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Our ref: DT/CL
Your ref:

Date: 24 September 2013

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, on **Tuesday, 17 December 2013 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

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

Labour Group

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



AGENDA

Open to Public and Press

- 1 Apologies
- 2 To note any declarations of interest arising from any items on the Agenda
- 3 To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4 Report of the Head of Community and Planning Services **3 - 136**

Exclusion of the Public and Press:

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

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2013/0689	1.1	Linton	Linton	1
9/2013/0733	1.2	Willington	Willington & Findern	39
9/2013/0745	1.3	Willington	Willington & Findern	50
9/2013/0754	1.4	Newhall	Newhall & Stanton	92
9/2013/0855	1.5	Newhall	Newhall & Stanton	98
9/2013/0859	1.6	Newhall	Newhall & Stanton	105
9/2013/0932	1.7	Melbourne	Melbourne	112

When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Director of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Director of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 1.1

Reg. No. 9/2013/0689/OS

Applicant:
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton Business Park
Congleton
CW12 1LB

Agent:
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton Business Park
Congleton
CW12 1LB

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 110 DWELLINGS ON LAND AT SK2616 8753 OFF HIGH STREET LINTON SWADLINCOTE**

Ward: LINTON

Valid Date: 11/09/2013

Reason for committee determination

The application is brought to the Planning Committee at the request of Councillor Stuart as local concern has been expressed about particular issues and there are unusual site circumstances that should be considered and debated. Additionally, the application is for a major development that has attracted more than two letters of objection and is not in accord with the development plan.

Site Description

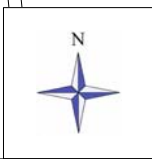
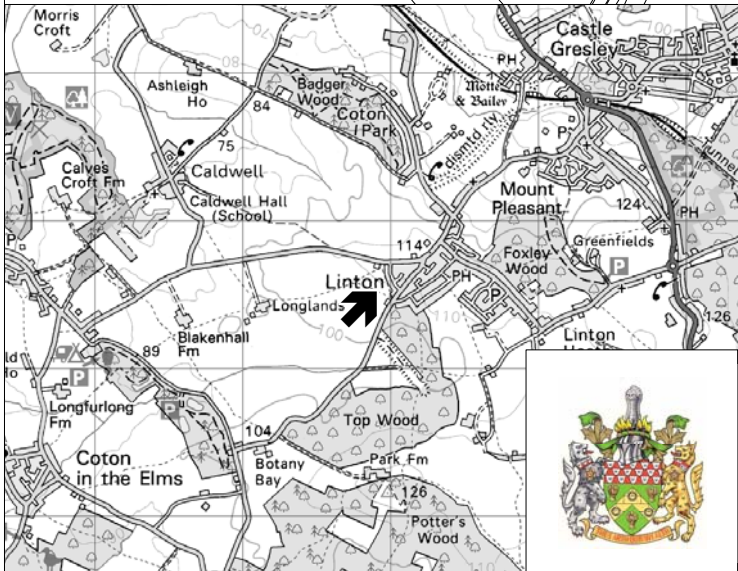
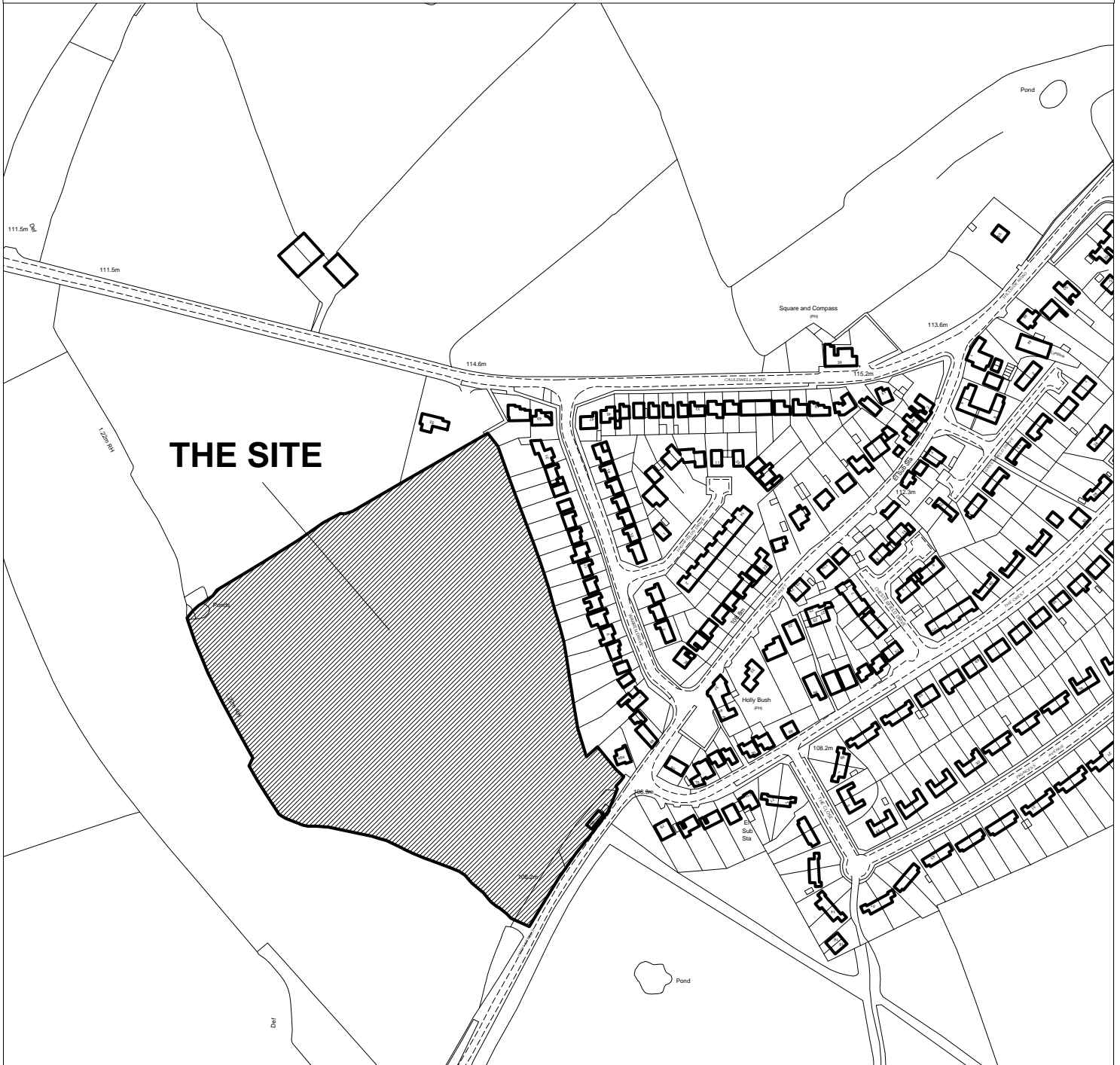
The application site comprises a two-storey dwelling (No.50 High Street, Linton), its curtilage and an agricultural field to the rear, totalling some 4.74 hectares, and is located adjacent to the western edge of Linton, outside the village confine boundary as depicted in the current Local Plan. The rear gardens of residential properties on Warren Drive abut the eastern side of the site, and open fields abut the northern and western boundaries separated by hedgerows and trees. The south eastern boundary of the site borders High Street, again separated by a mature hedgerow.

There are three public footpaths within the site; FP 14 follows the eastern boundary, FP 15 crosses the site diagonally on a northwest/southeast axis and FP 16 follows the northern boundary.

The entrance to Long Close Wood is located on the opposite side of High Street.

Proposal

9/2013/0689 - Land at SK2616 8753, off High Street, Linton, Swadlincote (DE11 6QL)



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The application, which is in outline with all matters reserved for future consideration except for access, is for the development of the site for a maximum of 110 dwellings, together with the provision of an area of public open space measuring approximately 1.20 hectares, which would also include a play area, located towards the middle of the site and a balancing pond at the southern corner. No.50 High Street would be demolished and the land included within the application site. A new vehicular access would be created into the site from High Street, approximately half way along the south eastern boundary. High Street would be widened to 5.5m and a 2m wide footway created along the site frontage. Two speed limit signs would be relocated south of the proposed junction.

Applicants' supporting information

The application includes a number of documents including an Indicative Masterplan within the Design and Access Statement, Landscape and Visual Impact Assessment, Transport and Travel Statements, ecology and arboricultural reports, a Phase 1 Site Investigation Report, Flood Risk Assessment, Air Quality and Noise Assessments, Archaeological Report, Utilities/Infrastructure Report, Renewable Energy Statement, Agricultural & Quality of Land Report, Socio-Economic Impact Report, Statement of Community Involvement, a Supporting Planning Statement and Draft S106 Heads of Terms, all of which are available to view on the Council's website. However, for ease of reference the individual reports and assessments can be summarised as follows:

Design and Access Statement (DAS) and Illustrative Masterplan

This provides a background to the application, a response to the context, i.e. location, need, planning policy, topography, nature conservation and ecology, arboriculture, townscape and landscape character, landscape and visual effects, access and movement; constraints, consultation exercises, design principles and Building for Life criteria. The Vision and Summary of the DAS states that:

'The overall vision for the site is to provide a distinctive and high quality place, which enhances the qualities and character of Linton village. The development would create up to 110 dwellings with associated public open space, which provides a mix of housing to meet the needs of the area, whilst respecting and enhance the site's existing environmental assets. It will also promote sustainable movement around the site. Housing will be set within a robust green infrastructure, which will include existing mature trees and hedgerows. This will help to integrate development within the landscape and create a distinctive sense of place. Rather than attempt to imitate building development, the design is informed and inspired by the character and details found within the core of Linton village and its surrounding landscape'.

Landscape and Visual Assessment

The project would create a sustainable development on land located to the west of Linton. The proposed Green Infrastructure (GI) framework would ensure the protection and enhancement of existing features of value. Potential substantial or moderate adverse effects occurring during the particular phases of construction works would be restricted to localised areas situated within or immediately adjacent to the site.

However, the completed development would not result in permanent substantial adverse effects.

The project proposes the optimum location of development uses within the site. Residential development is proposed with a buffer from the existing residential edge. It provides a means of delivering a percentage of the land use to Green Infrastructure resource by providing a central green corridor, buffer from existing urban edge, open space including play facilities and retained and enhanced boundary vegetation.

The development site occurs within an agricultural landscape. The magnitude of change would be high, resulting from the proposed conversion of agricultural land, into a high quality residential development. The proposed GI framework would retain and enhance existing features of value such as trees, woodland copse and public footpaths. These existing retained features would be supplemented by a diverse range of habitats including additional native trees, grassland and hedgerows. New trees and hedgerows will assist in the integration of the proposed built development. Areas of proposed public open space would be well located and maximise environmental and community benefits. There would also be other incidental areas of open space within the development. The existing public rights of way network would be retained and enhanced, including new informal routes linking the central corridor. The completed project would result in landscape enhancements as a result of the proposed green infrastructure which would result in an overall slight beneficial landscape effect.

The majority of properties within Linton would have no views of the project owing to the interaction of localised variations in topography, existing vegetation cover and existing urban fabric. (There would be) views of the project from the existing residential edge situated on Warren Drive. Longer distance partial views from public highways and rights of way network within the wider landscape situated to the north, south and west would not result in any significant adverse visual effects. Such views would be seen within the close context of existing residential edge of Linton adjacent to the site.

Transport Assessment

On the subject of road safety, the Assessment states 'Given the low level of traffic flow in Linton, a materials number of traffic accidents were not anticipated and this proved to be the case. Five year accident data shows just two accidents, one on Cauldwell Road and one at the junction of Cauldwell Road with High Street. Whilst any accident is unfortunate, two accidents in five years over the local network as a whole is not an indication of a significant accident problem and, given the low level of additional flows on the network as a result of these proposals, it is concluded that there is not a material road safety issue'.

The Assessment concludes by stating that:

- An access point to the required design standards are proposed
- The site is well located to allow travel by more sustainable modes
- A Framework Travel Plan accompanies the application
- There are no material traffic impacts associated with the proposal
- There are no road safety issues associated with the development

Overall, therefore, it is concluded that there are no material transport issues associated with the application.

Framework Travel Plan (FTP)

The FTP complements the Transport Assessment and details the means by which it is intended to encourage sustainable travel to and from the site by residents and others and help to mitigate the impact of additional local traffic generated by the development. The principal objective of the FTP is to encourage a shift from the use of the private car, particularly single-occupancy vehicles, to the use of more sustainable modes for travel to and from the site. It confirms that a Travel Plan Coordinator will be funded by the developer for the first five years of the occupation of the site who will implement, operate, monitor and review the FTP.

Ecology and great crested newt (GCN) Report

This concludes that the site lies approximately 80m from the nearest GCN breeding pond and much of the site is considered unsuitable habitat. Potential terrestrial habitat is located with the site along all but the eastern boundary, where hedgerows and ditches provide some potential sheltering and foraging habitat. Some limited hibernation habitat exists along the southern edge of the site. Breeding ponds are loosely linked to the site via the southern boundary. Mitigation measures are proposed that will focus on ensuring that no protected species will be harmed and compensatory habitat provided to mitigate habitat loss as well as the creation of additional habitats of potential value to GCN to provide biodiversity enhancements and improve the local conservation status.

Arboricultural Report

This concludes that the majority of tree cover on site is confined to field boundaries and will be incorporated into the areas of open space or landscape buffers and therefore the layout is considered to be arboriculturally sound in terms of reducing conflict between the residential element and the retained tree cover. Some trees were found to be suffering from damage and remedial works would be undertaken to remove the defective parts, particularly on those close to public footpaths. That said, before any tree work is undertaken it will be necessary to cross-reference to the ecological appraisal to ascertain whether the trees in question have been identified as having potential to support roosting bats. Further survey work may be required as a result. Three trees along the High Street frontage would be lost as a result of the development but will be mitigated for through a new tree planting scheme to support the development thereby ensuring continuation of tree cover in the future.

Phase I Site Investigation Report

This concludes that any contamination is likely to be from the use of pesticides and made ground associated with historical agricultural use. An off-site potential source of ground gas has been identified from the infilled Netherseal railway line, which lies within 50m of the western boundary. An historical landfill site is within 250m of the site. Intrusive investigation and an analysis of samples of material recovered from the site will be required. Gas protection measures to the proposed dwellings may also be required.

Flood Risk Assessment (FRA)

It is considered that the site is within Flood Zone 1, an area with low fluvial flood risk and outside the flood envelope of all other identified sources of flood risk development. The report concludes that the development is suitable for this location and free from any identified flood risk, subject to conditions in respect of the proposed drainage strategy.

Air Quality Assessment

This concludes that as the proposals are for up to 110 dwellings it is not anticipated that the development will have a significant impact with regard to emissions from additional road traffic. Furthermore, the background pollutant concentrations are well below the annual mean air quality objective, therefore any slight increase in pollutant concentrations due to additional traffic will not cause any quality objectives to be approached or exceeded at existing or proposed receptor locations. It is considered that a full air quality assessment is not necessary in this instance.

Noise Assessment

This concludes that road traffic on High Street and Cauldwell Road has been identified as the main contributing source of noise affecting the proposed development. However, it is unlikely that traffic noise would have an unacceptable impact on the proposed development. Additional road traffic generated by the development is likely to result in a small but imperceptible increase in noise levels at existing sensitive receptors. As such it is considered that a full noise assessment is not required at this stage.

Archaeology Report

There are not designated heritage assets within the site or surrounding area and that the site has a low/nil potential for the presence of Prehistoric or Saxon remains and a low potential for Roman remains. There are no known concentrations of important archaeological remains which might trigger a requirement for further archaeological evaluation as part of the development. It is concluded that the development will not cause significant harm to heritage assets and that no further archaeological measures are considered necessary to mitigate or safeguard heritage assets.

Utilities and Infrastructure Report

Only minor diversions of existing services are anticipated owing to the location of those services and there are no concerns or engineering difficulties anticipated with serving the new development with gas, water, electricity or telecommunication connections.

Renewable Energy Statement

This concludes that the Statement addresses national, regional and local policies relevant to the energy strategy for proposed new development. The strategy is based on an initial improvement in standard energy efficient which meets Part L of the Building Regulations. This can only be confirmed at reserved matters stage but will encompass a 'Fabric First' approach and will include: increased insulation, reduction in thermal bridging, effective air tightness, improved controlled ventilation and smart metering of utility supplies.

Agricultural Land Use and Quality Report

This concludes that the site has a range of soils from deep, medium and light loams to heavy soils over clay. Almost half of the land is of moderate quality in sub-grade 3b. The rest is of best and most versatile quality in grade 2 and sub-grade 3a. The medium and light loam topsoils would provide a good quality resource for gardens and landscaping.

Socio-Economic Report

This study has assessed the impacts that the development will have on the local area, specifically on Linton and the wider area. The report highlights the benefits that would arise from the scheme, including revenues for the local authority and the potential economic benefits of household moves. Among other things, the future occupiers of the new dwellings would provide local employers with a more ready supply of workers, increase consumer spending, and increase further the demand for much needed local retail and service provision within the area.

Statement of Community Involvement (SCI)

A Public Exhibition took place on 5th July 2013 at Linton Village Hall and information leaflets outlining the development principles and seeking comments were distributed during June to over 650 households in the village. The leaflet drop and public exhibition attracted a high number of responses, copies of which have been included within the SCI. As a result, the Masterplan was reviewed to take account of:

- The widening of High Street to the proposed site access
- The relocation of the 30mph speed limit further down High Street to be discussed with the Highway Authority through the planning process
- Widening of the footpath along the eastern boundary.

The SCI summarises the comments and responses and addresses some of the concerns expressed within those responses.

Planning Statement

The Planning Statement covers the material planning considerations associated with the proposed development, including:

- The site and its wider setting and location
- The proposed development
- National Planning Policy Framework
- The Development Plan, including the Saved Policies of the Local Plan
- Other material considerations, including the Preferred Growth Strategy and Strategic Housing Land Availability Assessment (SHLAA)
- South Derbyshire District Council current housing land supply
- Summary and Conclusions

As an overview of the Planning Statement the applicants are of the view that 'Having demonstrated that the proposals accord with the three dimensions of sustainability and the key tenets of the emerging development plan, and having identified the strong accordance with the NPPF and the matters of housing delivery and land supply, in accordance with section 36(6) of the Planning and Compulsory Purchase Act 2004, it is appropriate that planning permission should be granted now based on the significant

weight of material considerations that outweigh any departure from the out of date Local Plan'.

Draft Heads of Terms

As part of the application documents a Draft Heads of Terms has been submitted offering contributions towards open space and the National Forest. The applicants are of the view that affordable housing could be secured through an appropriate planning condition, which is line with guidance from the Planning Inspectorate.

Planning History

None relevant to the application.

Responses to Consultations

The County Highway Authority has considered the application and the applicant's intention to pursue the extension of the 30mph speed limit to include the entire site frontage. Part of the site frontage is currently subject to a 60mph speed limit. The CHA considers that this will require the provision of a fronting footway and street lighting all to adoptable standard. Whilst it is appreciated that the actual speeds on High Street are probably lower than the posted speed, until such time as this is in place the speed limit is 60mph. It is therefore considered that the visibility sightline provision to the south west should be maximised across the entire site frontage in that direction and a condition to that effect should be included in any consent. The white lining at the junction of High Street and The Crest would require modification to improve visibility for drivers emerging from The Crest onto High Street. A revised Travel Plan should be submitted but this could be conditioned to be submitted at reserved matters stage. The submitted Transport Assessment is considered to be robust.

In light of the above the County Highway Authority does not consider that the impact of the development would be such that a recommendation of refusal could be justified. Therefore, subject to conditions, there are no objections to the proposals from the highway point of view. A list of 13 conditions and 11 informatives is included within the response.

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

The Environment Agency has no objections in principle but recommends a condition in respect of the submission of details of a surface water drainage scheme based on sustainable drainage principles.

Derbyshire County Council (Strategic Planning) has provided the following comments:

- The proposals are not in accordance with the saved policies of the SDLP and the emerging Local Plan (Draft)
- The development should not stand as it would not provide for a sustainable form of development
- A significant proportion (40%) of affordable housing should be included

- Existing range of services would not be sufficient to support the needs of the additional residents
- Significant visual impact – a number of amendments to the design and layout are provided
- Contrary to the revoked EMRP
- The application site would form a logical extension to the village
- Nearest bus stop is over 500m away from the site – the site is not on a bus route – predominant use of private car for most journeys
- Significant impact on the open character of the countryside
- On the positive side, there is no flood risk and no environmentally important designations, high density development at 25-30 dwellings per hectare including affordable housing is proposed
- The Landscape and Visual Impact Assessment (LVIA) is flawed as it shows the site in the Leicestershire and South Derbyshire Coalfield NCA whereas it is within the Mease Sense Lowlands NCA, which has different key landscape characteristics.
- Other recommendations include: boundary planting within Phase 1, boundary treatments to overcome continuous lines of close-boarded fencing, protection of trees and hedgerows, the use of larger growing tree species on the northern and western boundaries, need to ensure long-term maintenance of landscaping and protection of landscape area during construction phases.

Derbyshire County Council (Planning Policy) has submitted the following comments:

Local Member Comments (DCC)

- Councillor Lauro concurs with the financial contributions requested for waste disposal, broadband and library revenue.
- School places are under pressure around Church Gresley, Castle Gresley and Linton and 110 houses would take them to capacity.
- The junction of High Street and Warren Drive would need significant improvement to allow the extra burden of traffic to be carried without affecting the quality of life of residents in the surrounding neighbourhood.
- Supports the comments of Derbyshire Fire and Rescue Service in respect of sprinkler systems.
- Developer contributions should be maximised to meet budget challenges as the development would generate a great deal of profit

Officer Comments (DCC)

Developer contributions would be required as a result of the anticipated impact of the proposed development on strategic infrastructure and statutory services. These would be in accordance with the three tests set out in the NPPF in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The requirements are not intended to provide an assessment of the merits of the development proposal. They are intended to provide guidance to the Local Planning Authority on the potential impact on strategic infrastructure and service delivery of the proposed development, were a planning application be approved by the Local Planning Authority. In summary, the requirements are as follows: -

- On-site design amendments to enable provision of high speed broadband;
- £3147.10 towards the provision of additional waste management capacity;
- On-site provision and financial contribution of £20,480 towards the delivery of the Derbyshire Greenway Network;
- £39,600 for 100 dwellings for additional library service revenue costs;
- Financial contribution towards education provision totalling £655,992.24;
- Financial contribution of £512.56 per dwelling towards health care provision;
- Financial contribution of £26 per dwelling and £1500 towards the installation of a 32mm mains water riser and a domestic sprinkler system.

If the contributions would impact on the viability of the scheme to the point where the scheme would not go ahead, a full financial appraisal should be submitted for review.

There is a legal requirement to protect the alignment of the public footpaths and any deviation would require a formal diversion order. The routes must remain open, unobstructed and on their legal alignment at all times, both during and on completion of the development and no disturbance to the surface of the paths should occur without prior authorisation from DCC Rights of Way Inspector. A temporary closure may be granted to facilitate public safety during the construction phase subject to conditions. The public footpaths should be improved to an adoptable standard with a protected minimum width of 2m and detailed specifications submitted to the County Council for approval. The applicant should liaise with the Highway Authority to ensure that adequate safety/traffic calming measures in line with current highway legislation are put in place in the vicinity of the public footpaths.

The Peak and Northern Footpaths Society has no objections to the application or the indicative site plan and welcomes the preservation of footpaths 14, 15 and 16 on their existing lines and their locations within green corridors. The Society hopes that these footpaths would be legally and physically upgraded to cycleways. The legal dedication and construction of a suitably surfaced cycleway along the south western boundary of the site would be welcomed.

The County Archaeologist confirms that the site does not contain any archaeological interest and an archaeological condition is therefore unnecessary.

Natural England requests a condition with respect to Great Crested Newts and has requested further information with regard to bats.

Derbyshire Wildlife Trust requires conditions relating to the retention and protection of trees and hedgerows, the demolition of existing buildings to be carried out as outlined in paragraph 5.6 of the Bat Survey Report, the implementation of the mitigation and habitat enhancement measures outlined in Section 7 of the GCN Survey Report, the undertaking of a survey for any recently excavated badger setts prior to any ground works commencing, no removal of hedgerows, trees, shrubs or brambles between 1st March and 31st August and the provision of a Habitat Management Plan for the existing hedgerows, wildflower grassland and the attenuation pond.

Derbyshire CPRE objects on the grounds that the proposal would result in the loss of agricultural land. They state: 'We should be valuing agricultural fields for their potential to produce food, not just as sites for potential housing development. Housing should still be targeted on Brownfield sits to allow Greenfield sites to continue to be used for

agriculture and/or recreational space. The SDDC draft Core Strategy did not want any more development in this area. It was not one of the preferred sites for development. The responses to the developer's consultation were overwhelmingly against it. If localism and democracy are to mean anything then attention should be paid to what local people and the local Council are saying. The scale of the development is not in keeping with the adjoining housing developments in that it appears to be of a much higher density and would alter the feel of this village'.

DEFRA and Natural England have been consulted with regard to the Agricultural Land Classification and the likely impact of the loss of a field currently in use for food production. The views of both parties are awaited and will be reported verbally to the Members of the Planning Committee.

The National Forest Company (NFC) requests conditions regarding the protection of boundary features and the submission of details for landscaping to include details of gapping up and tree planting within the boundary hedgerows. They would expect 20% of the site area to be given over to woodland planting in line with their guidance. They consider that the reserved matters submission should clearly demonstrate that the existing and permissive paths should be wide enough to incorporate the footpath and informal tree planting while being faced by dwellings to ensure security. A condition should be imposed for the reserved matter submission to be accompanied by a statement setting out how the final design is in accordance with the commitments made within the Design and Access Statement. The NFC also considers that the design of the High Street frontage should include clear site lines from public footpath 15 to the entrance to Long Close Wood on the opposite side of High Street. This would encourage access to the woodland, which connects through public footpaths to a number of further woodlands created as part of the National Forest.

The Crime Prevention Design Adviser has no issues with the principle of residential development in this area and supports the intended location of the area of public open space and play area as it would integrate better into the development and have better supervision. Ideally, all outward facing elevations facing public space should be fenestrated to habitable rooms to provide a visual connection both to that public space and the private house curtilage in between.

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

The Council's Strategic Housing Manager comments that 345 affordable homes per year are required over the period 2012 to 2017 across South Derbyshire and as at 1st October 2013 there were 2,164 households on the District Housing Register. For the sub-market area of Swadlincote and South (of which Linton is part) there is a shortfall of 1,028 affordable homes for the period 2012 to 2017 (an average of 206 per year). A figure of 40% of the total number of dwellings is recommended for this site, subject to viability, with a mix of 1, 2, 3 and 4 bedroom houses, 80% of which should be for rent.

Responses to Publicity

The Local County Councillor has objected to the application on the grounds that:

- the application is for development of a Greenfield site outside the village envelope in open countryside
- there are brownfield sites within Linton Division that may be available

- increase in traffic and narrow junctions at High Street, Warren Drive and The Crest. TIA is required
- impact on rights of way and forestry beauty spots
- not within the Local Plan
- impact on local services, i.e. shop and public house
- social housing should be included within the proposal.

Linton Parish Council expresses great concern and objects to the application on the grounds that:

- a) It does not comply with South Derbyshire Local Plan Policies EV1 and H5.
- b) It would be unsustainable as services are limited thereby forcing more people into cars
- c) The existing drainage system is not capable of taking the additional capacity
- d) There are more suitable brownfield plots and sites in the area
- e) The NPPF advises that the allocation of land for development should prefer land of lesser environmental value.
- f) Surrounding road network is not up to the large increase in traffic
- g) Warren Drive should become a cul-de-sac for road safety purposes, which should be secured under a Section 106 Agreement
- h) Relocation of the speed limit sign would make no difference to the situation as High Street was never designed to take the extra traffic
- i) Increased risk to pedestrians accessing Long Close Wood
- j) The Parish Council would object to an application for a TRO.
- k) Increased congestion, particularly during construction period
- l) Visual impact caused by loss of views and
- m) The proposal cannot be justified
- n) More development will follow if this is granted permission
- o) Contrary to the NPPF in that the site is high grade agricultural land and should be protected
- p) Does not agree that the loss of land would be acceptable because of the need to deliver housing in the district
- q) Increased opportunity for road traffic accidents
- r) Access for emergency vehicles
- s) Impact on protected species – an ecology survey should be undertaken by unbiased environmental professionals
- t) The development defeats the objective of the National Forest and threatens the bio system of the forest area
- u) Size of carbon footprint created by the development would be far too large and damaging.

Linton Village Action Group (LVAG) has been set up in order to oppose the application. A letter (extending to some 15 pages) has been received from a planning consultant who is acting on behalf of the Group, which, in summary, makes the following points:

- a) The applicants have misinterpreted the advice in Paragraph 49 of the National Planning Policy Framework (NPPF); it is only the 'housing supply policies' that should not be considered up to date and not the plan as a whole – an attached appeal case refers.

- b) The adopted local plan policies on protecting the countryside are in accordance with the NPPF (paragraph 17 of the NPPF makes it clear that, *recognising the intrinsic character and beauty of the countryside*" is a core planning principle). The adopted local plan policies therefore remain relevant *by virtue of* Section 38(6) of the Act.
- c) Linton is not the "key village" that the applicants suggest it should be.
- d) The replacement Local Plan is at an early stage in its publication and therefore it carries appropriately limited weight. Granting planning permission here would prejudice the emerging plan by predetermining the scale, location or phasing of development which are to be addressed in that plan. The current five year housing supply problem is only temporary. The site and the development have to be "sustainable". The applicant's Planning Statement quotes extensively from the NPPF but it does not submit any real evidence to support its claim that this would indeed be a sustainable development.
- e) At an appeal at Irchester, Northants (appeal reference APP/H2835/A/12/2182431) similar arguments were put forward. This appeal was subsequently dismissed. The relevant policies of the adopted local plan (Environment Policy 1: Development in the Countryside and Housing Policy 5: Village Development) are not concerned with the supply of housing land and cannot therefore be 'stood down'. They are concerned with the protection of the countryside, which remains a most relevant consideration. The applicant makes no reference to the replacement local plan, which clearly indicates that Linton is not regarded as suitable for any major development. Even if it were the case, the application would still be premature and that the granting of planning permission would prejudice the emerging plan by predetermining the scale, location or phasing of development to be addressed in the plan.
- f) There are no sources of employment of any significance in the village causing workers to travel - there is no bus route in the vicinity of the application site – the nearest bus-stop is 600 metres from the entrance to the application site - Department for Transport works to a "Default Walk Distance" of 400 metres - it would again not be a realistic option for the vast majority of potential travellers or users – the applicants quote acceptable walking distances of 2km and 800m - their various reports are confused and inconsistent. This application includes no proposals to route buses nearer to the development or to widen High Street to facilitate extra bus routes - The proposals which appear at Section 7 (under the title, "Marketing") of the applicant's "Travel Plan" for undertaking publicity into the health benefits of sustainable travel miss the point and are woefully inadequate.
- g) Linton primary school is some 1.3 kilometres distant from the site entrance walking by the shortest route possible, three times the DfT's default walking distance and too far for walking. Parents would access the school by car where parking is inadequate, dangerous and is not sustainable. There is no secondary school available in the village or located reasonably nearby.
- h) It could not reasonably be claimed that the village shop is capable of providing all of a family's needs and in any event it would not be reasonable to expect people to carry their shopping over such a distance (minimum 1km). The nearest conventional supermarket is 5km away thus relying on access by private car. –

the group's own survey of shopping patterns state: 100% shop in the main supermarkets in Swadlincote (a few go to Burton as well); Two people use the bus, the rest go by car; 50% go once a week; 25% go twice a week; 12.5% go two or three times a week; 12.5% are "other", e.g. they shop daily, fortnightly, monthly; Only two people have mentioned "topping-up" their main shopping at the post office in Linton.

- i) *The private car would also be required for access to Doctors/Health care, sports and community facilities. There is only one general purpose shop. There is also one public house, the Red Lion on Main Street. There is therefore a presumption against the development.*
- j) It is wrong to take land of this quality out of production forever simply to resolve a temporary problem with housing land supply that can more easily and more appropriately be resolved elsewhere on land of lesser value - there is no need to meet a need for Linton which is used to justify the loss of the land.
- k) Visibility at the access is limited against unknown vehicle speeds - emerging visibility could be dangerously inadequate – this will not be solved by the relocation of speed limit signs – there is no evidence that forward visibility at the access would be safe. LVAG has written to the Highway Authority for clarification.
- l) The applicant's own traffic survey and prediction indicates only the small increase in traffic movements on High Street heading south but does not highlight the actual increases in traffic going north of the site. The actual traffic increases in the mornings (taken from Appendix 3) are as below:-

High Street	175% increase (from 12 to 33 vehicles)
The Crest	120% increase (from 15 to 33 vehicles)
Warren Drive	24% increase (from 21 to 26 vehicles)
Total	92% increase (from 48 to 92 vehicles)

A relocation of a 30mph limit would require a TRO which could be objected to.

- m) The development would exacerbate rather than consolidate the built form. There are sites closer to the village centre. The layout will result in relative isolation for those living in the development as the scheme does not integrate into the existing pattern of the community. Users of the footpaths crossing the site would experience a large estate rather than open countryside. The development would form a clear detrimental visual impact arising from this major incursion into the countryside harming the intrinsic character and beauty of the countryside contrary to development plan policy and contrary to one of the core planning principles set out in the NPPF.
- n) Without additional survey work (which was clearly considered necessary by the applicant's specialists as they would not have attempted to undertake it) then the outcome and conclusions of the ecological report must at best be incomplete and could be flawed as it may have failed to pick up species protected by law. To develop this site in such close proximity to natural havens would undermine the ambitions of the national forest – harm from more cars and removing the potential for other protected species to occupy features on the site. The report is short on detail of impact, mitigation and implementation.

- o) Only two matters: open space and National Forest contributions are proposed - the school has a maximum capacity of 245 pupils and the total attending in the current (2013/14) school year is 239 pupils. It follows that development on this scale, which will generate a significant number of additional new pupil places, would need to be met possibly by new classrooms. It is not evident if the school can be so extended to provide that facility.
- p) The affordable housing contribution by condition contrary to the district council's requirement in its own published guidance - The indicated level of provision would appear to have disappeared in the detailed submission from the approx. 30% level initially promised. It is not clear if the need for 10 affordable dwellings suggested by Midland Rural Housing in 2007 has since been met.
- q) The "*Summary of Comments and Responses*" of the SCI is incomplete

LVAG 'overall conclusion and balancing'

Applying the test in Section 38(6) it can be seen that the proposed development is contrary to the development plan and therefore the starting point for any assessment is a presumption against the development. Of all the other material considerations only the question of a current shortage of land with planning permission is in the favour of the development, and that is a matter that is being addressed on land and sites well away from this site and this village. The village is clearly not sustainable under any sensible and reasonable assessment of the term and the applicant's own attempts to demonstrate that it is (in an attempt to try and persuade the authority that the presumption in favour of such development applies as per paragraph 49 of the NPPF) are questionable to say the least. Other material considerations all weigh against the proposed development. In short it is concluded that the case for refusing this proposal is overwhelming.

The Planning Consultant has also forward a copy of a letter sent to the Highway Authority seeking an explanation and justification for its conclusion and recommendation to the LPA. He considers that the submission is seriously flawed from a highway safety point of view and therefore open to objection. He asks that the CHA revisits the proposal and reconsiders the response. He advises that in the event of the application being refused and subsequently taken to appeal highway matters will be raised and it would be better and more appropriate if the CHA could explain how the recommendation was reached at the application stage so that it can be considered at the application decision process, and subsequently at any appeal. He also points out that Article 20 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 provides a general duty upon formal consultees to explain how they arrived at a particular view and that the CHA's letter to the LPA does not do that. This would be an opportunity to remedy that omission.

LVAG has also submitted a 54-signature petition against the proposed development.

The leader of Overseal Footpath Group has raised concern regarding the future management of the rights of way and asks who will be responsible for keeping the hedgerows cut so that the rights of way are kept clear and available for use.

113 emails and 41 letters of have been received, all of which object on the following grounds:

- a. Contrary to the adopted local plan and the emerging replacement local plan and the site does not pass the sustainability test as it is remote from existing facilities
- b. Loss of good quality agricultural land
- c. Poor relationship of the site to the village and loss of identity for the village
- d. Increased traffic and potential for increased number of accidents (an additional 220 to 330 cars). A traffic management plan should be considered as well as traffic calming measures on Hillside Road
- e. Brownfield sites available in the area, such as the former Coal Stockyard at Coton Park, which has better links to the A444
- f. Unsustainable as there is no secondary school, supermarket, doctor's surgery, dentist, hairdresser or chemist and inadequate bus service (no service on Sundays). The only shop has limited opening hours which are not compatible with full-time working and the primary school does not have sufficient capacity for additional children
- g. No demand for housing in Linton but if approved the development should be 'green', i.e. solar panels, rainwater harvesting and ground source heat pumps
- h. Children's safety in the vicinity of the school and on Warren Drive
- i. Inadequate road network in the vicinity of the site – access should be taken off Cauldwell Road
- j. Loss of a Greenfield site – is this Green Belt?
- k. Impact on protected species and wildlife in general and the established bio-diverse eco system – inadequate/incorrect information within surveys
- l. Incompatible development within the National Forest, which will impact on the number of tourists visiting the area
- m. Existing drainage is poor
- n. Outside the settlement boundary
- o. Harmful to open, rural character
- p. Overlooking of properties on Warren Drive
- q. Impact on public footpaths and loss of enjoyment of walking the footpaths, which are frequently used by walking groups – disturbing nature
- r. Precedent – if this development is approved it will open the floodgates for more applications – additional development of 22 houses already proposed at Coton Park
- s. Congestion on narrow roads
- t. Impact of the development on the friendliness and community spirit of the village
- u. Other sites, such as Drakelow and Castleton Park, will provide sufficient housing for the area – housing in Linton is difficult to sell
- v. Increase in number of vehicles on roads for shopping and getting to work – existing bus service is not a practical option for work or shopping
- w. Inadequate Section 106 contributions on offer – no mention of open space management or the balancing facility for GCN
- x. Disruption caused by construction traffic
- y. Lack of infrastructure, such as water, to support the development –existing low water pressure – no street lighting
- z. Odours from neighbouring farm will not provide a healthy environment
- aa. Three storey properties will overshadow existing houses and impact on natural light and privacy – no other three-storey houses in Linton so how can the development be in keeping with the village?

- bb. Number of dwellings is not proportionate to the village – the proposal represents an 11% increase in the number of dwellings in the village
- cc. Linton is large enough; this development will turn it into a town
- dd. Security for the residents of Warren Drive if high fences enclose the development – policing it would be impracticable
- ee. Insufficient space in local schools – Linton school already has two temporary classrooms, any more would encroach onto play and sports areas
- ff. Detrimental impact on village life and loss of community recreation facility – smaller communities are more easily managed
- gg. How will the route of HS2 affect new developments?
- hh. Would a development of this size be approved in more upmarket areas?
- ii. There are many houses for sale in all price bands so why is this development required?
- jj. Developers have not listened to the views of the village residents – this makes a mockery of the Community Involvement – whatever happened to localism and democracy?
- kk. The Traffic Assessment is flawed
- ll. The outcome of the Irchester appeal should be given considerable weight
- mm. Impact on old mine workings under High Street and Cauldwell Road and potential impact on the foundations of No.48 High Street (a cottage built around 1700 with shallow foundations). Who will rectify any subsidence?
- nn. Even though South Derbyshire DC cannot demonstrate a five year housing supply the proposal remains contrary to the NPPF as it is not sustainable development, neither is it needed. The five year housing land supply is not a long-term issue
- oo. The proposed number of new houses is contrary to the 2007 housing needs survey, which found that only 10 new houses were needed to meet intended growth
- pp. The application is a commercial, speculative venture that will only benefit the landowners and the developer – almost all the developer's projects go to appeal and describe themselves as 'Speculative Developers'.
- qq. Devaluation of existing houses in the village and loss of No.50 High Street, which is one of the oldest houses in the village and should be protected as a heritage asset
- rr. No demand for affordable houses – plus they attract bad neighbours
- ss. Impact on rural views and increased traffic through surrounding villages
- tt. Increased flooding as existing ditches cannot cope with additional storm water – the lane suffers from serious flooding the most recent event being a few months ago
- uu. Substandard internet provision in the area
- vv. There is nothing in the scheme that would benefit existing residents
- ww. No benefit to the rural economy as no new jobs would be created – no commitment to recruit construction workers from the local community
- xx. No benefit to the Council as the additional revenues gained would be cancelled out by the need to provide services
- yy. The development would, more than likely, attract people from outside the area rather than provide homes for local people
- zz. The Council should not condone the development of a greenfield site

A letter from the South Derbyshire Badger Group has also been received which objects on the grounds that the proposal would have a detrimental impact on badger feeding grounds, thereby ultimately affecting the badger population and their ability to survive.

37 letters supporting the proposal have been received. These can be summarised as follows:

- a. New, good quality housing for young people, helping them to remain in their village close to their families
- b. Linton would become more sustainable helping the school and shops and be of benefit to the wider community
- c. Increased employment
- d. Benefit to local businesses which struggle to compete with supermarkets and the local economy generally – additional customers will boost existing facilities
- e. Keep the village alive
- f. Bring in new investment
- g. More housing is needed in local villages
- h. A well thought-out scheme
- i. Great news for first and second time buyers wishing to return to the village
- j. The proposal reflects the needs of the local people
- k. The Warren Drive development was also subject to much protest/objection when it was first proposed
- l. A good mix of house sizes and prices
- m. Most housing developments start out as vacant sites
- n. A secure future for the primary school
- o. Affordable housing is much needed in the village

Development Plan Policies

The relevant policies are:

Local Plan: Saved Housing Policies 5, 8, 9, 11
Saved Environment Policies 1, 9, 10, 11, 14
Transport Policies 6, 7
Community Facilities Policy 1B
Recreation & Tourism Policies 4, 8

Local Supplementary Planning Guidance

Housing Layout and Design SPG.

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 17, 28, 47, 49, 50, 55, 57, 58, 59, 61, 69, 75, 109, 112, 118, 186, 187, 196, 197, 203, 204, 206.

Planning Considerations

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

- Principle of the development
- The Council's five-year housing land supply and sustainability
- Recent appeal decisions
- Visual Impact
- Highway matters

- Ecology issues
- Miscellaneous issues, including loss of agricultural land
- Section 106 obligations

Planning Assessment

The principle of development

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

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

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

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

The site lies within defined countryside immediately adjacent to the settlement boundary for Linton with open countryside on all other boundaries. The weight to be attached to Local Plan policies is dependent on their level of consistency with the NPPF (para. 215). The adopted Local Plan contains numerous saved policies relating to new residential development and development within the countryside, which are considered to be consistent with the NPPF.

When assessing the proposal against the Adopted Local Plan it is clear that the development would be contrary to both Housing Policies 5 and 8 and Environment Policy 1. It is evident from the Proposals Map that the site is located outside the village confine boundary, although the eastern edge of the development would abut the boundaries of rear gardens on the western side of Warren Drive. Consequently, Housing Policy 5 (Village Development) cannot be met, as this requires that new housing development is restricted to that which can be accommodated within the village confines.

Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or that it is necessary to be in a countryside location. Again, this is not the case here.

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

and historic features are safeguarded and protected. Part B of the policy states that: 'If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside'. As the application is in outline, it is difficult to assess the likely impact of the proposed development on the character of the area, although the nature of the proposal is bound to have some impact compared to the current open nature of the site.

The Emerging Local Plan identifies Linton as a Local Service Village in accordance with the Settlement Hierarchy Policy where there is opportunity for local scale development, which clearly this proposal is not. However, the Emerging Plan currently carries very little weight, owing to its 'Draft' status and because it is still progressing through its consultation stage. Although the weight that can be afforded to its policies will grow as the Plan progresses through its stages, it would be dangerous to refuse the current application based on the Policy S4 of the Emerging Local Plan as it currently stands.

Given that the proposals do not accord with Saved Housing Policies H5 and H8 and Saved Environment Policy 1 of the Adopted Local Plan, it is considered that the principle of the proposed development has not been met. Notwithstanding this, the decision is not as clear cut as the above policy considerations appear to suggest. Other important material considerations are fundamental to the outcome of this application.

Consideration should be given to the specific economic benefits arising from the development, including the New Homes Bonus which can be used by the Council to sustain and/or provide services and potential local employment for the duration of construction. This attracts a degree of weight in line with paragraph 19 of the NPPF and Section 70(2) of the 1990 Act

The Council's Five Year Housing Land Supply and Sustainability

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

In the terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Notwithstanding the Irchester decision reported earlier (see also below), it has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic

housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The Council is currently unable to demonstrate that it has a five year housing land supply (the current figure is 2.63 years at July 2013). Paragraph 49 of the NPPF is specific on this subject. It states: - 'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable sites'. It follows, therefore, that, as the Local Planning Authority is unable to demonstrate a five-year housing supply, Members should be approving the current proposal, provided that they consider the scheme to be sustainable. The NPPF advises that the purpose of planning is to help achieve sustainable development and it defines sustainable as *'...ensuring that better lives for ourselves don't mean worse lives for future generations'*.

Many of the objections that have been received believe that Linton is not particularly sustainable in that it has very limited services. Until quite recently it boasted three public houses, two of which have now closed. There is one grocery store with a post office facility, a butcher's, a fish and chip shop, an antique shop and a primary school. A second grocery store on the corner of Hillside and Main Street closed down some years ago. It is likely that the shop and pubs closed through lack of demand. The village is currently served by a bus service providing connections to both Swadlincote and Burton upon Trent.

It can be concluded, therefore, that Linton is sustainable to a limited degree. Whether that degree of sustainability is sufficient to serve the potential increase in its population, which this proposal is likely to bring, is the question that needs to be addressed. A view could be taken that an increase in population is likely to boost the local economy by bringing in more customers to the shops and public house rather than those services being considered insufficient to cope with the additional population. For instance, it is more likely that the local grocery shop would extend its opening hours if there was an increased demand for its goods and services. A population increase could, potentially, encourage a variety of services into the village if the demand existed.

Recent appeal decisions

The findings of recent and relevant appeal decisions are a material consideration in the determination of an application for similar development although it must be remembered that no two sites are the same. However, for purposes of illustration, two are examined in detail below.

The Planning Consultant acting on behalf of the Linton Village Action Group (LVAG) has included an appeal decision (dated 5th June 2013) relating to two sites in Northamptonshire which, he considers, has similar characteristics to the current application in that the appeals involved an edge of settlement proposal where a five-year housing land supply could not be demonstrated. The Inspector was of the opinion that housing land supply policies are fundamentally different from countryside protection policies. He accepted that countryside protection policies may also affect housing supply but that this is not their main purpose. He concluded that the countryside protection policies should not be considered as the ones referred to in paragraph 49 of the NPPF as being out of date. He took the view that, although paragraph 49 intends to ensure that the need for housing does not take second place to other policy

considerations, this does not mean that those other considerations, including the protection of the countryside, should be disregarded altogether. Other paragraphs within the NPPF (17 and 109) seek to ensure that valued landscapes are protected and enhanced and that the protection of the environment is one of the three 'dimensions' of sustainability (paragraph 7). He concluded by stating that the countryside protection policies and the development's effect on the countryside should still be weighed in the balance against other relevant considerations.

The second appeal decision in February 2013, relates to two appeals made by developers when Tewkesbury Borough Council failed to make a decision on the applications within the prescribed time limit. Both appeals were the subject of a conjoined public enquiry and concerned developments for a total of 1000 dwellings plus retail and community facilities. A view was taken that, both before and after the issue of the NPPF, the need to ensure a five-year supply of housing land was of significant importance. Before the NPPF the absence of such a supply would result in favourable consideration of planning applications. After the NPPF, if such a supply could not be demonstrated, relevant policies would be regarded as out of date and therefore afforded little weight and there would be a rebuttable presumption in favour of the grant of planning permission. An authority which was not in a position to demonstrate a five year supply of housing land would have recognised, or ought to have recognised, that on any appeal to the Secretary of State from a refusal of permission there would be at least a real risk that an appeal would succeed and permission would be granted.

The Inspector determined that because both sites were located in the countryside beyond the defined settlement boundary, they were contrary to the existing development plan. However, because the existing plan had an end date of 2011 the weight to be given to this was significantly reduced. Having identified the very limited weight to be given to the existing development plan he considered the material considerations which might outweigh it. His first conclusion was that the most important material consideration is Housing Land Supply (HLS). Tewkesbury BC could not demonstrate a five year HLS and had accepted that the presumption in favour of housing development in these circumstances applies. In principle, the pressing need for a five year HLS is capable of outweighing the conflict with housing policies in the development plan. Tewkesbury BC had argued that its emerging Joint Core Strategy would provide over ten years HLS but the Inspector held that if the appeals were rejected it would be impossible for Tewkesbury BC to meet the identified need for housing within the next five years. Even if the appeals were allowed and the development took place, there would still be a shortfall against projected need.

The Inspector's overall conclusion is as follows: -

'The main weight against the schemes stems from the conflict with countryside policies, which should be given greatly reduced emphasis as the development plan is rather dated In their favour are the need for housing, where the requirement for a 5 year HLS is not being met, and the need to boost the economy, which together warrant considerable weight. In short, the proposals required a difficult balance to be struck between giving priority to the development plan and the moves towards planning at a local level and the chance to rectify a substantial shortfall in the HLS, with affordable housing and other benefits, which could also provide a significant boost to the economy. For all the above reasons, I find that the balance should fall in favour of both proposals.'

It should be noted that the Inspector did not simply treat the absence of a five year housing land supply as overriding all other considerations. Instead he considered that there was a difficult balance to be struck, with some factors pointing in favour of allowing the proposals and others pointing against it.

Members should be aware that the Adopted South Derbyshire Local Plan has an end date of 2001, a full 10 years earlier than the Tewkesbury Local Plan highlighted in the paragraphs above. Given the outcome of the Tewkesbury case, the lack of a five year housing land supply and the fact that the Adopted Local Plan is even more dated than the Tewkesbury Plan, there is a very strong probability that the appeal against refusal of this application would not only result in that appeal being upheld but the ensuing costs that could be awarded to the developer in the event of the appeal being allowed could be extremely substantial, bearing in mind that the appeal would probably be determined by public inquiry, which, in itself, incurs the higher costs associated with employing legal representation, witnesses etc.

As well as the two appeal decisions detailed above, copies of ten further appeal decisions for similar development proposals on edge of village locations have been received, all of which were allowed. These are:

- Appeal 1 APP/Q4625/A/12/2169840 – Outline for 45 dwellings, p.o.s., etc., Meriden, West Midlands (pop: 1801)
- Appeal 2 APP/L3815/A/12/2188243 – Erection of 100 dwellings, village hall, village green, restaurant/public house, access and amenity space, Westhampnett, West Sussex (pop:460)
- Appeal 3 APP/C3105/A/12/2183183 – Outline for 44 dwellings, village hall, car parking, playing pitches and play area, access and landscaping, Chesterton, Oxfordshire (pop: 835)
- Appeal 4 APP/H1840/A/12/2171339 – Outline for mixed residential and commercial development, p.o.s., access and landscaping, Honeybourne, Worcestershire (pop: 1619)
- Appeal 5 APP/F1610/12/2173097 – Outline for maximum of 50 dwellings, p.o.s. and landscaping, Kemble, Cirencester, Glos. (pop: 964)

The following appeals are for other small sustainable settlements, with higher populations than Linton (current population of Linton is 2,300)

- Appeal 6 APP/Y2810/A/12/2180530 – Outline for up to 107 dwellings, extension to car park, construction of new toilet, booking office and retail facilities, Long Buckby, Northants (pop: 4,000)
- Appeal 7 APP/C1625/A/11/2165671 – Erection of 71 dwellings, p.o.s. and play space, new access, landscaping, car parking, engineering works etc., Cam, Glos (pop: 8280 but site is isolated from village)

- Appeal 8 APP/K2610/A/12/2177219 – Erection of 175 dwellings (max) 4,000m² employment space and p.o.s., Blofield, Norwich (pop: 3221)
- Appeal 9 APP/J3720/A/12/2185727 – Erection 112 dwellings (max) and 929m² employment, Shipston on Stour (pop: 3808)
- Appeal 10 APP/P1045/A/13/2195546 – Erection of up to 65 dwellings with access and infrastructure, Ashbourne, Derbyshire (pop: 5020)

Picking up the Inspector's conclusions within Appeal 10 above and, indeed, continuing the theme that runs through all of the above appeal decisions, it is clear that regard must be had to paragraph 14 of the NPPF in that (if the presumption of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit not just marginally, but rather '*significantly*' and '*demonstrably*'.

Visual Impact

The Council's Design Excellence Officer considers that the character of the country lane (the countryside extension of High Street) is very sensitive and that the rural character needs to be maintained, particularly along the site frontage where the proposed new access would be created. Obviously, the creation of the new vehicular access would lead to the initial loss of a length of mature hedgerow although this would be replaced by a new hedgerow and trees. Existing field boundaries would be retained and conditions attached to prevent damage to trees during construction. The Masterplan is purposely non-prescriptive, which provides an opportunity to work with the developer prior to reserved matters stage to achieve a high quality design which reflects the character of both the National Forest and rural South Derbyshire. The intention to retain the public footpaths on their original routes is welcomed and, with careful planning, could lead to a housing layout that maintains the character of the countryside edge. In accordance with Council policy, it is intended that the 20% of the site would be planted with trees and other landscaping features. This would be secured through the Section 106 Agreement.

In conclusion, it is considered that the visual impact of the development could be minimised by ensuring the development is screened by National Forest planting and by working with the applicant prior to the submission of reserved matters to bring forward a high quality design that maximises its rural setting and features.

Highway Matters

As part of the proposal it is intended to widen the road at the proposed vehicular access into the site from 3.7m to 5.5m and extend the 2m wide footway from the junction with The Crest to a point to the south west of the site entrance. The demolition of No.50 High Street is necessary in order to provide sufficient land to create the widened road and footpath and the required sightline to the north east.

Also, as part of the highway works, the applicants intend to extend the 30mph speed limit to include the entire site frontage – currently the site frontage is subject to a 60mph limit which reduces to 30mph at the north eastern corner of the site. The applicants

state that they will pursue the extension of the 30mph speed limit to include the entire site frontage. This would require the provision of a fronting footway and street lighting, all to be to adoptable standards. This would negate the need for a Traffic Regulation Order. Whilst the actual vehicle speeds on High Street are probably lower than 60mph, until such time as the fronting footway and lighting is in place, the speed limit remains at 60mph. As such the visibility sightline to the south west should be maximised across the entire site frontage in that direction and a condition is proposed in that respect.

In terms of the additional vehicles and the increased usage of the highway network in the vicinity of the site, which is one of the major concerns of the neighbouring residents, the County Highway Authority has not raised this as a concern nor, indeed, a reason to refuse the application as it considers this could not be justified at appeal. No other evidence has been submitted that would lead to an alternative conclusion.

In light of the above and in the absence of any alternative recommendation as a result of the invitation of the Planning Consultant for the CHA to explain its consultation response, it can be concluded, therefore, that, subject to conditions, there are no highway objections to the proposals.

Ecology Issues

Natural England has not raised any issues with regard to the ecology information submitted with the application other than to request a Nocturnal Bat Survey, which was not provided at that time. This was subsequently undertaken and Natural England has confirmed that they have no objections subject to a condition with regard to the submission of a detailed mitigation and monitoring strategy relating to bats.

With regard to the objectors' concerns relating to Great Crested Newts (GCN), Natural England does not object as, although the GCN population is likely to be affected by the proposal, they are satisfied that the proposed mitigation is broadly in accordance with the requirements of the GCN mitigation guidelines and should maintain the population identified in the survey report. Consequently, it recommends a condition requiring the submission of a detailed mitigation and monitoring strategy for GCN for approval. With regard to biodiversity and landscape enhancements it considers that the proposal may provide opportunities to incorporate features into the design of the development, which would be beneficial to wildlife and to enhance the character and local distinctiveness of the surrounding area.

Derbyshire Wildlife Trust has not raised objections to the proposals, subject to the inclusion of conditions relating to hedgerows, demolition, GCN mitigation, badger setts, breeding/nesting birds and the provision of a Habitat Management Plan.

It is concluded, therefore, that the likely impact on the ecology can be mitigated to the satisfaction of Natural England, Derbyshire Wildlife Trust and the Local Planning Authority, through appropriate conditions in respect of mitigation and monitoring strategies. The proposal is therefore acceptable in ecology terms.

Miscellaneous Issues including the loss of agricultural land

With regard to the CPRE's comments relating to the loss of agricultural land, paragraph 112 of the NPPF advises local planning authorities to *'take into account the economic and other benefits of the best and most versatile agricultural land and that, where*

significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use poorer quality land in preference to that of a higher quality'. The paragraph has its origins in the (now extinct) PPS7. A definition of the phrase 'significant development' is, unfortunately, not included within paragraph 112. The majority of the site comprises Grade 2 and Grade 3a agricultural land as defined in the Agricultural Land Classification. The advice in the NPPF is not intended to prohibit development on land just because it is currently in use as agricultural land, otherwise there would be no growth at all outside settlement confine boundaries and clearly no appeals would be allowed using that argument. Consequently, it will rarely become an overriding factor when determining applications of this nature as other considerations will carry more weight and in this instance such a consideration is the lack of a five year supply of housing land. Consideration should be given to the scale of the loss which begs the question as to whether the loss would be 'significant' in terms of food production. No evidence has been put forward by the CPRE to suggest that there is a shortage of good quality agricultural land in the area and therefore, a refusal on this basis would be unsound and unsubstantiated.

Various other points have been made, predominantly by village residents who object to the proposal. These are addressed below:

1. Available brownfield sites in the area. The Local Planning Authority can only assess an application for the site that is applied for. A number of factors could influence why certain sites do not come forward, such as land ownership. A decision for a particular site cannot be based on the fact that there are other sites in the area.
2. Access off Cauldwell Road. The land required to take access off Cauldwell Road is not within the applicant's ownership and cannot, therefore, be considered as an alternative.
3. Green Belt land. The site does not incorporate any Green Belt land.
4. Impact on Tourism. There is no evidence to show that tourism would be affected by the development. The public footpaths would remain open and unobstructed during the course of the development and upgraded as part of the reserved matters stage. The management of public rights of way is usually the responsibility of the County Council.
5. Not in keeping with the principles of the National Forest. The National Forest was not created in order to fetter development but to provide the country with increased woodland cover. The proposed development area would include at least 20% National Forest planting and it should be noted that the National Forest Company has no objections to the proposed development.
6. Overlooking. This would be addressed at reserved matters stage.
7. Impact on community life. There is no evidence to show that development of the site would be harmful in this regard.
8. Odours from the nearby farm. This would be covered under Environmental Health legislation.
9. Impact on existing foundations. This would be a private matter between the parties concerned.

Section 106 Agreement

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

As part of the application documents the applicants have offered obligations for open space and National Forest planting. With regard to affordable housing provision, they would prefer to see this secured by way of condition, which, they maintain, is the preferred option of the Planning Inspectorate. The Local Planning Authority has no objections to securing this provision by condition.

With regard to the education contribution of £655,992.24 in its original consultation response the County Council confirmed there would be no education contribution required as part of this proposal as there is sufficient capacity in the local primary and secondary schools to cope with the increase in school places likely to be generated by the proposal. It is understood that the Developers were informed of the County Council's stance in this regard at pre-application stage. The revised response from the County Council confirms the current school place situation by stating that: -

Linton Primary School has a current net capacity of 260 pupils and currently has 227 pupils on roll. Latest projections indicate numbers rising to 237 during the next five years (leaving a capacity for 23 pupils).

The Pingle School has a current net capacity of 1,376 pupils and has currently 1,162 pupils on roll, with numbers projected to stay around this number for the next five years. This means that the secondary school currently has capacity to take a further 214 pupils during the next five years.

The County Council has based its requirement for a financial contribution on the level of growth proposed in this area in the emerging Local Plan and states that 'it would be preferential if South Derbyshire District Council were to look at this application in the context of the draft Local Plan and consider seeking financial contributions towards primary and secondary school provision to mitigate the cumulative impact of the strategic scale of growth proposed'.

It is difficult to justify the requirement for a financial contribution of almost £656,000 given that the County Council has confirmed there is current capacity in both primary and secondary schools and there is likely to be for the next five years. By its own admission, the County Council has only stated that it would be 'preferential' to secure the contribution. By way of a further update the County Council recognises and appreciates that a request for a financial contribution towards school places is a change in their position since the developer's original pre-application enquiry. It is also appreciated that their analysis based purely on the extra pupils generated by this site (ignoring the potential wider impacts) indicates that the normal area schools would have capacity to accommodate the development. In light of this Members should consider whether the contributions are reasonable in terms of the development being acceptable. The fundamental question is whether the proposal could stand without those contributions. Applying the three tests within paragraphs 203 and 204 of the NPPF with regard to planning obligations, contributions must be:

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

In this instance it would appear that the development could stand without that contribution as there is current and future capacity in primary and secondary schools for

the next five years and therefore, it could be argued that the contribution would not be directly related to the development. It would be related to future developments in the area and, as such, fails that test.

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

The County Council has also requested obligations relating to: the provision of broadband for the site; £3147.10 towards the provision of additional waste management capacity; on-site provision and a financial contribution of £20,480 towards the delivery of the Derbyshire Greenway Network; and £39,600 for additional library service revenue costs; a total of £60,227. If these contributions would impact on the viability of the scheme they require a financial appraisal for review.

In addition the applicants have offered a contribution of £45,000 towards community facilities.

As already stated above, the NPPF advises in paragraphs 203 and 204 that: 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition' Planning obligations should only be sought where they meet all the tests:

Taking the other requests in turn and applying the above tests:

1. Waste Management contribution. The County Council has assessed the demand that the proposed development of 110 dwellings would have on the relevant Household Waste Recycling Centre (HWRC). Newhall (Bretby) HWRC is over capacity and unable to expand and during 2012/2013 exceeded its tonnage capacity. A new HWRC facility is required in order to meet growing demand from the existing population and to accommodate additional demand from new development. They have calculated the cost per dwelling of providing a new HWRC in South Derbyshire of £28.61 per dwelling, which is considered to be reasonable to meet the tests. There are no objections therefore, to the requirement for £3,147.10 towards waste management.
2. Derbyshire Greenway Network. The requirement to upgrade and improve the public footpaths to an adoptable standard can be covered by condition as they are wholly within the application site. The County Council requests that the proposed footpath/cycleway is built to Greenway standard (a 3 metre wide route designed into the scheme to accommodate horse riders as well as cyclists and pedestrians). This, again, could be covered by condition. They also request £20,480 towards the remainder of the route, a further 320 metres, should further landowner agreements be sought. This is considered to be unreasonable as the County Council is unable to guarantee that this would be provided, particularly as third party landowners would be involved. Furthermore, the extended route would be open for use by other residents of the village, and therefore the requirement has not been evidenced. It is considered, therefore, that the requirement for £20,480 fails to meet all the tests.

3. Library revenue costs. The development would result in additional user demand on existing facilities at Swadlincote Library. The County Council anticipates an additional 110 dwellings would result in around 53 additional borrowers and 1060 additional visits per annum. The cost of providing a library service at Swadlincote is £3.67 per visit or £36 per dwelling. The anticipated additional cost arising from this proposed development is £3690 for 100 dwellings per annum (£36 x 110). The County Council therefore requires a financial contribution of £39,600 towards additional library service provision to cover the next 10 years. At a recent appeal in North East Derbyshire (ref: APP/R1038/A/13/2192646) The Inspector was '*...satisfied that all of the provisions of the planning obligations would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations are, therefore, met and the planning obligation is a material consideration in the appeal decision. The purpose of the various contributions is to mitigate effects of the additional residential development ...*' Although no capital improvements to Swadlincote Library are required as a result of the development, applying the same principle as the Inspector at the North East Derbyshire appeal, it would appear that the requirement is directly related to the development and that it is fairly and reasonably related in scale and kind.
4. Whilst it is not appropriate to condition the requirement for the use of fibre optic cabling within the new development it is intended to include an informative to ask the developers to talk to broadband providers about broadband service provision.

Since the submission of the Draft Heads of Terms, the Developers have offered a further financial contribution towards the improvement of community facilities within the village although the details of the offer have not yet been received. A revised Draft Heads of Terms is expected shortly which will be reported verbally to the elected Members at the Planning Committee meeting.

Subject to the Members' agreement it is therefore proposed to require developer contributions and provisions relating to

- National Forest Planting (a minimum of 20%)
- National Forest contribution towards 10 year maintenance/ management
- Recreation comprising £372 per person for open space, £220 per person for outdoor facilities and £122 per person for built facilities plus a financial contribution towards maintenance/management of the on-site public open space facilities and balancing pond
- £3147.10 towards HWRC provision
- A contribution of £39,600 towards increased library services revenue costs
- A financial contribution of £45,000 towards community facilities (possibly Linton Village Hall improvements)

Overall Conclusions

As previously discussed, there is a difficult balance to be struck in the determination of this application and the decision will not be as clear cut as one would wish. The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues. The Highway

Authority is satisfied that the development could be made acceptable in highway safety terms with the imposition of conditions. Similarly, the ecology within and adjacent to the site could be protected by mitigation and monitoring work. The detailed layout, design and impacts of the development would be given careful consideration at reserved matters stage. Therefore the decision falls to be determined on more fundamental issues of principle. Whilst the application is contrary to Housing Policy 8 and Environment Policy 1 of the 1998 Local Plan this is outweighed in this instance by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to 'significantly boost the supply of housing'). In this context involving a development that could be argued to be reasonably sustainable, the Council cannot currently demonstrate a five year housing land supply and only limited weight can be afforded to the Settlement Hierarchy Policy in the Draft Local Plan. It is recommended therefore that, subject to the applicant entering into a Section 106 Agreement to cover the above obligations and subject to the conditions detailed below, the application is permitted.

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

Recommendation

Subject to the applicants entering into a Section 106 Agreement for National Forest Planting and maintenance/management contribution, recreation provision and maintenance contributions and contributions towards HWRC facilities, library services revenue costs and community facilities, then:

GRANT permission subject to the following conditions:

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

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

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

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

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

3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of all external materials to be used in the construction of the dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the character and appearance of the rural area.

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

Reason: In the interests of the character and appearance of the rural area and in order to ensure the boundary treatments along the routes of the public footpaths are appropriate for their continued use.

5. The scheme of landscaping required as part of condition 2 above shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The details shall include the root protection areas for all trees and hedgerows to be retained, which shall remain in situ throughout the entire construction period. The submitted landscaping shall also include details of the gapping up and tree planting within the hedgerows, as indicated within the Design and Access Statement.

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

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

Reason: To protect the amenities of adjoining properties and the character and appearance of the rural area.

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

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

8. With regard to condition 7 above, the surface water drainage scheme for the site shall be based on sustainable drainage principles which shall include an assessment of the hydrological and hydrogeological context of the site. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year plus an allowance for climate change critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason: To prevent the increased risk of flooding, both on and off the site.

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

become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the character and appearance of the rural area and the visual appearance of the completed development.

10. A minimum of 30% of the dwellings hereby permitted shall not be occupied other than as 'affordable housing' as defined in the National Planning Policy Framework (Glossary 2) (or as in any document which may replace or revoke this). A minimum of 70% of this provision shall be for rent, of which a minimum of 5 dwellings shall be (a) 1-bed: 2 person units and 1 dwelling shall be a 4-bed: 6 person unit. No development shall commence on site until the following details have been submitted to and approved in writing by the Local Planning Authority:
- i. a financial appraisal demonstrating whether it is viable to deliver up to 40% 'affordable housing';
 - ii. a plan showing the location/tenure and type of affordable housing evenly distributed across the whole site;
 - iii. the construction specifications for the affordable housing units to be provided;
 - iv. the arrangements, timetable and transfer prices for the transfer of the affordable housing units to a Private Registered Provider or the Local Authority Housing Provider ('the Provider');
 - v. details of the Service Level Agreement (SLA) with the Council for a Choice Based Lettings Allocation Scheme; and
 - vi. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Where a financial appraisal submitted under (i) above demonstrates that more than 30% affordable housing can be achieved, then the amount as shown in the approved appraisal shall be delivered in accordance with the following clauses:

- Prior to the transfer of the first unit of affordable housing, the Provider shall enter into the approved SLA. Unless otherwise agreed with the Local Authority all lettings, both first and subsequent, shall be to those person(s) who apply via the Choice Based Lettings Allocation Scheme or equivalent Scheme which may replace it. The affordable housing shall thereafter be occupied and managed in accordance with the approved details.
- The provisions of this condition shall not apply to a charge or mortgagee, receiver or administrator of the Provider that is the freehold owner of the affordable housing, or any part thereof; or a receiver or administrative receiver of the Provider to the intent that such mortgagee in possession receiver or administrator shall be entitled to dispose of the affordable housing, or part thereof, free of obligations contained in this condition.

Reason: To ensure the provision of a mix of housing types and tenures across the site in accordance with the Development Plan and the National Planning Policy Framework.

11. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been

submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

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

13. As part of the reserved matters submission a revised Design and Access Statement shall be submitted to incorporate the following:
- A careful selection of materials and a sensitively designed highway using the guidance under sections 2.7 and 2.8 of the Manual for Streets2 on rural street design. Specific reference to this approach for highway design shall be made within the revised DAS.
 - A character vision of the development to reflect a National Forest and rural South Derbyshire inspired design for the site, with specific reference made to timber boundary treatments, gates, porches and general construction, together with the abundance of native tree planting.

Reason: In the interests of visual amenity and to safeguard the rural character and appearance of the area.

14. Prior to the commencement of development of any works that may affect bats or great crested newts or their habitats, detailed mitigation and monitoring

strategies shall be submitted to and approved in writing by the Local Planning Authority. All works shall then proceed in accordance with the approved strategies unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of ecology, and to safeguard the health and habitats of bats and great crested newts, which are European Protected Species.

15. No operations shall be commenced until a temporary access for construction purposes has been constructed to High Street, laid out in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m and be provided with visibility sightlines of 2.4m x 43m in the north easterly direction and 2.4m to the extremity of the site frontage abutting the highway in the south westerly direction, the area forward of the sightlines shall be cleared and maintained thereafter clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

17. Wheel cleaning facilities for all construction vehicles shall be provided and retained within the site throughout the entire construction period. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

18. Prior to other works commencing, excluding those required under conditions 15, 16 and 17 above, High Street shall be modified generally in accordance with the application drawing. A 2m wide footway shall be provided around the southern radius of the High Street/The Crest junction and extend along the south eastern side of High Street to the point where the footpath from the south east joins High Street. Thereafter, a 2m wide grassed margin shall be provided on the south east side of High Street opposite the application site frontage. The High Street carriageway shall be widened to 5.5m and, notwithstanding the submitted drawing, be provided with a 2m wide footway on the north eastern side from the site's north eastern boundary extending along the entire site frontage. The modified highway shall be laid out, constructed, drained and lit all in accordance with Derbyshire County Council's specifications for new estate streets.

Reason: In the interests of highway safety.

19. Prior to the commencement of any building works, the new access into the site shall be formed to the modified High Street. The access shall have a minimum width of 5.5m, be provided with 2 x 2m footways, 6m radii and visibility splays of

2.4m by 43m in the north easterly direction and, notwithstanding the submitted drawing, 2.4m to the extremity of the site frontage abutting the highway in the south westerly direction, the area forward of the sightlines shall be cleared, taken into the highway being constructed as footway and verge and maintained thereafter clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The new access road shall be laid out, constructed, drained and lit all in accordance with Derbyshire County Council's specifications for new estate streets.

Reasons: In the interests of highway safety.

20. The gradient of the access shall not exceed 1 in 30 for the first 10m into the site from the highway boundary and 1 in 20 thereafter.

Reason: In the interests of highway safety.

21. The internal layout of the site shall accord with the Highway Authority's Policy Document '6C's Design Guide' and national guidance laid out in Manual for Streets.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

23. The new dwellings shall not be occupied until the proposed new estate street, between each plot and the existing public highway, has been laid out in accordance with the approved application drawings to conform to the County Council's Design Guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

24. Notwithstanding the submitted drawings, and unless otherwise agreed in writing, space shall be provided within the site for the parking of two vehicles per dwelling, laid out in accordance with the approved drawings and maintained free from any impediment to its designated use.

Reason: In the interests of highway safety.

25. Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety.

26. Any future reserved matters application shall be accompanied by a detailed Residential Travel Plan with SMART objectives. The Travel Plan shall set out proposals, including a timetable to promote and monitor travel by sustainable modes which are acceptable to the Local Planning Authority and shall be implemented in accordance with the timetable set out therein, unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted

annually, on each anniversary of the date of the planning consent, to the Local Planning Authority for approval for a period of five years from first occupation of the development.

Reason: In the interests of highway safety.

27. As part of the landscaping scheme required under Condition 2 above, a landscape management plan which shall include long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens and the retention of hedgerows H1 and H2 to include the mature trees within the hedgerows, shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

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

28. The demolition of Building No.1 (No.50 High Street) shall be carried out in accordance with a Best Practice Method Statement as outlined in paragraph 5.6 of the Bat Survey Report dated 25th September 2013, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of safeguarding protected species.

29. As part of any reserved matters submission details of the intended positions and design of the bat boxes and roost features for the site shall be provided, and the scheme shall be carried in accordance with the approved details before any of the dwellings hereby approved are first occupied.

Reason: In the interests of improving the ecology of the site.

30. Prior to the commencement of any works on site a survey for any recently excavated badger setts within the site shall be carried out and submitted to the Local Planning Authority. Works shall only commence if and when the Local Planning Authority is satisfied that no new badger setts have been created since the original badger survey was carried out.

Reason: In the interests of protecting a statutory protected species.

31. Any future reserved matters application shall include the submission of a Habitat Management Plan for the biodiversity enhancement measures, including the gapping up of existing hedgerows, the creation of wildflower grassland and the creation of the attenuation pond, which shall include details of how the management of the areas will be funded and implemented.

Reason: To ensure the biodiversity enhancement measures are managed in a satisfactory manner.

Informatives:

The detailed design of the proposed layout should take account of the advice from the Crime Prevention Design Adviser, particularly with regard to the position of habitable room windows and the public footpaths.

The reserved matters submission should include significant tree planting within the open space in order to meet the National Forest Company's Planting Guidelines, which is in accordance with Local Plan Saved Environment Policy 10.

With regard to conditions 7 and 8, the sustainable drainage scheme shall include: -

" Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.

" Limiting the discharge rate for run-off generated by all rainfall events up to the 100 year plus an allowance for climate change critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

" Provision of a surface water final discharge/outfall location in accordance with Part H of the Building Regulations; To the adjacent ditch course as detailed within Sections 7.1.2 and 7.1.3 of the Flood Risk Assessment (FRA) dated 14 June 2013, Ref: J-D1098 R01 (Draft) undertaken by Opus International Consultants (UK) Ltd, and as advised by STW in Appendix D of the FRA.

" Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.

" Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.

" Details of how the on site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

The routes of public footpaths Nos. 14, 15 and 16 within the site should be safeguarded and remain open and unobstructed at all times and their legal alignment retained both during and on completion of the development unless an application has been made to Derbyshire County Council for a temporary closure or diversion order in that regard. The safety of the public using the footpaths must not be prejudiced either during or after development works take place. Further information on temporary diversion orders may be obtained from the Rights of Way Section at Derbyshire County Council (01629 533190). The granting of planning permission is not consent to divert or obstruct a public right of way. If a right of way is required to be permanently diverted then the Council that determines the planning application has the necessary powers to make a diversion order. Any development, insofar as it will permanently affect a public right of way, must not commence until a diversion order has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council. To avoid delays where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for proposed development rather than awaiting the grant of planning permission.

The public footpaths should be improved to an adoptable standard with a protected minimum width of 2 metres and detailed specifications submitted to the County Council for approval. Where Linton Footpath No.15 is crossed by the proposed estate road the applicant should also liaise with the County Highway Authority to ensure that adequate safety/traffic calming measures in line with the current highways legislation are put in place.

The following notes are included to assist with Conditions 11 and 12 above:

Submitted with this application was Opus International Consultants (UK) Ltd's Phase 1 (Desk Study) Investigation Report (J-D1098_R1_RB, dated 09 April 2013) for the site. I have reviewed this report and I am happy that the investigatory and preliminary risk

assessment work goes as far as to satisfy part of the condition above. The reports findings and recommended further work (Section 6 & 7) goes to address part of Section A and D of the above condition. I would recommend that the proposed further works put forward in Section 7 are progressed and request that the applicant submits a Phase II investigatory scope inline with the recommendations put forward in the Phase I report.

The remaining phased risk assessment and potential remedial should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp. Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:

- " CLR 11: Model Procedures for the Management of Contaminated Land
- " CLR guidance notes on Soil Guideline Values, DEFRA and EA
- " Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- " Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- "Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538589 for further information. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, legal, and administrative processes involved in achieving adoption of new residential roads may be obtained from the Environmental Services Department at County Hall, Matlock. In order to carry out works on the existing highway a temporary road closure will be required, For temporary road closures and other traffic

management measures which may be required throughout the life of the development, the applicant should contact Derbyshire County Council's Environmental Services Department on 01629 538664. The applicant is required to pursue an extension of the 30mph speed limit on High Street. In respect of this, the applicant should contact Derbyshire County Council's Environmental Services Department on 01628 538609. The internal layout and construction of the site should accord with the Highway Authority's policy document '6C's Design Guide' and national guidance laid out in Manual for Streets.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is also available on The Coal Authority website at www.coal.decc.gov.uk Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

The hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to August inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

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

The applicants are advised to liaise with Derbyshire County Council with regard to the provision of improved broadband services for the development.

This permission is the subject of an agreement under Section 106 of the Town and Country Planning Act 1990.

Item 1.2

Reg. No. 9/2013/0733/SMD

Applicant:
Madecorn Leisure LLP
C/O Agent

Agent:
Mr Fran Chick
CSJ Planning
1 Host Street
Bristol
BS1 5BU

Proposal: THE VARIATION OF CONDITION 40 AND REMOVAL OF
CONDITION 38 TO FACILITATE THE USE OF 30% (180)
OF EXISTING RESIDENTIAL/LEISURE MOORINGS FOR
UNRESTRICTED RESIDENTIAL OCCUPATION ON
MERCIA MARINA FINDERN LANE WILLINGTON

Ward: WILLINGTON& FINDERN

Valid Date: 11/09/2013

Reason for committee determination

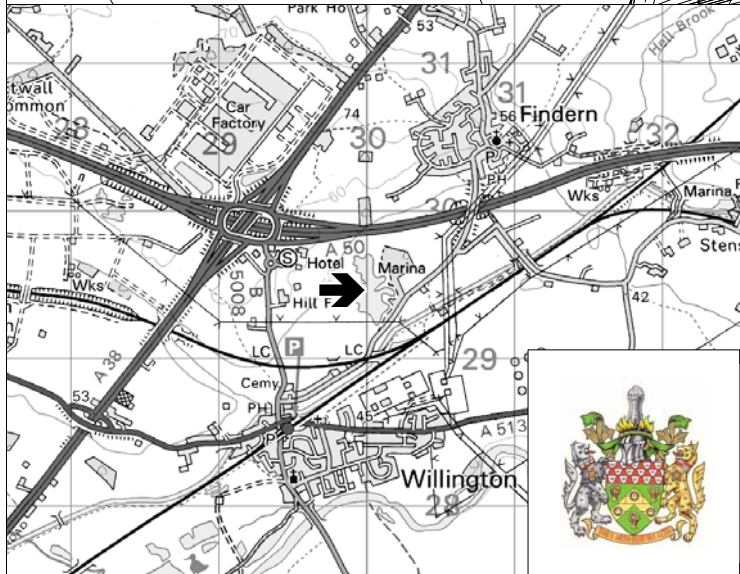
The development is not in accordance with the Development Plan.

Site Description

The marina lies to the south of the A50, north-east of Willington and south-west of Findern. It is beyond any defined settlement boundary. It is served by Findern Lane and a connection under the highway for boats from the Trent and Mersey Canal. The Derby to Birmingham and Derby to Crewe railway lines are nearby. A protected woodland lies on land to east, with open fields to the north and west. The land rises gradually and relatively uniformly. To the south of Findern Lane, which forms the southern edge to the active marina, is a nature reserve in the ownership of the applicant. A footpath crosses this and provides a connection to the canal towpath (via a pedestrian bridge over the canal). The site currently has a public car park containing 159 spaces at the front of the marina, and a further 229 private car parking spaces spread throughout the remainder of the site. There are also around 75 cycle parking spaces available for use by customers, as well as a chandlery and some shops and facilities.

Proposal

It is proposed to allocate 180 of the 585 existing leisure moorings to full time residential use (approximately 30%), allowing occupants to use the moorings as their primary place of residence. This would require the variation of conditions attached to the original permission. No physical changes to the site are proposed.



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South Derbyshire District Council. LA 100019461. 2010

Applicants' supporting information

A layout plan and supporting documents have been submitted. These are available in full on the Council's website. The following summarises those documents and in turn the view of the applicant:

- The **Planning Statement** considers the planning case relating to the applicant's proposals for development of the site after taking into account the Development Plan and all other relevant material considerations. It follows pre-application advice where concerns as to the quantum of development and the sustainability of the proposal were raised, as well as a "shift" from tourism to residential at the site. The applicant considers that the Marina is, in many respects, self-sufficient, and provides/will provide for shopping, leisure and recreation needs. The site is therefore considered to be sustainable in principle.
The Statement goes on to compare the proposals to other marinas, and the proportions of residential moorings allowed at those sites. It also outlines the desire to have flexibility as to which moorings are used for residential purposes so they can respond to demand and particular needs of boaters. The applicant also explains the reasons behind the application, namely the need to secure a continuous and non-seasonal income to facilitate onward investment into the site and wider tourism industry, and to respond to evidence of demand so not to suffer to its competitors. The benefits are also advanced, namely the meeting of increasing demand for residential moorings, the provision of low cost housing in the area, increased demand for employment in the area increasing economic prospects in the District, and income from Council Tax.

The statement then rehearses the relevant planning policies as well as a detailed analysis of planning policy and related considerations in relation to the proposed development; and provides an explanation of other material issues of relevance before drawing together conclusions on the various issues raised. This is supported by ministerial statements and with reference to a similar proposal at Sawley Marina. These matters will be drawn out in the assessment below.

- The **Transport Statement** forecasts there to be a total of 37 additional two-way vehicle trips in the busiest peak hour and 124 daily vehicles trips as a result of the proposed change of use. The 2001 census travel to work data for the Ward has been used to assign trips onto the network and assess the impact on the level crossing in terms of assignment of traffic, with it anticipated that around 80% of the additional traffic are likely to travel south towards Willington, the A50 and the A38, and therefore likely to use the level crossing. Therefore this equates to approximately one vehicle every two minutes during the busiest peak hour, and when combined with between two and three trains per hour passing through the level crossing; it is not considered to have a material impact on the queuing, operation or safety of the signal crossing.
- The **Travel Plan** identifies the site is already reasonably well served by bus, even at weekends, and provides (along with footpath/footway links) connections to Willington and rail services which pass through the village. The Plan then outlines the intention to take baseline surveys to establish modal transport patterns before further surveys following the residential use commencing. Beyond this a range of initiatives, measures and marketing plans are proposed to

encourage pedestrian, cycle and public transport travel, whilst reducing car trips through car sharing schemes for instance. The projected targets for residential moorings see a 10% reduction in the use of private cars, whilst increasing walking, cycling and public transport take up; as well as increasing awareness of the travel plan to three-quarters of the relevant population.

Planning History

9/2013/0729	The erection of nine log cabins	Approved 6/11/2013
9/2013/0597	The variation of condition 4 of planning permission 9/2013/0290	Approved 30/9/2013
9/2013/0290	The erection of a building for mixed use (A1, A3 and B1(a))	Approved 23/7/2013
9/2012/0989	Amended scheme to 9/2012/0560 for the erection of a public house and retail/commercial buildings comprising A1 (shop), A4 (drinking establishment), B1 (business and D1 (training use) to allow for the combining of units 1 and 2 in the piazza building and the mixed use of unit 7 for A1 (shop)/A3 (restaurants & cafes)	Approved 16/1/2013
9/2012/0560	The erection of a public house and retail/commercial buildings for mixed use (A1, A4, B1 (offices) and D1 (training) use)	Approved 24/8/2012
9/2012/0095	The erection of a gastro pub/retail complex and associated car parking (revised scheme for previously approved application 9/2010/0445)	Approved 8/5/2012
9/2011/0564	The erection of retail building including modifications to the approved peninsula parking scheme and extension and alteration to the main car parking	Approved 5/9/2011
9/2010/0759	The construction of 28 storage cabins built in 5 separate blocks and associated landscaping	Approved 19/10/10
9/2010/0445	The erection of a building to accommodate gastro pub with guest accommodation, fitness pool, gymnasium, spa and beauty salon	Approved 5/10/2010
9/2010/0045	The erection of 18 log cabins	Approved 30/4/2010
9/2008/0824	New chandlery building and associated works	Approved 1/10/2008
9/2007/0470	The creation of a 585 berth marina including a boatyard, chandlery and manager's office, tearooms, toilet blocks, boat hire and brokerage facilities and double dry dock. The erection of 18 log cabins to provide family group overnight tourist accommodation and the erection of a public house	Approved 27/10/2007

Responses to Consultations

A number of local, technical and statutory consultees were invited to make comment on the application. The following responses have been received:

- The **Environment Agency** do not consider there is a need to make comments as it does not pose a high risk to the environment nor is able to offer significant environmental benefit.
- **Network Rail** notes the Findern Lane level crossing is situated approximately 140 metres to the south of the site access, but the anticipated traffic impact as a result of the proposed change of use is not anticipated to be significant with approximately one additional vehicle every two minutes during the busiest peak hour which is not considered to have a material impact on the queuing, operation or safety of the signal crossing.
- The **County Highway Authority** considers that given the nature of the units, it would be unlikely that the travel characteristics for residential moorings would be materially different to the existing leisure moorings operating at full occupancy. As such they raise no objection without any prejudice to any application for conventional residential use which would need to be considered on its own merits.
- The **County Developer Contributions officer** noted there is a need for commuted sums towards the provision of a new HWRC for South Derbyshire given the existing centre at Newhall (Bretby) is already over capacity, towards additional library service revenue costs; towards the provision of 36 primary school places at Willington Primary School, 27 secondary school places at John Port School or a strategic secondary school solution for the Derby sub-area, and 11 post-16 places; amendments to site design to enable provision of high speed broadband; and contributions towards the cost improved surfacing to public footpaths within the site and the pedestrian footbridge over the canal, as well as towards the improvement of the towpath for Greenway use. DCC also highlights that they are working with Derby City Council and South Derbyshire District Council (SDDC) towards a strategy to provide additional secondary capacity through, potentially, expansion of John Port School and the delivery of a new secondary school.

Following discussion with the applicant and the Contributions officer, she conceded that the request for high speed broadband would be impractical and unnecessary; that the commuted sums for footpath improvements would represent “double charging” given the annual sums already commuted to the Canal and River Trust by the applicant; and that there was some scope for reducing and reviewing the degree of education and library contributions sought in light of boat capacity, likely occupants and the evidence provided by the applicant in these respects.

- The **County Archaeologist** raises no objection.
- The **Environmental Health Officer (Pollution)** raises no objection.

Responses to Publicity

Willington Parish Council objects to the proposal, noting:

- i. The proposal will place further demand upon the facilities of Willington which are already over capacity, such that they suggest significant Section 106 contributions are provided to the Parish Council as well as funding to improve the village hall;
- ii. It is believed that many already live at the marina;
- iii. Smoke produced from the boats give poor visibility on the road;
- iv. Could land south of Findern Lane under the applicant's ownership be used for allotments?
- v. How will the 180 limit be monitored?
- vi. How will increased demand on health care and schools be managed?
- vii. Will Council Tax be paid by boaters?
- viii. Whether there is consideration of this proposal alongside and other planning applications elsewhere to assess the impact on village facilities and public transport; and
- ix. A better footpath could be provided rather than walking through the car park.

A single representation has been received citing an error in the documentation in that the original site location plan does not reflect the marina layout as built in a number of ways.

Development Plan Policies

The relevant policies are:

- Saved Policies of the South Derbyshire Local Plan 1998 ("the SDLP"): Housing Policy 12 (H12), Transport Policy 6 (T6) and Environment Policy 1 (EV1).

National Guidance

- National Planning Policy Framework (NPPF) paragraphs 6, 7, 8, 11, 12, 14, 17, 19, 23, 28, 32, 39, 42, 47, 49, 50, 54, 55, 58, 61, 69, 75, 122, 123, 125, 128, 173, 186, 187, 196, 197, 203, 204, 206, 215 and 216.
- Circular 11/95.

Planning Considerations

As the proposal relates to change of tenure of existing moorings from leisure moorings to full residential moorings, the proposal is not considered to affect the existing status quo as to biodiversity impacts, heritage impacts or amenity.

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

- The Development Plan and other material considerations;
- The Principle of Development;
- Sustainability;
- Impact on local services and facilities; and
- Highway and rail safety impacts.

Planning Assessment

The Development Plan and other material considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission be determined in accordance with the Development Plan – in this case the saved policies of the SDLP – unless material considerations indicate otherwise. The NPPF is a significant material consideration, the emerging Plan requires due consideration, and replies from statutory and technical consultees, as well as third parties, are also material considerations. All these will carry varying degrees of weight.

The Principle of Development

The site lies outside of the settlement boundaries for Willington, and consequently in open countryside. In accordance with paragraph 215 of the NPPF, “*due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*” [emphasis added]. The SDLP contains numerous saved policies relating to housing development and development within the countryside which are considered to be consistent with the NPPF.

Policy H12 allows for boats as places of residence provided that there is a requirement for a dwelling to sustain an acknowledged rural based activity outside a settlement (amongst other criteria). EV1 further limits residential development in the countryside and drives development to more suitable locations, such that it is necessary to establish whether the proposal is essential to a rural based activity or it is unavoidable in the countryside. Neither is the case here. The proposal is therefore not in accordance with the Development Plan.

Notwithstanding the above, the NPPF requires proper consideration of the weight which may be afforded to housing policies. Paragraph 49 of the NPPF states:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”.

Paragraph 47 of the NPPF states:

“to boost significantly the supply of housing, local planning authorities should... ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area...; [and] identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements...” [emphasis added].

The Strategic Housing Market Assessment 2013 (SHMA) does not provide an objectively assessed need for residential moorings and, although it is probably true that most of the moorings would be in use as ‘second homes’, they would be nevertheless providing permanent dwellings hence the need for planning permission. As such it would appear reasonable to adopt an approach which counts 50% of them as contributing towards the supply of housing in the district. Also added to this there is a clear argument that conventional residential development gives rise to a need to allocate and develop greenfield sites to provide for strategic housing needs. Such a situation would find exemption under the “unavoidable” limb of EV1. With the moorings already present for leisure proposes only (limited by condition except for 12 existing

residential moorings for use by workers employed at the associated boatyard), and existing SDLP policy and the NPPF supporting the re-use of existing buildings in the countryside for residential purposes, the ultimate question is what harm arises by allowing a slightly different residential use to that which already exists given the benefit of providing residential accommodation which might alleviate some pressure elsewhere within the District. The focus therefore is whether the change of tenure would create unacceptable pressures on existing services, facilities and infrastructure which could not be mitigated for; and whether the wider environment would suffer as a result.

Sustainability

Paragraph 6 of the NPPF states that *“the policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development...means in practice...”*. Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). Willington is classed as a Key Service Village in the emerging Plan’s Settlement Hierarchy (S4). To qualify as a Key Service Village, settlements must have a bus service and/or convenience store plus at least 5 other services. Key Service Villages are envisaged to be capable of providing appropriate scale developments up to and including strategic sites (100 dwellings or more). The proposed development is slightly out of kilter with the intentions of the settlement hierarchy, but this currently carries limited weight. In light of extant permissions in Willington providing for some 102 dwellings, and the type of dwelling being provided and likely occupants arising from this change of tenure; the proposal is not considered to be unsustainable by way of extent alone.

Willington is served by a regular bus service from Burton, via Repton, and beyond to Findern and Derby. It passes immediately past the site. A direct rail service to/from Derby or Burton runs in both peak and off-peak hours and takes less than 10 minutes either way, although this is limited to around 5 services in each direction per day. The village lies on a junction between the A5132 and the B5008, which connect to the A38 and A50 within a short distance, as well as other villages and towns in the District. The site is served by a footway which connects back to the village centre and facilities within. The connectivity of this settlement is considered to assist in demonstrating its sustainability. As to facilities there is a post office, a convenience store and other shops, recently expanded doctors surgery, a pharmacy, a primary school, a village hall, a sports ground and a number of public houses. In brief, the village is considered capable of supporting further residential development in principle.

Impact on local services and facilities

The issue of what constitutes a sustainable village could be considered as subjective. A view could be taken that an increase in population is likely to boost the local economy by bringing in more custom or enabling businesses to expand. For instance it is not unreasonable to believe that a shop would extend its opening hours if there was more demand for its goods and services; or that a population increase could, potentially, encourage more services into the village if the demand existed. Paragraph 23 of the NPPF recognises that residential development can play an important role in ensuring the vitality of centres, whilst paragraph 28 lends weight to proposals which assist in sustaining rural enterprise (as would be the case here with increased mooring fees supporting the marina and the retained tourism focus overall). The opposing view is that existing infrastructure and services are considered insufficient to cope with the

additional population. Whilst the marina is and will be somewhat self sufficient by way of the peninsula retail development (now underway) and existing services at the site, it is accepted that the proposed development would place additional pressure on other services.

A key concern relates to schooling provision in the village and wider area. Willington Primary is stated to have zero capacity for additional children, with children from the village already having to attend Findern Primary. As for secondary school places, it is reported that John Port Academy too has little potential capacity at secondary schooling levels – a matter recognised by the County and in the emerging Plan. This poses a key hurdle to demonstrating sustainability of the proposal. However the County considers these issues can be addressed through commuted sums towards the provision of primary school and secondary school places. The County highlights they are working with the Council and Derby City Council towards a strategy to provide additional capacity. The expansion of John Port School and the delivery of a new secondary school in the Derby sub-area are understood to be possible options.

The applicant has expressed serious concern at the viability impacts of the initial requests, to the extent that the proposal would simply not proceed. This is centred on the basis that narrowboats are unlikely to be suitable for full time residential use by families with children – especially older children. This is not an unreasonable claim, but a recent appeal decision at Sawley Marina demonstrated that the Inspector considered there is a residual opportunity that could conceivably be taken up by families with children. The applicant has thus provided data based on Sawley Marina which demonstrates just 6 of their 123 moorings cater for children. In the absence of any other objective data, this 4.8% “take up” is considered to provide a reasonable representation of the most likely situation which would arise. The County raises no objection to this “tapering” of education contributions. These requests are now considered to fully meet the planning obligations tests set out in paragraph 204 of the NPPF.

The development will inevitably create refuse and waste which will need to be handled through a HWRC. The existing HWRC at Newhall (Bretby) is already over capacity, having exceeded its tonnage last year, and unable to expand. Additional housing, of which the occupants have a right to use the existing HWRC, will compound this problem. Consequently the County advice of a need for commuted sums towards the provision of a new HWRC for South Derbyshire. Whilst the marina already offers its own waste collection service, this is a chargeable service. With this in mind and the fact that occupants would have a right to use the HWRC regardless of what other provisions they may benefit from, this is considered to be justified and meet the NPPF tests.

The development will also place additional pressure on library services. The provision of public libraries is a statutory duty for local authorities, and services need to be continually improved to ensure they provide a responsive service that fits the needs of local communities. Etwall library serves Willington, and whilst no capital improvements are necessary the development will directly result in additional user demand and a resulting increase in revenue costs for service delivery. The presence of an on-site library does not eradicate this entitlement. Consequently a commuted sum is sought in this respect and is considered to be reasonable.

Improvement to broadband connectivity is a key priority for the County with superfast broadband roll out imminent. The NPPF places emphasis on ensuring high quality communications infrastructure with development of high speed broadband technology

playing a vital role in facilitating economic growth and enhancing the provision of local community facilities and services. However the dwellings provided here are not conventional such that connections are made through Wi-Fi available across the marina. It is not considered fair or reasonable to impose the County's request.

The County also seek improvement of existing footpaths and bridge connecting the site to the canal, as well as commuted sums to upgrading the towpath on the basis of it providing as a cycle route to enhance the Greenway network. However the existing leisure moorings will already have a reasonable degree of impact on these links, with the change to residential moorings unlikely to have a material impact. In addition the applicant already provides annual contributions to the Canal and River Trust for maintenance and improvements in recognition of the increased impact the original marina development had. The request here is thus not considered to be fairly related nor reasonable.

The Derbyshire and Nottinghamshire Area Team of NHS England have adopted the former Derbyshire County PCT model of estimating the cost of developing primary health care premises. The model assumes an average of 1800 patients per full time GP. Where extensions to existing practices are required, the Area Team require financial contributions from residential developments where a significant increase in the number of dwellings is anticipated. No response has been received to substantiate a commuted sum in line with established figures in the Section 106 SPG. Indeed, in the context of a new surgery in Willington, it is highly unlikely any request could be substantiated in terms of the "necessary" test under paragraph 204 of the NPPF.

Willington Parish Council has indicated a desire for contributions to sustain village facilities, including the village hall. It is not clear what the other facilities may be. Nevertheless the Parish Council has no evidence that this particular development would take the existing village hall or other community facilities operated by them beyond capacity. There is thus no evidenced need which directly arises as a result of this development. In addition there is no substantiated sum provided to address the issues arising. It thus has to be concluded that the request does not comply with paragraph 204 of the NPPF. Remaining services and facilities, such as shops and public houses, would not have a direct pressure placed upon them. The proposal is instead considered to bring about benefits in this fashion and ensure the vitality of them. Indeed the vitality and longevity of many of the aforementioned local services is sustained by the proposal, subject to the commuted sums outlined. It is thus not considered there is a specific capacity issue or impact on a local service or facility which cannot be addressed in order to make the development sustainable.

Highway and rail safety impacts

It is well established that there are existing traffic congestion problems in Willington around peak hours. There is also a level crossing along the vehicular route to the village (one of two pedestrian routes). It must be established whether further traffic generated by the proposal would lead a "tipping point" being reached. The Transport Statement looks at this matter, more particularly in respect of the impact on Findern Lane and the level crossing.

37 additional two-way vehicle trips in the busiest peak hour are projected and 124 daily vehicle trips. 2001 census travel to work data for the Willington and Findern Ward assigns around 80% of the additional traffic south along Findern Lane from the marina

towards Willington, the A50 and the A38. This makes the majority of vehicular traffic will likely use the level crossing. However as this equates to approximately one vehicle every two minutes during the busiest peak hour, it is not considered to have a material impact on the queuing, operation or safety of the signal crossing; nor existing congestion problems in the village. Network Rail and the Highway Authority thus raise no objection in this respect, and seek no conditions.

Other matters

Regard is finally had to the practicalities of ensuring only 180 moorings are used for full time residential purposes. The existing permission for the 585 moorings carries two conditions:

38. *The 12 residential moorings hereby permitted shall be occupied only by employees of the site operator.*
40. *With the exception of the 12 residential moorings, no mooring hereby permitted shall be occupied by any vessel that is a principal private residence.*

As the applicant seeks flexibility in that any of the moorings could be used for residential purposes, it will be necessary to devise a means of registration which allows for appropriate monitoring and enforcement if necessary. Whereas the existing controls make it clear that any person primarily living at the marina would have to be employed at it too, the proposal would allow for persons primarily living at the marina and persons using it as a second home/holidaying. It is not so much the monitoring of the 180 moorings that poses a problem, but how to identify that other boats are there on a leisure basis only (i.e. the occupants have a primary place of residence elsewhere). This means that all moorings will need to be subject to a condition.

Conclusion

The scene for the Marina complex as a whole is material here. The Marina is a developing tourist hub and, in many respects, self-sufficient in its own right. The complex is/will shortly be capable of providing employment opportunities, convenience goods, food and drink, as well as leisure facilities and accommodation. The reliance on outward services and facilities is already low and is likely to remain that way with the proposal now presented. Any potential for pressure on existing services can be alleviated through commuted sums, and those sums are agreeable to and viable for the applicant. The physical and visual outward impacts are negligible or maintain the existing status quo. Members should therefore focus on the view that the proposal *is* sustainable, or can be made sustainable through planning obligations and conditions. It is not considered there are any adverse impacts arising which would significantly and demonstrably outweigh the benefits arising.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. This permission is specifically for the full-time residential occupation of no more than 180 moorings within the marina at any one time.

Reason: For the avoidance of doubt and to ensure that residential occupation of further moorings does not occur, contrary to Development Plan policies and the tourism benefits arising from the principle of a marina in this location.

3. The owner/operator shall maintain a register of occupiers who contract for a continuous mooring period of 6 months or more for both residential and leisure moorings at the marina for each calendar year, which shall be made available for inspection by the Local Planning Authority at any time and a copy of the register shall be supplied to the Local Planning Authority at the end of each calendar year. This register shall include:

- i. a plan of all moorings at the marina, with each assigned a reference number;
- ii. the names of the occupier(s) of each mooring;
- iii. the date first occupied;
- iv. the date last occupied;
- v. whether occupation is for residential or leisure purposes, and in the case of the latter the occupants' primary address of residence.

Where the same mooring number is used by multiple persons throughout the calendar year, the register should contain multiple entries to this effect.

Reason: To ensure that the Local Planning Authority is able to monitor the use of moorings at the marina to ensure that the requirements of condition 2 are not breached.

4. Any other conditions remaining in force attached to the original permission 9/2007/0470.

Informatives:

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

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

Item 1.3

Reg. No. 9/2013/0745/SMD

Applicant:
Peveril Homes Limited
C/O Agent

Agent:
Paul Stone
Signet Planning
Strelley Hall
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NG8 6PE

Proposal: **THE ERECTION OF 77 DWELLINGS, PUBLIC OPEN SPACE, ACCESS AND DRAINAGE INFRASTRUCTURE ON LAND AT SK2928 5584 ETWALL ROAD WILLINGTON DERBY**

Ward: **WILLINGTON & FINDERN**

Valid Date: **23/09/2013**

Reason for committee determination

This is a major application, not in accord with the Development Plan and to which more than two objections have been received.

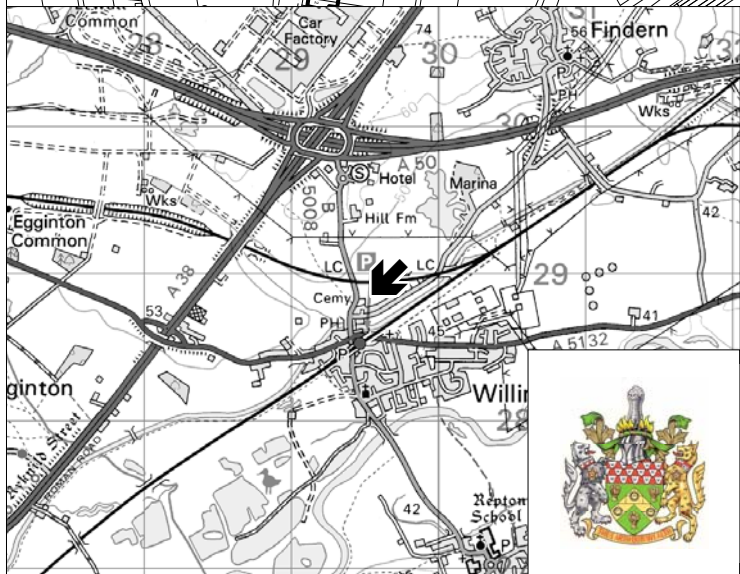
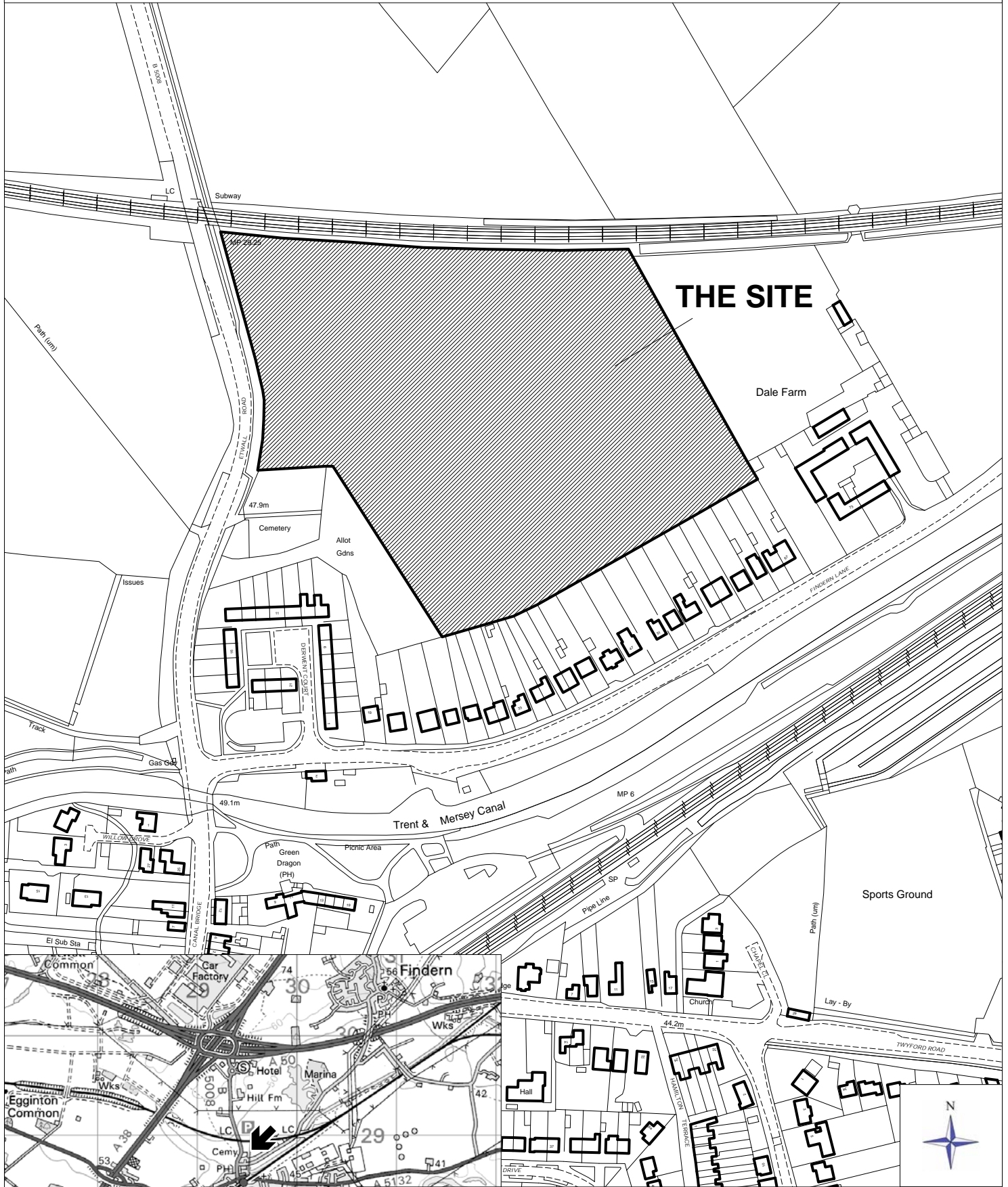
Site Description

The application site comprises a single agricultural field, covering approximately 3.45 hectares to the eastern side of Etwall Road, used for arable purposes. It is relatively flat in nature. To the north is the Derby to Stoke railway line on a slightly raised level, to the south are the rear gardens of existing residential properties along Findern Lane, and to the east is further farmland and farm buildings (Dale Farm). The south-west corner is bordered by existing allotments and the cemetery, whilst there is a level-crossing adjacent to the north-east corner. The site is bordered by mature hedgerow to the east and west sides, and broken hedgerow around the allotments. Mature trees complement the setting of the cemetery. The northern boundary/embankment with the railway is loosely vegetated with semi-mature trees and shrubs.

The allotment gardens benefit from vehicular and pedestrian access off Etwall Road, as does the cemetery. There is a short lay-by adjacent to the access into the cemetery. An existing field access to the site exists close to the apex of the bend on Etwall Road.

The Proposal

9/2013/0745 - Land at SK2928 5584, Etwall Road, Willington, Derby (DE65 6ED)



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This is a “revised” application of one submitted in July 2013. That application, listed under Planning History below, was found to be faulty and was returned. As the character and description of this application is the same as its predecessor, incorporating only minor detailing changes to some dwellings and accompanied by further technical addendums; representations received under the first application have been carried forward under this application. Interested parties were informed of this and invited to make further comment if the revised scheme fundamentally changed their view or added to/alleviated their concerns. Statutory and technical consultees were also consulted on both submissions. Representations are set out on this basis below.

The application is in full, seeking permission for the erection of 77 dwellings (in a range of 1-bed to 4-bed units) and the provision of associated infrastructure such as roads and footways, sustainable urban drainage systems (SuDS) and public open space (POS). The layout would provide for a new access on the bend in Etwall Road just south of the level crossing. Built form would be slightly set back from Etwall Road and the railway line, with a substantial landscaping buffer to the latter. The POS would sit centrally to the development with SuDS within this and the aforementioned buffers.

Applicants’ supporting information

A number of plans, drawings, technical reports and supporting documents have been submitted and are available in full on the Council’s website. The following summarises them and in turn the view of the applicant:

- The **Design and Access Statement (DAS)** notes that Willington is located close to the River Trent, about 6 miles southwest of Derby and about 5 miles northeast of Burton-upon-Trent. The village is at the crossroads of the B5008 (for Findern, Repton and Winhill), and the A5132 (linking Hilton and Swarkestone). The site is a short walk from the facilities located within the heart of the village, along Etwall Road and over the canal. There is a footway along this route. The railway station is located within the village. The site is considered a sustainable location for new residential development.

The village today reflects many generations and styles of building and development, reflecting historical growth since the 18th Century. Willington is an attractive and well connected village, it has an under-appreciated townscape which includes distinctive cottages and fine period buildings. The development of new homes on this site is considered to reflect the best traditions of architecture to complement the village’s existing environment. The applicant sees this development as a key part of the evolution of the village. This will be a place of quality, designed to be clearly recognisable as part of Willington. Great time, care and attention has been directed to avoid an industry standard approach and the creation of an anonymous housing estate.

The document highlights the merits of the site, and recognises the existing character, landscape and constraints of the site. These matters will be drawn out in the assessment below.

- The **Planning Statement (PS)** considers the planning case after taking into account the Development Plan and all other relevant material considerations. It describes the site and details the proposed development; rehearses the relevant planning policies as well as analysing in detail those policies and related

considerations in relation to the proposal; and provides an explanation of other material issues of relevance before drawing together conclusions on the various issues raised. These matters will be drawn out in the assessment below.

The PS also outlines the proposed housing mix and tenure. In brief and accounting for amendments since its creation, this comprises 55 two, three and four-bedroom dwellings for sale on the open market (“market housing”), and 22 one to four-bedroom dwellings for rent and shared ownership (“affordable housing”) with an emphasis on properties for rent.

- The **Building for Life (BfL) Assessment** considers the scheme in respect of the recently updated BfL12. This considers that the scheme connects and integrates with its surroundings, that it provides and is close to community facilities and services, it has good accessibility to public transport, it has a mix of housing types and tenures that suit local requirements; it creates a place with locally inspired distinctive character; it takes advantage of site characteristics; that buildings enclose streets and spaces and turn corners well; it is designed to make it easy to find your way around with streets designed to encourage low vehicle speeds; that resident and visitor parking is sufficient and well integrated, public and private areas are clearly defined; and there is adequate external storage for bins, recycling and cycles.
- A **Transport Statement (TS) and TS Addendum** has been prepared to consider the access, traffic and sustainable travel issues associated with the proposed development having consideration to the document “*Guidance on Transport Assessment*” published by the Department for Transport. It also takes into account the principles of the NPPF, advice contained in the 6C’s Design Guide as well as the requirements of the “*Design Manual for Roads and Bridges*” (DMRB).

The TS looks at existing conditions in respect of the site, the surrounding area, the local highway network and the facilities available to encourage access by sustainable modes of transport. It also reports on current traffic patterns and reviews the relevant personal injury accident records. It then moves on to assess the development proposals, including access arrangements for all modes of transport, and reviews transport policies relevant to the proposal and considers how the site complies with policy. Crucially it models projected peak and daily traffic generation from the development at the proposed site access and over the local highway network, and investigates the potential impact of this traffic during weekday AM and PM peak hours. This also considers highway safety issues. The addendum specifically addresses points raised by the Highway Authority, Network Rail and the Parish Council during the first application.

- A **Flood Risk Assessment (FRA)** has been provided, prepared in accordance with the NPPF and accompanying interim Technical Guidance, the District Council’s Strategic Flood Risk Assessment (SFRA) and in consultation with the Environment Agency (EA) and Severn Trent Water Limited (STW). This looks at existing on site drainage and sewers; flood risk from Sands Brook, Egginton Brook and the River Trent; groundwater flood risk; overland flows; and canals and other artificial sources. Beyond this it considers the impact of the proposed development in terms of foul and surface water drainage, looking at existing

sewer capacity and modelling surface water flows and need for attenuation/SuDS.

The risk of flooding to the proposed development and surrounding areas from all sources is considered to be low. No floodwater storage mitigation measures are considered necessary, and the implementation of a sustainable surface water drainage strategy (i.e. use of SuDS) will ensure that there is no increase in flood risk to surrounding areas through the disposal of surface water run-off in the post development scenario.

- The **Ecological Report** describes the existing habitat types; determines the existence and location of any ecologically valuable areas; and identifies the presence of any protected species. A walk-over survey of the site was carried out in accordance with good practice and complemented baseline data gathered from other sources. This makes up the standard Phase 1 habitat survey. Particular attention was paid to potential for badgers, bats, amphibians and reptiles, as well as considering the value of habitat on or adjacent to the site (such as hedgerows and trees) to provide for species.

No evidence of badger activity was recorded, with the only evidence of mammal activity recorded on site as rabbits with several burrows along the northern and eastern boundaries of the site. The site is also considered to be quite exposed and unlikely to provide good foraging habitat for bats; and as hedgerows are relatively short they are consequently unlikely to provide good flight lines for bats. There are no trees on the site and therefore no opportunities for any bat roosts to be present, and nearby trees are not considered to be affected. The majority of the site is intensively managed and therefore does not provide suitable habitat for either reptiles or amphibians. No ponds were recorded on or directly adjacent to the site which could support breeding populations of amphibians. Consequently there is not considered to be habitats of international, national or county importance that would be directly or indirectly affected by the proposals, with any species recorded described as common or abundant.

A range of generic mitigation/enhancement measures have been suggested, and if implemented effectively, would reduce the impact of the works on local wildlife and increase the nature conservation value of the site in the long term in accordance with the NPPF.

- Phase 1 and Phase 2 **Site Investigation Reports** are provided. These look at historical land uses both on and near to the application site, includes the results of intrusive investigation, and considers what pathways and receptors exist or might exist following development. From this mitigation measures are recommended.

The Phase 1 report indicates that the site has been used as agricultural land since at least the late 19th Century, although several off-site sources of contamination have been identified. These are the railway line, the cemetery and the old marl pit to the south west. These off-site land uses gives rise to the possibility of a pollution linkage to be present and a preliminary intrusive risk assessment is recommended to determine the extent of potential contamination at the site from these sources. Ground gas monitoring should be undertaken as

part of any ground investigation to assess the potential risks from the off-site sources of ground gas, namely the cemetery and the old marl pit.

The Phase 2 report followed the sinking and sampling of boreholes and digging of trial pits to look for potential contaminants and assess ground make up for structural purposes. Made ground was not found. Assessment of the chemical analysis undertaken on samples retrieved has suggested that remedial measures should not be required; and interim analysis of the gas monitoring undertaken to date indicates that gas protection measures are not likely to be required.

- The **Noise Impact Assessment (NIA)** identifies the intermittent road traffic movements and occasional train movements as generally forming the noise climate. To provide adequate information a 24 hour manned noise survey at fixed monitoring positions on-site has been undertaken; and an assessment of the impact of transportation noise during the daytime and night-time periods on external garden areas and internal room noise levels of proposed dwellings has been provided. Where appropriate, recommendations have been provided for noise control to reduce impacts to an acceptable level.

It is found that noise levels are elevated and a material consideration in determining the application for the majority of the site, with regard given to conditions to ensure an adequate level of protection against noise. There is just one small area of the site which experiences a higher noise exposure, and that is adjacent to Etwall Road. Private garden boundary areas would require acoustic screening to 1.8 metres to protect residents from road and rail traffic noise. The proposed dwellings with gardens parallel and closest to Etwall Road will require a 2.5 metre high brick or stone wall or close-boarded fence. All plots will require suitable glazing, ventilation and roof construction to meet the noise criteria.

Construction noise is not deemed to be significant given that noise will vary from day to day, existing road traffic noise dominates the noise climate and “best practicable means” would be employed during construction work activities. The impact of road traffic noise generated within the site on existing nearby residents is not expected to be significant given the existing background noise levels, locality of the site, and number of dwellings proposed.

- The **Archaeological Specification and Evaluation Report (including Addendum)** was informed by pre-application advice with the County Archaeologist who identified the potential presence of two prehistoric monuments and subsequently recommended a pre-determination geophysical survey and trial trench evaluation to inform a Written Scheme of Investigation (WSI). The WSI targeted cropmarks interpreted as being potentially of archaeological or geological origin.

The archaeological evaluation shows that significant prehistoric monuments, survive within two areas towards the southern extreme of the site. These are buried beneath topsoil and subsoil, at a depth of approximately 0.3 metres below the present ground level. Considerable plough damage has already occurred to the monuments and development may, potentially, further damage the remains, but this will depend upon the specifics of the design.

- A **Minerals Desk Top Study** examines whether the development would cause the sterilisation of an economically workable or significant mineral deposit. The deposit of the Beeston Sand and Gravel Formation lies across most of the site, with part already sterilised by residential development, the cemetery and allotments. Any sand and gravel beyond this existing development is subject to a degree of indirect sterilisation caused by the requirement to have a buffer zone between residential properties and mineral workings. In the absence of a specified buffer zone, a buffer zone width of 100 metres has been assumed.

The report demonstrates that almost all of the Beeston Sand and Gravel Formation lies within direct sterilisation zones or a 100 metre wide buffer zone of indirect sterilisation. Outside of those zones, the gravel is estimated to have an average thickness of 6 metres and to amount to approximately 57,000 tonnes. This is not an economically workable quantity of sand and gravel and is not significant in the context of the County's sand and gravel reserves, which are measured in millions of tonnes.

- A **Viability Statement** assesses the economics of developing this site, considering land value, development and finance costs, revenue from sales, revenue and suppressed revenue from affordable housing, and Section 106 costs. The Section 106 costs include commuted sums towards a new Household Waste Recycling Centre (HWRC), library services, primary school places, public open space and healthcare provision. They consider, having used reasonable assumptions and with an appropriate uplift applied, the scheme is viable with an affordable housing provision set at 30%.

Not including variants of each the plans and elevational drawings detail 20 different house types and 6 types of detached garages or car ports; as well as boundary treatments, landscaping and public open space provision, and the affordable housing mix.

Planning History

9/2013/0480: The erection of 77 dwellings, public open space, access and drainage infrastructure – Not determined (returned)

Responses to Consultations

In the interests of efficiency and clarity, the most up to date response from each consultee listed below is given, recognising amendments seeking to address any previous comments or concerns made:

- The **Environment Agency (EA)** initially objected on the basis the FRA failed to provide a suitable basis for assessment to be made of the flood risks arising from the proposed development and, in particular, an assessment of a culvert which appears to cross the site. Further investigation and assessment has been undertaken by the applicant and following their liaison directly with the EA, the EA has lifted their objection subject to a condition to ensure an adequate and sustainable surface water drainage solution.
- **Network Rail** has no objection in principle although they do have concerns over the proximity of the development to the level crossing. They acknowledge the

additional work carried out by the developer in respect of analysing the effect on queuing at the crossing and that the impact is going to be marginal. Nevertheless level crossing safety is a key concern. They point out that the access and egress point of the development is less than the standard 150 metres to the level crossing, although they accept there is no feasible alternative access, and the proposed level of traffic exceeds the amount specified in the Office of Rail Regulation's Railway Safety Publication No.7 to support the provision of yellow box markings.

As such they seek that the developer pays for the provision of yellow box markings on the crossing as a positive contribution to level crossing safety. As there will also be greater risk during the construction period with HGVs having the potential of unintentionally obstructing the level crossing, Network Rail seek that the yellow box markings are in place prior to development commencing.

Additionally they seek conditions (or to be involved in approval of details under condition) relating to drainage, boundary fencing, method statements, soundproofing, lighting and landscaping, the reasons for which can include the safety, operational needs and integrity of the railway. They also seek informatives in respect of related and ownership/safety matters.

- The **County Highway Authority** initially lodged a holding objection to the first application on the grounds that information supplied was deficient in respect of a traffic count on Etwall Road, speed readings on Etwall Road and a topographical survey to demonstrate that the forward visibility available for drivers turning right into the site is commensurate with actual vehicle speeds.

The traffic count and speed readings undertaken by the applicant have allayed concerns and confirmed the acceptability of the visibility splays shown. It has also been demonstrated that the necessary forward visibility can be achieved with the position and design of the access as shown acceptable. Remaining issues regarding internal road layout have been overcome by amendments, and the Highway Authority now has no objection subject to conditions and informatives.

- The **Canal and River Trust** has no comments to make.
- The **County Planning Officer** comments that the sand and gravel reserve, being approximately 57,000 tonnes, is not an economically workable quantity and is not significant in the context of the County of Derbyshire's sand and gravel reserves. As such he considers that no issue of mineral sterilisation would arise in connection with the proposed development.
- The **County Developer Contributions Officer** notes there is a need for commuted sums towards the provision of a new HWRC for South Derbyshire given the existing centre at Newhall (Bretby) is already over capacity; towards additional library service revenue costs; towards the provision of 15 primary school places at Willington Primary School; 12 secondary school places at John Port School or a strategic secondary school solution for the Derby sub-area, and 5 post-16 places; along with amendments to site design to enable provision of high speed broadband and provision of an off-site cycle route to enhance access to the Greenway network. The County recognises that current market conditions

are still difficult and that the viability of development schemes will vary, such that it is appreciated that it may not be possible to mitigate all of the impacts identified because of the viability of this development proposal. DCC also highlights that they are working with Derby City Council and South Derbyshire District Council (SDDC) towards a strategy to provide additional secondary capacity through, potentially, expansion of John Port School and the delivery of a new secondary school.

- The **County Archaeologist** notes that the proposal lies within a site on the Derbyshire Historic Environment Record, comprising an area of cropmarks mapped from aerial photographs and possibly including Bronze Age ring ditches and a Neolithic hengiform enclosure. The applicant has carried out an initial phase of archaeological evaluation including geophysics and trial trenching. The trenching was closely focused upon the potential monuments and a few other features apparent from geophysics/cropmarks, and did not seek to evaluate the presence/absence of archaeology across the whole site. The evaluation thus far has determined that the double-ditched 'hengiform' enclosure, and another roughly circular feature, are indeed archaeological, and that the sub-surface features survive in a reasonable state of preservation. There is some evidence for a ploughed down bank between the two ditches of the 'hengiform' monument, and a 'graveshaped' pit in the centre of the circular feature. A couple of the linear features identified through geophysics/cropmarks also appear to be archaeological, with others interpreted as geological/periglacial in origin. No dating evidence has been identified as yet – but on morphological grounds the features are likely to belong somewhere within the later Neolithic – earlier Bronze Age c3000-1500 BC.

It is considered that this does enough to allow determination of the application, and to secure further archaeological fieldwork through conditions. This will comprise a more detailed phase of evaluation trenching to fully define the spatial extent of the archaeological resource, followed by archaeologically controlled strip and record of the areas of significance thus identified.

- The **County Landscape Architect** notes the surrounding landscape is defined and described as "*Trent Valley Washlands: Lowland Village Farmlands*" – a landscape associated with the river terraces adjacent to the floodplain with settlement in the form of nucleated villages. The wider landscape type is defined by mixed farming with large hedged fields and a lack of hedgerow trees. The site is typical of the wider landscape character type. The immediate landscape extending to the north and east including the site has been identified as an 'Area of Multiple Environmental Sensitivity' (Secondary sensitivity) in work undertaken by the County Council; this sensitivity primarily relates to its ecological and historic interests.

Visually the site is open to views from Etwall Road particularly from the elevated level crossing. The grounds of the cemetery afford some screening by virtue of its mature hedgerows and occasional trees. In views from the north, the backdrop to the site is formed by the northern edge of Willington. Properties along Findern Road may gain some views but these impacts are limited by long rear gardens with occasional trees along their northern boundary. Overall the site is visually prominent particularly on approaching Willington from the north. Although the development is conceivably a sustainable urban extension to

Willington, the main village centre is some distance away by foot from the site and the scale of the proposal would constitute a significant increase to the size of the village. The prominence of the site (visually) dictates that the development needs to be of a high quality and act as an attractive gateway to the village from the north.

Overall he considered the original detailed design did not constitute the quality that the particular sensitivities of this site dictate. The design is considered to be a pastiche of the way Willington has developed over time. Advice centred around creating 'distinct character areas' and 'clusters of building types', but has been misinterpreted. The built edge adjacent to Etwall Road also needs to be very carefully considered so as to make a positive contribution to this approach into the village and also to help mitigate the scale of the overall development in views from the north. The current proposal for this western/north-western edge is too 'loose'. This development shouldn't be attempting to depict an evolutionary story for Willington but should focus on creating its own distinct character that might even contrast with the historic settlement core. The concept of a central green space and a green buffer to the railway are both welcomed and have some merits in integrating the site with the wider landscape character and provide opportunities for landscape and ecological enhancements.

- The **County Drainage Officer** (advisor for the SuDS Approving Body (SAB)) raises no objection in principle. They note surface water maps indicate a small accumulation of surface water to the north west of the site adjacent to Etwall Road, and that development of the site may add a considerable area of impermeable surfacing to the existing greenfield site, which is likely to exacerbate surface water flood risk. A review of the British Geological Survey dataset for infiltration SuDS suggests that there is a very significant potential for one or more geo-hazards associated with infiltration in the north-west of the site, and the site is probably more suitable for infiltration to the south; and ground water is likely to be lower to the southern half of the site and may be vulnerable to contamination. They hold no reported historical incidences of flooding within the proposed site boundaries. They also note that activities or works should not deteriorate the status of the watercourse to the south-west, beyond Etwall Road. All waterbodies should reach 'good ecological status' by 2015 according to an EU directive. The River Trent to which this watercourse flows is currently assessed as of 'moderate status'.

The officer recommends SuDS to be incorporated within the design of a drainage strategy, to promote betterment or meet current greenfield runoff rates taking into account the impacts of climate change. They also encourage the applicant to consider attenuation in stages to provide the appropriate number of water treatment stages rather than one large site-scale attenuation pond.

- **Derbyshire Wildlife Trust** notes the ecologists' data search was limited to the use of web based services and did not consult the relevant local nature conservation organisations to provide context to the survey. However this does not appear to be detrimental as they advise that there are unlikely to be any protected species issues arising.

They note that some hedgerow will be removed to facilitate access. The native hedgerows on the western and eastern boundaries meet the definition of UK

priority habitat and, as such, they advise it is essential that there is not a net loss of hedgerow priority habitat. They thus advise that a scheme to demonstrate how there will not be a net loss of hedgerow priority habitat and provision for new native hedgerow planting to result in a net gain of hedgerow habitat, should be agreed in line with the objectives of the NPPF. The hedgerows and scrub were also considered to have potential to provide suitable habitat for nesting birds, such that a condition should be imposed to afford protection here.

The development will also use previously undeveloped land and, as such, the ecological assessment work must therefore play a pivotal role in informing the site layout and which areas are to remain un-built. Site master planning and layout should have regard to the existing site constraints and opportunities, with existing landscape and biodiversity features retained and enhanced wherever possible, providing a network around which a built development can be designed. This has been largely achieved with the Masterplan Layout which is welcomed and they particularly note the consideration given to the largely retained boundary hedgerows within natural buffers. They advise that conditions are imposed to secure these objectives.

It is noted that the walk-over survey was conducted outside of the bird breeding season and that no consideration has been given to the potential use of the site by priority ground nesting bird species such as skylark or lapwing which are often associated with arable fields. However given the proximity of built development on the southern boundary and the availability of more suitable, less disturbed, habitat on the west side of Etwall Road; it is unlikely that the site supports significant ground-nesting bird interest. However they proposed a precautionary condition in this respect.

- The **Strategic Housing Manager** notes the Strategic Housing Market Assessment suggests over the next 5 years there is a district-wide need for 1,723 affordable homes, with 447 of these in the Derby Fringe. Currently there are 26 households registered on the District Housing Waiting list requiring a socially rented home who have indicated a wish to live in Willington. The introduction of Welfare Reforms is also increasing demand for smaller properties for households wishing to down size to more affordable homes. On this basis it is recommended that 4 to 6 one-bedroom homes are built for rent, with the balance split between two and three-bedroom family homes. It is also recommended that 40% affordable should be sought with the affordable tenure split 75% rent and 25% shared-ownership, and that should viability prove that it is not possible to deliver 40% then the emphasis should be on delivery of affordable housing for rent.
- The **Environmental Protection Officer (Contaminated Land)** has consulted records relating to the site and the information currently held does not lead to any significant concerns with respect to contaminated land. This does not however fully eliminate the risk associated with site and surrounding land potentially affected by contamination. The site is also located within influencing distance of potential ground gas sources. It is therefore considered that the development may be at risk from ground gas migration and ingress into the proposed buildings. In view of these issues, conditions are recommended to identify and remediate any potential land contamination on the site.

- The **Environmental Protection Officer (Pollution Control)** has no objection to noise sources affecting the site, provided all the mitigation measures identified in the noise report are implemented. He also requests a condition in relation to control of dust from the construction phase of the development. As the site is also close to several residential properties and therefore in a sensitive location, a restriction on the hours of construction and deliveries is recommended.
- The **Council's Drainage Engineer** advises that the final surface water drainage design should follow the recommendations of the FRA. It is noted that surface water is to be discharged to one of two locations, and that these should be investigated fully and evidence provided to demonstrate the chosen option is capable of receiving flows from the proposed development.
- The **Open Space Manager** notes the provision of informal open space around the SuDS and screen planting. It is also highlighted that developments of 50+ dwellings require provision of a Locally Equipped Area for Play (LEAP) as minimum standard in addition to the informal open space and commuted sums. There is no objection and it is considered the design and standard of the LEAP can be secured by condition.
- The **Police Crime Prevention Design Advisor** raises no objections, having no major issues with the proposed layout. The only matters raised were in respect of a need for natural surveillance over parking spaces from within properties, and other minor security concerns. The addition of gable windows at ground floor level from an active room (i.e. kitchen or living room) responds to the key issue, whilst the applicant has also sought to address the other matters through amendments.
- **Severn Trent Water Ltd** raises no objection subject to a condition requiring appropriate foul and surface water drainage for the site.
- Due to the proposal having a material increase in the volume using the level crossing, the **Secretary of State for Transport** (Department for Transport) has been consulted in line with Article 16(1) of the Development Management Procedure Order 2010. The 21 day period expired on 3 December without response.

Responses to Publicity

Willington Parish Council objects to the proposal, noting:

- i. There is no offer to extend the cemetery under the application, and that the land currently available will mean that the cemetery will be full in a little more than 10 years, and there is similarly no offer to extend the allotments which presently have a waiting list;
- ii. There is no clarity on what commuted sums are being provided to benefit the village, with play equipment, community buildings and allotments all at capacity and in need of capital expenditure;
- iii. This application, in addition to the approved developments for new houses at the Doctors Surgery and Calder's Aluminium, provides an increase of nearly 10% to the number of dwellings within the village, yet there has not been an addition of 10% towards the infrastructure in the village;

- iv. Whilst the DAS acknowledges the allotments and cemetery as assets to the village, the development fails to enhance these and make them sustainable;
- v. There is virtually no employment in Willington and therefore work involves travel to Swadlincote, Burton or Derby; and calculations of growth for each development are invalid because of the cumulative effects;
- vi. The application must take account of extant permissions and current applications for development (i.e. Calder Aluminium and Willington Surgery on Repton Road, and the Mercia Marina moorings; as well as projecting forward to potential large scale employment provision in the next few years. In this light the traffic impacts, particularly on the double island in the centre of the village, should be reconsidered;
- vii. Having a railway station does not make the village a sustainable location for new development;
- viii. Whilst the application includes a number of affordable homes, there is no provision for improving public transport with existing services to/from Willington being wholly inadequate. Most journeys will therefore be by car;
- ix. The accident data already shows there to be several incidents at the location of the proposed site access point/junction, and this accident figure will only rise if a new estate is built here;
- x. The proximity of the level crossing in relation to the proposed new entrance to is a major concern, and there does not appear to be any information relating to liaison with Network Rail in this regard;
- xi. The traffic survey makes naïve assumptions as to Etwell Road which combines a substantial amount of traffic from several routes as people drive towards the A50 junction, as to the double mini-roundabout not being materially affected, and only 16 peak hour vehicle movements being generated by the development;
- xii. The commuted sums are noted, but other than primary school contributions these are not considered to benefit or enhance the village. The provision of affordable housing would however be of benefit, if they were affordable to purchase;
- xiii. There is a growing issue in respect of secondary school provision, with planning decisions needing to account for long term education needs;
- xiv. There is surprise at the comments in the PS regarding the lack of a 5 year housing supply, particularly when the Draft Local Plan projects housing needs up to 2028; and it is assumed that past growth in Willington has led to it being omitted from this draft Plan;
- xv. This is agricultural land outside the village envelope, and policy should be to develop brownfield sites first with the Calder's Aluminium site being completed before greenfield sites are developed;
- xvi. SDDC policy EV1 would [not] be adhered to;
- xvii. There are various other sites available in Willington for development;
- xviii. Where are the pipes for the planned power station pipes going?
- xix. There will be noise from trains;
- xx. The total increase of houses within Willington will further deflect from the attractive village character;
- xxi. There are questions in relation to the level of social housing proposed;
- xxii. It seems that the developers act in isolation and it is up to SDDC to ensure a joined up plan which must include infrastructure considerations and public transport; and

- xxiii. There have been several previous proposals rejected on the site due to highway issues and serious concerns with traffic safety (a playing field/play area and a temporary compound for the construction of the A50).

Objections have been received by post and email from a total of 43 residents including those on Derwent Court, Findern Lane, Mill Close, Old Hall Drive, St Michaels Close and Willow Grove. These raise the following concerns:

Highway safety and capacity

- a) major traffic disruption in the village, especially during peak hours, with traffic looking to reach the A38 and A50;
- b) Willington is the only road crossing over the Trent in the near vicinity; with the next crossings being Burton and Swarkestone;
- c) 77 additional houses (and 154 parking spaces) will lead to approximately 150 extra vehicles trying to access Etwall Road;
- d) not enough parking spaces to serve the number of dwellings and their visitors;
- e) the [original] traffic audit was done in March 2011 and the audit should have been done between 4pm and 7pm, and statistics do not reflect real life situations;
- f) access will be very dangerous as the traffic on Etwall Road is extremely busy and fast moving, with the access on a bend;
- g) highway safety risk through decreased visibility to/from the proposed access when traffic queues back from the double mini-roundabout in the centre of the village and Findern Lane lights, onto the level crossing and beyond towards the services;
- h) if accidents occur how will emergency services gain access;
- i) the police accident report in the TS seems to be selective on statistics;
- j) the access road is close to a major rail line and the contour of the road at this point gives limited vision in both directions;
- k) oncoming traffic from the A50/A38 currently travels at 40 mph and has not got visibility of the proposed access until they are on top of the level crossing;
- l) visibility to the south is obscured by a bend in the road;
- m) the development includes a 2 metre wide footway along the access connecting to the existing path along Etwall Road, but that path is only 1.1 metres wide and with high hedges that overhang it, such that the current pathway will need to be widened;
- n) the high wall on the Etwall Road edge will cause visibility issues;
- o) whether the canal bridge can handle additional traffic and weights;
- p) the speed survey demonstrates vehicles are exceeding the speed limit at the proposed access point;

Rail safety

- q) no risk assessment that has been carried out regarding the level crossing, with Health and Safety Executive guidance stating *“the carriageway on the approaches to the crossing should be sufficiently wide to enable vehicles to pass safely”*, and that *“the road layout, profile and traffic conditions should be such that road vehicles are not likely to become grounded or block back obstructing the railway”*;

- r) if the strategic rail freight hub goes ahead, this will increase the railway traffic and make the railway crossing busier and more dangerous;
- s) the proposed access is too close to the level crossing;

Services and facilities

- t) transport links (bus and trains) are not very efficient/are limited, with most residents relying on car;
- u) the TS states the maximum walking distance to school is less than 2000m but Willington Primary is oversubscribed therefore children will need to use other schools, such that the assumptions that people would walk and that predicted vehicle trip generation figures (in the TS) of 12 vehicle arrivals and 19 vehicle departures are both inaccurate;
- v) schooling needs arising for children living on this development, with Willington Primary and John Port already full and resulting need to add to traffic problems by transporting them by car or bus;
- w) it will make access to healthcare more problematic, with an increase in residents causing even longer waiting times for appointments;
- x) more GPs are needed at the surgery;
- y) Findern Lane is on a separate electrical circuit to the rest of the village and suffers from numerous power cuts, and it is not clear if consideration has been given to electricity supplies to this proposed development;

Cumulative impact and social needs

- z) it is necessary to consider the social and environmental impacts of other developments either currently being built or in progress/with permission, such as the Stenson Fields development, 58 houses at the rear of Saxon Grove, Calder Aluminium, the new Doctors Surgery, sites at Castleway [presumably SHLAA sites], and plans for the extensive development in Findern and the surrounding area;
- aa) employment [opportunities] in the immediate vicinity of Willington are low, such that residents would have to travel to and from work by car;
- bb) loss of productive agricultural land;

Noise

- cc) building right by the rail line will make it very noisy for occupants of the proposed dwellings;
- dd) if the strategic rail freight hub goes ahead, this will increase the railway freight use, and the Noise Assessment does not appear to take this into account;

Drainage and flood risk

- ee) increased surface water from this development could pose a problem for existing dwellings;
- ff) if surface water is channelled into the culvert [Sands Brook], this could create further flooding on Repton Road – an area already subject to flooding;
- gg) there is a natural spring on either side of the railway line which will be disturbed;
- hh) there are flooding issues immediately adjacent to the site;

- ii) it does not look as though much thought has been taken into the development of a foul drainage strategy, with the FRA notes noting concerns over existing sewers and it not clear if the site can be served by gravity fed sewers;
- jj) not clear if a pumping station is required;
- kk) there is a water course which runs from the north under the railway and across the field;

Heritage

- ll) archaeological reports state that there is evidence of interest and further action and logging is needed, and what the implications would be if something of national importance is found;

Ecology

- mm) the ecological report is incorrect in that over the decade the land has not mainly been intensively farmed, and there are at least two protected species using the field (foraging bats and a pair of buzzards).
- nn) impact on other wildlife and ground nesting birds;
- oo) light pollution effect on foraging bats;

Contamination

- pp) the supposition that there are no landfill sites within 250m of the site is incorrect, as the field north-west of the railway line is a historical landfill site, filled during the 1970s;
- qq) disturbance of consecrated ground;

Design and Amenity

- rr) invasion of privacy;
- ss) overshadowing of existing dwellings;
- tt) proposed gardens and play areas is reduced by the density proposed, forcing them to other communal areas within the village;
- uu) the extent of public open space will not be of benefit to the village community;
- vv) proposed materials are not detailed on the application form;
- ww) dust, light and noise pollution from construction phase, and resulting residential use;
- xx) layout not in keeping with the village, with its situation and access preventing integration into the village;
- yy) the high wall on the Etwall Road edge will be visually unattractive;

Landscape

- zz) the land is green belt;
- aaa) the village boundary would be extended;
- bbb) this land is on the outskirts of Willington;
- ccc) Willington has already sprawled with new housing, the huge expanse of the Marina and the potential redevelopment of the power station - perhaps there might be room there rather than prime agricultural land;

- ddd) the acoustic wall to the Etwall Road edge would destroy the feeling of entering the countryside;

Other matters

- eee) planning permission has been turned down twice in the past – one to change this site to playing fields and a further application to build houses, both rejected due to inadequate distance between the level crossing and the access;
- fff) the proposal to use this site whilst construction of the pipeline was underway was rejected;
- ggg) the 2004 Public Inquiry Inspector's Report (2004 PIIR) considered that development here would appear *“as a significant and intrusive incursion into the countryside, poorly related to the local pattern of settlement and the form of the village as a whole”*, and the Screening Opinion issued in respect of the current application is at odds with this;
- hhh) local housing provision is already increasing in this area;
- iii) could set a precedent for land nearby to be developed;
- jjj) loss of pet life due to traffic;
- kkk) dog walkers use the field where the development is proposed;
- lll) how houses can be built on land where the pipeline is meant to be going;
- mmm) any development would preclude any future expansion of the cemetery;
- nnn) no further developments should be permitted until existing brownfield sites are 100% complete;
- ooo) safety issues linked with the provision of new houses close to a proposed pipeline route; and
- ppp) difficulty in getting insurance due to flooding.

59 'editable' round robin letters have been received echoing points (a), (g), (t), (v), (w), (gg), (hh) and (eee) above. The source of these letters and pre-constructed paragraphs therein is unknown. Letters submitted contain either all paragraphs or just a selection of them. Some of these letters are submitted without the signatory's address and at least one is provided anonymously (A. Resident); but where addresses are given these are residents on Canal Bridge, Derwent Court, Findern Lane, Green Close, Oaks Road, Repton Road and Willow Grove.

A petition against the development has also been received citing grounds of causing major traffic disruption, environmental issues, and access causing a risk to existing and new residents and passing traffic. This holds 106 signatures from residents on Beech Avenue, Canal Bridge, Castleway, Derwent Court, Findern Lane, Green Close, Hall Lane, Ivy Close, Mercia Drive, Oaks Road, Old Hall Drive, Repton Road, St Michaels Close, Tailby Drive, The Green, Twyford Road and Willow Grove; Doles Lane, Findern; Longlands Lane, Findern; Main Street, Hilton; Pinfold Lane, Repton; Rykneld Road, Derby; and from Littleover, Rolleston-on-Dove and Findern. The origin of this petition is unknown.

Of the above objections, round robin letters and the petition, there is some duplication of respondents.

4 letters of support have also been received, indicating an interest in the provision of new market and affordable housing and querying their availability, and the benefit of being able to get on the housing ladder whilst staying in the village. One letter of

support considers the site to be without flood or subsidence risk, on the edge of the village with an adequate road leading in and out of the village, and it will create a nice community – although they do recognise an issue with the Primary School capacity.

Addressing point (III) above, RWE nPower have been asked for their comments, given their current application to the Secretary of State for the pipeline to serve the already approved gas fired power station. The “limits of deviation” for the pipeline overlap the north-west corner of the site. However they confirm that they have been in negotiation with the land owner prior to the submission of this application for residential development, and the wedge of land close to the level crossing is free of housing to respect these limits of deviation.

Development Plan Policies

The relevant policies are:

- Saved Policies of the South Derbyshire Local Plan 1998 (“the SDLP”): Housing Policies 5, 8 and 11 (H5, H8 and H11); Transport Policy 6 (T6), and Environment Policies 1, 9, 11 and 14 (EV1, EV9, EV11 and EV14).

National Guidance

- National Planning Policy Framework (NPPF): particularly, but not exclusively, paragraphs 6, 7, 8, 11, 12, 14, 17, 19, 23, 32, 34, 39, 42, 47, 49, 50, 52, 54, 55, 58, 60, 61, 63, 64, 65, 69, 75, 96, 103, 109, 112, 118, 120, 121, 122, 123, 125, 128, 129, 131, 132, 134, 139, 141, 144, 173, 186, 187, 196, 197, 203, 204, 206, 215 and 216.
- Technical Guidance to the NPPF.
- Circular 11/95 – The use of conditions

Local Guidance and Evidence

- Housing Design and Layout Supplementary Planning Guidance (SPG)
- Affordable Housing Provision in South Derbyshire SPG
- Provision of outdoor playing space in new developments SPG
- Trees and Development SPG
- Section 106 Agreements: Guidance for Developers
- The Strategic Housing Market Assessment 2013 (SHMA)
- Landscape Character Assessment 2003

Environmental Impact Assessment

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

Planning Considerations

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

- The Development Plan and other material considerations;
- The Principle of Development
- Sustainability of the site;
- Impact on local economy, facilities and infrastructure;
- Affordable housing and viability;
- Highway and rail safety impacts;
- Biodiversity and ecological impacts;
- Landscape and visual impacts;
- Heritage and archaeological impacts;
- Amenity impacts;
- Design and layout (inc. BfL and POS provision);
- Drainage; and
- Land contamination and stability.

Prior to considering the above, it is important to recognise that some representations raise matters which are not material planning considerations. These matters are not discussed further.

A number of representations allude to historical applications on this site having been rejected on access and landscape grounds. No planning applications are known to have been submitted on this particular site in the past, although it is noted that rejected applications on land in the near vicinity have been of a significant nature. What is apparent however is that this site was considered in the round under the Inspector's report to the 2003 Revised Deposit Draft Local Plan (which subsequently was never adopted). His report is relevant in respect of it providing an independent view of landscape and visual impacts, and is discussed appropriately below, although Members are reminded of the need to assess this application on its merits at the present time.

Planning Assessment

The Development Plan and other material considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 command that applications for planning permission must be determined in accordance with the Development Plan – in this case the saved policies of the SDLP – unless material considerations indicate otherwise. The NPPF is a significant material consideration, the emerging Plan requires due consideration, and replies from statutory and technical consultees, as well as third parties, are also material considerations. All these will carry varying degrees of weight.

The Principle of Development

The site lies outside of the settlement boundary for Willington, and consequently in open countryside. Paragraph 215 of the NPPF states *“due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”* [emphasis added]. The SDLP contains numerous saved policies relating to housing development and development within the countryside which are considered to be consistent with the NPPF.

Policy H5 restricts development in Willington to within the settlement boundary as defined on the proposals map. As this site is beyond the village confines, the proposal cannot be said to be planned for by way of H5. It is left to saved policy H8 which allows for limited housing development in the countryside, but this is on an exception basis where it is necessary to support the operation of an established, viable, long term rural based activity or it is for the replacement of existing dwellings. These exemptions do not apply here. The proposal is therefore not in accordance with the Development Plan. Whilst EV1 places very similar criteria to limit development in the countryside and drive development to more suitable locations, there is clear argument that the development is “unavoidable” given the need to allocate and develop greenfield sites to provide for strategic housing needs across the District. Whether the third limb of EV1 – relating to visual, wildlife and heritage impacts – is met is left to be considered below.

The established settlement boundaries relate to the SDLP which will be replaced in stages. The emerging Plan does not intend to deal with this matter, leaving boundaries unchanged beyond adoption of that Plan. A review will take place through Part 2 of the emerging Plan at the same time as taking account of any smaller local scale housing allocations. Thus the proposal is therefore not in accordance with the emerging Plan.

Notwithstanding the above, the NPPF requires proper consideration of the weight which may be afforded to housing policies. Paragraph 49 of the NPPF states:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites” [Emphasis added].

There are two arms to this paragraph: (1) that the application should be considered in the context of the presumption in favour of sustainable development (a point returned to below), and (2) SDLP housing policies should not be considered to be up-to-date if a 5-year housing supply cannot be demonstrated. It is intended to address point (2) first.

Paragraph 47 of the NPPF seeks “*to boost significantly the supply of housing*”. It is therefore clear there is considerable emphasis on bringing forward significant housing provision as soon as possible. This is achieved through a rolling supply of deliverable sites sufficient to provide five-years worth of housing against projected requirements (a “5-year supply”). Where local planning authorities have failed to deliver a 5-year supply, an additional buffer of 20% is required (effectively 6 years). Whilst the Council has no issue with land supply as such, the sites are not being developed as timely as previously anticipated and there is a shortfall on the 5-year supply at the present time. Whilst preferred strategic allocations in the emerging Plan would provide this supply, and some of those sites are already being delivered; their overall deliverability has not been formally examined such that little weight can be afforded to the relevant emerging policies at this time. As such the relevant SDLP policies pertaining to housing delivery cannot be considered up-to-date and the proposal must be considered in the context of the presumption in favour of sustainable development. This conclusion also has a degree of impact on policy EV1 as it is clearly necessary to allocate land beyond settlement boundaries to accommodate projected housing needs over the next 15 years.

Willington is classed as a Key Service Village in the emerging Plan’s Settlement Hierarchy (S4). To qualify as a Key Service Village, settlements must have a bus

service and/or convenience store plus at least 5 other services. Such settlements are envisaged to be capable of providing appropriate scale developments up to and including strategic sites (100 dwellings or more). However this Hierarchy presently carries limited weight and whilst the proposed development is a of scale envisaged for a Key Service Village, the emerging Settlement Hierarchy does not and will not change the fact that this site is outside of the village. The proposal remains to be considered on first principles. As such the site would have been considered for Part 2 of the Plan.

Willington is served by a regular bus service from Burton, via Repton, and beyond to Findern and Derby. A direct rail service to/from Derby or Burton runs in both peak and off-peak hours and takes less than 10 minutes either way, although this is limited to around 5 services in each direction per day. The village lies on a junction between the A5132 and the B5008, which connect to the A38 and A50 within a short distance, as well as other villages and towns in the District. The site is served by a footway which connects back to the village centre and facilities within. The connectivity of this settlement is considered to assist in demonstrating its sustainability. As to facilities, there is a post office, a convenience store and other shops, recently expanded doctors surgery, a pharmacy, a primary school, a village hall, a sports ground and a number of public houses. In brief, the village is considered capable of supporting further housing development in principle.

There are specific economic benefits arising from the proposal too, including the New Homes Bonus which can be used by the Council to sustain and/or provide services, and potential local employment for the duration of construction. This attracts a degree of weight in line with paragraph 19 of the NPPF and Section 70(2) of the 1990 Act.

Sustainability of the site

In light of the above it follows that, as the Local Planning Authority is unable to demonstrate a 5-year supply, the presumption in favour of sustainable development as set out in paragraph 14 of the NPPF applies. This means:

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

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

However it is important to note that the NPPF provides a presumption in favour of sustainable development – not a presumption in favour of development. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable. The recent ruling in *William Davis & Jelson v. SSCLG [2013]* confirms this approach is correct. Paragraph 6 of the NPPF states that *“the policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development...means in practice...”*. Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). It is thus reasonable to conclude that conflict with other parts of the Framework, and indeed Development Plan policies, could lead to the proposal being defined as unsustainable.

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

Impact on local economy, facilities and infrastructure

The issue of what constitutes a sustainable village could be considered as subjective. A view could be taken that an increase in population is likely to boost the local economy by increasing demand and bringing in more custom, or enabling businesses to expand or new businesses to locate within it. Paragraph 23 of the NPPF recognises that residential development can play an important role in ensuring the vitality of centres. The opposing view is that existing infrastructure and services are considered insufficient to cope with the additional population. It is accepted that the proposed development would place additional pressure on the village, whilst not providing any new facilities itself other than open space. Specific capacity issues are discussed below.

A key focus of representations is the existing traffic congestion problems in Willington around peak hours. It is known that traffic backs up from the double mini-roundabout in the centre of the village in all directions during rush hour – particularly along the Etwall and Repton Roads which provide a key north/south route between the A50/A38 and Swadlincote avoiding Burton. The concern is that further vehicles generated by the proposal would lead to a “tipping point” being reached. The TS and TS Addendum look at this matter, more particularly in respect of the impact on Etwall Road. Established modelling practices have been applied, and these conclude that trip generation during peak hours result in between 41 and 55 arrivals or departures to/from the development per hour (and 417 in total over the entire day). It is difficult to predict precisely the distribution/direction of trips, but given the proximity to the A50/A38 junction it is projected that approximately one-third of these trips will be towards/from the village. Most importantly the traffic survey conducted in September confirms average weekday two-way flows of 9,741 vehicles. The proposal thus represents a 4% increase in vehicles using Etwall Road and in turn the surrounding road network. This is not considered to be so material to warrant refusal or the need for off-site improvements to alleviate the impact arising – even when adding in an arbitrary value for existing sites for housing development in Willington. There is thus not considered to be a highway capacity issue arising, with the *existing* conditions not materially worsened.

A further key concern relates to schooling provision in the village and wider area. Willington Primary School is stated to have no capacity for additional children, with children from the village already having to attend Findern Primary. As for secondary school places, John Port Academy serves this village and it is well established that it too has little capacity at secondary and post-16 schooling levels – a matter recognised by the County LEA and in the emerging Plan. This poses a key hurdle to demonstrating sustainability of the proposal. However the County LEA considers these issues can be addressed through commuted sums towards the provision of 15 primary school places at Willington Primary School, 12 secondary school places and 5 post-16 places (these yields based upon DfE figures). These requests are considered to meet the planning

obligations tests set out in paragraph 204 of the NPPF. The County LEA highlights that it is working with the Council and Derby City Council towards a strategy to provide additional capacity, possibly through expansion of John Port School and/or the delivery of a new secondary school in the Derby sub-area. In the interim, it is considered that the relatively small size of the development means the spread of children arising from it across all schooling years can be absorbed.

The development will inevitably create refuse and waste which will need to be handled through a HWRC. The existing HWRC at Newhall (Bretby) is already over capacity, having exceeded its tonnage last year, and unable to expand. Additional housing, of which the occupants have a right to use the existing HWRC, will compound this problem. Consequently the County advice of a need for commuted sums towards the provision of a new HWRC for South Derbyshire. This is considered to be justified and meet the NPPF tests.

The development will also place additional pressure on library services. The provision of public libraries is a statutory duty for local authorities, and services need to be continually improved to ensure they provide a responsive service that fits the needs of local communities. Etwall library serves Willington, and whilst no capital improvements are necessary the development will directly result in additional user demand and a resulting increase in revenue costs for service delivery. Consequently a commuted sum is sought in this respect and is considered to be reasonable.

Broadband quality varies across the District and access to superfast broadband speeds in Derbyshire is limited. Improvement to connectivity is a key priority for the County with superfast broadband roll out imminent. The NPPF places emphasis on ensuring high quality communications infrastructure. It is well established that the cost of providing broadband infrastructure at the outset is more economic and less disruptive than retrofitting, and the County suggest that fibre optic cabling should be fully integrated within the development at design stage. The applicant has confirmed that this can be satisfactorily accommodated alongside the provision of other services without material additional cost.

The County also seek provision of an off-site cycle route to enhance access to the Greenway network. Whilst Willington is well served by rail and bus services; cyclists would have to utilise the public highway carriageway to link with these services and the existing Greenway along the canal. The County considers there is an opportunity to contribute positively to the wider strategic Greenway network through the provision of a 3 metre wide cycle route along the east side of Etwall Road. The emerging Plan looks to establish cycleways as an objective. Consideration is given to the practicalities of providing this link. Whilst possible adjacent to the site access, the link would then either compromise the existing layby to the south; significant trees immediately adjacent to the cemetery; require the use of third party land; or require the realignment of the entire Etwall Road close to the junction with Findern Lane. These constraints make this option unfeasible, and realignment of Etwall Road in particular would not be reasonable for the scale of development and materially impact on the viability of the scheme to provide for other commuted sums. Whilst it is considered the tests under paragraph 204 are not met here, and thus this request is not supported; it is not considered the lack of a cycle route makes the site unsustainable given cycling is a relatively attractive option.

The Derbyshire and Nottinghamshire Area Team of NHS England have adopted the former Derbyshire County PCT health care model, which assumes an average of 1800

patients per full time GP. The comments from residents are noted and there is sympathy with the difficulties in securing an appointment. However this is an existing issue and quite commonplace at other surgeries. The delays may now also be alleviated by the new larger facility off Repton Road coming online in the last couple of months. Where extensions to existing practices are *required*, the Derbyshire and Nottinghamshire Area Team request financial contributions from residential developments where a significant increase in the number of dwellings is anticipated. No request has been received to substantiate a commuted sum in line with established figures in the Section 106 guidance. Indeed, in the above context of a new surgery, it is highly unlikely any request could be deemed “necessary” under paragraph 204 of the NPPF.

Willington Parish Council has indicated a desire for contributions to sustain other community facilities, including the cemetery, the allotments, community buildings and play equipment. The cemetery and allotments appear to be heading towards capacity, and it is reasonable to conclude the development will place additional direct pressure on these facilities – albeit limited. However the Parish Council has failed to justify or substantiate a sum which would address the issue and comply with paragraph 204 of the NPPF, in terms of it being fairly and reasonably related in scale and kind to this development. Indeed it is material that land would either have to be surrendered or found elsewhere, with either the loss of development on-site materially affecting the viability of the proposal and its ability to deliver other commuted sums and/or affordable housing, or the amount commuted would unlikely secure such land and capital expenditure elsewhere. As to the request for improvements to existing play equipment and community buildings (assumed to be the village hall), no evidence has been provided that there is a need to improve these facilities – and indeed that the need would directly arise as a result of this development. As such it is not considered possible to support the requests of the Parish Council.

Public open space, including play equipment and SuDS is to be provided within the site. This will result in land being transferred to the Council for maintenance upon completion of the development, attracting a direct need for commuted sums to support such maintenance. The request is considered to be compliant with paragraph 204.

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

Affordable housing

H9 of the SDLP seeks that a proportion of the housing be made available for affordable purposes. The NPPF states local planning authorities should “*use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area...*”, and “*identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand...*” (paragraphs 47 and 50). The SHMA identifies an overall need for 75% rented accommodation, and 25% intermediate (shared ownership). The Strategic Housing Manager advises that the 75% rented need equates to 26 dwellings in Willington,

leading to there being an overall affordable housing need of 35 dwellings. It is also preferred that more emphasis is given to delivering housing for those on the social rent list as opposed to intermediate needs.

The applicant proposes to provide just 22 dwellings, or 28.5%, arguing that Amber Valley's emerging plan seeks just 30%, and that is drawn from the same SHMA. This is not a sound justification – what an adjacent authority is proposing has no bearing on a decision made by this Council, and indeed their Housing Waiting List may actually indicate a lesser need. Since the application was submitted this Council has published its emerging Plan for consultation and that seeks 40%. For Willington both strategic and local evidence support this target, such that it is considered wholly reasonable to seek at least 40% provision.

Notwithstanding this, development must be viable to be delivered. This affects the balance between affordable housing and other commuted sums, and what the development can actually sustain. Members will be familiar with other greenfield schemes which have delivered less affordable housing on this basis, so to support other commuted sums and ensure the overall development remains sustainable. However a lower provision is only justified where the evidence demonstrates this. The Viability Assessment has been assessed by the District Valuer as to its integrity. He recognises the higher quality build proposed and thus the slightly higher build costs than normal, as well as the ability to command a slightly higher sale value due to the site's location and connectivity. Following extended discussions it is concluded that the scheme can sustain all of the commuted sums outlined above (education, library services, public open space, and waste recycling provision) and provide for 22 units of affordable housing meeting local requirements as best as possible.

The applicant has expressed no concern as to how the commuted sum "pot" is divided, but has reservation if further affordable housing provision were sought as this would lead to design changes in order to provide the correct types of dwellings. He instead suggests that if there is a preference to increase the percentage of affordable housing in favour over other commuted sums that this is in the form of a financial contribution towards other off-site affordable housing projects.

On balance it is not considered necessary or recommended. Whilst only a proportion of the 26 properties required for rent purposes will be provided, as well as intermediate housing; it does specifically provide for a prioritised need of 1-beds and a 4-bed. Overall 28.5% is not an unreasonable degree of provision on a wider site of 77 dwellings, and other sites in Willington to be built out shortly will help to further meet local needs. Moreover a financial contribution towards affordable housing would need to be used locally and within a set time frame, and there is no certainty that the land could be secured or such a project would occur.

Highway and rail safety impacts

The concerns regarding the adequacy of the TS were recognised following representations received under the original application – not least from the Highway Authority themselves who asked for a full traffic count, speed survey and topographical survey to be carried out. Those have been completed and submitted as part of the revised application, either at the outset (the TS Addendum) or through further negotiation with the Highway Authority.

It is important to divorce the existing situation from that which may result from the proposal. This is in order to better appreciate what issues already exist, what issues the proposal may introduce, and whether the difference would be materially detrimental to highway safety. Congestion and capacity concerns have already been discussed above, and the Highway Authority raises no objection in this respect. The remaining matters relate to the position of the access and visibility to/from it, the internal layout of the site and whether it facilitates safe and convenient access, and the relationship of the access with the level crossing.

The position of the access has been chosen in order to achieve the maximum possible visibility splays. The geometry of Etwall Road means that the level crossing restricts visibility to the north by way of the rise in the carriageway, and the curve of the road restricts visibility to the south. The speed limit is 40mph. The speed survey reported in the TS Addendum demonstrates an average speed of around 35mph in both directions. Consequently the normal visibility splays can be relaxed to a degree, and the Highway Authority seeks 73 metres in both directions. Crucially these distances can be achieved within the limits of the public highway, such that there is no reason for refusal here. The curve of the road also has a bearing on forward visibility for a driver travelling north and waiting to turn into the proposed access. However, again this has been demonstrated to be satisfactory with 73 metres also achieved. There is thus no concern that the access will be detrimental to highway safety, and the Highway Authority raises no objection in this respect, subject to conditions.

As to the internal site layout, a number of issues were raised to the original submission. Through the course of this application, design amendments have addressed these matters such that road junctions, driveways and footways within the site are all considered to be in line with the Highway Authority's requirements, such that there is no objection subject to conditions. It is noted that the views of residents and the Parish Council conflict with this conclusion, but on the basis of the evidence before officers and the context of current planning policy, there is no demonstrable adverse harm arising.

Turning to the impact on the level crossing, Network Rail's comments are included above. It is clear they have no objection in principle following the submission of the TS Addendum, with their concerns as to the impact on the crossing arising from this particular development alleviated subject to improvements secured by way of a planning obligation. Other impacts on rail infrastructure are considered acceptable subject to conditions or informatives. There is no basis for a refusal here either.

Biodiversity and ecological impacts

The ecological survey found no direct evidence of protected species on the site, and considers that potential for habitat which would cater for such species limited. No evidence of badger activity was recorded. The majority of the site is now intensively managed (i.e. in arable crop production) with no static water bodies on or adjacent to it, such that it does not provide suitable habitat for either reptiles or amphibians. As for bats, the conclusion that as the site is quite exposed, there are no trees on the site and hedgerows are unlikely to provide good flight lines for bats is not an unreasonable conclusion. The result is that there are no opportunities for any bat roosts to be present on the site, and it is also unlikely to provide as good foraging habitat. The comments from neighbours that they have observed bats flying over the land is noted, but this can only be given limited weight. It does not demonstrate a roost exists, nor does it demonstrate

the development would affect foraging. Trees on adjacent land which may provide for a roost should not be affected by the proposal simply by way of ownership issues.

Consequently there is not considered to be habitats of international, national or county importance that would be directly or indirectly affected by the proposals, with the species recorded on the site described as common or abundant, with no protected species recorded. It is considered a decision can be made on this application without giving rise to conflict with the Habitat Regulations.

Notwithstanding this the DWT seeks a range of generic mitigation/enhancement measures to reduce the impact of the works on local wildlife and increase the nature conservation value of the site in the long term in accordance with EV9, EV11, the third limb of EV1, and paragraphs 117 and 118 of the NPPF. This should represent a net gain in biodiversity. The requests for compensatory planting for hedgerow loss around the access, protection remaining hedgerow and trees, and protection for nesting birds are all considered reasonable and proportionate.

Landscape and visual impacts

As identified above EV1 of the SDLP allows for the development in that it can be viewed as “unavoidable”, although as mentioned under ‘Principle of Development’ there is a further criterion to be fulfilled. An objective of the emerging Plan is to protect the rural character of the area. The focus is therefore on the value of the character of the countryside and landscape quality, and what degree of weight should be attached to it.

In examining the 2003 Local Plan, the Inspector considered this site as a potential housing allocation, as will be the case on preferred allocations under the emerging Plan. At the time he commented that *“travelling northwards from the main body of the village and crossing over the canal creates a strong perception of entering the countryside. As well as the fields on the west side of the road, the predominantly open nature of the cemetery and allotment gardens to the north of Derwent Court also contribute to this impression”*.... *“the site occupies a very prominent position alongside one of the main routes in and out of Willington. My opinion is that development here would appear as a significant and intrusive incursion into the countryside, poorly related to the local pattern of settlement and the form of the village as a whole”*. It is certainly still the case that the site is predominantly open, and the route along Etwall Road away from the canal bridge does create a strong perception of entering the countryside. The proposed development would bring forward the first “non-ribbon” development north of Findern Lane, and intrude beyond the existing natural break of the cemetery all the way up to the railway line.

Although not leading to the loss of the best and most versatile agricultural land, the proposal would bring about considerable visual harm and intrusion into this part of the countryside. Public aspects of the proposal would be total along Etwall Road, with further aspects from the public footpath across the field to the west of Etwall Road. This aligns with comments made by the County Landscape Architect. It is noted that from Etwall Road between the level crossing and the cemetery, and from the public footpath around the railway, the existing back drop to views across the site is predominantly the dwellings and rear gardens along Findern Lane. This is the only suggestion that a settlement exists here. It is also noted that views of the site are absent on the northern side of the railway, with the raised level of the track providing a natural obstruction – although it must be realised the embankment is not high enough to eliminate aspects of

proposed rooftops, extending aspects for a few hundred metres further north along the highway corridor. Landscaping will not completely ameliorate this change, especially south of the level crossing. Consequently the considerable degree of visual harm weighs heavily against the proposal and conflicts with EV1 and paragraphs 17 and 109 of the NPPF.

The landscape falls into the “Trent Valley Washlands” character area – more specifically the “lowland village farmlands”. This is a large scale, open, gently rolling lowland landscape associated with broad floodplains. Woodland is largely absent, and villages are generally nucleated. The proximity to Derby and good transport corridors have led to the rapid expansion of many villages in the character area, with urban fringes often characterised by large modern housing estates. Infrastructure, including roads and overhead power lines, as well as large scale mineral extraction, all has an impact on the landscape. Whilst the comments from the County Landscape Architect are noted, as a wider character area and this development appearing as an urban extension to an existing village, it is not considered the development would bring about significant harm on a wider landscape character scale.

Heritage and archaeological impacts

There are no listed buildings in the vicinity to which it is considered there would be a direct impact upon or their setting would be affected. The focus is towards on-site archaeology and known interest on the land. Policies EV1 and EV14, as well as paragraph 139 of the NPPF require due consideration be given to archaeology. The site contains features of interest, with initial investigatory works validating the presence of a double-ditched ‘hengiform’ enclosure and another roughly circular feature, possibly Bronze Age ditches. The finds are preserved in a reasonable state, and on morphological grounds these features are likely to date back to circa 3000 to 1500BC.

The proposal would result in the total loss of this significant asset(s). Paragraph 133 of the NPPF states where there is total loss of significance, local planning authorities should refuse consent unless it can be demonstrated that the loss is necessary to achieve substantial public benefits that outweigh that loss. The County Archaeologist considers that the work undertaken so far is sufficient to allow determination of the application, and does not object in principle to the total loss of the asset(s). He instead seeks to secure a more detailed phase of evaluation to fully define the spatial extent of the asset, followed by controlled strip and recording. Consequently it is considered that the asset does not hold sufficient weight to counter the benefits that arise under this development.

Amenity impacts

Objections as to loss of privacy are not sustained. The nearest habitable window introduced by the proposal would be some 35 metres away from the nearest dwelling on Findern Lane. This is well in excess of the minimum expected under the SPG. The arrangement of dwellings within the site is also considered to afford a reasonable degree of privacy to all occupants, both within the dwellings and in private amenity space.

The NIA identifies Etwell Road and the railway as noise sources which would impact upon occupants. It is agreed that the elevated noise levels are a material consideration in line with H11 and paragraph 123 of the NPPF; but the both the assessment and

Environmental Protection Officer conclude that provided all the mitigation measures are implemented (acoustic wall to Etwall Road, acoustic fencing to private gardens, and particular roof construction, acoustic glazing and ventilation), the residential use of the site is appropriate. Network Rail's comments regarding the potential use of the railway line are noted, but ultimately for the noise environment (as mitigated for) to be considered acceptable, this must be the case regardless of how frequently trains may run. In any case, it would not be reasonable to expect the developer to "over engineer" design on a *potential* situation.

The Environmental Protection Officer also requests conditions to control dust from the construction phase, and as the site is close to residential properties and therefore in a sensitive location, a restriction on the hours of construction and deliveries is recommended. Both these requests are considered reasonable, and in line with conditions imposed on housing developments elsewhere to recognise the existing peaceful nature of the environment for the majority of the day and night, and across weekends.

Design and layout (inc. BfL and POS provision)

H11 of the SDLP seeks a reasonable environment for the public at large; reasonable amenities in terms of light, air and privacy for, both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping; adequate public open space; and for the development of any suitable adjoining land. Paragraphs 58, 60 and 61 of the NPPF reinforce this policy.

The design works around fixed constraints. This includes the need to position the access onto Etwall Road as far from the level crossing as possible but where it also achieves maximum visibility. It also includes a "stand off" from the proposed Willington C Gas Pipeline. It also accommodates areas of heightened surface water flooding. The applicants sought advice prior to submission, and worked to form an acceptable design for the site. One particular emphasis of this scheme has been design quality, and the proposed house designs and finishes emulate this. It is also apparent from the BfL Assessment that this development is to be of higher quality. This is welcomed. The layout is considered to be functional in terms of movement into, out of and around the site, with the Police Crime Prevention Design Advisor's comments accommodated to ensure a safe and secure design. The scale and design of the dwellings themselves are considered to be acceptable, and whilst the aspect to Etwall Road providing a "looser" edge than would normally be expected (even despite the acoustic wall between the dwellings); this helps to retain open views down towards the cemetery and allotments from the level crossing and the footpath.

The level of private amenity space is considered to be better than most modern housing developments, with provision made for bin and cycle storage; and whilst the level of usable POS to be provided is less than would normally be sought, this raises no objection from the Open Space Manager with the principles of the main POS area established, but subject to agreement through condition.

Drainage

The site is relatively flat and unconstrained by Flood Risk mapping published by the EA. The focus is on surface water drainage arising from the development, and accommodation of existing surface water flooding issues and a culvert crossing the site.

The initial objection from the EA has now been lifted subject to a condition. This followed further investigation and assessment of the culvert in particular. The County also raises no objection, despite surface water maps pointing towards localised surface water flooding to north-west corner of the site. These objections have been lifted as both parties consider the provision of SuDS to address surface water flows created by the site in principle, and that subject to a satisfactory design and rate of discharge, the quantity and quality of water entering the nearby brook and eventually the River Trent is unlikely to cause a flooding or water quality issue off the site. As to foul water, despite concerns from neighbours Severn Trent Water raises no objection to the foul water drainage proposals subject to a condition.

Land contamination and stability

The Environmental Health Manager recognises the work undertaken to date, but cannot be fully satisfied without completion of the ground gas monitoring. Therefore the recommended standard conditions have been adapted to reflect progress to date.

Balancing exercise and determining whether the development is sustainable

There are many factors in favour of the proposed development. Central to these is the provision of housing towards the 5-year supply and the wider housing needs of the District. This attracts significant weight. The economic benefits arising also add to this. The good connectivity of the site and the ability for the development to “cater for its needs” by way of providing commuted sums towards education, libraries and waste handling, as well as mitigating other impacts in this fashion and providing for affordable housing needs in Willington; highlights its sustainability credentials. This all attracts further considerable weight in favour. The fact that there is not a negative impact on highway and rail safety, flood risk, wildlife and residential amenity is of significance as it demonstrates compliance with the NPPF as a whole.

Notwithstanding this there is the considerable visual harm brought about as well as total loss of heritage assets. The latter is felt to be satisfactorily addressed by way of condition such that whilst the loss is regrettable, it is not considered to be sufficient to resist development. The balancing exercise is thus focussed towards visual and landscape impacts. A number of appeal decisions and case law¹ are defining the manner in which paragraph 49 of the NPPF should be applied. Ultimately these decisions take the view that although paragraph 49 intends to ensure that housing need does not suffer to other policy considerations, it does not mean that those other considerations should be disregarded altogether. The protection of the environment is one of the three dimensions of sustainability (paragraph 7 of the NPPF) such that although countryside protection policies may influence housing supply, there are difficult balances to be struck. It is therefore apparent that relevant policies of the SDLP which are not concerned with the supply of housing land cannot be automatically “stood down”. Policy EV1 is particularly relevant to this balancing exercise and remains a wholly relevant consideration. Notwithstanding this, the visual harm arising would be limited to the immediate area and ameliorated to some degree by way of existing boundary features and proposed landscaping. The site does not fall in a designated green wedge, or national designation such as an Area of Outstanding Natural Beauty. In a wider context this harm is not considered to make the development unsustainable, nor is it considered to be demonstrably adverse.

¹ APP/H2835/A/12/2182431 and *Tewkesbury BC v SoSCLG & others* [2013] EWHC286 (Admin)

Consequently, the considerable visual harm brought about by way of this development is considered to be outweighed by the significant benefits of providing housing towards the 5-year supply, including a reasonably generous affordable housing provision, and the ability to for the proposal to have a neutral or marginal (but acceptable) impact on other matters of importance (such as education needs or highway safety). The proposal is considered to be sustainable development to which a presumption in favour can apply and the recommendation below follows.

Members should be aware that the SDLP had an “end date” of 2001. Given recent case law, the lack of a 5-year supply and the fact that housing policies of the SDLP are out of date, there is a strong probability that any appeal against refusal of this application would not only result in that appeal being allowed, but the ensuing costs that could be awarded to the developer could be significant.

Recommendation

- A) To delegate authority to the Director of Planning and Community Services to deal with any new issues arising from the re-advertisement process;
- B) Subject to A, **GRANT** permission subject to the applicant entering into a Section 106 Agreement with the Council to secure the contributions referred to in the body of the report, and subject to the following conditions:
 - 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

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

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

- SP(90)01 Rev P (Site Layout);
- SP(90)02 Rev J (Landscape Layout);
- SP(90)04 Rev H (Planting Palette);
- SP(90)05 Rev H (Street Hierarchy Plan);
- SP(90)06 Rev I (Open Space Strategy);
- SP(90)07 Rev K (Housetypes);
- SP(90)08 Rev H (Building Heights);
- EL(90)01 Rev D (Street Elevations);
- EL(90)02 Rev D (Street Scenes);
- EL(90)03 Rev B (Boundary Treatments – Sheet 1);
- EL(90)04 Rev C (Boundary Treatments – Sheet 2);
- EL(20)01 Rev A and PL(20)01 Rev A (Housetype 1);
- EL(20)02 and PL(20)02 (Housetype 2);
- EL(20)03 and PL(20)03 (Housetype 3);
- EL(20)04 and PL(20)04 (Housetype 4);
- EL(20)05 Rev B and PL(20)05 Rev B (Housetype 5);
- EL(20)06 Rev A and PL(20)06 Rev A (Housetype 6);

EL(20)06A Rev A and PL(20)06A Rev A (Housetype 6A);
 EL(20)08 Rev C and PL(20)08 Rev B (Housetype 8);
 EL(20)09 Rev C and PL(20)09 Rev C (Housetype 9);
 EL(20)10 Rev B and PL(20)10 Rev B (Housetype 10);
 PL(20)14 (Housetype 14);
 PL(20)14A (Housetype 14A);
 PL(20)14B Rev A (Housetype 14B);
 EL(20)15 Rev B and PL(20)15 Rev B (Housetype 15);
 EL(20)16 Rev C and PL(20)16 Rev C (Housetype 16);
 EL(20)17 Rev B and PL(20)17 Rev B (Housetype 17);
 EL(20)19 Rev C and PL(20)19 Rev B (Housetype 19);
 EL(20)19A Rev B and PL(20)19A Rev B (Housetype 19 Variant A);
 EL(20)19D (Housetype 19 Corner Variant) and PL(20)19D Rev A
 (Housetype 19 Corner Variant);
 EL(20)20 Rev C and PL(20)20 Rev C (Housetype 20);
 EL(20)20A Rev A and PL(20)20A Rev A (Housetype 20A);
 EL(20)21 Rev C, PL(20)21-1 Rev D and PL(20)21-2 Rev C (Housetype
 21);
 EL(20)25 and PL(20)25 (Housetype 25);
 EL(20)26 Rev B and PL(20)26 Rev B (Housetype 26);
 EL(20)28 Rev C and PL(20)28 Rev C (Housetype 28)
 PL(20)102A Rev A (Double Garage)
 PL(20)103A (Single Garage)
 EL(20)106 Rev A and PL(20)106 Rev A (Double Garage and Loft Space)
 PL(20)107 (Car Port)
 PL(20)108 (Double and Single Garage)
 PL(20)109 (Double and Single Garage); and
 SP(90)11 (Garden Store – Plots 40 & 44).

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

3. No construction works relating to this development shall take place except between the 0800 and 1800 hours Monday to Friday, and 0800 and 0100 on Saturdays. There shall be no construction works on Sundays, Bank Holidays or Public Holidays with the exception of work needed during an emergency.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

4. No deliveries relating to this development shall be taken at or despatched from the site except between the hours of 0800 and 1800 hours Monday to Friday, and 0800 and 0100 on Saturdays. There shall be no deliveries on Sundays, Bank Holidays or Public Holidays.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

5. No removal of hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first

been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

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

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

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

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

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

8. There shall be no gates or other barriers within 5m of the nearside highway boundary (proposed highway boundary) at any of the private driveways or vehicular accesses within the site. Any gates beyond 5m from the highway boundary (proposed highway boundary) shall open inwards only.

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

9. The proposed private driveways or vehicular accesses within the site shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary (proposed highway boundary).

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

Pre-commencement

10. No development or other operations shall commence until full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence have been submitted and approved in writing by the Local Planning Authority. The works and/or development shall only be carried out in accordance with the approved details.

Reason: In the interests of ensuring the integrity of the railway network.

11. No development or other operations shall commence (including intrusive archaeological investigation) during the bird breeding season (April to August) unless a breeding bird survey to include any ground nesting species has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period has been submitted to and approved in writing by the Local Planning Authority. The survey shall include details of measures to protect any

nesting bird interest on the site and where necessary the protection measures shall then be implemented as approved.

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

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

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity.

13. a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and (i) the programme and methodology of site investigation and recording, (ii) the programme for post investigation assessment, (iii) provision to be made for analysis of the site investigation and recording, (iv) provision to be made for publication and dissemination of the analysis and records of the site investigation, (v) provision to be made for archive deposition of the analysis and records of the site investigation, and (vi) nomination of a competent person or persons/organization to undertake the works set out within the WSI.

b) No development shall take place other than in accordance with the archaeological WSI approved under (a).

c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

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

14. No development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'. Any gas protection measures approved in that scheme shall be incorporated prior to occupation of the site for residential purposes, and subsequent extension of dwellings by owner/occupiers shall incorporate equivalent gas protection measures.

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

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

Reason: To ensure that the visual impact of the development is minimised as far as possible.

16. No development shall take place until plans demonstrating (by means of swept path (tracking) analysis) the size of refuse vehicle intended to service the site can do so without overrunning kerb lines have been submitted to the Local Planning Authority. No works to provide the proposed estate streets shall commence until such plans have been approved in writing by the Local Planning Authority.

Reason: In the interests of safety on the public highway and ensuring adequate refuse provision for occupiers of the dwellings.

17. No development shall commence until an assessment highlighting details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises has been submitted to and approved in writing by the Local Planning Authority. The assessment shall address the impact that the activities will have, in terms of dust, on nearby residential properties and propose mitigation measures to minimise the impact. The agreed mitigation measures shall be implemented prior to works which would release dust and thereafter retained until completion of all external works on the site.

Reason: In the interest of protecting a reasonable standard of amenity for occupiers of adjoining properties.

18. All excavations/earthworks must be designed and executed such that no interference with the integrity of the railway can occur. Where vibro-compaction machinery is to be used in construction of the development and/or temporary works compounds are to be located adjacent to the operational railway, no works shall commence until details of such machinery or location of such compounds, along with a method statement for each (where necessary), have been submitted to and approved in writing by the Local Planning Authority. The works shall only be carried out in accordance with the approved method statement(s) and plan(s).

Reason: In the interests of ensuring the integrity of the railway network.

19. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for the storage of plant and materials/site accommodation/loading and unloading of goods vehicles/parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs to be submitted in advance to and approved in writing by the Local Planning Authority. This space

shall be maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

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

20. Before any other operations are commenced, a new estate street junction shall be formed to Etwall Road in accordance with the application drawings, laid out, constructed to base level and provided with 2.4m by 73m visibility splays in either direction, the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.

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

21. No development shall commence until the following details for the on-site provision of affordable housing as defined in the National Planning Policy Framework (NPPF) (Glossary 2) (or as in any document which may replace or revoke this) have been submitted to and approved in writing by the Local Planning Authority:
- a. the construction specifications for the affordable housing units to be provided in accordance with the Housetypes layout plan approved under condition 2;
 - b. the arrangements, timetable and transfer prices for the transfer of the affordable housing units to a Private Registered Provider or the Local Authority Housing Provider (“the Provider”);
 - c. details of the Service Level Agreement (SLA) with the Council for a Choice Based Lettings Allocation Scheme; and
 - d. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Prior to transfer of the first unit of affordable housing, the Provider shall enter into the approved SLA. Unless otherwise agreed with the Local Authority all lettings, both first and subsequent, shall be to those person(s) who apply via the Choice Based Lettings Allocation Scheme or equivalent Scheme which may replace it. The affordable housing shall thereafter be occupied and managed in accordance with the approved details.

The provisions of this condition shall not apply to a chargee or mortgagee, receiver or administrator of the Provider that is the freehold owner of the affordable housing, or any part thereof; or a receiver or administrative receiver of the Provider to the intent that such mortgagee in possession receiver or administrator shall be entitled to dispose of the affordable housing, or part thereof, free of obligations contained in this condition.

Reason: In the interests of providing an acceptable mix of housing types and tenures in accordance with the Development Plan and the NPPF.

22. No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The

scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall demonstrate:

- (i) the utilisation of holding sustainable drainage techniques;
- (ii) the limitation of surface water run-off to existing greenfield rates;
- (iii) the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations;
- (iv) details for diversion of the drainage pipe which dissects the site (flood risk from the drainage route up to the 1 in 100 year return period plus an allowance for climate change must be appropriately managed, and necessary easements included); and
- (v) responsibility for the future maintenance of drainage features.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures.

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

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

24. No development shall commence until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the dwellings, garages and outbuildings, boundary walls and pedestrian circulation areas (including shared surfaces) have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved schedule of materials.

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

25. No development shall commence until a scheme for the position, type, angle, colour and baffling of external lighting have been submitted to and approved in writing by the Local Planning Authority. Where lighting is to be erected adjacent to the railway, the potential for the lighting to dazzle train drivers or the colour of the lights to give rise to the potential for confusion with the signalling arrangements must be eliminated. The approved scheme shall then be implemented and maintained as such.

Reason: In the interests of safety on the rail network, in the interests of species and habitat conservation, and in the interest of visual amenity.

26. No development shall commence until details and timing of provision of the play equipment and other furniture or enclosure of the Locally Equipped Area of Play (LEAP) have been submitted to and approved in writing by the Local Planning

Authority. No less than 5 mixed items of play equipment shall form part of these details. The approved items of play equipment, furniture and enclosure shall then be installed in accordance with the approved timetable and maintained as such until the LEAP is transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of securing appropriate and high quality play and open space provision for occupiers of the dwellings hereby approved.

Pre-occupation

27. Prior to occupation of the development (or parts thereof) an independent verification report must be submitted, which meets the requirements given in Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

28. Prior to occupation, where recommended by the Noise Impact Assessment (ref: R12.0508/3/DRK), each dwelling shall be constructed and fitted out with the noise mitigation measures. Subsequent replacement or insertion of windows and doors and any conversion of loft space by owner/occupiers shall be done in a manner to ensure the same level of acoustic protection is achieved.

Reason: To protect the health of occupiers of the dwellings hereby approved and to ensure an acceptable standard of amenity for those occupiers.

29. No dwelling, the subject of the application, shall be occupied until the proposed new estate streets between that respective plot and the existing public highway have been laid out in accordance with the application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of safety on the public highway and to ensure reasonable access for all users during the course of construction.

30. No dwelling, the subject of the application, shall be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents and visitors vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: To ensure adequate parking and turning provision for each dwelling.

31. No dwelling, the subject of the application, shall be occupied until a scheme of soft landscaping to public and private areas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure that:

- (i) any hedge or tree planted adjacent to Network Rail's boundary fencing is so placed that when fully grown it does not damage the fencing or provide a means of scaling it;
- (ii) no hedge should prevent Network Rail from maintaining its boundary fencing;
- (iii) compensatory hedgerow planting is included to provide for that lost; and
- (iv) landscape buffers and attenuation areas are designed to provide a net gain in biodiversity and maximum benefit for wildlife in accordance with an Ecological Management Plan.

Reason: In the interests of visual amenity, enhancement of priority habitats and delivery of net gains in biodiversity in accordance with national and European objectives, and to secure appropriate open space provision for occupiers of the dwellings hereby approved.

Other

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

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

33. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company.

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

Informatives:

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

- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. Submitted with this application was HSP Consulting Engineers Ltd's Phase II Ground Investigation Interpretative Report (Ref: C1672/PII, 08/01/2013) for the site. Although its findings are noted, the Environmental Health Officer seeks that the proposed further works recommended are carried out to establish an agreed scheme protection measures in relation to ground gas. The phased risk assessment should continue be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance.
- d. For further assistance in complying with planning conditions and other legal requirements applicants should consult "*Developing Land within Derbyshire – Guidance on submitting applications for land that may be contaminated*". This document has been produced by local authorities in Derbyshire to assist developers, and is available from www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp. Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
 - CLR guidance notes on Soil Guideline Values, DEFRA and EA
 - Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
 - Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
 - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
- e. Network Rail wishes to draw attention to the following points:
- The developer must contact Network Rail to inform them of their intention to commence works a minimum of 6 weeks prior to the proposed date of commencement;
 - The developer/applicant must ensure that their proposal, both during construction and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail air-space (including by scaffolding) and no encroachment of foundations onto/under Network Rail land. All operations, including the use of cranes or other mechanical plant working adjacent, must be carried out in a "fail safe" manner such that in the

event of mishandling, collapse or failure, a 3 metre “stand-off” is achieved. Any future maintenance must be conducted solely within the applicant’s land ownership such that buildings/structures should be constructed at least 2 metres from Network Rail’s boundary;

- Security of the railway boundary will need to be maintained at all times, and all roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development;
 - During and after construction, no part of the development, including the access off Etwall Road, shall cause the level crossing sight lines, road traffic signs and markings, or the crossing itself to be obstructed;
 - Network Rail has serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets (e.g. level crossings). Network Rail request that the applicant contact the Asset Protection Project Manager to confirm that any proposed route is viable and to agree a strategy to protect asset(s) from any potential damage caused by abnormal loads. Where any damage, injury or delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability.
 - Level Crossing audible warning units can be considerably noisy, and in a worst case scenario there could be trains running 24 hours a day, such that soundproofing incorporated into the dwellings should take this into account;
 - Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary; and
 - Network Rail would like to include promotional material for the safe use of level crossings in any “welcome pack” distributed to the first residents of the new development. Please contact the “Asset Protection Project Manager, Network Rail (London North Eastern), Floor 2A, George Stephenson House, Toft Green, York, Y01 6JT”; email: assetprotectionlne@networkrail.co.uk.
- f. The Environment Agency does not consider oversized pipes or box culverts as sustainable drainage. Should infiltration not be feasible at the site, alternative above ground sustainable drainage should be used. In addition surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management. Sustainable Drainage Systems (SuDS) are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on-site as opposed to traditional drainage approaches which involve piping water off-site as quickly as possible.
- g. Once Schedule 3 of the Flood & Water Management Act (FWMA) is enacted, Derbyshire County Council (DCC) will be designated a SuDS Approval Body (SAB) and will be responsible for approving all construction works which have drainage implications. DCC will not retrospectively adopt any SuDS schemes. As such, should a SuDS solution be proposed for future development, the applicant should confirm prior to commencement of works on any proposed development that the responsible organisation for SuDS maintenance will be once the development is complete.

- h. Any works in or within close proximity to an 'Ordinary Watercourse' (i.e. an outfall that encroaches into the profile of the watercourse) would require consent under the Land Drainage Act (LDA), 1991 from the consent authoriser (DCC). The FWMA came into force in 2010 and designated DCC as a Lead Local Flood Authority (LLFA). As of the 6th April 2012 the FWMA transposed consenting powers under the LDA to the LLFA, therefore any works in or nearby to an Ordinary Watercourse require consent from DCC. Upon receipt of any application (including the legislative fee) DCC have an 8 week legislative period at which to make a decision and either consent or object the proposals. If the applicant wishes to make an application for any works please contact The Flood Risk Management Team on Flood.Team@derbyshire.gov.uk.
- i. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
- j. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway (new estate streets) measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- k. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works.
- l. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting this Authority via email – es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- m. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- n. Highway surface water shall be disposed of via a positive, gravity fed system (i.e: not pumped) discharging to an approved point of outfall (e.g: existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

- o. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g: street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- p. Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway (including public Rights of Way), at least 6 weeks prior notification should be given to the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the New Roads and Streetworks Section).
- q. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.
- r. Construction works are likely to require Traffic Management and advice regarding procedures should be sought from David Bailey, Traffic Management - telephone 01629 538686.
- s. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.

Item 1.4

Reg. No. 9/2013/0754/FM

Applicant:
Mr Pemberton
C/O Agent

Agent:
Mr. S. Greaves
S. G. Design Studio Ltd
202 Woodville Road
Hartshorne
Swadlincote
Derbyshire
DE11 7EX

Proposal: THE DEMOLITION OF EXISTING BUILDING AND THE PROPOSED REDEVELOPMENT OF THE SITE FOR THE ERECTION OF 3 DWELLINGS AT 43 OVERSETTS ROAD NEWHALL SWADLINCOTE

Ward: NEWHALL

Valid Date: 10/10/2013

Reason for committee determination

The application is before Planning Committee as the application was referred to Committee by Cllr Bambrick due to local concern that has been expressed about a particular issue.

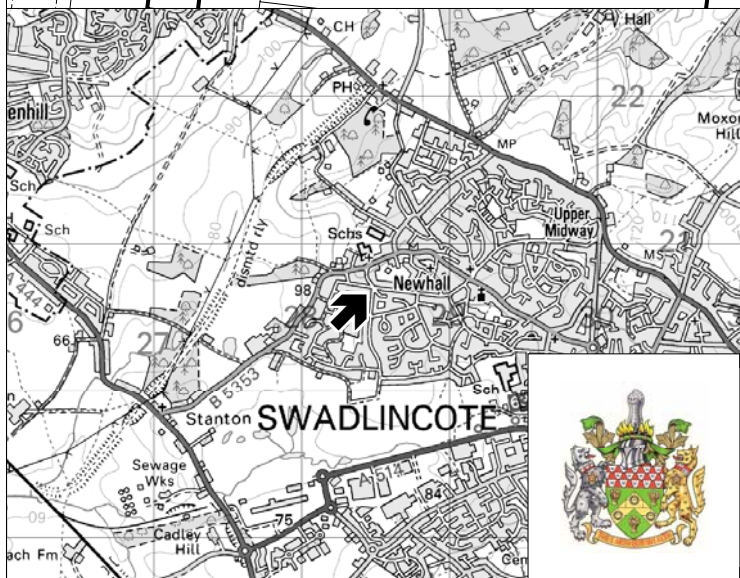
Site Description

The application site is currently a large detached, traditionally designed, two storey dwelling located on the eastern side of Oversetts Road and which has a substantial garden associated with it. It should be noted that the application site only extends part way down the garden area with the remainder of the rear garden lying outside the red edge but inside the blue edge (i.e. being other land in the applicant's ownership). The application site is located in a predominantly residential area with housing located on all sides.

Proposal

The application originally included the use of the existing building as accommodation in relation to building works currently being undertaken at 91 Oversetts Road but following a request for further information relative to that part of the scheme from the County Highway Authority, that part of the proposal has been omitted from the application.

9/2013/0754 - 43 Oversetts Road, Newhall, Swadlincote DE11 0SL



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The application is in full and is for the demolition of the existing two storey dwelling and the erection of a short terrace of three x two storey dwellings on the site. The proposed dwellings are sited so that they front Oversetts Road set 1.8m back from the edge of the footway behind a 900mm high wall that would enclose the frontage. The proposed dwellings are designed such that they have eaves and ridge heights that reflect the adjacent properties and have part two storey, part single storey rear elements to them. Each property would consist of a lounge, dining room, w.c. and breakfast area at ground floor with two of the properties containing two bedrooms at first floor level and the third, slightly larger property in the middle of the terrace, containing three bedrooms. No off-street car parking is proposed to serve the development.

Planning History

None relevant.

Responses to Consultations

The Local Highway Authority when commenting on the original submission raised concerns in respect of the use of the existing land and building in connection with the works at 91 Oversetts Road. In respect of the proposed new housing they state that the site is located on the inside of a bend in the road and advised that there should be no off-street parking within the site due to lack of visibility which would be available for emerging drivers onto the highway. They also state that introducing vehicular movements in this location would be detrimental to highway safety but that in view of the parking restrictions in the vicinity they feel that an objection for lack of parking could not be sustained. The Local Highway Authority's view on the proposal omitting the use of the existing building has been sought and any further comments and any suggested conditions will be report at the meeting of planning committee.

Severn Trent Water – Wish to make no comments on the proposal.

The Coal Authority – No objection subject to a condition requiring intrusive site investigations to take place to establish the exact situation relating to coal mining legacy on the site and any necessary remediation.

Responses to Publicity

One letter of objection has been received in response to the application and the grounds for objection are summarised as follows:

- a. We have concerns relating to the upkeep of the remainder of the land as there will be no access and it may not be well kept, leading to problems with vermin.
- b. No parking is proposed and there is already a problem with parking in the area in New Road and Oversetts Road especially at weekends. People have two cars therefore there could be six in total.
- c. The roads here are already dangerous to cross due to cars going too fast.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 4 & 11, Transport Policy 6.

National Guidance

The NPPF at 7, 17, 47, 50, 56, 57 & 215.

Local Guidance

SPG - Housing Design and Layout

Planning Considerations

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

- The Development Plan and NPPF Guidance
- Impact on neighbours
- Design
- Highway safety

Planning Assessment

The Development Plan and the NPPF

The policies in the adopted Local Plan have been assessed against the provisions of the NPPF and for the purposes of Paragraph 215, Housing Policies 4, 11 & Transport Policy 6 are in line with the advice in the NPPF and as such carry significant weight in the determination of this planning application.

The site lies within the urban area of Swadlincote for the purposes of Housing Policy 4. The development is wholly in accord with the principle of allowing housing development in the urban area – the site is surrounded by development, is not a valuable open space within the urban area and does not represent an intrusion into the rural area surrounding the urban area and is also an underused piece of brownfield land. As a consequence the principle of developing the site for residential purposes is acceptable.

Impact on neighbours

In terms of neighbour impact, the main impact resulting from the development would result from the overbearing impact of the proposal on the amenity of the occupiers of the properties either side of the site, numbers 39 and 49 Oversetts Road. Number 43 Oversetts Road has a main habitable room window in the rear of their property as well as a side facing door which would be within the sector of view when assessed against the standard contained in the Council's SPG that relates to housing design and layout. However, the existing property on the application site has a worse relationship to that window than that proposed and the proposal would in fact lead to an improvement of this interrelationship such that a redesign on the grounds of overshadowing, loss of light or overbearance of that property could not reasonably be justified.

With regards to the impact on 49 Oversetts Road the interrelationship between the proposal and that property is considered to be acceptable in terms of loss of light, overshadowing and overbearance as well as loss of privacy and overlooking taking into account the existing outbuildings located on the shared boundary with that property.

Overall the proposal is considered to be acceptable in terms of neighbour impact.

Design

The design of the proposed dwellings specifically reflects the historic design of the adjacent properties in terms of eaves and ridge height, window details and proportions, as well as siting. The omission of off-street parking whilst necessary in highway safety terms reinforces the traditional character of the area as the majority of the traditional properties are either located at the back edge of the footway or set behind small fore gardens and traditionally no off-street parking was provided. These aspects of the design of the scheme result in a well detailed and well proportioned street scene that will sit well within its immediate surroundings. The brick and tiles have been specified and these again reflect the colour and size of the traditional materials, albeit that the tiles are concrete but these are suitable for the proposal. The applicant has detailed the window headers and sills which are set in a relatively deep reveal and the eaves and verge are suitably detailed with dentil courses and the use of rise and fall brackets. The proposal results in a good quality residential scheme that will enhance the visual amenity of the area. Accordingly this aspect of the proposal is considered to be acceptable in line with the advice contained in Local Plan Saved Housing Policy 11 and paragraphs 56 and 57 of the NPPF.

Highway safety

It should be noted that the existing property does not benefit from any formal off-street parking therefore the proposal would result in the provision of a net two additional dwellings each similarly with no off street car parking provision.

It has to be borne in mind that the application site is well located and benefits from very good public transport links with bus stops directly outside the site to link with immediate communities. The site is considered to be sustainable and affords access by a range of means of transport. Whilst the proposal does not provide any off-street car parking spaces it must be noted that the County Highway Authority has stated that it advised against any provision and that it therefore raises no objection to the proposed new houses. On this basis, notwithstanding the concerns raised in this respect, in highway safety terms the proposal would not result in any demonstrable detriment to highway safety.

Other considerations

With regards to the other points raised that have not been covered above the owner will retain a large part of the existing rear/side garden and any future redevelopment of it would need a separate application that would have to be judged on its merits at that point in time; the upkeep of that remaining land will be the responsibility of the owner but should its condition deteriorate significantly enforcement action can be taken to secure its improvement; the control of vermin would be a matter for Environmental Health and the responsibility of the owner.

Conclusions

The proposal is considered to be an appropriate form of development for this and will lead to an improvement to the visual amenity of the area whilst providing much needed and appropriate housing for the locality. As a consequence the proposal is considered

to be acceptable and accords with the provisions of the Development Plan and planning permission is recommended.

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission relates to the plans validated by the Local Planning Authority on 10th October 2013 and the amended description referred to above, and as agreed by the applicant's agent's email, and any variation to the approved drawings may need the approval of the Local Planning Authority.

Reason: For the avoidance of doubt as to what is approved.
3. The development hereby permitted shall be implemented utilising the materials specified in the application form for the construction of its external surfaces unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the visual amenity of the area.
4. Notwithstanding the submitted details, prior to the occupation of any of the dwellings hereby approved, full details of the means of enclosure throughout the site shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until its means of enclosure has been provided in accordance with the approved details. The last dwelling to be occupied shall not be occupied until all means of enclosure have been provided in accordance with the approved details. All means of enclosure shall be retained.

Reason: In the interests of the visual amenity of the area and to protect the amenity of neighbours.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no dwelling hereby permitted shall be extended or altered externally, have its roof altered or enlarged, be provided with a porch, incidental building, structure or enclosure, additional hard surface, new vehicular access or be painted externally.

Reason: In view of the form of the development, in the interests of visual amenity and to protect the amenity of neighbours.
6. Notwithstanding the provisions of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking and re-enacting that Order) no window or opening (other than any that may be shown on the approved drawings) shall be formed in any of the elevations of any of the dwellings unless planning permission has first been granted by the Local Planning Authority.

Reason: To avoid the possibility of overlooking in the interests of preserving the amenity of residents.

7. The development hereby permitted shall be implemented incorporating all the eaves, verge, rainwater goods, windows and door, details shown on drawing number 213-51.03 Revision A and all these building details shall be retained.

Reason: In the interests of the visual amenity of the area.

8. Prior to the commencement of the development details of the results of appropriate intrusive site investigation works that examine shallow mine workings and coal mining legacy issues on the site, along with any remedial measures to ensure the safety and stability of the proposed development, shall be submitted to and approved in writing by the Local Planning Authority. The development must then only be implemented on accordance with any remedial measures approved by this condition.

Reason: To ensure that the proposed development is safe from previous coal mining activity in the area.

Informatives:

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at:

<http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

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

17/12/2013

Item 1.5

Reg. No. 9/2013/0855/FM

Applicant:
Mr Bob Ledger
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Agent:
Mr Matthew Branton
Franklin Ellis Architects
The Old Pumphouse
No 5
The Ropewalk
Nottingham
NG1 5DU

Proposal: THE ERECTION OF TWO DWELLINGS WITH
ASSOCIATED PARKING, GARDENS AND ACCESS AT
SDDC OWNED GARAGE COURT ST CATHERINES
ROAD NEWHALL SWADLINCOTE

Ward: NEWHALL

Valid Date: 28/10/2013

Reason for committee determination

The application is before Planning Committee as the District Council is the applicant and owner of the site and consideration needs to be given to compliance with the Council's SPG.

Site Description

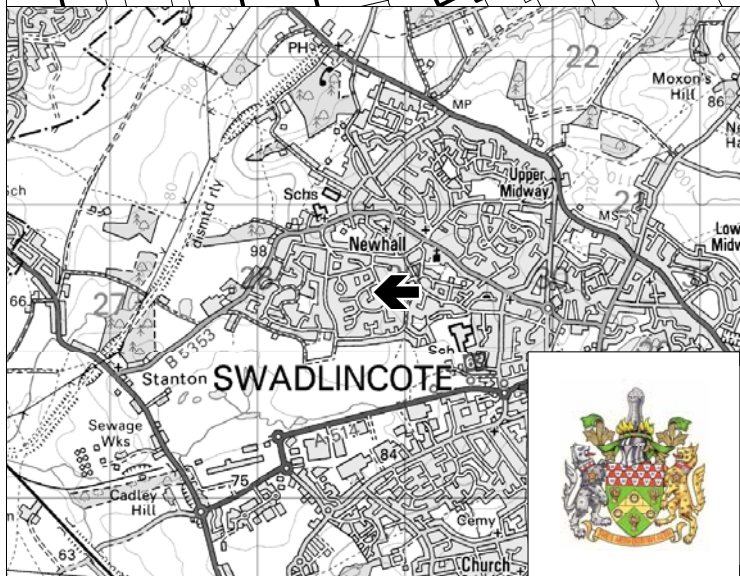
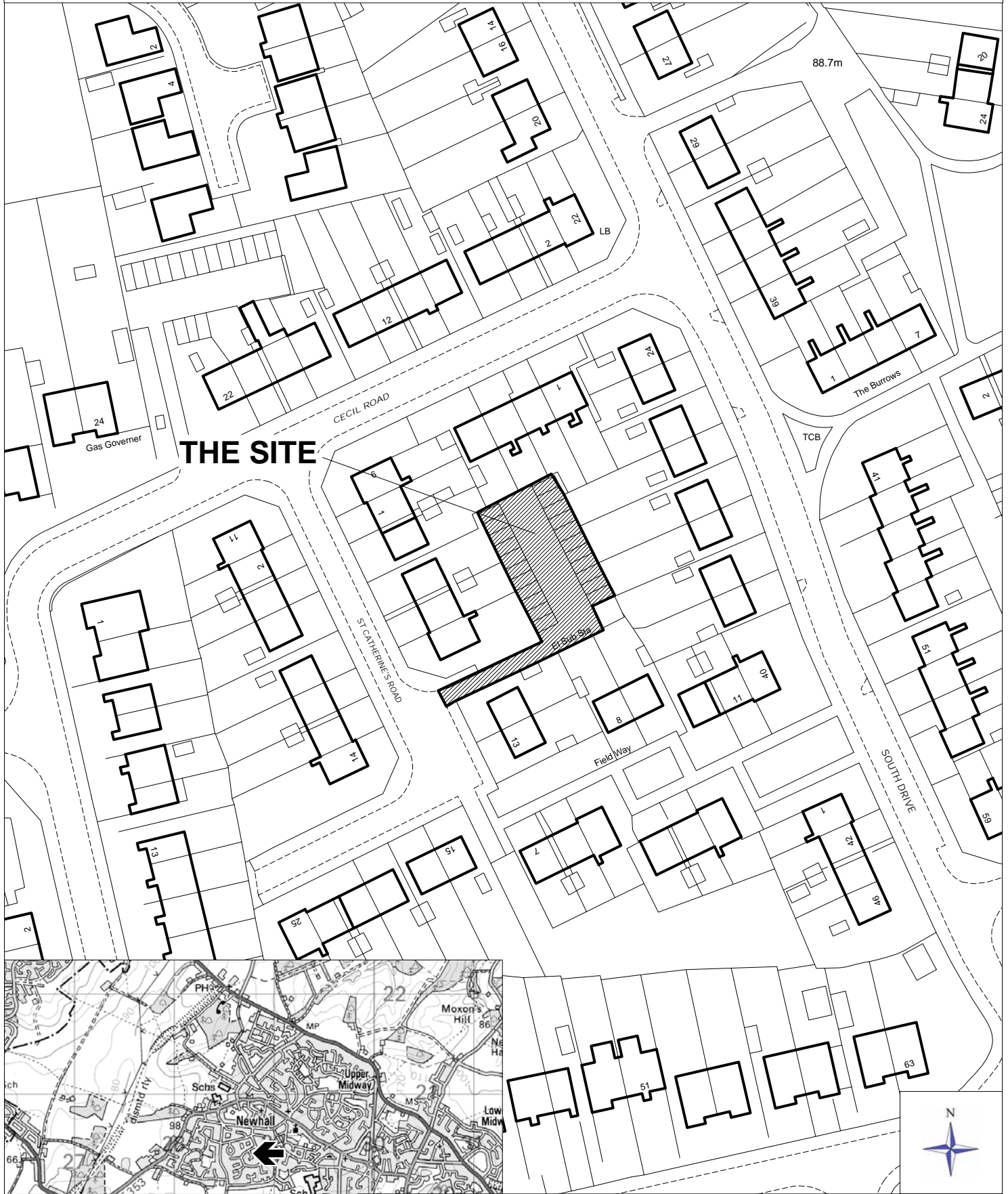
The application site is a former garage court which has been cleared but still containing the concrete bases of the garages. There is an electricity sub-station located on the south-east corner of the site that lies beyond the land the subject of the application. The site is located in a residential area with housing located on all sides. Access to the site is from the eastern side of St Catherine's Road between numbers 9 and 11 St Catherine's Road via the existing established access.

The boundaries to the site comprise a mixture of concrete and brick walls/retaining walls and timber fencing and there are two mature trees to the rear of 7 and 9 St Catherine's Road on their rear boundary.

Proposal

This is a full application and is for the erection of a pair of semi-detached, two storey dwellings on the site accessed from St Catherine's Road via the existing access. The proposed dwellings are orientated so that the principal front elevations face south

9/2013/0855 - SDDC Owned Garage Court, St Catherines Road, Newhall, Swadlincote (DE11 0RZ)



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towards the rear of numbers 8 and 9 Field Way with the rear elevations facing north towards the rear of numbers 5 and 7 Cecil Road. Both side elevations would contain a window of a w.c. at ground floor level as well as a bathroom window at first floor level. Off-street car parking is provided in the form of two spaces each with two spaces at the side of one plot and two spaces in front of the dwellings.

Planning History

None relevant.

Responses to Consultations

The County Highway Authority has no objection subject to a requiring the provision and retention of the parking and turning areas shown on the approved plans.

The Environmental Protection Officer has no objection subject to a condition relating to any unexpected contamination.

Responses to Publicity

Two letters were received in response to the application and the grounds for objection are summarised as follows:

- a) Letter not received
- b) The use of the jitty adjacent to the access and will cause an invasion of privacy.
- c) It will be a danger to the children as the access is concealed.
- d) The development will disrupt the private and quiet nature of the area.
- e) The access road is not structurally sound for the construction traffic and there is a water pipe running down it – who will be responsible if it is damaged?
- f) Who will be responsible if the retaining walls are damaged?
- g) There will be a loss of privacy to a back garden.
- h) If families move in children may climb up the wall and gain access to an adjoining garden.
- i) There may be increased noise especially if the occupiers have pets.
- j) There will be an increased in traffic and the street is already busy.
- k) There will be loss of light to an adjoining property.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 4 & 11, Transport Policy 6.

National Guidance

The NPPF at 7, 17, 47, 50, 56, 57 & 215.

Local Guidance

SPG - Housing Design and Layout

Planning Considerations

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

- The Development Plan and NPPF Guidance
- Impact on neighbouring dwellings and compliance with SPG
- Design
- Highway safety

Planning Assessment

The Development Plan and the NPPF

The policies in the adopted Local Plan have been assessed against the provisions of the NPPF and for the purposes of Paragraph 215, Housing Policies 4, 11 & Transport Policy 6 are in line with the advice in the NPPF and as such carry significant weight in the determination of this planning application.

The site lies within the urban area of Swadlincote for the purposes of Housing Policy 4. The development is wholly in accord with the principle of allowing housing development in the urban area – the site is surrounded by development, is not a valuable open space within the urban area and does not represent an intrusion into the rural area surrounding the urban area and is also an underused piece of brownfield land. As a consequence the principle of developing the site for residential purposes is acceptable.

Impact on Neighbours

In terms of neighbour impact, the main impact resulting from the development is overlooking between the front and rear windows of the proposed dwellings and the rear of the existing properties on Field Way and Cecil Road. The proposed dwellings are orientated so that the principal front elevations face south towards the rear of numbers 8 and 9 Field Way with the rear elevations facing north towards the rear of numbers 5 and 7 Cecil Road. However, the interface distance between the fronts of the new houses and the rear of the properties on Field Way is approximately 24m. In that instance the Council's adopted SPG – Housing Design Layout generally requires 21m. In the case of the distance between the rear of the new houses and the rear of the properties on Cecil Road is noted that numbers 5 and 7 Cecil Road have had single storey rear extensions added which result in the requirement for a distance of 18m. The actual distance is approximately 15m, however the proposed dwellings would have a finished floor level significantly lower than the existing properties and whilst these rear interface distances are short of the SPG requirement it is noted that there is a change in levels on the site with the finished floor level of the proposed properties being significantly higher than those on Field Way but lower than those on Cecil Road. Looking at the interrelationship between the existing and proposed dwellings in the round, the adverse impact on the amenity enjoyed by the occupiers of the existing properties is not considered to be so significant so as to reasonably justify a redesign even taking into account the non-compliance with the SPG. A scheme for the landscaping for the intervening garden space backing on to the Cecil Road gardens would also help.

In terms of impact on the occupiers of the existing properties on either side in terms of overbearance loss of light and overshadowing there would be adequate distance to comply with the Council's SPG. In terms of loss of privacy and overlooking the windows at first floor level in the sides of the proposed dwellings would serve bathrooms and be obscure glazed and this can be controlled by a suitably worded planning condition. It

should also be noted that whilst there may be casual overlooking of the rear gardens of the properties on South Drive as well as St Catherine's Road sideways from the first floor windows of the proposed dwellings, those interrelationships are not considered to be so significant in terms of overlooking or loss of privacy to reasonable redesign the scheme. Whilst the existing boundary on the southern part of the site is a relatively low wall a condition is proposed to ensure that this is complemented by a boundary treatment of a more suitable height to avoid casual overlooking from users of the access.

Overall the proposal is considered to strike a reasonable balance between the existing and proposed dwellings and as a consequence, resistance of the application on the grounds of overlooking, loss of privacy, overshadowing and overbearance, is not considered to be justified. Overall, notwithstanding the comments received in the letters of objection, the proposal is considered to be acceptable in terms of neighbour impact.

Design

The design of the proposed dwellings has been influenced by the surrounding developments and is relatively simple being of two storey scale, with pitched roofs, gabled to the sides and with brick and tile construction. It is considered that the proposed design is acceptable and in line with the advice contained in Local Plan Saved Housing Policy 11 and paragraphs 56 and 57 of the NPPF.

Highway safety

The site was historically used for garaging and therefore would historically have been subject to significant levels of comings and goings associated with that use. Whilst this may have ceased a long time ago the site can still be used for parking of vehicles. In order to assess the suitability of the access, level of off-street parking and implications for highway safety generally the view of the County Highway Authority have been sought. They have assessed the proposed scheme and consider the proposal to be acceptable in highway safety terms and this view is considered to be reasonable. In light of this in terms of highway safety and examining the suitability of access as well as parking and turning facilities the proposal is, notwithstanding the concerns raised in the letters of objection, considered to be acceptable.

Other considerations

With regards to the other points raised that have not been covered above the immediate neighbours including the objector were sent a letter but a site notice was also displayed near the site; whilst the site may ultimately be more intensively used than in recent times historically there would have historically been greater comings and goings along the access than what will result from this development; the damage to, and future maintenance of, the access and any drains underneath is a matter for the development; any damage to retaining walls will be a private matter; the planning process cannot control the behaviour of future occupiers; any noise would be that associated with residential occupancy and would not be unreasonable. Contamination as referred to by the Council's Environmental Protection Officer can be addressed through the imposition of a suitably worded condition.

Conclusions

Subject to the imposition of the recommended conditions the development is considered to accord with the provisions of the Development Plan and planning permission is recommended.

Recommendation

GRANT permission under Regulation 3 subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission relates to the plans validated by the Local Planning Authority on 28th October 2013 and any variation to the approved drawings may need the approval of the Local Planning Authority.
Reason: For the avoidance of doubt as to what is approved.
3. Prior to the occupation of any dwellings hereby permitted the car parking spaces, vehicular access and turning areas shown on the approved plans shall be laid out and constructed and surfaced in materials, the details of which shall have been submitted to an approved in writing by the Local Planning Authority beforehand. All such areas shall then be retained for their intended use thereafter.
Reason: To ensure that adequate off-street parking is provided and retained for use to reduce the incidence of on-street parking and its attendant dangers in the interest of highway safety.
4. No development hereby permitted shall take place until samples of the materials to be used in the construction of its external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved samples.
Reason: In the interests of the visual amenity of the area.
5. No development shall take place until full details of landscape works (including tree protection, means of enclosure and the screening of the existing dwellings to the north) have been submitted to and approved in writing by the Local Planning Authority. All landscape works shall be carried out in accordance with the approved details. No dwelling shall be occupied until its means of enclosure have been provided in accordance with the approved details. The last dwelling to be occupied shall not be occupied until all means of enclosure have been provided in accordance with the approved details. All means of enclosure shall be retained thereafter.
Reason: In the interests of the visual amenity of the area and to protect the amenity of neighbours.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no dwelling hereby permitted shall be extended or altered externally, have its roof altered or enlarged, be provided with a porch, incidental building, structure or enclosure, additional hard surface, new vehicular access or be painted externally.

Reason: In view of the form of the development, in the interests of visual amenity and to protect the amenity of neighbours.

7. Before the first occupation of the either of the dwellings hereby permitted the windows serving their respective bathroom in the north-eastern or south-western elevations of the building shall be glazed with obscure glass which shall thereafter be permanently retained in that condition unless planning permission has first been granted by the Local Planning Authority.

Reason: To avoid the possibility of overlooking in the interests of preserving the amenity of residents.

8. Notwithstanding the submitted details and prior to their provision, full details of the openings of the windows serving the bathrooms in the north-eastern or south-western elevations of the building shall be submitted to and approved in writing by the Local Planning authority. The development shall then be carried out strictly in accordance with the approved details and shall thereafter be permanently retained in as approved unless planning permission has first been granted by the Local Planning Authority.

Reason: To avoid the possibility of overlooking in the interests of preserving the amenity of residents.

9. Notwithstanding the provisions of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking and re-enacting that Order) no window or opening (other than any that may be shown on the approved drawings) shall be formed in the north-eastern or south-western elevations of the building unless planning permission has first been granted by the Local Planning Authority.

Reason: To avoid the possibility of overlooking in the interests of preserving the amenity of residents.

10. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A, and appropriate remediation proposals. The development must then only be undertaken in accordance with the details approved by this condition.

Reason: To protect human health.

11. Notwithstanding the submitted details, further details of (a) the windows and doors, (b) the eaves, verges, headers and sills, rainwater goods, and (d) any retaining structures hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. These elements shall be provided in accordance with the approved details prior to the first occupation of the development.

Reason: In the interests of visual amenity.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and

quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848.

Further information is also available on The Coal Authority website at www.coal.decc.gov.uk

Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

Item 1.6

Reg. No. 9/2013/0859/FM

Applicant:
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South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote

Agent:
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Franklin Ellis Architects
The Old Pumphouse
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Nottingham
NG1 5DU

Proposal: THE ERECTION OF TWO BUNGALOWS WITH ASSOCIATED PARKING, GARDENS AND ACCESS AT PINE GROVE NEWHALL

Ward: NEWHALL

Valid Date: 17/10/2013

Reason for committee determination

The application is before Planning Committee as the District Council is the applicant and owner of the site.

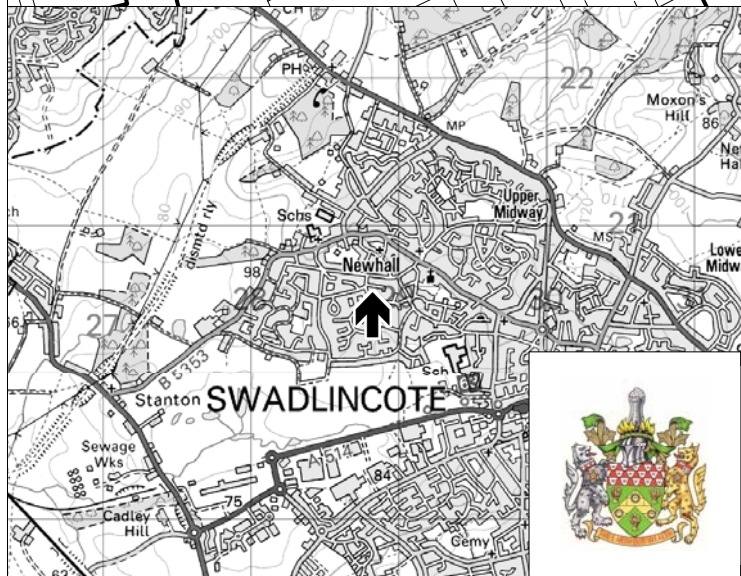
Site Description

The application site is a surface car park located on the southern side of Pine Grove. The site backs on to the rear of 9 to 15 South Drive which lie to the west, as well as to the west of 30 to 33 Pine Grove a small block of two storey flats. Rights of way pass the site along the western and southern boundaries and the boundaries to the site are currently open with the rear gardens of 9 to 15 South Drive having a hedge whilst the rear boundary to 30 to 33 Pine Grove comprises a timber fence. The site is located in a residential area and access to the site is from the Pine Grove.

Proposal

The application was amended following formal consultation with the County Highway Authority and to enable a better layout, albeit with a reduction in off-street car parking spaces from the three originally proposed to two on the latest plans. The application is in full application and is for the erection of two detached, single storey dwellings on the site. Vehicular access would be via a new access from Pine Grove but immediately to the rear of the boundary to 30 to 33 Pine Grove. The proposal is to erect dwellings that are orientated so that they front Pine Grove as well as the adjacent footpath routes with one dwelling in the north-western corner of the site and the second in the south-western corner of the site. The proposal would create two, one bedroom, single storey dwellings

9/2013/0859 - Pine Grove, Newhall, Swadlincote DE11 0SB



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and off-street car parking is provided in the form of one space each in between the proposed properties.

Planning History

None relevant.

Responses to Consultations

The County Highway Authority commented on the original plans and requested the access be relocated towards the eastern side of the site to improve visibility and to create additional space to allow adequate room for turning. Their requests have been incorporated into the latest plans and they have informally commented that they have no objection to the reduction in the number of parking spaces either. They have been reconsulted on the revised plans and their final comments will be reported to Planning Committee at the meeting.

The Coal Authority – No objection subject to a condition requiring intrusive site investigations to take place to establish the exact situation relating to coal mining legacy on the site and any necessary remediation.

Environmental Protection Officer – No comments to make on the application.

Severn Trent Water – Advise that there is a public sewer on the site which is protected under the Water Industry Act 1991, as amended by the Water Act 2003, and building close to, or over it is not allowed. They advise the developer to contact Severn Trent Water to secure a suitable solution.

Responses to Publicity

No representations received.

Following the re-siting of the proposed dwellings and the relocation of the access a further period of public consultation has been undertaken and any comments received as a result of that reconsultation will be reported to Planning Committee at the meeting.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 4 & 11, Transport Policy 6.

National Guidance

The NPPF at 7, 17, 47, 50, 56, 57 & 215.

Local Guidance

SPG - Housing Design and Layout

Planning Considerations

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

- The Development Plan and NPPF Guidance
- Impact on neighbouring dwellings and compliance with SPG
- Design
- Highway safety

Planning Assessment

The Development Plan and the NPPF

The policies in the adopted Local Plan have been assessed against the provisions of the NPPF and for the purposes of Paragraph 215, Housing Policies 4, 11 & Transport Policy 6 are in line with the advice in the NPPF and as such carry significant weight in the determination of this planning application.

The site lies within the urban area of Swadlincote for the purposes of Housing Policy 4. The development is wholly in accord with the principle of allowing housing development in the urban area – the site is surrounded by development, is not a valuable open space within the urban area and does not represent an intrusion into the rural area surrounding the urban area and is also an underused piece of brownfield land. As a consequence the principle of developing the site for residential purposes is acceptable.

Impact on Neighbours

In terms of neighbour impact, as the proposed dwellings are single storey, the main impact resulting from the development would be on the amenity enjoyed by the occupiers of 30 to 33 Pine Grove and 9 to 15 South Drive. With regards to the impact on 30 to 33 Pine Grove, there is a kitchen door and two secondary lounge windows in the eastern elevation of the proposed dwelling that lies on the southern part of the site, and these would be approximately 12.5m from the main rear wall of those existing properties. The eastern elevation of the proposed dwelling on the northern part of the site also contains a secondary kitchen window and lounge window and these would be approximately 18m from the nearest part of 30 to 33 Pine Grove. The Council's SPG on Housing Design and Layout advises that secondary windows will be assessed on their merits as will separation distances relative to single storey dwellings in general terms. In terms of overlooking and loss of privacy it is considered that the proposed dwelling will not have any significant impact on the amenity that the occupiers of these dwellings. It is acknowledged that the private garden area of the plot on the southern part of the site would experience some degree of overlooking from the first floor windows of 30 to 33 Pine Grove future occupiers will be aware of this interrelationship and this level of amenity space is considered adequate to ensure that the future occupiers of the new property will have a reasonable amount of private garden area.

With regards to the impact of the proposal on the amenity enjoyed by the occupiers of the properties to the west, number 9 to 15 South Drive, those properties benefit from relatively generous back gardens of between approximately 12m and 15m in depth. Whilst the proposed dwellings have secondary bedroom windows and bathroom windows on the elevations facing west towards those properties there would be no significant loss of privacy.

Overall the proposal is considered to strike a reasonable balance between the existing and proposed dwellings and is considered to be acceptable in terms of neighbour impact.

Design

The design of the proposed dwellings has been influenced by the surrounding developments and is relatively simple being of a storey scale, with pitched roofs, gabled to the sides and of brick and tile construction. Whilst it is acknowledged that there are two storey dwellings to the sides of the site on Pine Grove and South Drive, across Pine Grove there are a number of single storey dwellings. The proposal has been amended so that the dwellings relate better to the footpaths which are to the south and west of the site with the proposed dwellings set just off the boundary with windows to provide natural surveillance whilst retaining a suitable design and privacy for future occupiers. It is considered that the proposed design and layout are acceptable and in line with the advice contained in Local Plan Saved Housing Policy 11 and paragraphs 56 and 57 of the NPPF.

Highway safety

The site is currently used for off-street parking and would historically have been subject to significant levels of comings and goings associated with that use, albeit that the demands for this car park appear to have diminished somewhat in recent times. In order to assess the suitability of the access, the level of off-street parking and implications for highway safety generally, the views of the Local Highway Authority have been sought. They assessed the initial scheme and requested amendments be made in order to make them acceptable to them. These have been incorporated into the latest plans and it is understood that as a result the Local Highway Authority consider the proposals to be acceptable in highway safety terms and this view is considered to be reasonable. Their formal reply is still awaited and is anticipated before the meeting of Planning Committee and an update will be provided at the meeting. It is, however, considered that in terms of highway safety and examining the suitability of access as well as parking and turning facilities the proposal is acceptable.

Conclusions

Subject to the imposition of the recommended conditions the development is considered to accord with the provisions of the Development Plan and planning permission is recommended.

Recommendation

GRANT permission under Regulation 3 subject to the following conditions:

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

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

2. This permission relates to the revised plans received by the Local Planning Authority on 2nd December 2013 and any variation to the approved drawings may need the approval of the Local Planning Authority.

Reason: For the avoidance of doubt as to what is approved, the original plans being considered unacceptable.

3. Prior to the occupation of any dwellings hereby permitted the car parking spaces, vehicular access and turning areas shown on the approved plans shall be laid out and constructed and surfaced in materials, the details of which shall have been submitted to an approved in writing by the Local Planning Authority beforehand. All such areas shall then be retained for their intended use thereafter.

Reason: To ensure that adequate off-street parking is provided and retained for use to reduce the incidence of on-street parking and its attendant dangers in the interest of highway safety.

4. Prior to the occupation of any of the dwellings hereby approved the existing access shall be reinstated as footway in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

5. Before the access is brought into use 2.4m x 33m visibility sightlines shall be provided in each direction from the access with there being no obstruction to visibility exceeding 600mm in height relative to the nearside carriageway edge and these sightlines shall be retained as such thereafter.

Reason: In the interests of highway safety.

6. No development hereby permitted shall take place until samples of the materials to be used in the construction of its external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved samples.

Reason: In the interests of the visual amenity of the area.

7. No development shall take place until full details of landscape works (including means of enclosure) have been submitted to and approved in writing by the Local Planning Authority. All landscape works shall be carried out in accordance with the approved details. No dwelling shall be occupied until its means of enclosure have been provided in accordance with the approved details. The last dwelling to be occupied shall not be occupied until all means of enclosure have been provided in accordance with the approved details. All means of enclosure shall be retained.

Reason: In the interests of the visual amenity of the area and to protect the amenity of neighbours.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no dwelling hereby permitted shall be extended or altered externally, have its roof altered or enlarged, be provided with a porch, incidental building, structure or enclosure, additional hard surface, new vehicular access or be painted externally.

Reason: In view of the form of the development, in the interests of visual amenity and to protect the amenity of neighbours.

9. Notwithstanding the submitted details, further details of (a) the windows and doors and (b) the eaves, verges, headers and sills, rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. These elements shall be provided in accordance with the approved details prior to the first occupation of the development.

Reason: In the interests of visual amenity.

10. Prior to the commencement of the development details of the results of appropriate intrusive site investigation works that examine shallow mine workings and coal mining legacy issues on the site, along with any remedial measures to ensure the safety and stability of the proposed development, shall be submitted to and approved in writing by the Local Planning Authority. The development must then only be implemented on accordance with any remedial measures approved by this condition.

Reason: To ensure that the proposed development is safe from previous coal mining activity in the area.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification shall be given to the Environmental Services Department at County Hall, Matlock (tel: 01629 538595) before any works commence on the vehicular access within highway limits.

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

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

The application site is adjacent to a Public Right of Way (Footpath 118 as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form. If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order. Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council. To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for

any permanent stopping-up or diversion of a public right of way can be considered concurrently with the application for proposed development rather than await the granting of permission. Further advice can be obtained by calling 01629 533190 and asking for the Rights of Way Duty Officer.

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at:
<http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

The applicant is advised that following consultation with Severn Trent Water, they advise that there is a public sewer within the site which has statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals who will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development. For further advise please call Severn Trent Water on 0116 264 9834.

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

Item 1.7

Reg. No. 9/2013/0932/FM

Applicant:
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Burton on Trent
DE15 0QN

Agent:
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Horninglow Street
Burton on Trent
DE14 1NG

Proposal: **DEMOLITION OF EXISTING BUNGALOW AND AGRICULTURAL BUILDINGS AND THE ERECTION OF SINGLE STOREY DWELLING, GARAGE AND ANCILLARY WORKS AT WEST VIEW THE COMMON MELBOURNE DERBY**

Ward: **MELBOURNE**

Valid Date: **18/11/2013**

Reason for committee determination

The application is referred to Committee because of the implications for Saved Environment Policy 1 and Housing Policy 8 of the South Derbyshire Local Plan.

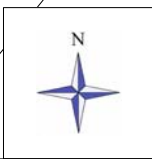
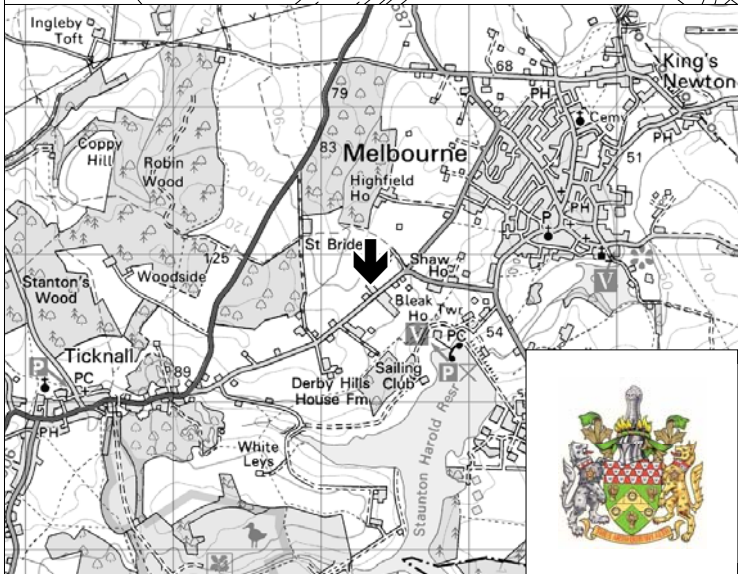
Site Description

The site is a former market garden and industrial premises containing a dwelling (approx 120 sq m) and a range of glasshouses and utilitarian sheet clad buildings (approx 1015 sq m). The latter, in particular, occupy a visually prominent location adjacent to the public highway. There are light industrial premises on the opposite side of the road at Dovesite and Two Hoots and a dwelling, Four Winds, next door. The site lies within the National Forest.

Proposal

The application proposes the demolition of all the existing buildings and their replacement with a new single-storey single dwelling house with a footprint of about 563 sqm. A separate detached garage would be 49.7 sqm. The house would be an unequivocally modern design, featuring rendered walls and overhanging flat roofs with dark coloured metal roofing. The mass of the building would be broken into smaller elements to reduce its scale. A contemporary chimney stack would be in Ashlar stone. Stone would also be used for the proposed 2.4 m high entrance walls. The windows would be set in graphite coloured aluminium frames and the main entrance and garage

9/2013/0932 - West View, The Common, Melbourne, Derby DE73 8DH



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doors in Oak. The elevation facing the road would be in the same position, relative to the highway, as the existing bungalow.

The existing main access would be utilised as opposed to a repositioned access granted before. The drive and turning areas would be surfaced with gravel.

Applicants' supporting information

- The house is designed to meet the needs of a severely disabled family member.
- The dwelling would incorporate a range of measures to make it highly energy efficient, for example by utilising solar gain, high fabric thermal efficiency and incorporating a range of renewable energy measures.

Planning History

9/0889/0551 - Use for manufacturing of agricultural machinery – permitted.

9/1194/0713 - Sales of tractors – permitted.

9/2001/0961 - The demolition of building and the erection of an office unit and the change of use and alterations for light industrial purposes- permitted.

9/2008/1202 - Re-development of site with new B1 employment building - permitted.

9/2012/0775 - Demolition of existing dwelling and industrial workshop buildings and the erection of a detached dwelling (686 sq m over two storeys) – granted by committee.

Responses to Consultations

To be reported at Committee.

Responses to Publicity

Melbourne Civic Society considers that the masonry wall would be a dominant feature in this rural setting, whilst acknowledging the existence of older brick walls in the locality. A lower post and rail fence with hedge planting is preferred.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policies 1 & 10, Housing Policy 8 and Transport Policy 6.

National Guidance

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Chapter 7 (Requiring good design)

Chapter 10 (Climate change)

Paras 186 & 187 (Decision-taking)

Para 193(Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)

Para 196 & 197 (Determining applications)

Paras 203-206 (Planning conditions and obligations)

Annex1 (Implementation)

Planning Considerations

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

- The principle.
- Impact on the character of the countryside.

Planning Assessment

The principle

Local Plan Saved Environment Policy 1 requires development to be necessary or unavoidable in the countryside subject to environmental safeguards, in particular protection of the character of the countryside. Saved Housing Policy 8 clarifies the acceptability in principle of replacement dwellings in the countryside, provided that:

- the form and bulk of the new dwelling does not substantially exceed that of the original;
- the design and materials are in keeping with the character of the surroundings;
- the new dwelling is on substantially the same site as the old; and
- there is no increase in the number of dwellings.

The proposal would not be fully compliant with Saved Housing Policy 8 because it would be of a greater size than the current bungalow. Nevertheless, in terms of floor space and volume it would be smaller than the dwelling permitted under 9/2012/0775, and substantially less than the area covered by the existing buildings on the site.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be taken in accordance with the development plan unless material considerations indicate otherwise.

The existing buildings do not make a positive contribution to the character and appearance of the countryside and occupy a prominent position in the landscape on the approach to Melbourne. Permission has previously been granted to redevelop the industrial buildings. The current application proposes a substantial overall reduction in the amount of the site covered by the buildings. They would be replaced by a dwellinghouse displaying high quality design (see assessment below) and new planting which would, overall, lead to a significant enhancement to the appearance of the site. The reduction in the amount of development and the opportunity to employ energy efficient design would also be a more sustainable way to use the site into the future, in accordance with paragraph 96 of the NPPF. In these circumstances the benefits of the development outweigh its failure to fully comply with Saved Housing Policy 8.

The curtilage of the application site is extensive, being an amalgamation of the existing garden and the former industrial buildings and hardstandings. Therefore there is the potential for substantial amounts of development to be undertaken without the need to apply to the local planning authority, by virtue of the provisions of the General Permitted

Development Order. In order to maintain the benefits of reduced site coverage, a condition removing permitted development rights is justified.

Impact on the character of the countryside

Given their unprepossessing appearance, the loss of all the existing buildings and the associated hardstanding would be beneficial to the character of the countryside.

The proposed dwelling would be of ultra-modern design and with a modern metal roof. Nevertheless it also would utilise materials common to South Derbyshire's local tradition (stone/render/timber). Although the building would be a large dwelling its mass would be broken up by the use of smaller scale components. The building would therefore sit comfortably in its landscape context. This would be in accord with Paragraph 60 of the NPPF, which states that planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

The new planting would further integrate the development with its National Forest location, in accordance with Saved Environment Policy 10.

Conclusion

The substantial environmental enhancements that would result from the removal of unsightly buildings, and their replacement with a well-designed building occupying much less of the site, justifies a decision not in accord with the development plan and would fit better with the aspirations of the NPPF.

Due to its non-conformity with the development plan, the application is subject statutory advertisement. The response period expires on 20 December.

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

Recommendation

- A. Grant authority to the Director of Community and Planning Services to consider and deal with any representations received during the remainder of the publicity period;
- B. Subject to A, **GRANT** permission subject to the following conditions:
 1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
 2. This permission shall relate solely to the plans submitted with the application, unless as otherwise required by condition attached to the permission and unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

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

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

4. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the entrance wall and gates, including the method of capping to the walls, have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

5. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

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

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

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted drawing 2013-276-10) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

8. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and

until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

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

10. The dwelling shall not be occupied until space has been provided within the application site in accordance with the application drawing 2013-276-10 for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

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

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

Reason: In the interests of highway safety.

12. The dwelling shall not be occupied until all the existing buildings on the application site have been demolished and the materials either used in the development hereby permitted or removed from the site.

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

Informatives:

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk.

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

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0963	Bretby	Newhall & Stanton	Dismissed	Delegated
9/2013/0064	Newhall	Newhall & Stanton	Dismissed	Delegated



Appeal Decision

Site visit made on 5 November 2013

by Gary Deane BSc (Hons) DipTP MRTPI

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

Decision date: 26 November 2013

Appeal Ref: APP/F1040/A/13/2197565

3 Stanhope Glade, Bretby, Burton on Trent DE15 0QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Kay Methven against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0963, dated 30 November 2012, was refused by notice dated 24 January 2013.
 - The development proposed is the demolition of the existing house together with garage and attached outbuilding and the new construction of a dwelling house and detached garage block with ancillary accommodation above.
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Decision

1. The appeal is dismissed.

Procedural matter

2. At the final comments stage of the appeal process, the appellant submitted a tree survey and preliminary arboricultural assessment. This submission sought to resolve the Council's concerns regarding the lack of sufficient information to assess the effect of the proposed development on trees, which formed the basis of its second reason for refusal. In the interests of fairness and natural justice, the Council and others were invited to submit further representations in the light of that submission, which I have taken into account.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the local area.

Reasons

4. The appeal property is an unassuming 2-storey house with an attached garage that lies in a predominantly residential area. It is located at the end and forms part of a group of three detached 2-storey houses of similar size, age and style that are served by a private drive, Stanhope Glade. The proposal is to demolish and remove the existing dwelling and to erect a substantial detached house and a detached garage on the site.
 5. The new dwelling would respect the staggered front building line of the Stanhope Glade properties and take advantage of the plot's generous depth,
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- with a good-sized rear garden with the new built form in place. The new house would be set at a lower level than the existing building and would not be conspicuous from the public highway, Ashby Road East, given the notable difference in ground levels and the effective screening provided by tall conifers and other vegetation mainly along the site's road frontage.
6. The new dwelling would be Georgian in general style with a broad symmetry to the front and rear elevations and a strong pattern of fenestration. It would noticeably differ in design, scale and appearance to the remaining properties that front Stanhope Glade with their distinctive front gables, long sloping roof at one side and dormers. Nevertheless, there is no reason to conclude that a new house of contrasting size and style to those nearby could not be successfully assimilated into the prevailing mixed character of existing development in the local area.
 7. However, in this case, the new dwelling would be considerable in scale and mass with relatively long 2-storey front and rear elevations that would extend across much of the plot's width. The horizontal emphasis in the front elevation flowing from the eaves and window lines would accenuate the width of the new house when viewed on the main approach to the site. With limited space on each side, I consider that the new 2-storey built form would appear overly large and cramped in terms of layout.
 8. It would contrast markedly with the modest scale and proportions of the Stanhope properties, which stand comfortably within their spacious plots, and with which the proposal would be visually read. Although trees and other vegetation would visually soften the new development in some views it would be seen from the private drive to be an uncharacteristically large addition and in my view an incongruous element in the street scene to which it belongs.
 9. The new detached garage would also be a sizeable addition with space to accommodate a row of four cars and ancillary accommodation at the first floor level. The proposed roof form with its part gable, part hipped ends and long ridgeline would emphasise the considerable scale and bulk of this element of the appeal scheme. The high level openings would be conspicuous features of the new building with ten roof lights, two front gables and a first floor window in each of the side elevations introducing a residential style of fenestration. Despite the use of appropriate materials to match the replacement dwelling, the main function of the new building as a garage would not be obvious especially when viewed side-on on the approach to the site.
 10. In reaching these conclusions, I acknowledge that introducing a distinctive new building that has a strong presence can often be an appropriate design solution. In my experience, this tends to work well on corner sites that can play an important role in the streetscape and in locations where the character of existing development changes to the extent that the design, scale and massing of a new building can mark the transition. In this case, however, overly large buildings would be introduced that would relate uneasily to their immediate surroundings. I also accept that the proposal would establish a vista stop in some views along the private drive. However, it would do so in an intrusive way that would interrupt the rhythm to the built form along the same side of the private drive.

11. The National Planning Policy Framework (the Framework) notes that planning decisions should not impose architectural styles or particular tastes through unsubstantiated requirements to conform to certain development forms or styles. Equally, the Framework requires that planning should always seek to secure high quality design. It states that good design is a key aspect of sustainable development and that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. For the reasons given, that would be the case with the proposal before me.
12. Against that background, I conclude that the proposed development would significantly harm the character and appearance of the local area, in conflict with Housing Policy 4 of the South Derbyshire Local Plan (LP). This policy aims to ensure that residential development is suitable in scale and character and is substantially surrounded by development.
13. With regard to other matters, the site is well treed which together with boundary hedgerows provide an attractive setting to the existing property particularly at the rear. Most of the existing vegetation would not be affected by the proposal with the opportunity taken to improve the soil conditions and landscaping around some specimens and to carry out minor works to improve their overall condition. Two horse chestnut trees, situated towards a front corner of the site would be close to the side elevation of the proposed garage. These trees are denoted in the appellant's survey as T2 and T3 and are protected under Tree Preservation Order 121. The survey concludes that T2 is of modest quality with works proposed to remove some deadwood. Its canopy may also need to be cut back from the roof of the new garage. The survey also notes that T3 is virtually moribund and is recommended for removal in the interests of safety. I see no obvious reason to disagree with these findings.
14. The root protection area of other trees would encroach into the area of the new driveway. Coupled with my findings in relation to the protected horse chestnut tree and the proposed changes in ground levels, protective measures would therefore be required to safeguard the health and longevity of trees and hedgerows during the construction phase if the proposal was acceptable. With those measures in place and secured by conditions, the proposal would not conflict with LP Environment Policy 9 and the Framework, which recognise the importance and amenity value of trees and seek to ensure that the impact of development on trees is acceptable. My favourable finding on this issue does not outweigh the harm that I have identified.
15. The new dwelling would be constructed to a high standard using energy efficient materials with the glazing in the rear, south-facing elevation providing passive solar gain. The development would also make an efficient use of land. However, these benefits are insufficient to justify the development in the light of the harm that would be caused to the area's character and appearance.
16. Overall, for the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR



Appeal Decision

Site visit made on 5 November 2013

by Gary Deane BSc (Hons) DipTP MRTPI

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

Decision date: 21 November 2013

Appeal Ref: APP/F1040/A/13/2196852

39 Stoneydale Close, Newhall, Swadlincote, Derbyshire DE11 0UN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr T Wain against the decision of South Derbyshire District Council.
 - The application Ref 9/2013/0064/FH, dated 29 January 2013, was refused by notice dated 12 March 2013.
 - The development proposed is the erection of a 2-storey extension with porch canopy over new front entrance door, rear conservatory and internal modifications to provide additional living space and bedroom.
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Decision

1. The appeal is dismissed.

Procedural matter

2. At the site visit, I viewed the appeal property from 41 and 43 Stoneydale Close with the consent of the occupiers of these neighbouring houses. On both occasions, the main parties accompanied me.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the occupiers of 41 and 43 Stoneydale Close, with particular regard to outlook and visual impact.

Reasons

4. The proposal includes a 2-storey extension at the side of the appeal property, 39 Stoneydale Close, which is a 2-storey dwelling that lies in a predominantly residential area. The flank gable wall of the new addition would be close to and parallel with the boundary of the site. In this position, it would face the rears of 41 and 43 Stoneydale Close, which stand at right angles to No 39. The rear elevations of these adjacent properties include a living/dining room window at No 41 and a bedroom window at No 43, both of which are at ground floor level.
 5. Housing Policy 13 of the South Derbyshire Local Plan (LP) notes that residential extensions will be permitted if proposals, amongst other things, are not detrimental to the amenities of adjoining properties. The Council's Supplementary Planning Guidance, *Extending your Home* (SPG) supports this
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policy. It sets out minimum recommended separation distances between a new extension and a neighbouring dwelling. In this case, the gap between the new gable wall and the rear ground floor bedroom window of No 43 would fall just short of the SPG's guideline figure of 9-metres. According to the Council, the distance between the new built form and the ground floor living/dining room window of No 41 would also fail to meet the minimum 12-metre threshold recommended in the SPG.

6. The supporting text of the SPG indicates that the separation distances are guidelines to protect privacy and reduce the effect of overlooking. Although the terms "outlook" and "visual impact" are not cited in that particular context, the aim of applying these guidelines is to safeguard residential amenity. That objective is consistent with an underlying purpose of LP Housing Policy 13, which, in turn, is in accordance with a core planning principle of the National Planning Policy Framework¹ (the Framework). Accordingly, I attach considerable weight to LP Housing Policy 13 and the Council's SPG in this case. In doing so, I note that the Council does not appear to rely on similar guidance regarding the separation distances about and between dwellings within new housing schemes².
7. From the rear ground floor bedroom window of No 43, views of the new sidewall would be direct and at a significantly closer range than the existing wall, which is noticeably set back from the shared boundary between this property and the site. Although existing vegetation in the rear garden of No 43 would partly screen and visually soften the new built form to some extent, the new sidewall would unacceptably dominate outlook when seen from this main habitable room. The elevated position of the proposal in relation to No 43 due to the notable difference in ground levels would accenuate its visual impact, causing it to be overbearing to the occupiers of this adjacent property. To my mind, the existence of full-length glazed doors in the side rear elevation, which provide a secondary source of external outlook and natural light to this bedroom, would not satisfactorily offset this harm.
8. The proposal would be less imposing on the occupiers of No 41 because views from its ground floor living/dining room window would be at an oblique angle and at a slightly greater distance compared to those from the rear of No 43. Nevertheless, the new built form would stand tall adjacent to the shared boundary with this property and, in my judgement, would dominate outlook and be oppressive from this direction.
9. For these reasons, I conclude that the proposed development would materially reduce the living conditions of the occupiers of Nos 41 and 43, in conflict LP Housing Policy 13, the SPG and the Framework. In reaching this conclusion, I acknowledge that neither of the occupiers of these neighbouring houses has objected to the proposal. However, my assessment takes into account future as well as existing occupiers of these properties.
10. The appellant notes that if the proposed built form was in place then the rears of Nos 41 and 43 could be extended to within 7-metres of their rear boundary as permitted development. If that were the case, I agree that the separation

¹ A core principle of the National Planning Policy Framework is to secure a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17).

² Supplementary Planning Guidance, *Housing Layout and Design*

distances cited in the SPG would be less relevant. Nevertheless, while I have taken this scenario into account, it does not alter my findings in relation to the main issue, which are based on the proposal before me.

11. Therefore for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR