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Date: 21 March 2024

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held at **Council Chamber**, Civic offices, Civic Way, Swadlincote on **Tuesday, 02 April 2024 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Labour Group**

Councillor G Jones (Chair), Councillor D Shepherd (Vice-Chair) and
Councillors J Carroll, M Gee, I Hudson, A Jones, L Mulgrew and K Storey.

Conservative Group

Councillors K Haines, A Kirke and D Muller.

Liberal Democrats

Councillor J Davies.

Non-Grouped

Councillor A Wheelton.



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 STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 77**

Exclusion of the Public and Press:

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

Report of the Strategic Director (Service Delivery)

Section 1: Planning Applications

Section 2: Appeals

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

1. Planning Applications

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

Reference	Item	Place	Ward	Page
DMPA/2024/0027	1.1	Wilne	Aston	6
DMPA/2023/1494	1.2	Scropton	Hilton	12
DMPA/2023/1526	1.3	Melbourne	Melbourne	28
DMPA/2023/1660	1.4	Melbourne	Melbourne	33
DMPA/2024/0121	1.5	Stenson	Stenson	38
DMPA/2024/0037	1.6	Swadlincote	Swadlincote	42
DMPA/2023/1350	1.7	Willington	Willington	49
DMPA/2024/0062	1.8	Hartshorne	Woodville	58

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 report of the Strategic Director (Service Delivery) 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 Strategic Director (Service Delivery), 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.

Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
BNG	Biodiversity Net Gain
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

Item No. 1.1

Ref. No. [DMPA/2024/0027](#)

Valid date: 08/01/2024

Applicant: M and S Rodgers and Hampson **Agent:** TUK Architecture

Proposal: The variation of condition no. 9 of permission ref. DMPA/2022/1293 (for change of use and conversion of the existing building into a Holiday Let) to incorporate reference to the 'garden path' instead of 'footpath' at 11 Wilne Lane, Shardlow, Derby, DE72 2HA

Ward: Aston

Reason for committee determination

The current application seeks to vary condition 9 of planning permission DMPA/2022/1293, which was attached by Planning Committee.

Site Description

The application site is located off Wilne Lane behind properties 19-27 Wilne Lane and relates to a single storey old Coach house currently used as garages with associated hardstanding. The site lies within the Shardlow Conservation Area and to the north of the site lies the Trent and Mersey Canal and the towpath. A number of listed buildings lies within the vicinity.

The proposal

The application seeks permission to vary condition 9 of planning permission DMPA/2022/1293. Condition 9 currently states:

Notwithstanding the plans hereby approved, the existing footpath within the site to the canal towpath shall be retained in its current form and retained free from obstruction or impediment for the lifetime of the development.

Reason: In the interests of residential amenity and sustainable development in accordance with Policy BNE1 of the Local Plan Part 1.

The proposal is to amend the wording of the condition to replace the word 'footpath' with 'garden path' as follows:

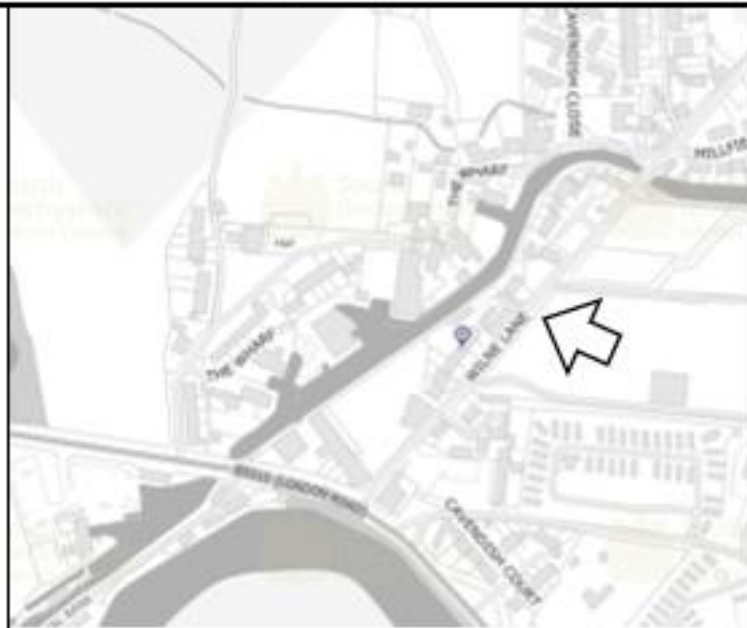
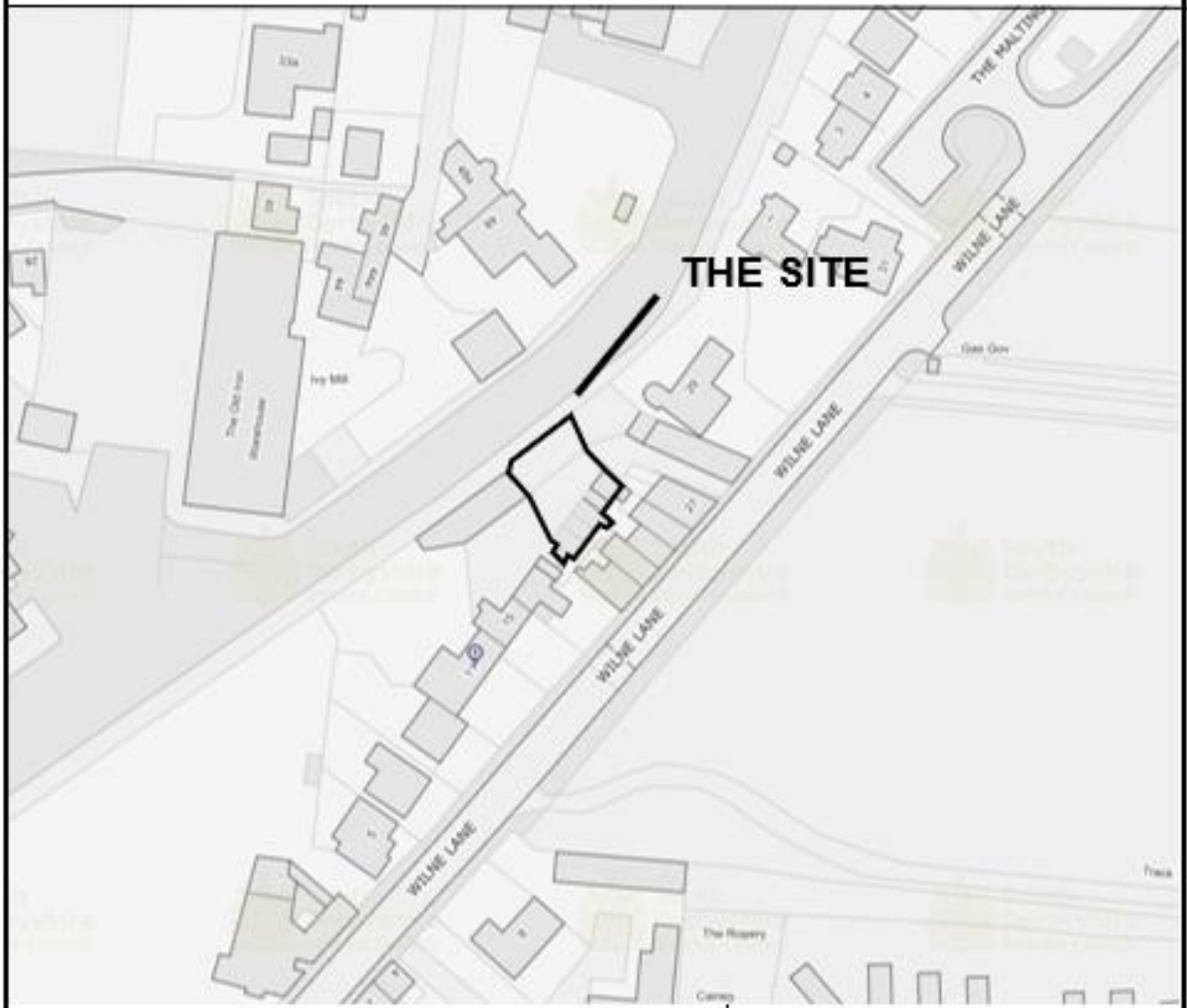
Notwithstanding the plans hereby approved, the existing garden path within the site to the canal towpath shall be retained in its current form and retained free from obstruction or impediment for the lifetime of the development.

The application description initially sought to remove condition 9 from the planning permission and was subsequently changed to the variation in wording (as above). The revised application description was reconsulted on in full.

Applicant's supporting information

The documents submitted with the application include

- Proposed Coach House Plans, 2111-BC01-P01 Rev B;
- Planning Statement Addendum, received 8 February 2024.



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Relevant planning history

DMPA/2022/1293 Change of use and Conversion of the existing Building into a Holiday Let – Approved.

DMPA/2020/0426 - Refurbishment of the existing sash windows (x 4) to the front elevation of house and replacement of the existing leaded lights with clear double-glazed glass and the replacement of the existing casement windows – Approved.

Responses to consultations and publicity

Canal and Rivers Trust

Based on the information available our substantive response (as required by the Town & Country Planning (Development Management Procedure) (England) Order 2015 (as amended)) is that the Trust has no comment to make on the proposal. (05/02/2024)

Public Comments

Five responses have been received which have been summarised below;

- a) There may not be a 'public' footpath however there is residential access to utilise this footpath. The footpath is used regularly and to my knowledge there has been no issues with residents using the footpath and this has been positively maintained and managed by residents throughout the years.
- b) Concern that removal of the condition would remove rights that other residents have to the path in housing deeds.
- c) No objection to the condition being amended to restrict public right of way, so long as existing right of way to the towpath is retained and unrestricted for residents.
- d) If condition 9 is removed the applicants will remove an ancient existing footpath that has been used by residents over the years. Queries whether the change will mean that the owners can assume ownership legally.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), and INF10 (Tourism Development).

2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside), BNE10 (Heritage Assets),

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

Planning considerations

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of the proposed condition variation;
- Other matters.

Planning assessment

Principle of the Development

An application can be made under Section 73 (s73) of the Town and Country Planning Act 1990 to vary or remove conditions. One of the uses of a s73 application is to seek amendments to existing conditions. Permission granted under s73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions.

Where a developer makes a s73 application the Local Planning Authority is only able to consider the question of the conditions attached to the planning permission and not the principle. In this respect (a) if the LPA decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

In this case, the application seeks to amend condition 9 which includes a requirement for the existing 'footpath' within the site to be retained and remain unobstructed. The proposed amendment to the wording of this condition would not result in a significantly different development than originally approved and the original description of development would remain unchanged. The s73 is therefore considered an appropriate planning route for the changes sought and the principle of the development as established by the extant planning permission DMPA/2022/1293 is unquestioned.

Condition 9

The Planning Statement Addendum (received 8 February 2024) provides an explanation for the proposed change in wording to condition 9. It states that the path which the planning condition refers to is not a footpath and that there is no public right of way from the towpath (which in itself is not a footpath), through the applicant's property to Wilne Lane. It is apparent that there is concern that through the provision of condition 9, a footpath under the meaning of The Highways Act 1980 has been established within the application site.

It is noted that the pathway is not identified on the Derbyshire County Definite Map and does not comprise a public right of way. It is acknowledged that the wording of condition 9 refers to a 'footpath'. The wording of the condition alone would not however provide the pathway with status as a 'public right of way', which can only be acquired through a Public Path Order.

Notwithstanding this, the application to alter the wording of condition 9 to refer to 'garden path' is not unreasonable and would avoid any potential confusion, whilst maintaining the general provisions of the condition i.e. that the pathway be retained and kept free from obstruction. It is also noted that the plans in both the original and current application show that the pathway would not be obstructed; and there have been no changes to the previously approved plans, aside from the addition of a label to indicate the 'garden path' in the current submission (ref. Proposed Coach House Plans, 2111-BC01-P01 Rev B).

Members from the local community raised concern that the proposed amendments would prevent right of access that the community advises are in place within housing deeds. It is noted that planning permission does not override the requirements of separate legislation and would not override any private rights of third parties.

Conclusion and Planning Balance

The principle of the proposed amendment to condition 9 is considered to be acceptable in principle as a section 73 variation. The replacement of the word 'footpath' with 'garden path' would be a minor alteration to condition 9, not affecting the purpose of the condition to maintain access to the canal towpath. The requirement for the pathway to be retained and free from obstruction, as is shown on the plans, would remain. It is therefore considered that the proposed amendment would be acceptable, and the planning application is recommended for approval. The conditions attached to ref.

DMPA/2022/1293 should be reattached to any forthcoming decision notice taking into account the proposed change in wording and matters previously discharged.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

APPROVE subject to the following conditions

1. The development hereby approved shall be begun before the expiration of three years from the date of the planning permission ref. DMPA/2022/1293.

Reason: To conform with Sections 73 and 91 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 application form, Location Plan, Block Plan and Proposed Plans & Elevations Dr No. 2111-BC01-P01 B received 5th January 2024, Cover Letter – Update received 18th April 2023, Flood Risk Assessment received 20th September 2022, Inspection Report – ASP Consulting received 20th September 2022, Bat Survey received 20th September 2022 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) Order 2015, or any Order(s) revoking and re-enacting either or both Order(s), with or without modification, the building(s) hereby permitted shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order, without the prior grant of planning permission by the Local Planning Authority pursuant to an application made in that regard, and:

- (i) the building(s) shall not be occupied as a person's sole, or main place of residence;
- (ii) the accommodation shall not be occupied by a person or group of persons for a continuous period of more than 28 days, and it shall not be re-occupied by the same person(s) within 3 months following the end of that period; and
- (iii) the site operator shall maintain an up-to-date register of the names of all occupiers of the building(s), and of their main home addresses, and shall make that information available at all reasonable times to the Local Planning Authority.

Reason: The development hereby approved is expressed to be overnight accommodation, and as such, is permitted by virtue of its accordance with INF10 Tourism Development which supports the provision of overnight accommodation where identified needs are not met by existing facilities. The permitted development is, therefore, considered to be contributing to an identified need, and should be retained as such.

4. The parking provision, 1 car parking space, shown on the approved plans shall be constructed and the space be available for use prior to the first use of the proposed holiday let, and thereafter the approved facilities together with the means of access thereto shall be maintained as approved, and be reserved for the benefit of the development hereby permitted. No additional car

parking spaces should be provided unless details have first been submitted to and approved in writing by the Local Planning Authority

Reason: To ensure that the proposed development does not prejudice the free flow of traffic or the conditions of general safety along the neighbouring highway and to ensure that the facilities provided are reserved for the benefit of the development for which they are specifically required.

5. No work should be undertaken on either of the buildings between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered, then these should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts.

6. The measures in the Biodiversity Enhancement Plan (ref. P2427_01, Elton Ecology, 13 November 2023) and covering letter from TUK Rural (dated 5 December 2023) approved under ref. DMOT/2023/1625 shall be implemented in full and maintained thereafter.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts.

7. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations, and any mitigating features such as dimmers, PIR sensors and timers. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Such approved measures will be implemented in full.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

Item No. 1.2

Ref. No. [DMPA/2023/1494](#)

Valid date: 02/01/2024

Applicant: Liam Kelly

Agent: RPC Ltd

Proposal: **The variation of condition no. 13 (time limit and reinstatement of the land) and condition number 27 (landscape management plan) of permission ref. DMPA/2021/0315 relating to the time limit and lifespan of the development for the installation of up to 10MWp of solar photovoltaic panels and associated works on Land at SK1930 5212, Scropton Road, Scropton, Derby, DE65 5PR**

Ward: Hilton

Reason for committee determination

The application is reported to Planning Committee due to the receipt of more than 4 objections from members of the public and the application has been called to committee by Cllr Andrew.

Site Description

The application site lies within the Parish of Foston and Scropton and the ward of Hilton, directly to the north of the village of Scropton and is accessed from a track leading from Scropton Road. The site is an irregular parcel of land extending to just over 9 hectares. The site is currently understood to be in agricultural use. Beyond the southern limits of the site and the village lies the River Dove, the site lies within flood zones 2 and 3. The site is shown to be within an area of archaeological interest and potential and lies to the northeast of a number of listed buildings within the village of Scropton. The site comprises a number of fields currently occupied by grasslands in agricultural use.

The proposal

The application proposes to vary conditions attached to the previously approved scheme which granted permission for the development of a solar farm with a generating capacity of 10 MW. The proposed changes would serve to extend the approved lifetime of the development from 30 years to 40 years and change the proposed landscape management plan extending this for the same period.

Applicant's supporting information

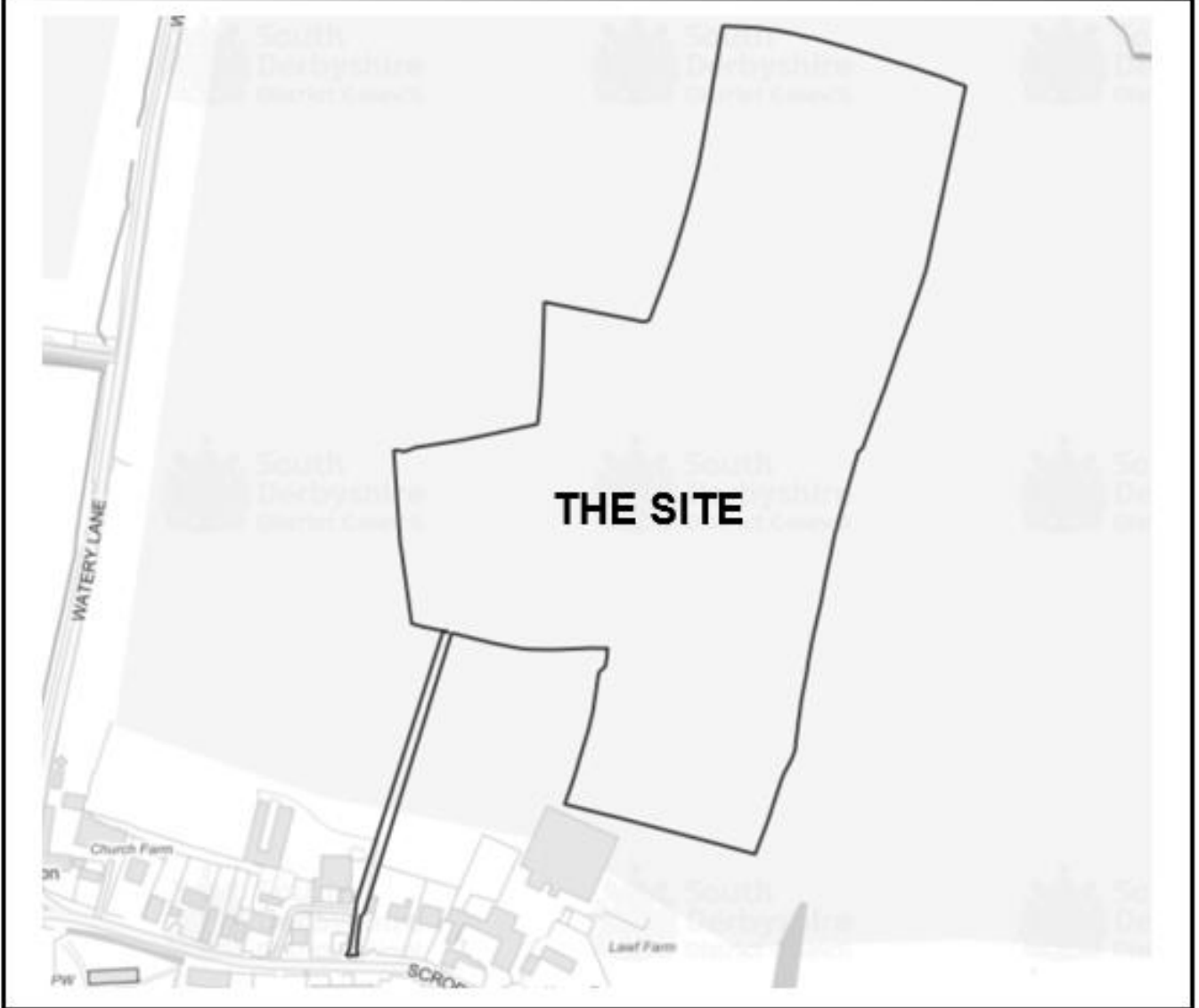
[Planning Statement - Green Switch Capital, Hawthorne Solar Farm, s.73 Planning Statement, report number RPC055-PL01 Version 0.2, dated 20/11/2023, received 22/11/2023](#)

The Planning Statement submitted in support of the application sets out that, until recently, 30 years was the typical operational lifetime for a solar farm, but, due to significant and rapid enhancements in technology solar farms can now be maintained for significantly longer periods of time. The planning statement sets out that due to the technological advancements the proposed development stands to make a substantial contribution to government renewable energy targets beyond the approved 30 year lifespan as approved, both feeding green energy into the network whilst simultaneously supporting the reduction of carbon dioxide emitted from fossil fuels. It notes these to be significant material considerations that weigh in favour of the proposals. The planning statement seeks to justify the proposed changes in the content of national and local policy, referencing the NPPF (Section 14, para 160 a) in respect of plans maximising the potential for suitable development and their future re-powering and life extensions, while ensuring that adverse impacts are addressed appropriately.

[Landscape Management Plan - GSI Hawthorn Limited, Hawthorn Solar Farm, Landscape Management Plan, Job number GM10971, Report number: 0020 V2.0, dated January 2024, received 11/01/2024 -](#)

The submitted Landscape Management Plan updates a previously approved document that sought to

DMPA/2023/1494 – Land at SK1930 5212, Scropton Road, Scropton, Derby, DE65 5PR



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discharge the requirements of Condition 27 of the parent permission (DMPA/2021/0315). The updated plan provides details of the proposed landscape and habitat arrangements and the ongoing management and maintenance of these. The plan is updated for submission in support of this application to reflect the extended operational lifetime of 40 years for which permission is sought.

Landscape Planting Plan, Drawing No: GM10971-013 Rev B, dated 28/01/2021, received 22/11/20203

Site Location Plan, Drawing No: GM10971-010 Rev A, dated 18/03/2021, received 01/12/2023

Relevant planning history

9/2015/0688 - Proposed installation of photo-voltaic panels, inverters and transformers to produce renewable electricity. Approved with conditions - December 2015

DMPA/2019/1198 - Outline application (matters of access to be considered now with matters of layout, scale, appearance and landscaping reserved for later consideration) for the erection of 10 dwellings with associated work. Approved - October 2021.

DMPN/2020/0339 - Certificate of Lawfulness for existing development to determine if application ref. 9/2015/0688, relating to the installation of photo-voltaic panels, inverters and transformers to produce renewable electricity, was lawfully commenced. Refused - October 2020.

DMOT/2021/0137 - Screening request relating to the proposed installation of photo-voltaic panels, inverters and transformers to produce renewable electricity. Not EIA Development - February 2021.

DMPA/2021/0315 - The installation of up to 10MWp of solar photovoltaic panels and associated works, including substations, inverters, access tracks, security fencing and cameras. Approved - February 2022

DMOT/2022/1030 - The approval of detail reserved by condition nos. 8 (HGV route survey), 10 (temporary access track details), 11 (maintenance track details), and 12 (public rights of way management during construction), 14 (solar panels, module frames, fencing; gates, CCTV poles, CCTV equipment, customer cabin, transformers, inverters and substation DNO details), 15 (equipment details), 17 (levels), 19 (lighting), 20 (CCTV active monitoring), 21 (archaeology), 22 (archaeology compliance), 23 (archaeology results analysis, publication and dissemination), 24 (tree protection), 26 (landscaping plan), 27 (Landscaping Management Plan), 28 (surface water drainage), 29 (surface water hierarchy), and 30 (construction surface water management) of permission ref. DMPA/2021/0315 (for the installation of up to 10MWp of solar photovoltaic panels and associated works, including substations, inverters, access tracks, security fencing and cameras). Approved - July 2022

Responses to consultations and publicity

Consultees

Foston and Scropton Parish Council - No comment received at the time of writing.

Natural England - No comment received at the time of writing.

Derbyshire County Council - Landscape Architect - No comment received at the time of writing.

Derbyshire Wildlife Trust - The Officer confirms they have reviewed the information and that the habitat enhancement, creation and ongoing management prescriptions are the same albeit with the proposal to extend such arrangements for the proposed 40 year period. They confirm that they do not envisage any adverse impacts as a result of the proposals and note the proposals will ensure extended management.

South Derbyshire District Council

Conservation Officer - No comment received at the time of writing.

Parks, Green Spaces and BNG - No comment received at the time of writing.

Tree Officer - No comment received at the time of writing.

Members of the public

13 Objections to the scheme were received, these are summarised below:

- a) Conflict with previously imposed conditions in respect of length of the permission and restoration to agricultural land, previously objected to 30 year permission and sustain objection to proposed 40 year permission

Agricultural Land

- a) Agricultural land being taken out of food production,
- b) The impacts on food security arising from the loss of agricultural land
- c) Crucial need to consider that agricultural land could and should be better used for crop production

Flood Risk

- a) New development should minimise the risk of flooding to people, property and the environment
- b) Increased flood risk due to the introduction of panels and loss of permeable surfaces / agricultural root systems
- c) There are increased risk of flooding arising from the development to neighbouring properties, farmland and highways
- d) The comments and materials referred to within the planning statement are from 2015
- e) The EA had previously observed in comment on the previous application that the modelling did not take into account flooding from other sources (only taking into account river flooding)
- f) Science Media Centre states that flooding in the UK is increasing as a result of climate change, alternate land use and development within flood plains.
- g) Lack of flood risk assessment supporting this application

Visual and landscape impact and the impact upon the rural setting, impacts on visual amenity

- a) Impacts on wildlife
- b) Industrial nature of the development, visual impacts of the development on the rural landscape and views
- c) Boundary treatments not in keeping with the rural area

Impact on residents

- d) The site is within close proximity to some residential dwellings, the impact on views and settings of these residences will be detrimentally affected
- e) The proposals and existing approval have resulted in stress , anxiety and worry for some residents
- f) Harmful Impact upon quality of life of residents, mental health and wellbeing
- g) Unknown impact on human and animal health from solar panel operation

Other

- a) The proposals contravenes the requirements of the local plan,
- b) Change of government policy, since grant of previous permission, to advise against development of solar farms on farmland
- c) Lack of consultation received from LPA, Alleged attempt to keep the application from members of the community. Request notification sent to all those who previously commented
- d) Impact upon property values
- e) It is requested that the application be heard at planning committee rather than determined under delegated authorities
- f) Ineffective energy production from solar panels
- g) Concerns surrounding decommissioning / responsible decommissioning and potential for detrimental impact upon the environment arising from decommissioning

- h) Queries over decommission / responsibilities if the company were to go into liquidation
- i) Need for planning to promote solar roofing rather than use of agricultural land
- j) Removal of opportunities to enjoy the countryside.

It is noted that 2 of these objections were received in duplicate from the same objector and repeated verbatim other comments.

1 comment of support was received and is summarised below:

- a) The proposal for green energy is required as the country will be increasingly dependent upon sustainable energy

Relevant policy, guidance and/or legislation

The relevant Development Plan policies is:

(2016) Local Plan Part 1: Policy S1: Sustainable Growth Strategy; Policy S2: Presumption in Favour of Sustainable Development; Policy S3: Environmental Performance; Policy S6: Sustainable Access; Policy E7: Rural Development; 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 SD6 Sustainable Energy and Power Generation; Policy BNE1: Design Excellence; Policy BNE3: Biodiversity; Policy BNE4: Landscape Character and Local Distinctiveness; Policy INF1: Infrastructure and Developer Contributions; Policy INF2: Sustainable Transport; Policy INF5: East Midlands Airport and Policy INF7: Green Infrastructure

(2017) Local Plan Part 2: SDT1 Settlement Boundaries and Development; BNE5 Development in Rural Areas; BNE7 Trees, Woodland and Hedgerows and BNE10 Heritage

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national planning policy and guidance is:

National Planning Policy Framework
National Planning Practice Guidance

The relevant legislation is:

The Town and Country Planning Act 1990, Section 73

Planning considerations

This application seeks to vary or remove conditions attached to a previous approval. The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account along with the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Extended use of the site as a solar farm
- Landscape and Habitat management

Planning assessment

The proposals are as a result of improvements to solar panel technology which mean the panels are efficient in generating electricity for a longer period of time, thus meaning the development could provide electricity for 40 years rather than the previously approved 30 year period. It is relevant that the previous permission made provision within condition 13 for the lifetime of the development to be limited to 30 years, unless otherwise agreed on application to the Local Planning Authority. It is also important to note that the application does not seek to amend conditions beyond the lifetime of the solar park before commissioning and the landscape management plan which is also proposed to be extended to 40 years in order to ensure that the previously approved habitat and landscape measures are secured,

managed and maintained for the lifetime of the development.

To this end the application seeks to vary Conditions 13 and 27 amending the wording of both from 30 years to 40 years.

The principle of development

The principle of development is considered to be established by the previous approval for development of a solar farm on this site. This application does not provide the opportunity to reconsider the principle of development as established.

Extended use of the site as a solar farm for an additional 10 years

The National Planning Policy Framework (NPPF) places great emphasis upon sustainable development and set out the different considerations for planning decisions which contribute towards sustainability, it identifies three key elements as economic, social and environmental. Specified within the environmental objective to protect and enhance our natural environment are included:

- 'Making effective use of land
- 'Improving biodiversity'
- 'Using natural resources prudently'
- 'Minimising waste and pollution'
- 'Mitigating and adapting to climate change, including moving to a low carbon economy'

Paragraph 157 states the planning system should support the transition to a low carbon future in a changing climate, it should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions and support renewable and low carbon energy and associated infrastructure.

Paragraph 163 goes on to state that when determining applications for renewable and low carbon development LPAs should:

a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions; and

b) approve the application if its impacts are (or can be made) acceptable. Once suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas

c) in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable.

Policy SD6 of the South Derbyshire Local Plan relates to Sustainable Energy and Power Generation and sets out the Council will support renewable energy developments, ancillary buildings and infrastructure where the environmental effects have been appropriately considered and schemes will not give rise to unacceptable impacts on landscape or townscape character, ecology, the historic environment or cultural heritage assets and that there will not be unacceptable impacts on local amenity, or give rise to safety concerns, as a result of noise, shadow flicker, electromagnetic interference, emissions to the air or ground, odour or traffic generation and congestion.

It is considered that the extension of the proposed operational period of the development from 30 to 40 years would provide extended contributions from the development towards increased renewable low carbon energy production. The NPPF advises that significant weight be given to the benefits of extending the life of existing renewable sites. The site, by virtue of the existing permission, can be considered in this context to offer benefits in accordance with the requirements of the NPPF. It is

considered that the impacts are consistent with those previously assessed and are therefore acceptable.

The application seeks not only to extend the operational lifetime of the solar farm but also to extend the landscape management proposals to ensure that the benefits to the site in terms of landscape and habitat management are secured for the extended operational lifetime. It is considered that at the end of the approved 30 year period the landscaping will also have matured to the degree where, in the context of the solar farm, the landscape enhancements will have the most positive impact on screening the development and in providing mature habitats during the extended 10 year period.

The proposed changes to the conditions do not give rise to any additional environmental effects or increased or exacerbated landscape concerns due to the established nature of the landscaping taken from the end of the currently approved lifetime of the development. Furthermore the environmental effects considered as part of the previously approved application are not considered to be exacerbated by the recommendation to approve the extension of the operational lifetime of the development.

The proposed changes are therefore considered to accord with the requirements of local and national policy.

Landscape and Habitat management

Section 15 of the NPPF discusses how planning policy and decisions should contribute to and enhance the natural and local environment. Paragraph 180 c) identifies *minimising impacts on and providing net gains for biodiversity*. In relation to determining applications paragraph 186 and its' sub paragraphs advise the circumstances where impacts upon biodiversity, habitats or protected sites indicate that planning permission should not be granted

Local Plan Part 1 Policy BNE3 sets out that development which supports the protection, enhancement management and restoration of biodiversity and delivers net gains will be supported. Policy BNE4 of the Local Plan Part 1 relates to local character and local distinctiveness and sets out that the quality of the District's landscape will be protected and enhanced through careful design and sensitive implementation of new development.

The proposed development delivers landscape and habitat improvements that are secured across the lifetime of the development. The relevant conditions are recommended to be updated to secure compliance with an updated Landscape Management Plan and the previously approved Landscape Plan. Formal comments have not been received from the Landscape Officer however, it is understood that the impact on the landscape declines over the lifetime of the solar farm, as the landscaping matures, as such, the extension of the operational lifetime of the development is considered to fall within the years when the landscape impact will have declined as the landscaping proposals mature. The ongoing management of proposed landscape features has been secured via condition 27, which is considered necessary to make the proposed changes acceptable in planning terms. The Wildlife Trust set out in their response that they do not consider there will be adverse impacts arising from the proposals. The proposals are, for these reasons, considered to accord with the relevant development plan and national policies and are therefore acceptable.

Other Issues

A number of matters arise from comments received from members of the public, which, where not addressed in the relevant sections of the report are addressed here.

Visual impact of the development

Concerns are raised regarding the visual appearance of the development within a rural setting. It is understood that the previously approved development introduces industrial features to the rural setting. However, the acceptability of this was confirmed in the previously approved scheme, this application seeks to extend the operational lifetime of the development and as such Officers must consider whether the visual impact is acceptable during these additional 10 years, the acceptability of the visual impact during the initial 30 year period being established by the previous permission.

During the consideration of the application the landscape management provisions have been updated to ensure that the landscape mitigation measures will be continued during the extended period. Subject to compliance with these conditions, the landscape mitigation will be of a mature nature during the extended period offering the best screening of the proposals. As such it is considered that the visual impact is acceptable.

Agricultural Land

The previously approved application was supported by a Soils and Agriculture Assessment which noted that the site comprised more than half the total area in Grade 3 according to the Agricultural Land Classification, with 74% of this in Grade 3a, and therefore Best and Most Versatile (BMV) Land and 26% in Grade 3b which is moderate quality and is not considered to be BMV. The report noted the overall loss to be approximately 5% with mitigation proposed to support the retention of, and minimise impacts upon, the soil through planning of grass herbage mix and that construction period is proposed between April - September to minimise the impact upon soil. The report concluded that the ongoing use of the site for grazing and low level of disturbance would result in no significant effects on soils. The report also concluded that, given higher quality soils across the district the location of the development in other areas of the district would be unlikely to overcome this loss and had the potential to have a greater impact by resulting in loss to higher quality land.

The previous permission secured, by condition 13, the restoration of the site to former agricultural use, it is proposed to retain all elements of condition 13, replacing only the 30 year period with a 40 year period thus ensuring that the land be reinstated to agricultural use following the use as a solar farm.

It is noted that another application for a solar farm within the district at Lullington, that was refused, on the grounds of the loss of BMV, was subsequently dismissed at appeal and that this decision was upheld on legal challenge. Notwithstanding this, the development of a solar farm on this site and associated loss of BMV are both accepted in the previous permission. This site is of a smaller scale, and though Natural England have been consulted, no response to that consultation has been received.

It is noted that the site is currently arable land used for grazing and that grazing would continue on grass planted beneath the panels during the operational lifetime of the proposed development. Beyond the permitted and proposed lifetime of the development the return of the land to agricultural use is secured via condition. As the principle of the use of this site is considered established in respect of the use of a site partially assessed as BMV, it is not considered that this presents a robust reason for the refusal of the proposed extension of the lifetime as proposed.

The Lullington case is not comparable in this instance as the use of the site and loss of the quantum of BMV it contained was not established. In this application the use and impact on BMV for 30 years is considered established by the existing permission, and as noted above, the matters that are to be determined are not the impact on BMV as a principle but the extended period for which the BMV will be affected, which given, the benefits as set out in this report and the matters of this being a temporary loss are considered acceptable.

Flood Risk

Concerns are raised in relations to increased flood risk, the application does not seek to alter the quantum of development nor the amount of panels or hard surfacing. It is proposed to retain the previously approved conditions in relation to flood risk and as such the extended operational lifetime of the development does not give rise to further concerns regarding flooding.

Procedural matters

The application seeks amendments to the conditions as set out below, where struck through text indicates wording to be replaced and emboldened text indicates wording that will be added.

Condition 13

The development hereby approved is granted for a limited period only, expiring ~~30~~ **40** years after the

date on which electricity is first generated by the installation, on or before which date the solar panel arrays and associated buildings, structures, tracks, infrastructure, gates and fencing shall be removed and the site reinstated to the satisfaction of the Local Planning Authority as per its former agricultural use state, including the agricultural field land drainage system across the whole site area as it existed prior to the approved development, unless, prior to that date, permission has been granted for an extended period pursuant to an application made to the Local Planning Authority in that regard. The solar panel array operator shall inform the Local Planning Authority in writing within 10 working days of the first date on which electricity is first generated.

Reason: **In accordance with the applicants stated intentions and** in the interests of the visual amenities and landscape character of the rural area beyond settlement boundaries, so not to risk redundant equipment, structures, buildings and boundary treatments being left in place in perpetuity, compromising the productive use of the land and the character and appearance of the area thereafter **in accordance with the requirements of Policy BNE1, Policy BNE4 and Policy SD1 of the Local Plan Part 1 and the National Planning Policy Framework.**

Condition 27

The wording of Condition 27 is altered in respects of ensuring that, due the previously approved details, and those submitted in support of this application the condition secures compliance with the previously approved and newly submitted details rather than requiring further discharge of details.

