been met I do not consider it necessary to give further consideration to flood risk.
12. For the reasons given above, I conclude that the proposed dwelling, given its location within an area at risk from flooding, would not be acceptable. As such it would conflict with the Framework's sequential risk based approach to the location of development.

Other Matters

13. The appellant states that the proposed dwelling is required as a refuge in the event of a flood, as flood defence works will result in the flood levels around Egginton Hall increasing, isolating the Hall and putting its outbuildings underwater. I do not underestimate the distress caused to occupiers of properties affected by flooding. However, notwithstanding that the proposed development itself would be located within an area at risk of flooding and that such a refuge may be able to be met by an alternative site, or means, within the locality, I consider such an argument could be repeated by many occupiers of properties at risk of flooding across the country and as such does not amount to special circumstances to justify an unacceptable form of development.
14. I note the appellant's comments that the proposed dwelling would have little, if any, impact on the living conditions of occupiers of nearby dwellings and the adjacent playing field. I also note that the proposal may be acceptable in other respects, such as the incorporation of sustainability measures into its design. However, the absence of harm in respect of such matters does not justify a development that would be unacceptable due to its location within the countryside and an area at risk of flooding.
15. The appellant points out that the Government encourages development and contends that the proposed dwelling, which would be in an accessible location close to village facilities and services, would add to the housing stock of the area. Notwithstanding the contradiction of the proposed dwelling providing both a refuge for the appellant and contributing to general housing supply, taking account of the Framework, which recognises the intrinsic character and beauty of the countryside and seeks to steer development to areas with the

lowest probability of flooding, I do not consider the proposal represents a development which the Government encourages.

Conclusion

16. I have found that the proposed dwelling would not be acceptable given its location within the countryside and an area at risk from flooding. In my judgement, the other matters reviewed above do not justify the proposal. Consequently, the appeal should be dismissed.

Stephenie Hawkins

INSPECTOR