The development hereby approved shall be undertaken, maintained and managed in accordance with the details contained within the approved Landscape Management Plan - GSI Hawthorn Limited, Hawthorn Solar Farm, Landscape Management Plan, Job number GM10971, Report number: 0020 V2.0, dated January 2024 ~~Prior to the first use of the development hereby approved a landscape management plan (LMP) shall be submitted to and approved in writing by the Local Planning Authority. The LMP shall include long term design objectives to cover the lifespan of the development of 30-40 years. Should the management responsibilities change notice (including contact details and means of informing the Local Planning Authority of any change to those details) shall be provided to the LPA within 10 working days of the change and Landscape Management shall continue to be undertaken in accordance with the approved plan. and maintenance schedules for all landscape areas to include long term maintenance of hedgerow and tree screening both as existing and as proposed. Where relevant, the maintenance schedules shall include means to annually review the condition of any hard surfaces, fixed equipment or furniture (including public information boards), and replace/upgrade those surfaces, equipment and furniture on a rolling programme. The landscape management plan shall be carried out as approved.~~

Reason: **In accordance with the applicants stated intentions and** in the interest of the visual setting of the development and the landscape character and visual amenity surrounding area over the lifetime of the development **in accordance with the requirements of Policy BNE1, Policy BNE3, Policy BNE4 and Policy SD1 of the Local Plan Part 1 and the National Planning Policy Framework.**

In addition to the changes to the above conditions for which the application seeks permission a number of conditions which have been discharged will be amended to make these compliance conditions rather than conditions requiring discharge on application.

Conclusion & Planning Balance

The NPPF states that there are three dimensions to sustainable development, namely economic, social and environmental and that these should be considered collectively and weighed in the balance when assessing the suitability of development proposals.

The comments received from members of the public in relation to the proposed development highlight a number of different concerns including the extended periods for which the land will be unavailable for agricultural use, the potential impacts as a result of flooding, the impact upon neighbouring residents in terms of the visibility of the development and the impact upon the rural setting.

The objections raised through the consultation process are noted, in this instance the impacts of the extended period of 10 years have been considered in respect of the context of the existing permission which allows the development a lifetime of 30 years. Extending the lifetime of the development for 10 years is considered to extend the benefits of renewable energy generation and ensure that the component parts of this development are used for an appropriate length so as not to result in a wasteful removal prior to the end of the functional lifetime of the equipment. Concerns were also raised in relation to decommissioning and how this is secured, as the planning permission is tied to the land, the requirements of the application for the structures to be removed in agreement within the Local Planning Authority would remain the responsibility of the landowner and as such are enforceable against them.

It is considered that, as at the time when the proposed lifetime would extend from and until, ie, between 30 years and 40 year, the landscaping will have matured to offer the best possible screening, the impact upon visual amenity, the landscape and users of the public rights of way will not have an unacceptable level of impact and that the proposed changes are therefore appropriate in this location.

Any harm arising, is considered to be limited as discussed above, and is also considered to be balanced by the ongoing environmental and economic benefits secured through the sustained use of the previously approved solar farm. These benefits are considered to be through the generation of green electricity, securing economic benefits for the landowner and energy company and the environmental benefits of this ongoing green energy generation in combination with enhancements secured through the extended landscape management plan offering benefits to habitats and landscape. The proposal would not therefore detrimentally impact upon the character and appearance of the area or the amenity of neighbouring occupiers such that would present a robust reason for the refusal of the application.

Taking the above into account the application is recommended for approval subject to the amended conditions included in this report.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

The application is recommended for approval subject to the amended conditions as set out in the body of this report. The recommendation is considered appropriate as it would secure a further 10 years of green energy, at the end of the existing approved 30 year lifespan of the development. The landscaping previously approved will have matured by this time and landscape any visual impacts will have reduced as the landscaping has matured, the management proposals are also to be extended, and secured by condition.

1. The development hereby approved shall be commenced before the 22nd February 2025.

Reason: To conform with Section 91 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 or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

-GM10971-002 Site Location Plan Rev A as received by the Local Planning Authority on 18th March 2021.

-GM10971-010 Site Location Plan Rev A as received by the Local Planning Authority on 18th March 2021.

- GM10971-014 Existing Site Layout Rev A with Topographical Information as received by the Local Planning Authority on 18th March 2021.
- GM10971-020 Fence Details Rev A as received by the Local Planning Authority on 22nd February 2021.
- GM10971-021 Gate Detail Rev A as received by the Local Planning Authority on 22nd February 2021.
- GM10971-023 Substation DNO and Solar Park Rev A as received by the Local Planning Authority on 22nd February 2021.
- PV Layout GSV1002-100 Rev E as received by the Local Planning Authority on 6th July 2021.
- CCTV GSS100A_001 as received by the Local Planning Authority on 22nd February 2021.
- 20ft Substation Details GSV1002-202 as received by the Local Planning Authority on 6th July 2021.
- 40ft Substation Details GSV1002-203 as received by the Local Planning Authority on 6th July 2021.
- Customer Cabin Details GSV1002-201 as received by the Local Planning Authority on 6th July 2021.
- Inverter details as attached to the appendices of the Wardell Armstrong letter dated 6th July 2021 IJP/GM10971/LET-006 as received by the Local Planning Authority on 6th July 2021.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. The development hereby approved shall be implemented as per the methodology as stipulated within the Dust Action Plan GM10971 REP-002 Version 0.2 dated February 2021 as received by the Local Planning Authority on 22nd February 2021, unless as otherwise agreed first by submission for approval in writing to the Local Planning Authority on a prior to execution basis.

Reason: In the interests of pollution control and amenity protection during the construction period of the development.

4. During the construction period of the development hereby approved, the details for routing HGV vehicles, deliveries, site access, manoeuvring and signage contained in the Construction Traffic Management Plan GM10971 010 V1.0 dated February 2021 as received by the Local Planning Authority on 22nd February 2021 shall be adhered to, unless as otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of highways safety, residential amenity and pollution control.

5. Prior to any other works commencing on site, a site compound shall be provided for the storage of plant and materials, site accommodation, parking and manoeuvring of site operatives' and visitors' vehicles, located in accordance with drawing GSV1002-100 PV Layout Rev E as received by the Local Planning Authority on 6th July 2021. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period. Upon completion of the development and prior to its first use the temporary construction compound shall be removed and the area made good.

Reason: In the interests of highways safety, pollution control, visual amenity, landscape character and amenity protection during the construction period of the development hereby approved.

6. No construction or related activity shall take place on the site outside the following hours: 0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Bank Holidays with the exception of work needed during an emergency.

Reason: In the interests of residential amenity protection during the construction period of the development.

7. Throughout the construction period of development hereby approved vehicle wheel cleaning facilities shall be provided and retained within the site within the Temporary Construction Compound as shown on drawing GSV1002-100 Rev E PV Layout and as stated within the Construction Traffic Management Plan February 2021 GM10971 010 V1.0 as received by the

Local Planning Authority on 6th July 2021 and 22nd February 2021 respectively. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highways safety, pollution control and amenity protection during the construction period of the development.

8. The condition of the HGV/haulage routes as inspected within the Pre-construction Road Condition Survey ref: number GM10971/REP-0021 and recorded by representatives of the applicant and the Highway Authority is agreed. Within 28 days of the completion of the works, details of the remedial works shall be submitted to and approved in writing by the Local Planning Authority. The approved reinstatement works shall be carried out within 3 months of the completion of the works.

Reason: In the interests of highways safety.

9. Prior to any works commencing in relation to the decommissioning of the site, a Construction Traffic Management Plan, site access, routing and remedial works program shall be submitted to and approved in writing by the Local Planning Authority and implemented throughout the decommissioning period.

Reason: In the interests of highways safety, pollution control and residential amenity during the decommissioning period of the development.

10. The approved temporary track(s) as detailed within drawing number GM10971-034 Constraints Plan shall be implemented on site in accordance with the approved details on a prior to erection of solar panels and associated equipment basis.

Reason: In the interests of highways safety during the construction period of the development hereby approved.

11. Prior to the first use of the development hereby approved for the generation of electricity the maintenance track as shown on drawing GSV1002-100 Rev. E – PV Layout shall be implemented on site, on a prior to first use of the development basis and maintained in good working order for the lifetime of the development thereafter in accordance with the approved details.

Reason: In the interests of highways safety, visual amenity and tree/hedgerow protection.

12. The diversion of and safe management of the public rights of way (even if not being diverted) running through the site during the construction period shall be undertaken in accordance with the details shown on the Footpaths Technical Note, dated 03/11/2022 approved by application reference DMOT/2022/1030. Information boards should be provided at suitable points at the entrance and sections of the PROWs crossing the site in respect of the proposed development for its construction period in accordance with the approved details.

Reason: In the interests of preservation of the public rights of way and in the interests of public safety during the construction period of the development.

13. The development hereby approved is granted for a limited period only, expiring 40 years after the date on which electricity is first generated by the installation, on or before which date the solar panel arrays and associated buildings, structures, tracks, infrastructure, gates and fencing shall be removed and the site reinstated to the satisfaction of the Local Planning Authority as per its former agricultural use state, including the agricultural field land drainage system across the whole site area as it existed prior to the approved development, unless, prior to that date, permission has been granted for an extended period pursuant to an application made to the Local Planning Authority in that regard. The solar panel array operator shall inform the Local Planning Authority in writing within 10 working days of the first date on which electricity is first generated.

Reason: In accordance with the applicants stated intentions and in the interests of the visual amenities and landscape character of the rural area beyond settlement boundaries, so not to risk redundant equipment, structures, buildings and boundary treatments being left in place in perpetuity, compromising the productive use of the land and the character and appearance of the area thereafter in accordance with the requirements of Policy BNE1, Policy BNE4 and Policy SD1 of the Local Plan Part 1 and the National Planning Policy Framework.

14. The development hereby approved shall be undertaken in accordance with the following approved details: Solar panels (Tiger Pro TR 78M 565–585 Watt mono-facial or similar); Module (Tiger Pro TR 78M 565–585 Watt mono-facial or similar); fencing and gates (drawings GM10971-020-A and GM10971-021-A); CCTV poles (drawing GSS100A-001); CCTV equipment (drawing GSS100A-001); customer cabin (drawing GSV1002-201); 40ft substation (drawing GSV1002-203); 20ft substation (drawing GSV1002-202); DNO substation (GM10971-023-A), as supplemented by the details contained in the letter from Wardell Armstrong ref: SS/LD/GM10971/LET-007, dated 21st July 2022. These listed elements of the development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity and landscape character in a rural area.

15. The development hereby approved in respect of the pad/foundations/bases shall be undertaken in strict accordance with the details contained within drawing numbers GSV1002-201; GSV1002-203; GSV1002-202; and GM10971-023-A, as supplemented by the details contained in the letter from Wardell Armstrong ref: SS/LD/GM10971/LET-007, dated 21st July 2022.

Reason: In the interests of visual amenity, landscape character and archaeology.

16. Prior to the erection of any battery or other storage in relation to excess energy generation or balancing of electrical grid in respect of the development hereby approved, details of this shall be submitted to and approved in writing by the Local Planning Authority. The battery or other storage shall be implemented on site in accordance with approved details and maintained in good working order for the lifetime of the development thereafter.

Reason: In the interests of residential amenity, visual amenity, pollution control and landscape character.

17. The topographical levels for the development shall be implemented in strict accordance with the details specified in the letter from Wardell Armstrong ref: SS/LD/GM10971/LET-007, dated 21st July 2022.

Reason: In the interests of visual amenity and landscape character in a rural area.

18. Following the construction period of the development the noise levels from inverters, fixed plant and machinery forming part of the development hereby approved shall not exceed 47 dB(A) at 10 metres from the site boundaries.

Reason: In the interests of residential amenity.

19. Notwithstanding the previously agreed details (stating that there will be no external lighting either during construction, or during ongoing operation, as specified in the letter from Wardell Armstrong ref: SS/LD/GM10971/LET-007, dated 21st July 2022) no erection of any sources of external lighting associated with the development hereby approved (including during the construction period) shall be undertaken without prior approval on application detailing specification, dimensions, siting and colour to the Local Planning Authority for approval in writing. The external lighting scheme shall be implemented on site in accordance with the approved details and maintained in good working order thereafter. If a lighting scheme is approved solely for the construction period this shall be removed prior to the first use of the development hereby approved.

Reason: In the interests of visual amenity, landscape character and nature conservation in a rural area.

20. CCTV active monitoring provision shall be implemented prior to the first use of the development and in complete accordance with approved details contained in the letter from Wardell Armstrong ref: SS/LD/GM10971/LET-007, dated 21st July 2022 unless otherwise agreed in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions to promote the well-being of the area and to reflect local and national planning policies on secure design and crime prevention in new developments.

21. No development shall take place until any pre-start element of the approved Written Scheme of Investigation for Archaeological Trial Trenching, dated November 2022, produced by Wardell Armstrong has been completed to the written satisfaction of the local planning authority.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

22. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 21.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

23. The development hereby approved shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 21 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: In the interests of archaeology and designated heritage asset protection, conservation and recording.

24. The development hereby approved shall be undertaken in accordance with the tree protection scheme detailed within drawing 'Landscape Planting Plan ref: GM10971-REP-020'. The approved tree protection measures shall be implemented on site on a prior to commencement basis and retained in place for the duration of the construction period. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- i) there shall be no changes in ground levels;
- ii) no material or plant shall be stored;
- iii) no buildings or temporary buildings shall be erected or stationed;
- iv) no materials shall be burnt within 20 meters of any retained tree or hedgerow; and;
- v) no drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

Reason: To ensure that the retained trees and hedgerows are not harmed during the construction of the development.

25. The development hereby approved shall be implemented in accordance with the measures recommended in the Biodiversity Management Plan February 2021 GM10971 V1.0 011 as received by the Local Planning Authority on 22nd February 2021 and as shown on the Landscape Planting Plan drawing GM10971-013 Revision B as received by the Local Planning Authority on 2nd August 2021.

Reason: In the interests of landscape character and biodiversity protection, enhancement and net gains.

26. The development shall be undertaken in accordance with the approved Landscaping Plan, ref GM10971-REP-020. The approved landscaping plan details shall be implemented on site in accordance with the approved details in the first planting and seeding seasons following the first

use of the development or the completion of the development, whichever is the sooner and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of landscape character, promoting healthy lifestyles and visual amenity in a rural area.

27. The development hereby approved shall be undertaken, maintained and managed in complete accordance with the details contained within the approved Landscape Management Plan - GSI Hawthorn Limited, Hawthorn Solar Farm, Landscape Management Plan, Job number GM10971, Report number: 0020 V2.0, dated January 2024 to cover the lifespan of the development of 40 years. Should the management responsibilities change notice (including contact details and means of informing the Local Planning Authority of any change to those details) shall be provided to the LPA within 10 working days of the change and Landscape Management shall continue to be undertaken in accordance with the approved plan.

Reason: In accordance with the applicants stated intentions and in the interest of the visual setting of the development and the landscape character and visual amenity surrounding area over the lifetime of the development, in accordance with the requirements of Policy BNE1, Policy BNE3, Policy BNE4 and Policy SD1 of the Local Plan Part 1 and the National Planning Policy Framework.

28. The development hereby approved shall be undertaken in strict accordance with the approved detailed design and associated management and maintenance plan of the surface water drainage for the site contained within GM10971-REP-008 V1.0 dated July 2022, GM10971 Technical Note dated 15 December 2022, and the email chain between Wardell Armstrong and the Flood Risk Management Team at Derbyshire County Council between 16/02/2023 and 02/03/2023.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

29. The development hereby approved shall be undertaken in accordance with the approved details in respect of assessment demonstrating that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance. The approved details are: GM10971-REP-008 V1.0 dated July 2022, GM10971 Technical Note dated 15 December 2022, and the email chain between Wardell Armstrong and the Flood Risk Management Team at Derbyshire County Council between 16/02/2023 and 02/03/2023

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

I. into the ground (infiltration);

II. to a surface water body;

III. to a surface water sewer, highway drain, or another drainage system; IV to a combined sewer.

30. The development shall be undertaken in accordance with approved details for the management additional surface water run-off from the site will be avoided during the construction phase, specifically GM10971-REP-008 V1.0 dated July 2022, GM10971 Technical Note dated 15 December 2022, and the email chain between Wardell Armstrong and the Flood Risk Management Team at Derbyshire County Council between 16/02/2023 and 02/03/2023. The

approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any construction works.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

31. Prior to the first use of the development, a verification report carried out by a qualified drainage engineer shall be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Non-statutory technical standards for sustainable drainage and CIRIA standards C753.

Informatives:

- a. 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.
- b. Foston and Scropton Public Footpaths 11 and 17 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section. If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.
- c. The required phases of archaeological recording of the site outlined in the conditions attached to this decision notice, are in line with the requirements of the NPPF which requires developers to record and advance understanding of the significance of any heritage assets which are to be lost to development.

The fieldwork should be conducted by a suitably qualified archaeological consultancy (ie a CIFA registered organisation), to a written scheme of investigation to be agreed with ourselves. It is strongly recommended that the developer commissions the archaeological recording scheme soon after any grant of outline permission. It is vital that sufficient time is allowed to complete all the required phases of recording prior to the commencement of any ground preparation or building of the scheme.

- d. Due to the historical and ongoing flood risk in Scropton, in order to recommend discharge of the above conditions, the LLFA will need to be sure that any excess runoff resulting from the development will be managed within the site. Detailed design calculations will need to be provided for the proposed swales and the existing watercourse which borders the site.
- e. Please refer to the informatives from the Lead Local Flood Authority as per the feedback given on 27th July 2021.
- f. Due to the location of this development within the operational and safeguarding zone of East Midlands Airport a crane or tall equipment licence may be required from the Civil Aviation Authority on a prior to commencement basis, separate to planning.

Item No. 1.3

Ref. No. [DMPA/2023/1526](#)

Valid date: 07/12/2023

Applicant: Andrew Moseley

Agent:

Proposal: **The erection of extension and the erection of outbuilding at Nutwood, Shepherds Lane, Melbourne, Derby, DE73 8HT**

Ward: Melbourne

Reason for committee determination

This item is presented to committee as it has been called in by Councillor Carroll.

Site Description

Nutwood, Shepherds Lane (the site) is a two storey barn conversion within a woodland clearing in the countryside accessed via a track off Shepherds Lane to the North East. The site lies between the villages of Ticknall and Melbourne and falls outside of the defined settlement boundaries. The floor plan currently incorporates a bathroom, kitchen/diner and sitting room at ground floor level, and a bedroom at first floor level.

The proposal

The proposal is for a single storey extension from the lean-to element of the existing barn conversion forming an L-shaped layout. The extension would comprise of an office, bedroom and shower room.

Applicant's supporting information

Planning Application Drawings

Proposed floor plans (amended) 26 January 2024

Proposed West and South elevations (amended) 26 January 2024

Proposed East and North elevations (amended) 26 January 2024

Location Plan 7 December 2023

Existing floor plans and elevations

Design and Access Statement

Relevant planning history

9/2008/0182 - Prior notification for the erection of a barn – No objection

9/2009/0316 - Prior notification for the creation of forestry roads – No objection

9/2014/0504 - Prior approval for the change of use of a barn to a dwellinghouse and associated operational development - refused and dismissed at appeal

9/2014/0741 - Prior notification for the creation of forestry roads - permitted

9/2014/0807 - Prior notification for the creation of forestry roads - permitted

9/2017/1046 - Prior approval for change of use of existing barn to a dwellinghouse (use class C3) along with associated operational development - withdrawn

9/2018/0887 - Conversion of existing timber frame barn to a dwelling - permitted

9/2019/0651 and APP/F1040/W/19/3240900 - The variation of condition no. 2 and the removal of conditions 4, 5 and 6 of permission ref. 9/2018/0887 (relating to the conversion of existing timber frame barn to a dwelling) - allowed at appeal

DMPN/2024/0220 - Prior notification for the erection of an agricultural machinery store and an open fronted feed / log store - not required



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Responses to consultations and publicity

Melbourne Parish Council

Raises no objections

Melbourne Civic Society

Following completion of the development, the subdivision of the plot to two dwellings should be prevented.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

2016 Local Plan Part 1: H1 (Settlement Hierarchy); S2 (Presumption in Favour of Sustainable Development); SD1 (Amenity and Environmental Quality); and BNE1 (Design Excellence)

2017 Local Plan Part 2: H27 (Residential Extensions and other Householder Developments); H28 (Residential Conversions); SDT1 (Settlement Boundaries and Development); and BNE5 (Development in rural areas)

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

Planning considerations

- Principle of the proposed development
- Impact on the host dwelling and the character and appearance of the area
- Residential amenity

Planning assessment

Application Site

Nutwood, Shepherds Lane (the site) is a C21 two storey barn conversion within a woodland clearing accessed via a track off Shepherds Lane to the North East. The site lies in the rural area between the villages of Ticknall and Melbourne and falls outside of the defined settlement boundaries.

The conversion of the timber frame barn was permitted through application 9/2018/0887, and an application to extend the barn by erecting a lean-to (as well as remove certain conditions) was allowed on appeal on 9th March 2020. The inspector commented as follows 'Whilst the proposed extension would be somewhat larger than that approved, the design would incorporate additional glazing which would reflect the open character of the original building, allowing the internal frame of the middle bay to be revealed and mirroring the glazing on the other side of the building. The extension would still be well set back from the north elevation and the significant amount of glazing on the middle bay section would limit the visual impact of the extension. The canopy is modest in size and would not appear as a dominant feature.'

It should therefore be noted that an extension has already been granted for this conversion scheme which was considered to be acceptable and not extensive, thus in accordance with Policy H28.

Description of Proposed Development

Planning permission is sought for the erection of a single storey L-shaped extension. The extension would extend beyond the 'lean to' element of the dwelling and have a gable roof almost to the height of the existing barn conversion. The extension would comprise of an office, bedroom, and shower room. To the West elevation, a window is proposed to serve the shower room. To the South elevation, windows are proposed to serve the bedroom. To the East elevation, a window is proposed to serve the

office. To the North elevation, three windows are proposed to serve the office, bedroom and shower room. The extension would be accessed via the lobby area of the kitchen/diner of the existing barn conversion.

Initially a two storey car port and two storey extension were proposed. Following Officer feedback, the extension has been reduced in height and the amended scheme is now presented. The car port element has been removed from the scheme. The applicant has stated that 'barn 2 [of prior notification DMPN/2024/0220] could be made surplus to requirements if the provision for the workshop had been allowed'. However, the decision to remove the barn from the prior notification cannot be done through this householder planning application. Unless the prior notification expired or was not implemented, the applicant could still implement barn 2. Weight therefore cannot be given to the prior notification (whether implemented or not) to justify the inclusion of a two storey car port within the scheme.

Principle of Proposed Development

Policy BNE5 relates to developments outside of settlement boundaries and states that permission will be granted in these areas where allowed for under a number of policies including H27 and H28.

Policy H27 which supports extensions and alterations to dwellings or the erection or alteration of outbuildings, annexes, structures and boundary treatments within residential gardens where they

- i) are of a scale and character in keeping with the property, and
- ii) are not detrimental to the living conditions of adjoining properties or the general character and appearance of the area.

In this instance, it is considered the proposed extension is not of a scale and character in keeping with the property, due to the conflict with the relevant policy H28.

Policy H28 of the Local Plan Part 2 relates to Residential Conversions. The dwelling is a barn conversion, where permitted development rights have been removed and as such, when an application is subsequently received, the proposal needs to be considered through the same policy as the original conversion.

H28 states that 'outside settlement boundaries the conversion of a building to provide residential accommodation will be permitted provided the building:

- iii) is suitable for conversion without extensive alteration, rebuilding and/or extension.'

It is considered that the proposed extension is extensive due to the large scale of the footprint, and the L-shape which is not considered subservient to the existing building. The extension measures a floor space of approximately 56m² which is considered to be significant when compared to the ground floor space of the existing dwelling of approximately 98m². For context, a typical accessible double bedroom would be 4m x4m resulting in floor space of 16m² and an accessible bathroom would be 7m².

The development is proposed to extend further from the 'lean to' which is already an extension in itself, which would create a disjointed design which could even be considered to read like a separate dwelling. The principle of the development is therefore considered unacceptable as it is considered to be contrary to policy H28.

The South Derbyshire Design Guide SPD provides additional guidance on this matter. The South Derbyshire Design Guide SPD (pages 130/131) states 'Where a scheme of residential conversion is granted the permitted development rights which normally apply to dwellings will be withdrawn as a condition of the approval. This means for instance that windows, doors and roof coverings cannot subsequently be changed and small extensions like porches cannot be erected without planning permission. Proposals for such subsequent changes will be considered by the same criteria as the original conversion.' The design Guide SPD goes on to state 'An extension may be acceptable where it allows for a more sympathetic conversion of the existing building but will not be permitted where its purpose is to facilitate a high density conversion.'

It is also noted that the applicant has stated within the Design and Access Statement that 'this modest

extension is in line with the guidance set out in the local plan and will help create a house suitable for the owners work life needs into the future'. There has not been any specific detailed information provided with this application with regard to any potentially special individual circumstances that may outweigh the normal policy presumption against such development. The significant size and disjointed design of the extension is considered to result in harm which would be contrary to policies H27 and H28.

In summary, the Local Plan policy states sympathetic conversions should retain the agricultural character and large extensions should be avoided. As set out above, the building already benefits from planning permission for a sympathetic conversion which includes an appropriate extension. The current scheme as submitted is considered to be unacceptable due to its large size and the disjointed design (L-shape form) which would have a negative impact on the host dwelling.

Residential Amenity

The site is positioned on private land in a woodland clearing with no immediate neighbouring properties. It is considered that the proposed development will not unduly harm the amenity of nearby properties. The scheme therefore complies with policies H27 and BNE1 of the development plan and advice within the Design Guide SPD in that regard.

Other matters – pre application advice

The applicant has also submitted a pre-application enquiry following the suggestion of Officers, with a view to working towards an acceptable scheme. A site meeting was also undertaken with different proposals considered both on site and via email exchange. Following this, further advice was provided as the suggested options were considered by Officers, including the Design Officer, to be an improvement but still too extensive. The applicant has not formally submitted any further amended plans and wishes to proceed with the current application.

Conclusion and Planning Balance

While the needs of the applicant are noted, there are ways of securing additional accommodation via an extension to the building that are capable of being consistent with Policy H28. The proposal as submitted is not considered to comply with the Council's adopted policy on rural conversions and would have a detrimental impact on the host dwelling due to its large scale and disjointed design. The extension is 'extensive' due to its large floor space which appears to seek more than a standard accessible bedroom/bathroom. The proposal therefore is deemed to conflict with the aims of the development plan policies and Design Guide SPD. On that basis, the scheme as presented is considered to warrant refusal of planning permission in this instance.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Refusal of planning permission.

1. The proposed extension by virtue of its scale and form would be unacceptable in principle and would be contrary to policies H27 and H28 of the Local Plan Part 2, and the South Derbyshire District Council Design Guide Supplementary Planning Document.

Item No. 1.4

Ref. No. [DMPA/2023/1660](#)

Valid date: 27/12/2023

Applicant: Malcolm Roseburgh

Agent: Malcolm Roseburgh

Proposal: Height barrier at entrance to rugby end car park at Melbourne Sports Park opening onto Cockshut Lane, Melbourne at Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby, DE73 8DG

Ward: Melbourne

Reason for committee determination

This item is presented to the Committee as South Derbyshire District Council owns the land to which the planning application relates.

Site Description

The application site comprises 3no. artificial grass tennis courts that form part of the wider Melbourne Sports Pavilion, located on the eastern side of Cockshut Lane and to the south of the built edge of Melbourne. The wider sports facility incorporates 3no. hardstanding tennis courts to the south, the cricket pitch to the east, car parking and the pavilion building to the south and further sports pitches beyond this. The site is not located within Melbourne Conservation Area. The nearest residential properties are located on the southern side of Hope Street and to the west on Cockshut Lane.

The proposal

The proposal is to install a height barrier to prevent vehicles over 2.2m high entering to the southernmost vehicle entrance / exit to the sports grounds, from along Cockshut Lane (which runs along the western boundary of the site). The maximum height of the barrier structure will be 2.8m, at a width of c.6.7m in total width. This will be set back from the highway by a minimum of six metres.

Applicant's supporting information

Planning Statement

This document sets out an assessment of the scheme against the local development framework that has been undertaken by the applicant's agent.

Design and Access Statement

This statement has been included to provide some explanation and rationale for the scheme. The statement also details the impact of the proposal on the site and surrounding area, and concludes that it should not cause harm to the site or wider area and streetscape.

Specification Information

This document provides technical information related to the height restriction barrier, such as its height, width, location and materials. The information also contains a drawing as a visual aid/plan.

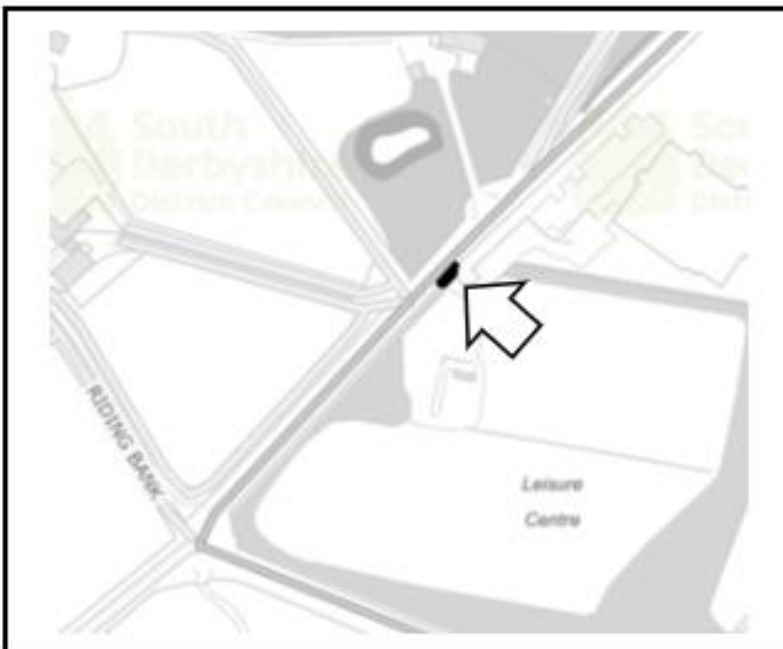
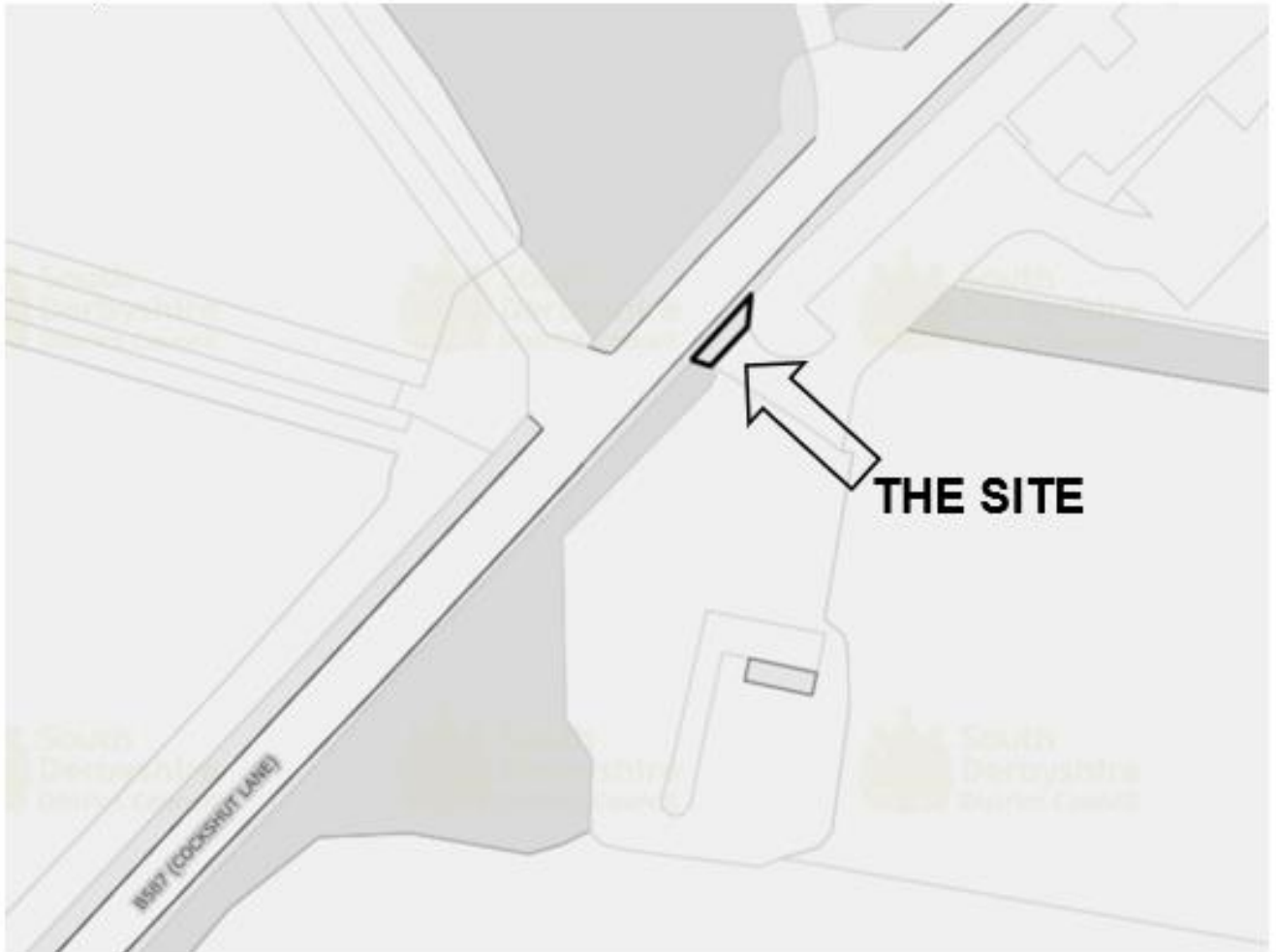
Relevant planning history

9/2011/0910 Proposed redevelopment to form new facilities for rugby, cricket, tennis and bowls. The erection of a new club house, floodlighting and creation of parking facilities – approved February 2012.

9/2013/079 Development of FA compliant 7V7 artificial turf pitch with associated fencing, floodlighting and access pathway – approved November 2013.

9/2018/1378 Creation of 3no. artificial grass tennis courts with 3m high perimeter fencing – approved

DMPA/2023/1660 – Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby, DE73 8DG



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South Derbyshire District Council, LA 100019461, 2020

November 2020.

DMPA/2021/0487 Formation of pedestrian access to car park – approved October 2022.

DMPA/2022/0865 Portal steel framed structure for the storage of equipment – approved October 2022.

DMPA/2023/0579 Installation of floodlighting system to the northern most tennis court at Melbourne Tennis Club - approved August 2023

Responses to consultations and publicity

Melbourne Parish Council - No objections

Derbyshire County Council Highways - no highway objections in principle to the proposals, subject to the condition that signage should be installed on Cockshut Lane informing drivers of the height restriction at the site access. This will ensure that large vehicles do not enter the access and the have to reverse back onto Cockshut Lane which would be detrimental to highway and pedestrian safety.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

2016 Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development); BNE1 (Design Excellence); INF2 (Sustainable Transport); SD1 (Amenity); INF2 (Sustainable Transport); and INF9 (Open Space, Sport and Recreation)

Local Plan Part 2 (LP2)

Melbourne Neighbourhood Plan

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF);
Planning Practice Guidance (PPG).

Planning considerations

The determining issues are as follows:

1. Principle of the development;
2. Amenity;
3. Highway Safety
4. Other Matters.

Planning assessment

Principle of Development

The site lies just outside of the Key Service Village of Melbourne within the existing Melbourne Sports Partnership complex to the southwest of the wider site. There are policies related to the provision of open space, sports and recreation facilities, and Policy INF9 of the Local Plan states that the current provision of open space, sports and recreation facilities in the District is not sufficient; and opportunities for creating new or enhanced facilities will be sought. The proposal for a vehicle height barrier seeks to prevent unauthorised access to the site without interfering with the primary functions of the sports park or impacting vehicle and highway visibility. The proposal would therefore be within development allowed under policy INF9 for enhancing the existing sports and recreation facility.

Visual Amenity

Policy BNE1 sets out principles for design excellence, which is supported by the detail within South

Derbyshire District Council Design Guide SPD. Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

The proposed structure should be largely obscured from the streetscape and would sit within the southernmost access off Cockshut Lane. The size and simple design will not appear unduly prominent from within the site or public vantage points around the site, and will serve a purely functional purpose.

Given the size, location and overall function of the proposed structure, it raises no concerns on design grounds and would be considered acceptable and in accordance of policies S2 and BNE1 of the Local Plan. In addition, due to the nature of the proposal away from residential properties, it should not result in any harmful impacts to neighbouring amenity and should therefore comply with Policy SD1 of the Local Plan.

Highway Safety

Policy INF2 seeks to ensure that proposals do not have an adverse impact upon highway safety. The County Highways Authority have no objection to the installation of the height barrier being constructed 6 metres into the site away from the highway. However, it is conditioned that the applicant is to install appropriate signage warning drivers of the height restriction to the car park access. With this conditioned on the decision notice, it is considered that matters of highway safety are sufficiently addressed, and potential issues will be mitigated through the signage.

Conclusion and Planning Balance

The proposal for the height restriction barrier within the established Melbourne Sports Partnership complex would be in accordance with the aims of policy INF9 and acceptable in principle. Having reviewed the material considerations related to the potential impact on the amenities of the area and highway safety, it is considered that the proposal would comply with the requirements of policies S2, SD1, BNE1, INF2, as well as the Neighbourhood Plan and wider policy documents. Accordingly, this application is recommended for approval.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approval subject to conditions.

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings received 22.12.23 ref. Application Form; Location Plan; Design and Access Statement; Planning Statement; Specification Information., unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. Prior to the installation of the proposed height barrier a signage scheme for Cockshut Lane should be submitted to and approved by the Local Planning Authority to inform drivers of the height restriction in place.

Reason: In the interests of highway safety.

4. The proposed barriers must be located a minimum of 6m behind the edge of the carriageway.

Reason: In the interests of highway safety.

Item No. 1.5

Ref. No. [DMPA/2024/0121](#)

Valid date: 02/02/2024

Applicant: Neil Atkin

Agent: John Steedman

Proposal: The replacement of two windows at Stenson House, Stenson Road, Stenson, Derby, DE73 7HL

Ward: Stenson

Reason for committee determination

This item is presented to committee as the site is owned by Councillor Atkin.

Site Description

Stenson House, Stenson Road (the site) is a two storey early C19 Grade II Listed dwelling, accessed via an entrance to the North of Stenson Road. The site is located within the Trent and Mersey Canal Conservation Area. The site is within Stenson and falls outside of the defined settlement boundaries. The site uses Ashlar and red brick and has a hipped Welsh slate roof. The windows are white timber, use glazing bar sashes, and have stone lintels above.

The proposal

Listed Building Consent is sought for the replacement of two first floor windows which serve the kitchen to the West side elevation, as the condition of the timber has deteriorated, and the lower parts of the frames have become rotten.

Applicant's supporting information

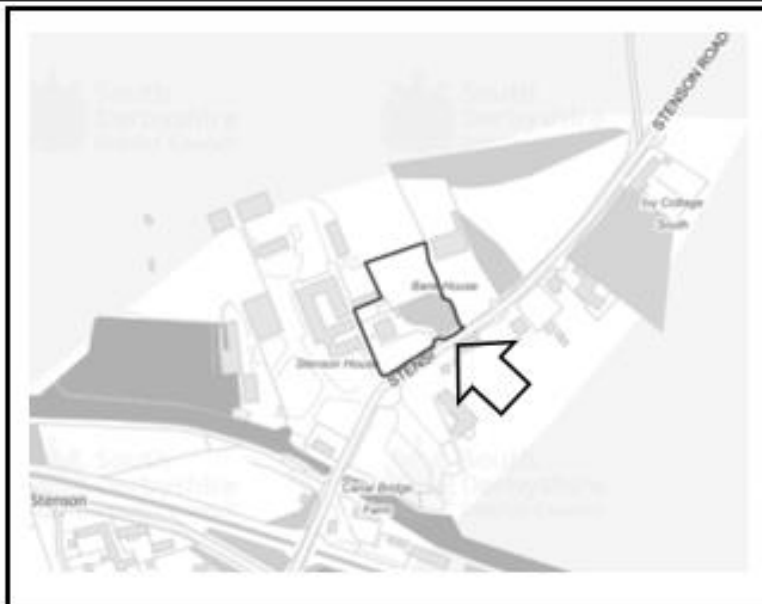
- Existing and Proposed Elevations
- Site Plan
- Proposed Window Replacement
- Cill and Transom Profiles
- Scale Timber Profiles
- Window Location Plan
- Heritage Impact Statement

Relevant planning history

9/1999/0306 - Internal alterations, repairs to windows and the demolition of a single storey extension - Permitted

9/2000/0492 - Internal and external alterations to the Grade II Listed Building - Permitted

9/2005/1473 - The removal of a door and the installation of replacement windows to the rear elevation - Permitted



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Responses to consultations and publicity

Conservation Officer

Raises no objections as the windows are not original, will be replaced like for like, will be single glazed, and the glazing will be held in place with putty.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development); SD1 (Amenity and Environmental Quality); H1 (Settlement Hierarchy); and BNE2 (Heritage Assets)

2017 Local Plan Part 2: BNE10 (Heritage)

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document
Trent and Mersey Canal Conservation Area Statement

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

The relevant legislation is:

Section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue(s) central to the determination of this application is/are:

- The impact on the historic fabric and external appearance of the listed building.

Planning assessment

Application Site

Stenson House, Stenson Road (the site) is an Ashlar and red brick C19 detached dwelling. It is a grade II Listed Building within the Trent and Mersey Canal Conservation Area. The dwelling has had multiple alterations, and the windows are considered to have been replaced at various points since the dwelling was being built in the early C19. The front of the dwelling can be seen within the Conservation Area, the site is set back within its private grounds and is otherwise not largely visible. The dwelling was originally part of a farm, with the former outbuildings having been adapted into a pub and semi-industrial buildings serving the boatyard.

Description of the Proposed Development

Listed Building Consent is sought for the replacement of two first floor windows which serve the kitchen to the West side elevation, as the condition of the timber has deteriorated and the lower parts of the frames have become rotten.

Main Issues

The proposed window replacements are located to the West elevation of the site, which is not visible from the Conservation Area or highway, Stenson Road. It is considered that there would be no loss of historic fabric associated with the replacement of the windows, the existing windows are not the original windows. The Conservation Officer considers that, as the proposed windows are like for like in timber, are single glazed, and held in place with putty, the proposals are acceptable. Therefore it is considered that there will be no harmful impact upon historic fabric and external appearance of the Listed Building in accordance with policies BNE2 and BNE10.

Conclusions and Planning Balance

The proposals are considered to preserve the character and significance of the heritage asset in accordance with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, BNE2 of the Local Plan Part 1 and BNE10 of the Local Plan Part 2 and the application is therefore considered acceptable.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approval of Listed Building Consent.

1. The works hereby approved shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with plans/drawings ref. Location Plan, Site Plan, Mumford Restorations Drawing, Cill and Transom Profiles, Timber Profiles, Window Location Plan received by the Local Planning Authority on 24 January 2024 and Existing and Proposed Elevations NA/SHS/1 received by the Local Planning Authority on 2 February 2024 unless as otherwise required by condition attached to this consent.

Reason: For the avoidance of doubt.

Item No. 1.6

Ref. No. [DMPA/2024/0037](#)

Valid date: 08/01/2024

Applicant: V Kotecha

Agent: Ian / Adam Ray

Proposal: Formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Hearthcote Road at 247 Hearthcote Road, Swadlincote, DE11 9DU

Ward: Swadlincote

Reason for committee determination

This application seeks to overcome the reasons for refusal set out in ref. DMPA/2022/0302 which was determined by Planning Committee.

Site Description

The site has an area of 0.6ha and is roughly rectangular in shape. It is host to a large detached dwelling, with extensions permitted under planning reference DMPA/2020/0915 (allowed on appeal ref. APP/F1040/D/21/3266987), which is set back from the highway by a hard surfaced parking area and driveway. The application site is situated within a mixed-use area host to building that are highly varied in terms of their design. Dwellings along Hearthcote Road consist of a mixture of traditional and relatively modern properties, semi-detached and detached properties, two storey properties and bungalows. Dwellings are set back from the road at varying intervals and are finished in a range of materials including facing brickwork and render of various colours. Until recently, there was a mature belt of landscaping on the property's frontage to Hearthcote Road.

Planning reference DMOT/2021/0754 approved the felling of a number of trees as part of the hard and soft landscaping details required by condition under DMPA/2020/0915 (allowed on appeal).

Planning application DMPA/2022/0302 was refused in November 2023 for the following reason:

The proposed boundary wall, gates and pillars in association with the proposed additional vehicle access to the property would erode the predominantly landscaped character of the area and would form a stark transition from the extensive natural vegetation immediately to the west. The application is therefore contrary to policies SD1 and BNE1 of the South Derbyshire Local Plan part 1 and Policy H27 of the South Derbyshire Local Plan part 2.

The proposal

The proposal is for the formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Hearthcote Road. Vehicles would enter the western access and exit via the eastern access. The application seeks to overcome the previous reason for refusal in planning ref. DMPA/2022/0302 with incorporation of landscaping in front of the boundary wall that is adjacent to the proposed access and forms the frontage of the site.

DMPA/2022/0302 – 247 Hearthcote Road, Swadlincote, DE11 9DU



South Derbyshire District Council

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Applicant's supporting information

Site Location Plan, PL003A (final version received 14 Feb 2024)

Site Plan, PL002B (final version received 21 Feb 2024)

Proposed Block Plan, PL004A (final version received 14 Feb 2024)

Gate Wall Details, PL001A (final version received 14 Feb 2024)

The plans were resubmitted as part of the application process, although there were no material changes made to the Site Location, Proposed Block or Gate Wall Details plans. Minor clarifications were added to the Site Plan including labelling of the proposed planting and the addition of a tree and hedgerow to the west of the site.

Relevant planning history

DMPA/2022 The felling of 9 trees covered by South Derbyshire District Council Tree Preservation Order no.213 and the formation of a vehicular and pedestrian access – Refused August 2023. Appealed and outcome pending.

DMOT/2021/0754 Approval of details required by condition 1 attached to ref. DMPA/2020/0915 (two-storey side and single storey rear extension along with attached garage) – Approved Sep 2022

DMPA/2020/0915 Two-storey side and single storey rear extension along with attached garage. Refused, Dec 2020. Appeal Ref. APP/F1040/D/21/3266987 – Decision overturned, Feb 2021

Responses to consultations and publicity

County Highways Authority

It is noted that the applicant has proposed to install traffic plates to ensure enforcement of the 'in' only proposed access to the property. It is confirmed that this proposal is acceptable as it would satisfactorily prevent vehicles from leaving by the proposed access. Taking this into account the highway authority has no objections to the application subject to the following conditions being imposed should approval be granted. (26/01/2024)

Tree Officer

I recently inspected the site and noted that the brick wall 1275mm in height and gateways 2100mm in height have been constructed an estimated 1.5m from the rear of the footway leaving a strip of land that has been laid to grass. The protected trees to the rear of the wall are fully visible from the highway.

I note that the visibility splay includes up to 1.0m of the grass verge on the west side of the site to clearing the grass verge on the east of the site. Provided the new planting does not intrude into the visibility splay and that there are no services under the verge, compact low growing shrubs (no more than 1.0m in height) that can withstand drought conditions and salt spray could be planted in front of the wall. Suggested species include: lavender, santolina, berberis thunbergia, pyracantha species. To provide a higher visual screen (over 2.0m in height) to the property taller growing shrubs or small growing trees could also be planted behind the wall. Suggested species: viburnum spp, cotoneaster, hawthorn, laurel, rowan, Swedish whitebeam. (29/01/2024)

Neighbour Responses

Four letters of objection which raised the same concerns. The objections raised have been summarised below:

- a) It is unclear whether the Highways Authority has been consulted in relation to this specific application.
- b) The site plan (Site Plan PL002) fails to meet Government planning legislation. It fails to show the site boundary in red which means that it is not possible to determine the extent of development in relation to site boundaries and topographical features. The omission of the site

boundary on this plan creates a false impression that the applicant has some sort of legal interest and control of neighbouring property No 249 forming part of their development site.

- c) The site plan is not a topographical survey map and fails to show written dimensions from the western entrance splay to the straight-line boundary of 249 Hearthcote Road to ensure that the proposal does not encroach onto neighbouring property No. 249 which the applicant holds no legal interest or control. Written dimensions are a requirement of the guidelines.
- d) The site plan fails to show physical boundary markers to the west of the development scheme and to the front of property in the legal interest of 249 Hearthcote Road i.e. TREE (No 4), hedging adjacent to the rear of the pavement (No G11) and fencing to the rear of the pavement and perpendicular to the straight-line boundary between No. 247 and 249 Hearthcote Road. These markers are important to the detail of this plan as they identify where the straight-line boundary between No 247 and No 249 Hearthcote lies.
- e) The Location Plan PL003 does not show the substantial development that has taken place since 2020 and is therefore misleading and not up to date.
- f) Inaccuracies between the width of access on the site plan and the block plan. Proposed Block plan PL004 fails to show the Traffic Flow Plates, No Exit Sign and Entrance Only annotations, ensuring that this plan meets the conditions of the County Council Highways Authority recommendations when the applicant has applied for the 'Formation of an ingress only vehicular access. The consequence of this is that if a planning consent is granted that includes Block Plan PL004 the consent may be misinterpreted by the applicant as providing an access for both ingress and egress.

Relevant policy, guidance and/or legislation

The relevant Local Plan policies are:

2016 Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), INF2 (Sustainable Transport)

2017 Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant National Guidance is:

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

The relevant Local Guidance is:

South Derbyshire Design Guide SPD (Design SPD)

Planning considerations

The determining issues are as follows:

- Principle;
- Amenity and Landscaping.

Planning assessment

Principle

Policy INF2 sets the local policy framework for sustainable transport and states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for users of the private car and other modes of transport.

The proposed development has been assessed by the County Highway Authority who has raised no objection. The applicant has proposed to install traffic plates to ensure that the one-way system in and out of the property would be adhered to and this has been reviewed by the County Highways Engineer who advises it would satisfactorily prevent vehicles from leaving by the western access. Conditions are recommended to ensure that the traffic plates are installed prior to first use, and that gates open into the site (and not onto the highway). These conditions would be reasonable and necessary to ensure the safety of the public highway. Overall, it is considered that the proposal would have no undue detriment on the safety of the local highways network and would comply with the requirements of policy INF2.

Amenity and Landscaping

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD. Policy BNE7 states that where new planting is proposed, principal consideration should be given to planting tree species which are in keeping with the urban and rural area.

The previous refusal (ref. DMPA/2022/0302) of the access is material in consideration of this case. The reason for refusal stated that the *'proposed boundary wall, gates and pillars in association with the proposed additional vehicle access to the property would erode the predominantly landscaped character of the area and would form a stark transition from the extensive natural vegetation immediately to the west'*. In effort to overcome the previous concerns, the current plans show that landscaping would be incorporated in front of the boundary wall. This would provide some continuity between the landscaped frontage of the property to the west and enhancement of the frontage of the site. The Tree Officer has been consulted and recommended species that would be appropriate for the roadside environment, and the recommendations of the Tree Officer were incorporated into the latest version. The gates and pillars would integrate with the existing access to the property, located further to the east; and the proposed planting in front of the boundary wall is considered to overcome the previous reason for refusal. Details of the proposed shrub planting (e.g. size of litre pots) could be secured by condition. With this condition in place, it is considered that the proposal would meet the requirements of policies BNE1 and BNE7.

It is noted that the Tree Officer also suggested species for planting to the rear of the boundary wall, however additional planting here is not considered to be necessary, given the scale of the access proposal.

Any Other Matters

Representations have been received which raise several issues. These are responded to as follows:

- a) The Highway Authority has been consulted in relation to the planning application.
- b) The red line boundary is shown on the Site Location Plan (PL003) and it is not necessary to show this on the site plan (PL002). Land ownership is not a material planning consideration.
- c) Whilst guidance encourages written dimensions, it would not be necessary to require them in this case as it is possible to accurately measure from the Site Plan PL002.
- d) The site plan PL002 was updated following neighbour comments to incorporate the tree (T4) and hedgerow (G11) to the west of the access. These features do not affect the safety of the access, which is ingress only.
- e) Officers have visited the site and are aware of the other development within the site. This is not material in consideration of the proposed access and landscaping on the front boundary.
- f) The planning drawings would be viewed together and not independently. It is clear from the development description and site plan (PL002) that the new access would be ingress only. Detailed measurements would be taken from the detailed block plan (PL002).

Conclusion and Planning Balance

The boundary wall and gates are in a prominent position on the site frontage. Visibility is also substandard if exiting the site from the western access. It is considered that the formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247

Hearthcote Road with a condition to secure this would successfully address the visibility concern. The County Council as Highway Authority are content with this, and as such the development is considered to accord with Policy INF2 of the Local Plan. Although the front boundary wall and gates are in a prominent position, the landscaping detail with planting proposed in front of the boundary wall is considered to successfully mitigate the built form in this location and as such it is considered that the previous reasons for refusal of the scheme is addressed with this amended application. The application is recommended for approval subject to conditions.

Recommendation

Approval subject to conditions.

1. The works hereby approved 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 and details: Site Location Plan, PL003A (final version received 14 Feb 2024); Site Plan, PL002B (final version received 21 Feb 2024); Proposed Block Plan, PL004A (final version received 14 Feb 2024); Gate Wall Details, PL001A (final version received 14 Feb 2024), unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and to ensure any future use of the premises does not adversely affect the amenities of the locality in general and in accordance with Policy BNE1.

3. The access hereby approved shall not be brought into use until it has been fully constructed, including the installation of traffic flow plates which shall remain in good working order for the lifetime of the development, in accordance with the Site Plan PL002B.

Reason: In the interests of highway safety and in accordance with Policy INF2 of the Local Plan.

4. The access hereby approved shall not be brought into use until the proposed access gates have been set back 5 metres from the highway boundary (back of footway) and made to open inwards only.

Reason: In the interests of highway safety and in accordance with Policy INF2 of the Local Plan.

5. Prior to incorporation within the development, details of the landscaping proposed in front of the boundary wall shall be submitted to and approved in writing by the Local Planning Authority. The details shall show the proposed locations of each tree species, the size of each type of tree (standard, select standard, or heavy standard with girth dimensions), and the proposed locations and sizes of any ornamental shrubs (in litre pots). All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the date of this decision; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the visual amenity of the area and in accordance with Policy BNE1 of the Local Plan.

Informatives

- a) The construction of the access is subject to the applicant obtaining a section 184 license to undertake work in the public highway.
- b) Under provisions within Sections 149 and 151 of the Highways Act 1980, the 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 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.
- c) Where the site curtilage slopes down towards the public highway provisions within Section 163 of the Highways Act 1980 requires measures to 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.
- d) Planning permission does not give you approval to work on the public highway. To carry out works associated with this planning permission, separate approval must first be obtained from Derbyshire County Council as Highway Authority - this will take the form of a section 184 licence (Highways Act 1980). It is strongly recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email highways.hub@derbyshire.gov.uk or telephone 01629 533190.

Item No. 1.7

Ref. No. [DMPA/2023/1350](#)

Valid date: 24/10/2023

Applicant: McDonald's Restaurants Ltd **Agent:** Planware Ltd

Proposal: Erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD) Play Frame and 4 Electric Vehicle Charging Points (EVCP) (Resubmission of DMPA/2022/1321)

Ward: Willington and Findern

Reason for committee determination

The item is presented to Committee at the request of Councillor Hudson as local concern has been expressed about a particular issue and unusual site circumstances and committee should debate these issues which are finely balanced.

Site Description

The application site has a lawful use for the storing and hiring of skips. The site is enclosed by a fence, with trees and low-level planting on highways land. More mature trees are located to the south of the site. Access to the site is from The Castle Way. The site is located approximately ½ mile west of the edge of Willington village and is outside any settlement boundary. Immediately north of the application site is a BP filling station with a very small spar forecourt shop. The filling station provides access to both the A38 and The Castle Way. A small diner is located north of the filling station, sharing the access. It has its own car park further north.

The proposal

The application is a resubmission of the application which was withdrawn in September 2023 for a roadside McDonald's restaurant and associated works to the site. The proposal, which is for both the sale of food and drink for consumption on and off the premises, is a mixed use of Class E and Sui Generis within the Use Classes Order. The works would include a McDonald's restaurant with 78 sq m of dining area, 46.4 sq m of ancillary public area and 197.9 sq m of kitchen/staff and back of house storage space, a drive-thru, car parking with 41 spaces including 4 EV charging points, two accessible bays in addition to two grill bays. In addition, it is proposed to provide 10 covered cycle parking spaces and a further six spaces provided with three secure cycle lockers for staff in addition to two motorcycle spaces. Also included is landscaping and associated works, including customer order displays (COD) and a play frame, and associated works to the site. The restaurant would employ 120 full and part time staff.

Applicant's supporting information

Planning Statement

Prepared in support of the application the statement seeks to demonstrate accordance with economic, social and environmental objectives of local and national policy. It notes the economic investment in the district and the number of jobs created, the provision of services and the redevelopment of a key brownfield site concluding that this would be an appropriate location for a drive-thru restaurant serving passing customers and those in the surrounding area and providing a comprehensive justification of the development and how it complies with key policies.

Sequential Assessment

An amended sequential assessment has been provided following discussion with the Council regarding potential locations. This statement maintains the applicant's view that a sequential assessment is not required. Nonetheless the applicant has considered sites or centres in the following locations:

DMPA/2023/1350 – Land at Junction of A38 and A5132, The Castle Way,
Willington, Eggington, DE65 6GY



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South Derbyshire District Council, LA 100019461 2025

Mickleover, Willington, Etwall, Hilton, Hatton, Findern, Newton Solney, Repton and Heatherton Village in the Derby City area. The assessment concludes that the location of the proposed site is not only sequentially the most appropriate but also the optimum location for the proposed site.

Odour Control Assessment

This report provides an odour risk assessment using industry best practise. In recognition of the potentially very sensitive nature of the proposed restaurant location in relation to the nearby housing, it is proposed to provide odour control measures exceeding the assessment conclusions in order to provide a comfortable design margin over and above the minimum recommendations. Appropriate odour mitigation can be achieved to protect the amenity of nearby receptors.

Travel Plan

The document details measures it will undertake to make staff aware of the alternative means of transport that are available in order to travel to and from their place of work and in particular, reduce the number of journeys to work that are made by car. That surveys demonstrate that typically a low number of staff drive to work and that a Travel Plan Co-ordinator will be appointed for the restaurant and that the Travel Plan will be in place for a minimum of 5 years with appropriate targets proposed to reduce single occupancy car trips to work by staff.

Construction Environmental Management Plan

This document details how the construction of the site will be managed with details of access, traffic management and routing, health and safety, delivery and work times, construction site layout, storage and waste disposal.

Environmental Noise Assessment

Prepared in support of the application the assessment provides details of 24 hour on-site survey work that has been undertaken. This recorded high levels of existing traffic noise from the A38 which the document states will provide a high degree of masking or the proposed operational noise. It assesses the proposed noise generated and the mitigation requirements for the proposal.

Arboricultural Assessment

This report provides details of the assessment of the trees on site (nine individual trees, one area of trees and four hedges). The arboricultural related implications of the proposal are three-fold; the need to fell one low quality/poor longevity individual tree and additionally, three landscape features require minor surgery; the alignment of the drive through and parking nominally intrudes within the Root Protection Areas of 3 hedges to be retained. This has only minor influence on the Root Protection Areas and as such it is considered appropriate to undertake linear root pruning, thus obviating the need for specialist "no dig" construction techniques; and all other trees and landscape features can be retained if works are carried out in accordance with the assessment.

Preliminary Ecological Appraisal

The report provides an ecological summary of the site and implications of the proposals including the need for further surveys and mitigation, enhancement measures, an and assessment of impacts.

Drainage Management Plan

This report provides details of the site and proposed drainage management system. It provides management and maintenance responsibilities.

Flood Risk Assessment The assessment states that the site is located within Flood Zone 1 and sets out the flood risks to the site. It sets out specific flood risk reducing features incorporated into the design and the drainage infrastructure for the proposal due to constraints of permeability and size of site surface water will be directed to a attenuation tank and enter the sewer system which are will have restricted rates of discharge.

Transport Assessment

This document assesses the likely traffic and trip generations as a result of the proposals. It acknowledges the limitations of the site for walking, cycling and public transport. It sets out parking

figures (54 spaces) 6 cycle spaces and 2 motorcycle spaces. The proposals would involve the slight modification of the existing priority access junction and concludes that visibility will be sufficient. It sets out data on peak times and junction modelling works and concludes that there would no material traffic impacts as a result of the development.

Desk Study, Site Investigation and Risk Assessment Report

The report has been prepared to support the application and provides an assessment of the historical uses of the site, implications for potential contamination, the type and nature of testing working which have taken place at the site and their results which found no evidence of significant soil, groundwater or landfill gas contamination. Recommendations are given for remediation of the site.

Relevant planning history

DMPA/2022/1321 - Erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD) and Play Frame (E11-003) - Withdrawn 18/09/2023. This application was recommended for refusal on the basis of the applicant failing to adequately demonstrate that there were no sequentially preferable sites for the proposed development and a lack of a sound business case.

DMOT/2021/0672 – Approval of details required by Conditions 3 and 8 attached to ref. 9/2019/0583 on land at SK2828 2357, The Castle Way, Willington, Derby, DE65 6BW – Pending consideration.

APP/F1040/W/19/3239004 – The erection of a light industrial and storage/distribution unit (Use Classes B1(C) and B8 on Land at SK282 2357, The Castle Way, Willington, Derby – Allowed 23rd March 2020.

9/2019/0583 – The erection of a light industrial and storage/distribution unit (Use Classes B1(C) and B8 on Land at SK282 2357, The Castle Way, Willington, Derby – Refused 7th August 2019. Approved at appeal ref: APP/F1040/W/19/3239004 – 23rd March 2020.

9/2018/1153 - Retrospective application for the erection of 2.4m high v-mex style fence around the perimeter of the site together with 2.4-metre-high access gates these will be green in colour at Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Approved December 24th 2018.

9/2016/0479 – Change of use of vacant land to an area of hard standing for skip storage (Use Class B) on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Approved 30th November 2016.

9/2015/0670 - Change of use to residential gypsy caravan site for 3 pitches along with erection of amenity buildings and acoustic fencing and creation of bunds and hardstanding on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Refused 11th November 2015.

9/2013/0093 - The change of use of land to use as residential caravan site for 4 gypsy families, each with two caravans including no more than one static mobile home, together with laying of hardstanding, landscaped bunds and the erection of two amenity buildings on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Refused 8th May 2013.

Responses to consultations and publicity

County Highway Authority – No objections to the application subject to conditions.

A previous response to this application was issued by the highway authority which requested the applicant to undertake a further ATC survey on Castle Way the results of which should be compared to the 2021 surveys to establish if traffic flows have changed since the original surveys were undertaken.

This information has been provided and following review it is considered that it has been satisfactorily demonstrated that the original 2021 traffic surveys are a valid basis for the assessment of the proposal and that the junction assessments which have been provided are robust. It is concluded therefore, that the impact of the proposed development traffic can be satisfactorily accommodated on the local road network, including at the A38/Castle Way junction. In addition, it has previously been confirmed that the proposed access and parking arrangements within the site are acceptable. The CHA also reconfirmed their position following consultation on the comments received by Willington Parish Council.

National Highways - No objection.

Environmental Health - No objections subject to conditions.

Derbyshire Police (Design) - No objection in principle and no comments to make on the detail of the proposal.

Derbyshire Wildlife Trust – No objections.

The response from Derbyshire Wildlife Trust highlights that there are no significant habitats of value that will be affected by the proposals given the existing nature of the site. However, the response sets out a number of recommendations in relation to protect species and biodiversity enhancement that should be considered as part of the development proposals.

Egginton Parish Council – The Parish Council have serious concerns in relation to the impact of the proposed development on highway safety. This section of the A38 was designed and built in the 1960's, when road design was less well developed, there were many fewer cars and lorries and speeds were generally lower than today. Coming from the North, towards Egginton Services, the traffic is often travelling too fast as it nears the short, narrow exit slip road. To make matters worse, this slip road has a right angle turning off it, which is an entrance to the Southbound Egginton Services. This often causes sudden harsh braking, as drivers (uncertain of where the entrance actually is) suddenly spot it and try to avoid over-shooting. Traffic is liable to back up onto the slip road. Slip road not wide enough for three cars - vehicles waiting to turn right will block traffic. Southbound access to the A38 is also poor. An application as a Travellers' home / site was previously rejected for this site. An application as a store / base for skips was accepted and was expected to have only few vehicle movements. Given the already substantial series of traffic difficulties in the immediate area, it is extremely unwise to consider this site for a Macdonald's.

Willington Parish Council – Would like their original objection recorded. This latest objection cites concerns with regard to Environmental Impact, Noise, Odour, Litter and Pollution. This includes reference to potential noise disturbances from additional plant equipment, as well noise from anti-social behaviour from people using the site to socialise with friends at night time, the restaurant proposed being 24-hour. The response also raises concerns in relation to highway safety. In addition they reviewed the Transport survey data and make the following comments in bullet point form:

The recent 2023 traffic survey was only conducted on Castle Way (A5132), Eastbound and Westbound. Why did the survey not include traffic into the service area nor the actual A38?

- The main traffic concern is not Castle Way (A5132), but the flow of traffic exiting the A38 onto the A5132 and traffic attempting to enter onto the A38 along the very small left-hand- turn acceleration lane.
- The history of reported accidents, the high volume of un-reported incidents and the thousands of near misses are all due to slow moving traffic attempting to exit or enter the A38 from the A5132.
- We therefore request that a full analysis is conducted on this actual junction and that the results are shared.
- The recent 2023 traffic survey was completed from Thursday 7th Dec through Wednesday 13th Dec 2023.
- The full traffic flow data is provided for each day and by time of day.
- However, the report only analyses the data from what it claims to be the Peak Traffic which it states are Friday (7am-10am and 4pm-7pm) and the Saturday 11am-3pm.

- The report compares the alleged peak-traffic data to the same days within the 2021 traffic report.
- The report shows that traffic volumes are roughly similar, and in some cases lower than that of 2021 traffic volumes.
- In order to verify the data, the 2021 report was reviewed to look at the reported traffic volume.
- The original report (section 7.0, Page 24) states that the original traffic surveys were undertaken on Friday 12th November 2021 (7-10 and 4-7) and Saturday 13th November (11-3). It states “the timings of the surveys are designed to assess the times when the peak development traffic is likely to coincide with the network peak traffic.
- The bulk of the original highways/traffic analysis and report was completed using this raw data to make assumptions on queuing traffic, extra congestion and the impact on the network.
- The new 2023 traffic data however does show the actual traffic volume by day and time.
- The Eastbound and Westbound data has been combined for ease of analysis.
- The Peak traffic flow day is not the Friday nor the Saturday as we were led to believe in the original report.
- Peak Morning time is 7am till 10am on a Wednesday.
- In fact, Wednesday is around 25% busier than what the applicant states the Peak time is.
- The data actually shows that Friday 7am till 10am is the quietest morning Peak Time.
- In order – Wed=1817, Tue=1810, Mon=1646, Thu=1550 and Fri=1465.
- The same results are found in the applicants next analysis of the alleged Friday Afternoon/Evening Peak Time.
- Instead of the alleged Friday peak being between 4-7pm, the actual Peak Evening day/time is Tuesday between 3pm and 7pm.
- Considerable amount of school traffic passes through this area as the largest secondary school in Derbyshire is located a few miles away.
- The data actually shows that Friday afternoon is the 2nd quietest day/time.
- In order – Tue=1599, Wed=1563, Mon=1550, Fri=1509 and Thu=1463.
- The other assumption in the original report is that Saturday lunch is the peak time at weekends.
- Low and behold, the 2023 data shows more traffic in the full 24-hour period on a Sunday.
- In fact, the Peak Lunch time periods on both those days are 1833 on Sunday and 1339 on the Saturday.
- Sunday lunch period is 37% busier that the alleged peak period on the Saturday.

There are only two possible reasons for the applicant analysis to produce these findings either the traffic data for any other day is considerably higher or the applicant has misled planners by suggesting that Friday and Saturday are the peak times.

Why does the 2021 traffic report not show the volume of traffic for each day and time?

- A very detailed 66 page 2021 report only uses traffic data for a 10-hour period in a whole week.
 - The same 2021 report only uses traffic data for the A5132 and not the far busier A38 on which the majority of traffic will be entering/exiting.
 - The report references accidents near the site but fails to mention the actual fatal accidents that have occurred on or near this junction (this information has been provided previously but omitted from the applicants reports).
 - We request that a new and complete Highways report be completed again as the report from 2021 is at best disingenuous and worst case a deliberate attempt to mislead by presenting only the data that fitted their proposal.
 - The report should include all data including the A38 and specifically that junction.
- The queuing traffic data, impact of the increased traffic and every other assumption were based on flawed and inaccurate assumptions taken in 2021.
- Every single Parish Council in the region has raised concerns about this junction in the initial application.
 - Hundreds of locals have raised concerns about this junction in the original application.
 - The original application a was based on flawed data.
 - We state that the residents who live in the area, and who use that junction on a daily basis should be listened to and that any application for development includes significant work to make the entrance and exit onto the A38 safe.

Cllr Martyn Ford - I strongly object on the grounds of noise, light and smell pollution. I also object to the request for 24hr operation which will have serious, negative impacts on the amenity of local residents.

Public Responses - The application has received a considerable amount of publicity. A total of 199 letters of objection or raise specific concerns and a total of 43 letters of support were received. A summary of the public responses and the key points that were raised are as follows:

Objections

- a) Increase in traffic and highway safety impacts;
- b) Noise, odour and air pollution impacts;
- c) Potential increase in litter arising from proposed development;
- d) An existing McDonalds restaurant is already in close proximity;
- e) Impact on the character of Willington;
- f) Impacts on the environment from increase in pollution;
- g) Lack of pedestrian access;
- h) Not an appropriate location for the proposed development;
- i) Potential increase in anti-social behaviour;
- j) Impacts on local businesses;
- k) Impact on health and wellbeing of local people.

Support

- a) Job creation in the area;
- b) Increase in convenient food options in the area;
- c) Reduction in car journeys into local towns to access McDonald's;
- d) Addition to the local area;
- e) Positive use of site;
- f) Improve appearance of site.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S5 (Employment Land Need), S6 (Sustainable Access), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure)

2017 Local Plan Part 2 (LP2): BNE5 (Development in Rural Areas), RTL1 (Retail Hierarchy);

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of development (Sequential Test);
- Principle of development (Development in the Rural Area);

- Scale Appearance and Visual Impact;
- Highway Impact; and
- Impact on neighbouring residential amenity.

Planning assessment

This is a re-submission of DMPA/2022/1321 which was withdrawn prior to committee in September last year and was recommended for refusal due to the submission of an inadequate sequential assessment and for not providing a sound business case in line with policy E7. The applicant has sought to address these concerns in this resubmission.

Principle of development (Sequential Test):

The application proposals seek permission for the erection of a freestanding restaurant with drive-thru facility, which is proposed to be operated by national fast food retailer McDonald's. The proposed development would be considered to fall within Use Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 20202, and for the purposes of determining this application constitutes a main town centre use as defined within the National Planning Policy Framework. The glossary to the NPPF specifically identifies drive-through restaurants as a main town centre use.

Policy RTL1 of the Local Plan Part 2 states that 'applications for new main town centre uses outside of the following centres will be subject to the sequential test'. Indeed, that reflects the NPPF that states (paragraph 91) 'local planning authorities should apply a sequential test to planning application for main town centres which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre location; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'

Planning Practice Guidance states: "it is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential test could in itself constitute a reason for refusing permission)." (ref: 011 ID Reference ID: 2b-011-20190722).

The applicant states that a sequential test has been undertaken and possible locations were discussed with input from Planning Policy, but no alternative sites have been found. This includes an investigation of a 'Drive Thru' restaurant in the local centre of the hosing allocation at New House Farm. Most recently the LPA notified the applicant that the KFC 'Drive Thru' located at Derby with Burton Services at the junction of the A38 and A50 was vacant. The applicant was not aware that the unit was available at the time the sequential assessment was amended. However, whilst the applicant has not been able to verify whether the lease has been surrendered or lapsed at this time, the applicant states that the site has been reviewed on several occasions over the last 15 years and has been reviewed again in the light of its potential availability not only as a suitable alternative site but also as an additional store. Each time, McDonald's has determined that the site is not viable or suitable, being too small as an alternative and the applicant has been advised that there is no further space available at the services without a full reconfiguration of the building.

In addition, despite undertaking a sequential test in regard to the local centres set out in the amended sequential assessment, the applicant considers that the proposal does not need to be subject to sequential testing as the particular locational requirements of a roadside drive thru restaurant mean that a town or local centre site would be unsuitable.

The applicant refers to appeal decision APP/C3105/W/16/3151655, which states (paragraph 2): "Given that the purpose of this development is to provide roadside facilities for motorists on the A43, which by definition is unlikely to be within a town centre, I consider the sequential test to be of little relevance to this appeal and this was confirmed by the Council at the hearing. Furthermore, the Council's statement notes that disputing whether or not there are alternative sites available will not be

beneficial to either party. The Council also confirmed at the hearing that the question of alternative sites does not arise in this case, as there are none under consideration.”

In Paragraph 3 the Inspector goes on to state:

“As such, although the reasons for refusal state that there has been insufficient robust assessment of alternative locations along the A43, I have concluded that neither a consideration of alternative sites nor the sequential test are determinative factors and have given them no further consideration in my reasoning.”

Notwithstanding the above, planning applications should be considered on their own merits. The Inspector’s conclusion does not rule out the application of the sequential test in all circumstances when considering development of this kind. Notably, footnote 46 of the NPPF states that ‘The primary function of roadside services should be to support the safety and welfare of the road user’. However, no case has been made to suggest that this is the primary function of the proposal. The Transport Assessment submitted with the application indicates that 30% of trips generated on a Friday and 11% of trips generated on a Saturday would be additional trips made solely for the purpose of visiting the facility. Of the remaining trips an unspecified proportion would be accounted for by traffic diverted from existing routes to visit the facility, adding to the overall distances travelled. The Transport Assessment suggests that such trips would be diverted from the A38 northbound carriageway, but it seems reasonable to assume that a proportion would be taken from local routes, such as the B5008, which passes through the centre of Willington. The volume of induced travel demonstrates that the proposal would serve a wider purpose than that of a roadside facility and would be a destination in its own right for many patrons, confirming that it should not be exempted from the requirement to undertake a full sequential test.

The NPPF para 92 states that “where a sequentially preferable site cannot be found preference should be given to accessible sites which are well connected to the town centre”.

The applicant has undertaken a sequential assessment and has adequately demonstrated that there are no sequentially preferable sites that are suitable for the business model of the applicant. In addition, the applicant maintains that the sequential assessment was not necessary given the proposal's primary function is to serve as a roadside facility. This last point is disputed by the Council. Nevertheless, it is considered on balance that the sequential assessment adequately confirms that there are no sequentially preferable sites for the proposed use.

Principle of development (Development in the Rural Area)

The site is located along the A38 at the Willington Services to the west of the Key Service Village of Willington. The site is located outside any defined settlement boundaries and, therefore, for the purpose of planning is located in the rural area of the District. However, it is noted that this is not a typical rural area given the site's location on a key part of the local highway network. The site is also within an area that is somewhat suburban in character due to the range of uses/development within its vicinity.

Notwithstanding the above, in rural areas, the provision of new development is limited to that which is considered to be acceptable *inter alia* by Policy BNE5, which allows for development that accords with other policies in the Development Plan. Of most relevance to the proposals, this includes Policy E7 that states:

“The Council will support proposals for the re-use, conversion and replacement of existing buildings where:

- i) It is supported by a sound business case;
- ii) The local highway network is capable of accommodating the traffic generated;
- iii) Development will not give rise to any undue impacts on neighbouring land;
- iv) It is well designed and of a scale commensurate to the proposed use;
- v) Visual intrusion and the impact on the character of the locality is minimised.”

Taking into consideration the above, whilst the company's business case has not been put forward in support of the development - the applicant states that it does not share its business model with anyone - the applicant has provided detail on its UK operation and contribution to the economy of South Derbyshire. The applicant states:

'The latest figures available show that McDonald's contributed £1.87 million to the economy South Derbyshire. Of this total, 87% is associated with the value of the meals sold in restaurants and the remaining 13% is the value of expenditure with suppliers and driven by the multiplier effect of employees in their company-owned and franchised restaurants, and employees supported by the supply chain, spending their wages in the local economy.'

These figures are being checked and a verbal update will be given to committee. It is evident that the applicant has a successful international business and a dedicated team working on what it refers to as 'gap analysis' looking for suitable additional sites. Given this additional information it is considered that the proposed development is of a design and scale that would be financially sustainable in this location and is therefore considered to comply with i) of E7. Other criteria set out in E7 are discussed below.

Scale appearance and visual impact

The most applicable policies and guidance to consider with regards to the design, character, and appearance related considerations are Policy S2 (Presumption in Favour of Sustainable Development), Policy E7 (Rural Development), Policy BNE1 (Design Excellence), Policy BNE4 (Landscape Character and Local Distinctiveness), Policy BNE5 (Development in Rural Areas), and Policy BNE7 (Trees, Woodland and Hedgerows) of the South Derbyshire District Local Plan and the South Derbyshire Design Guide SPD.

Policy BNE1 of the Local Plan Part 1 states that all new development will be expected to be well designed and embrace the principles of sustainable development, encourage healthy lifestyles and enhance peoples quality of life. The building, a series of flat-roofed 'boxes' connected to each other and clad in different materials is similar to other McDonalds restaurants. The modular design and construction techniques provide a highly sustainable energy efficient building. The appearance is unmistakably a McDonald's restaurant but its materials scale and visual impact are acceptable being set back from the residential development to the north and more generally in this roadside location and therefore complies with BNE1. Sufficient detail is set out on the plans not to require a condition relating to materials.

Highway impact

Policy INF2 of the Local Plan Part 1 states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development. In addition, Policy S6 of the Local Plan Part 1 sets out the Council's aim to minimise the need to travel, make the most efficient use of transport infrastructure and services and encourage a modal shift away from the private car.

The proposed development is to be served by the existing site access that is taken from Castle Way. The existing arrangement is considered to be acceptable and the required visibility splays can be readily achieved. The scheme proposals also include the provision of access improvements to ensure safe and satisfactory use by customers and vehicles. Pedestrian access to the site will be provided by a new footway on Castle Way to the east of the site, along with the provision of an uncontrolled pedestrian crossing to the existing footway on the northern side of Castle Way utilising dropped kerbs and tactile paving. The Highway Authority have reviewed the access arrangements and considered them to be acceptable.

As noted in relation to consideration of the sequential test, above, the site is situated in an out-of-town location and, therefore, there are limited opportunities for customers and staff members to access the site via foot, cycle or public transport. The applicant has, therefore, prepared a Travel Plan that includes a number of measures that seek to reduce the need for staff to travel by private car to the site. This includes the provision of secure cycle parking, implementation of a car sharing initiative,

appointment of a travel plan co-ordinator and the appraisal of staff against the Travel Plan.

A number of public responses have been received on the application raising concerns with regards to the impact of the proposed development on the surrounding highway network. Notably, the potential queuing on the highway that may result from people accessing the drive thru element of the scheme. The Transport Assessment that was submitted as part of the application indicates that the proposed drive thru lane has a capacity for 20 vehicles before reaching the main McDonalds car park. The assessment highlights that at two existing McDonalds restaurants in comparable settings which showed queues were on average 6 car lengths with the maximum queue measured as being 10 car lengths. On that basis, the proposed lane length of 20 vehicles is considered to be acceptable and will not affect the operation of the car park or the local highway network.

The number of parking spaces provided by the scheme has been amended through the course of the consultation on the application. This now better reflects the maximum anticipated demand generated by the proposed development. The reduction in parking spaces at the site also enable a more satisfactory servicing arrangement.

The Transport Assessment that was submitted as part of the planning application confirms that the proposed development traffic can be satisfactorily accommodated on the local road network. This has been reviewed by the Highway Authority who agree with these conclusions.

In light of the above, the Highway Authority do not raise any objection in relation to the proposed development. The application has also been reviewed by National Highways who also raised no objection.

The proposed development is, therefore, considered to be acceptable in highways terms and in accordance with Policy INF2 and Policy S2 of the Local Plan Part 1.

Impact on neighbouring residential amenity

Policy SD1 of the Local Plan Part 1 states that the Council will support development that does not lead to adverse impact on the environment or amenity of existing and future occupiers within or around proposed developments.

The application site is located directly opposite the existing residential dwellings that are located on Castle Way. The proposed development, therefore, has the potential to impact on the amenity of nearby residents in terms of lighting, noise and odour, which must be taken into consideration in determining the application.

The Environmental Health Officer reviewed the scheme proposals and requested further information in relation to the impact of vehicle lights upon neighbouring amenity and measures to control the omission of odour. An odour assessment has been submitted and Environmental Health have confirmed that on this basis the proposal would not result in any detriment to the occupants of these neighbouring properties. A revised proposed site has been submitted (11275 AEW 8862 0004F) with the inclusion of screening for the headlights and it is understood that this information is acceptable.

The applicants submitted an Environmental Noise Assessment, which sets out a number of mitigation measures to minimise noise emissions from the site. These are considered to be acceptable and ensure that the development will not lead to unacceptable level of noise. The Environmental Health Officer raises no concerns with the Noise Assessment. However, recommends that a condition should be included to limit delivery times to only take place between the hours of 7am and 11pm, should the application be approved.

Overall, it is accepted that the proposed development will not lead to an unacceptable impact on neighbouring residents in terms of noise disturbance or odour.

Conclusion and Planning Balance

The proposal will result in a main town centre use being located outside of the town centre in the rural part of the district, which are negative aspects of this application that weigh against approval in the planning balance. There are also concerns raised by members of local communities regarding traffic, noise and disturbance.

The applicants, whilst contesting the need for a sequential assessment have undertaken one, and concluded that there are no sequentially preferable and available sites. This has been reviewed by officers and found on balance to be policy compliant in relation to seeking more central sites to accommodate main town centre uses, with case law to support the applicant's case regarding roadside facilities. In light of the particular context of this area it is not considered that there would be any significant harm to the character and appearance of the area or landscape quality. There will be increased traffic associated with the use, but it is considered that this can be accommodated within the existing road network. There will also be some impact on the occupants of nearby properties associated with the use, however it is considered that this can be appropriately mitigated through conditions. The proposal will result in the redevelopment of a brownfield site and create in the region of 120 full and part time jobs, which will be a key benefit of the scheme to the local economy. On balance, it is considered that the proposals are acceptable and that there are no material planning considerations which would justify a refusal of planning permission in this instance.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:-

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

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

2. The development hereby permitted shall be carried out in accordance with drawing refs.
11275_AEW_8862_0001 (Location Plan)
11275_AEW_8862_0002 (Block Plan)
11275_AEW_8862_0004 (Proposed Site Plan)
11275_AEW_8862_0005 (Proposed Elevations)
11275_AEW_8862_0006 (Proposed Floor and Roof Plan)
18341-VL-McD_L01 Rev B (Landscape Plan)
18341-VL-McD_L02 Rev A (Landscape Planter Plan)
unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. The development hereby approved shall not be brought into use until the access, parking and turning facilities have been provided as shown on the approved drawings.

Reason: To ensure conformity with submitted details.

4. The development hereby approved shall not be brought into use until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 73m to the right and 52m to the left measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These

splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: In the interests of highway safety.

5. The development hereby approved shall not be brought into use until the bicycle and motorcycle parking has been provided in accordance with the approved details. The bicycle and motorcycle parking shall be maintained for this purpose thereafter.

Reason: To promote sustainable travel and healthy communities.

6. An electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the building hereby permitted. The plan shall contain details of the number and location of all electric vehicle charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851, and Derbyshire Highway Design Guide. Parking spaces that are to be provided with charging points shall not be brought into use until associated charging points are installed in strict accordance with approved details and are operational. The charging point installed shall be retained thereafter unless replaced or upgraded to an equal or higher specification.

Reason: To promote sustainable travel and healthy communities.

7. The Travel Plan prepared by ADL Traffic and Highways dated October 2023 (Ref ADL/CC/4418/05A) hereby approved shall be implemented and monitored in accordance with the regime contained within the Plan. In the event of failing to meet the targets within the Plan a revised Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of travel to and from the site.

Reason: To reduce vehicle movements and promote sustainable travel.

8. Notwithstanding the details provided, prior to commencement of the development hereby permitted details of a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:

- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Advisory routes for construction traffic;
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles;
- Highway Condition survey;
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

9. No deliveries shall be made to the premises other than between 0700 hours and 2300 hours.

Reason: To safeguard the amenities of nearby occupiers and/or in the interests of highway safety.

10. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: To safeguard the amenities of nearby occupiers and/or in the interests of highway safety.

11. The approved scheme for odour, submitted with the application by CDM Partnership, dated July 2023 shall be installed prior to the first use of the extraction equipment and subsequently maintained as such.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers.

12. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- Glanville. 25/05/2022. Flood Risk Assessment. 4210338/ZM/007. Including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team.
 - And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

13. Prior to commencement of the development, the applicant shall submit for approval to the Local Planning Authority details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

14. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls)

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

15. The development shall be carried out in strict accordance with the enhancement recommendations detailed in the Preliminary Ecological Appraisal version 2 prepared by Practical Ecology dated May 2023. If the Field Maple identified in the PEA will be affected by site

clearance further assessment by a suitably qualified bat ecologist will be required prior to works to determine the presence/absence of a bat roost.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

16. In line with recommendations within the PEAR report no clearance of trees, hedgerows or scrub will be completed during the bird breeding season. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. Therefore, no such vegetation clearance work should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

17. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

18. All planting, seeding or turfing comprised in the approved details set out on the landscaping plan 18341-VL_McD_L01 Rev B shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

Informatives:

- g. A. The County Council does not adopt any SuDS schemes at present (although may consider ones which are served by highway drainage only). As such, it should be confirmed prior to commencement of works who will be responsible for SuDS maintenance/management once the development is completed.
- B. Any works in or nearby an ordinary watercourse may require consent under the Land Drainage Act (1991) from the County Council. For further advice, or to make an application please contact Flood.Team@derbyshire.gov.uk.
- C. No part of the proposed development shall be constructed within 5-8m of an ordinary watercourse and a minimum 3 m for a culverted watercourse (increases with size of culvert). It should be noted that DCC have an anti-culverting policy.
- D. The applicant should be mindful to obtain all the relevant information pertaining to proposed discharge in land that is not within their control, which is fundamental to allow the drainage of the proposed development site.
- E. The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water discharge, in line with Table 4.3 of the CIRIA SuDS Manual C753.
- F. The County Council would prefer the applicant to utilise existing landform to manage surface water in mini/sub-catchments. The applicant is advised to contact the County Council's Flood Risk Management team should any guidance on the drainage strategy for the proposed development be required.

G. The applicant should provide a flood evacuation plan which outlines:

- The flood warning procedure
- A safe point of extraction
- How users can safely evacuate the site upon receipt of a flood warning.
- The areas of responsibility for those participating in the plan
- The procedures for implementing the plan.
- How users will be made aware of flood risk
- How users will be made aware of flood resilience
- Who will be responsible for the update of the flood evacuation plan

H. Flood resilience should be duly considered in the design of the new building(s) or renovation. Guidance may be found in BRE Digest 532 Parts 1 and 2, 2012 and BRE Good Building Guide 84.

I. Surface water drainage plans should include the following:

- Rainwater pipes, gullies and drainage channels including cover levels.
- Inspection chambers, manholes and silt traps including cover and invert levels.
- Pipe sizes, pipe materials, gradients, flow directions and pipe numbers.
- Soakaways, including size and material.
- Typical inspection chamber / soakaway / silt trap and SW attenuation details.
- Site ground levels and finished floor levels.

J. On Site Surface Water Management.

- The site is required to accommodate rainfall volumes up to the 1% probability annual rainfall event (plus climate change) whilst ensuring no flooding to buildings or adjacent land.
- The applicant will need to provide details and calculations including any below ground storage, overflow paths (flood routes), surface detention and infiltration areas, etc, to demonstrate how the 30 year + 35% climate change and 100 year + 40% Climate Change rainfall volumes will be controlled and accommodated. In addition, an appropriate allowance should be made for urban creep throughout the lifetime of the development as per 'BS 8582:2013 Code of Practice for Surface Water Management for Developed Sites' (to be agreed with the LLFA).
- Production of a plan showing above ground flood pathways (where relevant) for events in excess of the 1% probability annual rainfall event, to ensure exceedance routes can be safely managed.
- A plan detailing the impermeable area attributed to each drainage asset (pipes, swales, etc), attenuation basins/balancing ponds are to be treated as an impermeable area.

Peak Flow Control

- For greenfield developments, the peak run-off rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event, should never exceed the peak greenfield run-off rate for the same event.
- For developments which were previously developed, the peak run-off rate from the development to any drain, sewer or surface water body for the 100% probability annual rainfall event and the 1% probability annual rainfall event must be as close as reasonably practicable to the greenfield run-off rate from the development for the same rainfall event, but should never exceed the rate of discharge from the development, prior to redevelopment for that event.

Volume Control

- For greenfield developments, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must not exceed the greenfield runoff volume for the same event.
 - For developments which have been previously developed, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must be constrained to a value as close as is reasonably practicable to the greenfield runoff volume for the same event, but must not exceed the runoff volume for the development site prior to redevelopment for that event.
- Note:- If the greenfield run-off for a site is calculated at less than 2 l/s, then a minimum of 2 l/s could be used (subject to approval from the LLFA).
- 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 the features remain functional.
 - Where cellular storage is proposed and is within areas where it may be susceptible to damage by excavation by other utility contractors, warning signage should be provided to inform of its presence. Cellular storage and infiltration systems should not be positioned within the highway.
 - Guidance on flood pathways can be found in BS EN 752.

- The Greenfield runoff rate which is to be used for assessing the requirements for limiting discharge flow rates and attenuation storage for a site should be calculated for the whole development area (paved and pervious surfaces - houses, gardens, roads, and other open space) that is within the area served by the drainage network, whatever the size of the site and type of drainage system. Significant green areas such as recreation parks, general public open space, etc., which are not served by the drainage system and do not play a part in the runoff management for the site, and which can be assumed to have a runoff response

which is similar to that prior to the development taking place, may be excluded from the greenfield analysis.

K. If infiltration systems are to be used for surface water disposal, the following information must be provided:

- Ground percolation tests to BRE 365.
- Ground water levels records. Minimum 1m clearance from maximum seasonal groundwater level to base of infiltration compound. This should include assessment of relevant groundwater borehole records, maps and on-site monitoring in wells.
- Soil / rock descriptions in accordance with BS EN ISO 14688-1:2002 or BS EN ISO 14689-1:2003.
- Volume design calculations to 1% probability annual rainfall event + 40% climate change standard. An appropriate factor of safety should be applied to the design in accordance with CIRIA C753 – Table 25.2.
- Location plans indicating position (soakaways serving more than one property must be located in an accessible position for maintenance). Soakaways should not be used within 5m of buildings or the highway or any other structure.
- Drawing details including sizes and material.
- Details of a sedimentation chamber (silt trap) upstream of the inlet should be included.

Soakaway detailed design guidance is given in CIRIA Report 753, CIRIA Report 156 and BRE Digest 365.

L. All Micro Drainage calculations and results must be submitted in .MDX format, to the LPA. (Other methods of drainage calculations are acceptable.)

M. The applicant should submit a comprehensive management plan detailing how surface water shall be managed on site during the construction phase of the development ensuring there is no increase in flood risk off site or to occupied buildings within the development.

N. The applicant should manage construction activities in line with the CIRIA Guidance on the Construction of SuDS Manual C768, to ensure that the effectiveness of proposed SuDS features is not compromised.

- h. The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out.

Contact the Highway Authority's Implementation team at development.implementation@derbyshire.gov.uk allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the Councils costs in undertaking the following actions:

Item No. 1.8

Ref. No. [DMPA/2024/0062](#)

Valid date: 12/01/2024

Applicant: T Ranking

Agent: SG Design Studio

Proposal: Approval of reserved matters for plots 1 and 2 (appearance, landscaping, biodiversity enhancement, layout, car parking and scale) pursuant to outline permission ref. DMPA/2021/0983 at land to the rear of 69a and 69b, Repton Road, Hartshorne, Swadlincote, DE11 7AF

Ward: Hartshorne

Reason for committee determination

This item is presented to the Committee as the applicant is related to Councillor Neil Tilley.

Site Description

The application site is located to the south of Repton Road, Hartshorne and to the immediate west of a public right of way. There are a number of trees within the site and the land slopes away towards Repton Road and towards the south. The application relates to plots 1 and 2 which are located between the existing dwelling to the north and kennels to the south. Plot 3 is located broadly in the position of the existing kennels buildings.

The proposal

Outline planning permission was granted in June 2022 for the erection of three dwellings. The current planning application seeks approval for matters that were reserved as part of the outline planning permission, as secured by planning conditions 2, 12, and 13. The application seeks to secure approval for plots 1 and 2 of the site, with matters related to plot 3 having previously been approved under ref. DMPA/2023/1243 in December 2023.

The proposal comprises the erection of two dwellings which would be orientated towards the access road that is located on the eastern site boundary. The dwellings would incorporate 5no bedrooms each and would be broadly symmetrical as a pair with gable roof design, adjoining double garage with habitable floorspace (and dormer windows) above and chimneys on the end elevation. There would be a canopy above the central front door and dormers. Parking spaces would be provided on the eastern side of the dwellings in front of the garages, and private amenity space would be provided to the west and north/south.

Applicant's supporting information

- Existing Site Survey 224-29-01, Rev A
- Proposed Site Plan 223-29-02, Rev B
- Proposed Dwelling, Plot 1, 224-29-03-p1
- Proposed Dwelling, Plot 2, 224-29-03-p2
- Proposed Sections / Street Scene, 224-01-04
- Proposed Site Plan Simplified, 223-29-05, Rev B
- Proposed Landscaping Plan, 223-29-06, Rev C
- Location Plan, 224-01-07

DMPA/2023/1243 – Land to the rear of 69a and 69b, Repton Road, Hartshorne, Swadlincote, DE11 7AF



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A Supporting Statement prepared by SG Design Studio (received by the Local Planning Authority on 12 January 2024) also highlights the matters for which approval is sought and incorporates additional detail on materials.

Relevant planning history

DMOT/2024/0061 Approval of details reserved by condition nos. 4 (CEMP), 5 (finished floor levels, plots 1 and 2) and 10 (drainage, plots 1 and 2) of permission ref. DMPA/2021/0983 – approved March 2024

DMPA/2023/1243 Approval of reserved matters for plot 3 (appearance, landscaping, biodiversity enhancement, layout, car parking and scale) pursuant to outline permission ref. DMPA/2021/0983 – approved December 2023

DMOT/2023/1270 Approval of details reserved by a condition 4 (CEMP), 5 (levels plot 3 only) and 10 (drainage plot 3 only) relating to planning permission DMPA/2021/0983 – approved December 2023

DMPA/2021/0983 Outline application (matters of access to be considered now with matters of layout, scale, appearance and landscaping reserved for later consideration) for the erection of three dwellings – approved 07/06/2022

Responses to consultations and publicity

County Highways Authority

Having reviewed the submitted plans there are no highways objections to the application. (08/02/2024)

Derbyshire Wildlife Trust

I have reviewed the information particularly in relation to Condition 13 relating to Biodiversity Enhancements. The plans indicate the type and position of swift bricks, bat boxes and bee insect houses both within the new dwellings and to be installed on retained trees as required under the condition. I therefore have no objection to the approval of reserved matters on this basis. (04/03/2024)

Tree Officer

There is no objection to the planting of the proposed 5no. standard *Prunus sargentii* Rancho an upright ornamental cherry and 3 no. *Betula jacquemontii* Snow Queen a tree of slender form with white bark are appropriate species for these properties with small gardens.

The proposed mixed native fruit and nut hedges (damson, crab apple, hazel and blackberry) to be planted on the north boundary of Plot 1 between the 1.8m close boarded fence and the turning area of the car park and between Plot 2 and Plot 3 under the crown of the pear T17 will be subject to shade from the fence and the canopy of the pear T17 and In my view are unlikely to establish well in this location. However, if the hedges manage to establish, they have the potential to grow to a height of 5.0m and 3.0m in width in 10 years which is too large for the site and will require extensive cutting, the consequence of which is they are unlikely to produce flowers, fruit and nuts.

The damson, crab apple, hazel and blackberry are potentially large growing species that if they do become established will quickly grow too large for this site.

I would have in the past suggested box (*Buxus sempervirens*) as an alternative native hedge on this site. However, box is now found to be susceptible to both fungal box blight and defoliation by box caterpillars. An alternative is Japanese holly (*Ilex crenata*) that has small evergreen leaves and can be trimmed like box to produce a low growing and narrow width hedge and will grow in most soil conditions or privet (*Ligustrum ovalifolium*) that is a reliable hedge plant in the UK and will tolerate shade and most soil conditions. (13/02/2024)

Environmental Health

No objections or comments (14/02/2024)

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

Local Plan Parts 1 and 2: BNE1, INF2, BNE3, BNE7.

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

Planning considerations

The principle of the development was accepted as part of outline planning permission DMPA/2021/0983. Conditions 2, 12, and 13 required that matters reserved at the outline stage be subject to further information as part subsequent planning applications. Specifically:

Condition 2 states: Before any development is commenced the further approval of the local planning authority is required with respect to the following matters (herein referred to as the reserved matters) on an application made in that regard: (a) appearance, (b) landscaping, (c) layout, and (d) scale. *Reason: This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015 and section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004)*

Condition 12 states: As part of a Reserved Matters application, the number, size, layout, and location of car parking spaces must be submitted to, and approved in writing by the local planning authority. Before the first occupation or use of the development, these parking spaces shall be provided in accordance with the approved details and thereafter retained for the sole use of parking for the development hereby approved for the lifetime of the development. *Reason: To ensure that the proposed development does not prejudice the free flow of traffic or the conditions of general safety along the neighbouring highway and to ensure that the facilities provided are reserved for the benefit of the development for which they are specifically required.*

Condition 13 states: As part of the reserved matters, a scheme of biodiversity enhancement to include, as a minimum, features incorporated within the new buildings for roosting bats and nesting swifts along with hedgehog gaps and native planting within the details of landscaping shall be submitted to and approved in writing by the local planning authority. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development. *Reason: In the interests of the biodiversity of the site and the surrounding area.*

The determining issues related to the reserved matters application for plots 1 and 2 are therefore:

- Design and Impact on the Character of the Surrounding Area;
- Residential Amenity;
- Highways and Parking;
- Landscaping and Biodiversity; and
- Other Considerations

Planning assessment

Design and Impact on Character of the Surrounding Area

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD. This policy requires that new development responds to its context and has regard to valued landscape characteristics. Also that it is visually attractive, appropriate and possesses a high standard of architectural design.

Condition 2 of planning permission reserved matters of appearance, layout and scale for later consideration. The dwellings would be prominent from the public right of way to the immediate east of the site, although not easily be visible from the public realm of Repton Road. Number 69 (a,b) Repton Road comprises a characterful dwelling with large chimneys, traditional fenestration that has been extended a number of times to the rear. There are uniform short terrace rows to the east of the access, and a mix of dwellings on the opposite side of Repton Road, together with newer dwellings to the west of the site and within Adams Close. The mix of dwelling types and scales in the area provides scope for flexibility in design and therefore the main considerations comprise the general acceptability of the design/appearance and residential amenity. The plans were reviewed together with the Council's Design Officer and the design is considered acceptable within the context. The facing materials put forward in the application supporting statement comprise mixed coloured brickwork with grey roof tiles, which would be consistent with the detail previously accepted for plot 3 and similar to the Adams Close dwellings.

The applicant has submitted the proposed finished floor levels for the dwellings on the Proposed Site Layout (ref. 224-01-02, received 12 January 2024) and Proposed Streetscene (224-01-04, received 12 January 2024). It is noted that there is a change in land levels within the site, with the ground at plot 3 higher than plots 1 and 2. The land is also higher than in the neighbouring development to the west (Adams Close). There would be c. 23m between the rear elevations for numbers 5, 7 and 9 (plots 6-8 ref. 9/2010/0698) Adams Close and plot 1 of the proposed development, which would exceed the recommended distance in the Design Guide SPD and would be acceptable even when making allowance for the difference in topography. There are no habitable room windows on the ground floor, eastern elevation of number 11 (plot 10) Adams Close. Plot 2 of the proposed development would be separated by a distance of c. 18m at the nearest point from the first floor bedroom window of number 11 Adams Close. This nearest point would be with the ensuite of Plot 2 which is proposed to be obscure glazed. There would be more than 19m between the first floor bedroom window of 11 Adams Close and the nearest bedroom windows in plot 2, which would exceed the recommendation of the Design Guide SPD (of 15m) by 4m and would be acceptable even taking into account topographical differences. It is noted that there are also trees protected by Tree Preservation Order (TPO) intervening between the two developments. As the amenity of neighbouring dwellings would be acceptable.

Overall, it is considered that the appearance, layout and scale of the proposed dwellings is acceptable and in accordance with the requirements of policy BNE1 related to design.

Highways and Parking

Policy INF2 sets the policy framework for sustainable transport and states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for users of the private car and other modes of transport. Access to the site was approved as part of the outline planning permission, however condition 12 required details to be submitted related to the number, size, layout, and location of car parking spaces. The County Highways Authority was consulted as part of the planning process and raised no objections. The Design Guide SPD states that the Council '*strongly encourages developers to provide at least two spaces for dwelling*'. This provision would be achieved through provision of the double garage for each dwelling and parking spaces in front of the garages.

Landscaping and Biodiversity

Policy BNE1 g) includes requirement for development to possess a high standard of landscaping quality. Policy BNE3 supports development which contributes to the protection, enhancement,

management and restoration of biodiversity and delivers net gains in biodiversity wherever possible.

The proposed landscaping plan shows detailed specification of tree and shrub planting, which has been reviewed by the Council's Tree Officer. Some recommendations were made for alterations to the proposed species to ensure that trees/shrubs would be suited to the application site. The recommendations were taken into account by the applicant and the landscaping scheme updated accordingly.

With respect to the requirement for biodiversity enhancement, condition 13 required features to be incorporated within the new buildings for roosting bats and nesting swifts along with hedgehog gaps and native planting. The proposal includes provision of an integrated swift brick, bat brick and bee brick per dwelling in plots 1 and 2. There would be 2no. bat boxes and 4no. bird boxes placed on trees within the site, as previously agreed for plot 3. Derbyshire Wildlife Trust has been consulted on the application and confirmed that the proposals would be acceptable. These provisions, together with the detailed planting scheme, would be sufficient to provide a net gain proportionate to the scale of the plot and proposal.

It is considered that the requirements of conditions 2 and 13 would be met with respect to biodiversity and landscaping, with the details in accordance with policies BNE1 and BNE3.

Other Considerations

It is noted that the only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted. It is recommended that an informative be attached to any forthcoming planning permission to highlight to the applicant/developer that the decision notice should be read together with the outline planning permission DMPA/2021/0983.

Conclusion and Planning Balance

Outline planning permission was approved in 2022 for the erection of three dwellings on the application site, with all matters reserved except means of access. The principle of the development has therefore been accepted, and the current application seeks approval only for the details previously reserved including appearance, layout, scale, landscaping, parking arrangement and biodiversity enhancement. The application relates only to plots 1 and 2, with the details for plot 3 having previously been approved. The design of the proposed dwellings is considered to accord with the requirements of policy BNE1 and the Design Guide SPD, including for residential amenity. The requirements of conditions 2, 12 and 13 are considered to be met. Accordingly, the reserved matters application for plots 1 and 3 are recommended for approval, subject to conditions.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve with conditions.

1. The development for plots 1 and 2 hereby permitted shall be carried out in accordance with the following approved plans/details: Existing Site Survey 224-29-01, Rev A; Proposed Site Plan 223-29-02, Rev B; Proposed Dwelling, Plot 1, 224-29-03-p1; Proposed Dwelling, Plot 2, 224-29-03-p2; Proposed Sections / Street Scene, 224-01-04; Proposed Site Plan Simplified, 223-29-05, Rev B; Proposed Landscaping Plan, 223-29-06, Rev C; Location Plan, 224-01-07; and the Supporting Statement prepared by SG Design Studio (received by the Local Planning Authority on 12 January 2024); unless as otherwise required by condition attached to this permission or following

approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

2. All hard and soft landscaping shall be carried out in accordance with the approved details prior to occupation of any dwelling; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

Informatives:

- i. This planning permission approves matters reserved by planning permission DMPA/2021/0983 and relates to the development of plots 1 and 2 only. The applicant and/or developer is therefore advised to read this decision notice together with the conditions of the planning permission DMPA/2021/0983.

2. Planning and Other Appeals

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

Reference	Place	Ward	Outcome	Decision level
DMPA/2023/0351	Hilton	Hilton	Dismissed	Committee



Appeal Decision

Site visit made on 20 February 2024

by **Elaine Moulton BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2024

Appeal Ref: APP/F1040/W/23/3327429

77 Egginton Road, Hilton, Derby DE65 5FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mark Amritt against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/0351.
 - The development proposed is change of use of part of the amenity land at Egginton Road to allow for an access driveway and dropped kerb to houses 77, 79 and 81 Egginton Road to facilitate vehicle parking at 77 Egginton Road, Hilton, Derby, DE65 5FG.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the planning application, the Government has published a revised National Planning Policy Framework (the Framework). Where reference is made in this decision to paragraph numbers, they are taken from the latest version.

Main Issues

3. The main issues are the effect of the proposal on:
 - Local Green Space (LGS) with reference to the impact on the character and appearance of the area; and
 - highway safety, with particular regard to the adequacy of visibility from the access and communal parking provision.

Reasons

Local Green Space

4. The appeal site is an area of grassed open land next to Egginton Road, adjoined by dwellings on three sides. It is designated as LGS in the Hilton, Marston on Dove and Hoon Neighbourhood Development Plan (NDP) and the South Derbyshire Local Green Spaces Plan (LGSP).
5. Based on the evidence before me, the appeal site is used as a general play area for younger children and by dog walkers and, as such, for recreational rather than sporting purposes. Furthermore, by providing a green and natural break in the frontage, the appeal site gives visual relief from its more built-up surroundings and thereby contributes to the character of the area in a positive

<https://www.gov.uk/planning-inspectorate>

way. For these reasons, and notwithstanding the LGS is small, sloping and uneven, and is regularly overgrown, it is demonstrably special and of value to the wider local community. The LGS designation therefore accords with the requirements set out in paragraph 106 of the Framework.

6. Although a relatively small proportion would be affected by the proposal, the extent of the grassed area, within what is currently a very modest LGS, would be reduced by the formation of the proposed access driveway. The proposed development would therefore erode its green character. Even if the access were left unsurfaced, the green character would still be eroded due to vehicles continually driving over it, thereby resulting in the compaction of the ground and the loss of grass.
7. Consequently, the essential quality of the LGS as a recreational resource, and the visual relief it affords to its built-up surroundings, would be unacceptably and harmfully diminished. This would amount to a loss of part of the LGS which would be harmful to the character and appearance of the area. That the LGS would remain in the ownership of the Council does not alter my findings in this regard.
8. The proposal does not involve any compensation for the loss of LGS through equivalent or better provision, or the provision of alternative facilities. Furthermore, there is no compelling evidence before me that such loss is acceptable because existing open space and facilities in the locality exceed the required provision. Accordingly, the exceptional circumstances that are specified in Policy INF9 of the South Derbyshire Local Plan Part 1 (LP1), which is relevant to all open space irrespective of its size, are not met by the appeal proposal. The loss of open space arising from the proposed development is therefore contrary to this policy.
9. The provision of a driveway would improve access to 77, 79 and 81 Egginton Road and would enable the formation of parking spaces served by electric vehicle charging points. This would support the provision of a sustainable mode of transport and thereby promote climate change adaptation and offer environmental benefits that would accord with the aims of the Framework. However, there is no guarantee that any of the spaces would in fact be used by electric vehicles. As such this does not, for the purposes of Policy BNE8 of the South Derbyshire Local Plan Part 2 (LP2), amount to very special circumstances that justify development that I have found to be harmful to the LGS.
10. Furthermore, the proposed development on the LGS is not one of the limited types that LP1 Policy BNE8 identifies as being acceptable. Accordingly, whilst the proposal would preserve the openness of the LGS, it is contrary to LP2 Policy BNE8. It therefore follows that the proposal is also contrary to NDP Policy E1 which states that development of LGSs will not be permitted unless deemed strictly necessary under LP2 Policy BNE8.
11. Whilst the proposal would improve vehicular access to several properties, it would not serve or improve the ease of access to the LGS to the benefit of its recreational users. Accordingly, the proposed development does not constitute an enhancement of the LGS and does not gain support from the LGSP.
12. Therefore, the proposal would result in the harmful loss of LGS contrary to LP1 Policy INF9, LP2 Policy BNE8 and NDP Policy E1, thereby unacceptably

diminishing it as a recreational resource and harming the character and appearance of the area.

Highway safety

13. The visibility splays, shown on the submitted Visibility Splay Block Plan, cross the frontages of the dwellings to either side of the LGS. As a result of the height of the boundary treatments to the front and side of those properties, the visibility on exit from the access would be impeded. Any driver exiting from the proposed access would, therefore, have limited forewarning of other vehicles travelling along Egginton Road. My observation on site suggests that there are a steady number of vehicles that pass the appeal site, and such vehicles are travelling at moderate speeds. Given such conditions, it is probable that vehicles exiting the proposed access driveway would encounter other highway users of Egginton Road and that, on occasion, there would not be sufficient time to anticipate each other's movements and stop as appropriate. Accordingly, the impediment to visibility for vehicles exiting the site is likely to result in conflict with users of Egginton Road to the detriment of highway safety.
14. I acknowledge the appellant's intention was for the Visibility Splay Block Plan to show that a space within the lay-by, over which vehicles using the proposed access would cross, would be required to be left free of obstruction. Nonetheless, there is no compelling evidence that suggests that the visibility splays, which are clearly impeded, have been incorrectly drawn.
15. The appellant suggests that reversing out of the existing parking spaces within the lay-by is unsafe. However, the proposal would not result in a cessation of such reversing manoeuvres. In the absence of any robust evidence that suggests otherwise, it has not been demonstrated that a reduction in parking spaces and reversing manoeuvres would maintain or improve highway safety to justify an access that I have found to be unsafe.
16. Vehicles would drive across the LGS as part of the proposal, which would be an unsafe arrangement as it could lead to conflict with the users of the LGS, particularly children. However, this could be addressed by the erection of a barrier to segregate the access from the remaining LGS. Such a barrier could be secured through a planning condition.
17. There is no agreement between the parties as to the precise number of spaces that would be lost from the lay-by because of the proposal. I am, however, satisfied that the number of parking spaces lost would be exceeded by the number of vehicles that would be taken off the highway through on-plot provision. I therefore find, in the absence of any compelling evidence to the contrary, that the proposal would not exacerbate any existing highway safety issues arising from an insufficiency of on street parking spaces in the locality.
18. I have not agreed with the Council that there would be an unacceptable loss of communal parking and have found that any conflict between users of the space and vehicular traffic arising from the development could be appropriately addressed. Nonetheless, it remains that the proposed access driveway would be unsafe due to inadequate visibility.
19. I therefore conclude that the proposed development would be harmful to highway safety due to inadequate visibility. Consequently, it would be contrary

to LP1 Policy INF2 which requires, amongst other things, that appropriate provision is made for a safe access.

Other Matters

20. Whether or not the cost of the proposed development should be met by the Council, and any difficulties that there may be in the funding of the future maintenance of the proposed access driveway, are matters that fall outside of the remit of this decision.
21. Whilst no objections have been raised by interested parties this is a neutral factor that does not weigh in favour of the scheme. In addition, the public support for the proposal does not justify the harm identified.
22. I acknowledge the appellant's comments that the proposal would improve access for emergency vehicles to the properties adjoining the LGS. However, no compelling case has been presented that indicates emergency vehicle access is currently problematic or that the proposal would materially improve such access.

Planning Balance

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
24. I have concluded that the proposal would result in the loss of LGS that would unacceptably diminish it as a recreational resource and would harm the character and appearance of the area. I have also found harm regarding highway safety. Consequently, the proposal conflicts with the development plan and such a conflict carries substantial weight in the decision.
25. The proposal would enable the formation of parking spaces served by electric vehicle charging points and therefore facilitate the provision of a sustainable mode of transport. However, I have found that there is no guarantee that the spaces would in fact be used by electric vehicles. As such, this benefit is only afforded limited weight in the planning balance.
26. Accordingly, in this instance, I consider that the benefits of the proposal do not present a material consideration that is sufficient to outweigh the identified conflict with the development plan.

Conclusion

27. The development conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
28. Therefore, for the reason given above, I conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR