

## DEVELOPMENT CONTROL COMMITTEE – 9 January 2006

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

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### REPORT OF THE HEAD OF PLANNING SERVICES

1. Planning Applications
2. Appeals

### INDEX TO PLANNING APPLICATIONS

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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 Head of 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 Head of 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.



19/01/2006

**Item** 1.1**Reg. No.** 9/2005/1409/F**Applicant:**

Mr Mrs M B & A P Gouldin  
10 Longlands Lane  
Findern  
Derby  
DE65 6AJ

**Agent:**

Mr Mrs M B & A P Gouldin  
10 Longlands Lane  
Findern  
Derby  
DE65 6AJ

**Proposal:** The erection of a bungalow adjacent to the existing bungalow at 10 Longlands Lane Findern Derby

**Ward:** Willington/Findern

**Valid Date:** 28/11/2005

This case is reported to committee because the applicant is an employee of the Council.

**Site Description**

The site forms the side garden of a corner bungalow plot among a small development of bungalows built in the 1960s. The current driveway access to No 10 is at the rear alongside the driveway serving No 2 Porters Lane.

**Proposal**

The scheme proposes the addition of a further bungalow alongside No 10 as an extension to the row facing Longlands Lane. The proposed bungalow would be in the same style as the others and would sit slightly lower in the street than that at No 10. An amended plan shows No 10 with a new hardstanding and new access from Longlands Lane. The new bungalow would utilise the existing access and driveway off Porters Lane.

**Planning History**

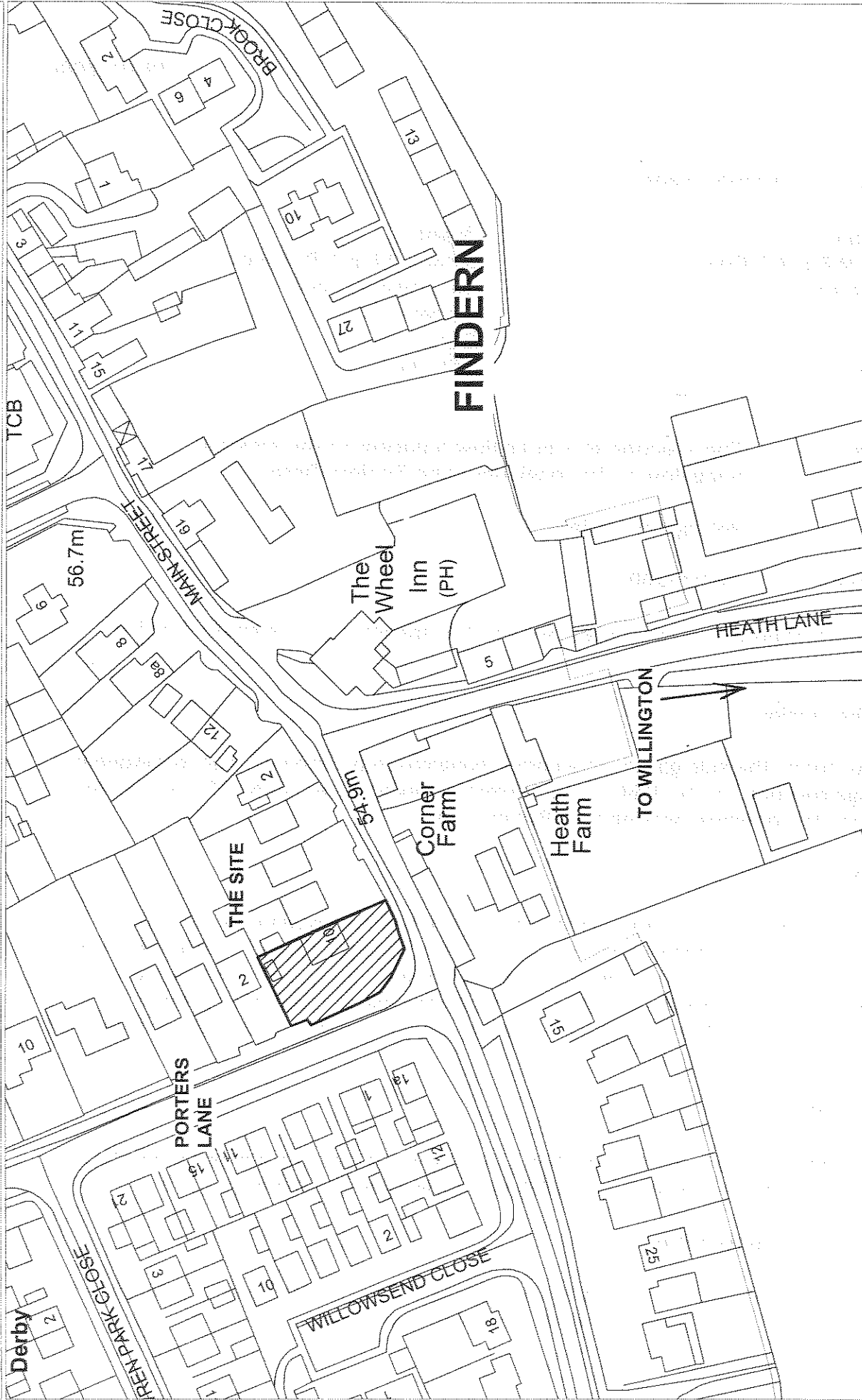
An application for the erection of three, two-storey houses in place of the existing bungalow was submitted earlier in 2005 but subsequently withdrawn.

**Responses to Consultations**

The Parish Council considers that the new access on to Longlands Lane is far too close to the junction which is dangerous and therefore unacceptable.

9/2005/1409/F 10 Longlands Lane

Findern  
Derby



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The County Highway Authority, Severn Trent Water and the Environmental Protection Manager have no objections to the scheme

### Responses to Publicity

A neighbour highlights concerns that the close location of the new access to the road junction would introduce a hazard

### Development Plan Policies

The relevant policies are:

Joint Structure Plan: GDSP3, Housing Policy 5

Local Plan: Housing Policies 5 and 11, Transport Policy 6.

### Planning Considerations

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

- The proposal in relation to the development plan
- Visual amenity
- Highway safety

### Planning Assessment

Being located on a side garden plot in an established residential location within a serviced village, the site for residential development is considered acceptable. A previous application for its development showing three dwellings was withdrawn earlier after negotiation with the developer. The current application is the result of that negotiation and shows a sympathetic scheme which simply continues the line of existing bungalows fronting Longlands Lane in the same style. The bungalow would be far enough away from any other property not to be detrimental to neighbour's amenity. Given the advice of the County Highway Authority, local concerns about highway safety cannot be substantiated.

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

### Recommendation

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

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

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

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

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

3. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no.2 revision A.

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

4. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

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

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

#### Informatives:

To contact the Area Engineer South, Trent Valley Area, Derbyshire County Council, Director of Environmental Services, County Hall, Matlock, Derbyshire (Tel. 01629 580000 ext 7595) at least six weeks before the commencement date of the proposed works in order to arrange the necessary supervision of works on the highway crossing.

19/01/2006

**Item** 2.1**Reg. No.** 9/2005/1199/L

**Applicant:**  
Mr Mrs Hughes  
Tythe Barn Derby Road  
Swarkestone  
Derby  
DE73 7JB

**Agent:**  
Latham Architects  
St Michael's  
Queen Street  
Derby  
DE1 3SU

**Proposal:** The installation of photovoltaic panels to the existing south facing roof pitch at Tythe Barn Derby Road Swarkestone Derby

**Ward:** Aston

**Valid Date:** 10/10/2005

### **Site Description**

Tithe Barn is a stone built early 17<sup>th</sup> century farm building converted to residential use in 1985. It is situated about 300 m off the public highway in farmland to the east of the village. The south facing roof slope is not visible from the road but can be seen from the vicinity of St James Church. The south slope of the roof has been altered previously by the insertion of rooflights.

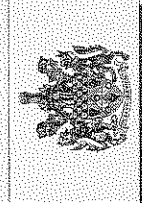
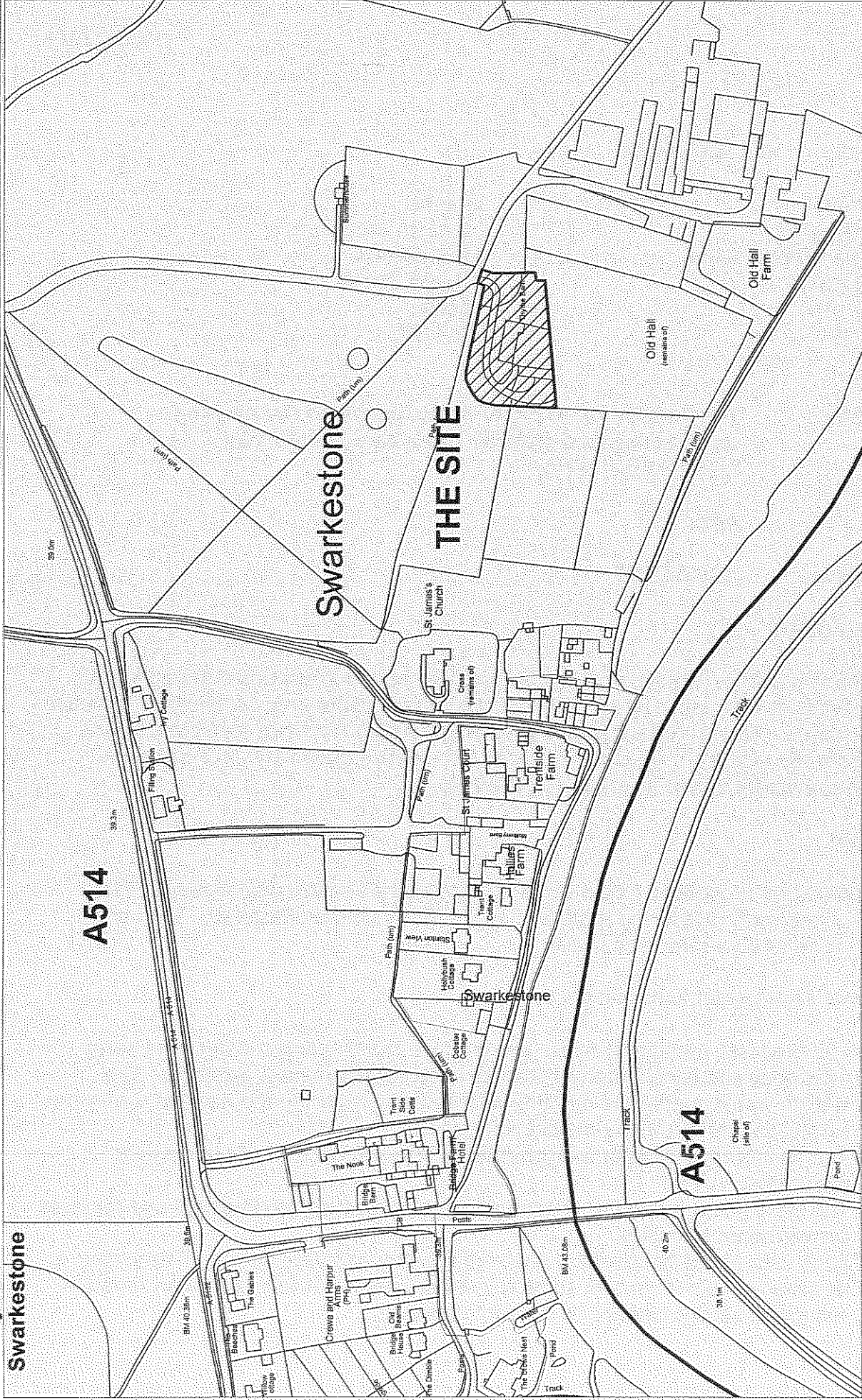
### **Proposal**

The application proposes a single panel of photovoltaic cells, running almost the length of the roof, measuring some 21.5 m x 1.7m, including flashings. The panels would sit centrally in the roof slope.

### **Applicant's Supporting Information**

- a) The proposal would modernise and improve the building's long-term energy efficiency and contribute towards lowering environmental pollution. The system would supply the building with electricity during the day and supply any surplus power to the main electricity grid.
- b) The panels convert solar energy directly into electricity without noise or pollutants.
- c) The system is designed to fit directly onto an existing pitched roof and replaces conventional roof tiles.
- d) Roof tiles would be carefully removed and stored safely on site. The system is designed to allow the roof to be reinstated, as all new elements can simply be removed without damage to the roof members.

92005/1199/L Tythe Barn  
 Derby Road  
 Swarkestone



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- e) Visually the panels would form an integral part of the roof and may appear as a run of skylights. The face of the panels would project only marginally above the planes of the roof and would not appear to be a recent attachment.
- f) Utilising solar energy and conservation of listed buildings are both activities aimed at achieving similar objectives.
- g) Roof integrated solar panels would only marginally affect the external appearance of the listed building but the gain from long-term environmental conservation is greater.
- h) This particular system would be carried out under the DTI Major Photovoltaic Programme managed by the Energy Saving Trust.

### Responses to Consultations

The Design and Conservation Officer acknowledges that the alterations to the building would only be visible from a few locations nearby, but objects because the panels would require the removal of a significant area of roof tiles of historic and architectural merit. The appearance of the roof is already compromised by a number of standard roof lights. The resulting visual harm to the appearance of the roof would be seriously exacerbated by the proposal, which would disfigure and further disrupt an already altered and cluttered roofscape, to the detriment of the character of the listed building.

In 2002 English Heritage produced guidance on the application of Building Regulations Approved Document Part L, Conservation of Fuel and Power, which now applies to both new and existing buildings but allows a more flexible approach for historic buildings. The categories for which the Regulations allow more flexibility include listed buildings, buildings in conservation areas and other historic buildings referred to in the development plan (for instance historic buildings of local interest). Part L does not specifically cover the provision of renewable energy sources but the English Heritage guidance provides a good framework for considering how to approach conflicts that may arise in building conservation and energy conservation. The document points out that new construction each year adds about 1% to the national building stock. Historic buildings (both listed and unlisted), a precious and finite resource, constitute less than 6% of the total national building stock. English Heritage believes that a contribution towards national energy saving can be made from this heritage stock but it is a low proportion of the total. In essence the guidance supports the government's aims to reduce CO<sub>2</sub> emissions through improving energy efficiency provided that it can be achieved without harm to the special characteristics of historic buildings, which many standard solutions would. For instance rather than replace a single glazed Georgian window with a sealed double glazed unit it advocates efficient draught proofing or in certain cases secondary glazing or improving roof insulation instead and not overlooking the thermal value of simple things like heavy curtains and shutters. In the right circumstances the regulations would not prevent the replacement of inappropriate double glazing with single-glazed windows which match the originals.

An analogous situation for the provision of a panel of photovoltaic cells might advocate their provision where they can be completely hidden from view and thus do not affect the special historic and architectural appearance of a listed building and/or

where they do not entail the removal of historic fabric. Listed building consent has been granted for instance for the installation of solar panels at Twyford Hall in a concealed inner roof slope and carefully positioned ground mounted panels have been provided at Dame Catherine School Ticknall without detriment to the character of the conservation area.

### **Development Plan Policies**

The relevant policies are:

RSS8: Policies 27 & 41

Joint Structure Plan: Environment Policies 10 & 19

Local Plan: Environment Policy 13

### **Planning Considerations**

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

- The impact on the character of the listed building, having regard to the desirability of promoting a renewable energy project.

### **Planning Assessment**

The Structure Plan and PPS22 offer strong encouragement to renewable energy schemes and energy efficient buildings. In general terms dwellings with south facing roof slopes offer the opportunity to make good use of photovoltaic cell technology. The proposal would therefore make a contribution to renewable energy objectives.

Notwithstanding the benefits of renewable energy the building is included on the statutory list of buildings of historic or architectural interest. RSS8 requires particular consideration to be given to the effect on the cultural environment (including the setting of historic assets). The proposal would result in significant change to the appearance of the roof, as set out in the Design and Conservation Officer's comments. On balance therefore, because of the change to the external fabric of the listed building, the proposal is unacceptable.

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

### **Recommendation**

**REFUSE** permission for the following reason:

1. Notwithstanding the renewable energy benefits of the works, the proposal would disfigure and further disrupt an already altered and cluttered roofscape, to the detriment of the character of the listed building, contrary to the following policies: Derby and Derbyshire Joint Structure Plan Environment Policy 10; and South Derbyshire Local Plan Environment Policy 13.



# Appeal Decision

Site visit made on 14 December 2005

by **J Chance BSc DipTP MRTPI**

an Inspector appointed by the First Secretary of State

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Date  
**23 DEC 2005**

**Appeal Ref: APP/F1040/A/05/1188342**

**616 Burton Road, Midway, Swadlincote, Derbyshire DE11 0DP**

- 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 C Casey against the decision of South Derbyshire District Council.
- The application Ref 9/2004/1579/F, dated 1 December 2004, was refused by notice dated 2 March 2005.
- The development proposed is described as "erection of a 1 storey house extension".

**Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out below in the Formal Decision.**

## Procedural Matters

1. Although the site address and description of the development proposed on the application form are as given above, the proposed extension would be at the annexe building, known as No 616A Burton Road, and it would be a first floor level extension over part of the ground floor of the existing building, and I have determined the appeal on this basis.

## Main Issue

2. The main issue is whether the proposed development would result in the creation of a new separate dwelling and, if so, how this would impact on the Council's housing policies for the area.

## Planning Policy

3. The development plan includes the South Derbyshire Local Plan (LP) (adopted 1998). Housing Policy 4 indicates that residential development within or on the fringes of the built-up area which includes Swadlincote and Midway will be permitted, provided the site is substantially surrounded by development and, amongst other things, that it does not result in a prominent intrusion into the rural landscape, is of a suitable scale and character, and that it would not detract from the character or environmental quality of the area by developing an important gap or space.

## Reasons

4. The 1992 planning permission which resulted in the formation of No 616A as a detached bungalow requires its occupancy to be restricted to members of the household of No 616 Burton Road or the domestic staff, and that it is not severed from the main house as a separate and unconnected dwelling. The proposed development would comprise an additional bedroom with en-suite facilities within that annexe building, enabling three-bedroom accommodation to be provided.

5. The Council is concerned that the proposed extension would result in the annexe building becoming a separate dwelling which would no longer be ancillary to No 616. However, I saw that the existing accommodation at No 616A already comprises a fully self-contained dwelling with its own existing kitchen and bathroom facilities, together with a lounge, dining room and two bedrooms. I also saw that it is physically separate from No 616 and I understand that it is occupied by family members of the appellant, who lives at No 616.
6. Whilst the proposed extension would mean an increase in the accommodation provided within No 616A from two to three bedrooms, there would be no increase in the overall footprint of the building. Furthermore, I saw that the existing annexe bungalow offers only modest accommodation and that the proposed additional bedroom would give much needed extra living space to better accommodate the appellant's daughter, son-in-law and their small children. Consequently, I do not share the Council's view that the proposed extension would represent such a significant addition that the annexe building would no longer be considered as ancillary to the main dwelling and would therefore be tantamount to the creation of a new dwelling.
7. If I were to allow this appeal, I consider that there would be no significant change in the status of the annexe building in terms of either its physical separation or the nature of its occupancy. Moreover, even though the proposed extension would increase the overall mass and floorspace of the annexe building it would, in my opinion, still be subservient in scale and appearance to the main building at No 616. It would also continue to be ancillary in function to that main dwelling as it would still be occupied by family members. In the particular circumstances of this case, I disagree with the Council's view that the proposal would result in the formation of a new residential unit within an area where residential development is generally resisted.
8. Furthermore, the site is well screened from the road and from other nearby properties and I consider that although the upper section of the roof of the proposed extension would be seen above the existing roof ridge from the fields to the rear, as well as from No 616, the extension would not be a prominent intrusion into the rural landscape or have an adverse effect on openness, and would generally be of suitable scale and character. Even though the site is outside the main built-up area of Swadlincote and is not substantially surrounded by development, I find that the proposal would not result in the formation of a further dwelling or unacceptably consolidate an isolated group of houses outside the main urban area. Consequently, I consider that there would be no serious conflict with the intentions of LP Housing Policy 4, if I were to allow this scheme.
9. I therefore conclude that the proposed development would not result in the creation of a new separate dwelling and that it would have no serious adverse impact on the Council's housing policies for the area.

#### Other Matters

10. I have had regard to the development at the old farm shop site referred to by the appellant and the appeal decision for the erection of a single dwelling in the garden of The Spinney, 600 Burton Road, referred to by the Council. Nevertheless, the current proposal differs significantly in its scale and context and I have considered this appeal on its own merits and by reference to the development plan and find that it is acceptable for the reasons given.

### Conditions

11. I have considered the conditions suggested by the Council having regard to the advice in Circular 11/95. In addition to the standard commencement condition, which should refer to 5 years because the application was made before 24 August 2005, in the interests of visual amenity a condition would be required to ensure that the external finishes would match those of the existing building.
12. Since both parties accept that the condition on the 1992 planning permission already prevents separate occupation and use of the living accommodation from the main house, there would be no need to re-impose that previous condition.

### Conclusion

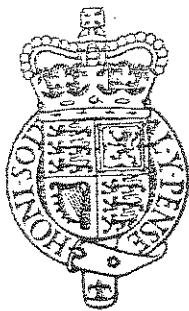
13. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

### Formal Decision

14. I allow the appeal, and grant planning permission for a first floor level extension over part of the ground floor of the existing building at the annexe building at 616 Burton Road, Midway, Swadlincote, Derbyshire DE11 0DP in accordance with the terms of the application, Ref 9/2004/1579/F, dated 1 December 2004, and the plans submitted therewith, subject to the following conditions:
  - 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
  - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the local planning authority.

*J. Chance*

INSPECTOR



# Appeal Decisions

Hearing held on 15 November 2005

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the First Secretary of State

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Date  
**12 DEC 2005**

## Appeal A: Ref APP/F1040/C/05/2002477 Land to the north of Uttoxeter Road, Hilton, Derbyshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Leo Smith against an enforcement notice issued by South Derbyshire District Council.
- The Council's reference is E2004/340.
- The notice was issued on 25 April 2005.
- The breach of planning control as alleged in the notice is the **unauthorised use of the land for the siting of residential gypsy caravans, temporary structures and chattels and the parking of towing and other vehicles.**
- The requirements of the notice are:
  1. **The residential gypsy caravans, temporary structures, chattels, towing and other vehicles to be permanently removed from the land.**
  2. **The areas of hard standing to be removed and any resulting loose material and rubble to be removed from the land.**
  3. **The land to be restored to agricultural use by levelling the ground and re-seeding it with grass.**
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) & (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

## Appeal B: Ref APP/F1040/A/05/1180862 Land north side of Uttoxeter Road, Hilton, Derbyshire

- 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 Leo Smith against the decision of South Derbyshire District Council.
- The application Ref 9/2004/1472/U, dated 5 November 2004, was refused by notice dated 8 March 2005.
- The development proposed is **for small Romany gypsy site for 5 caravans.**

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

1. At the commencement of the hearing Mr Brown, as agent for the Appellant, amended the proposal subject to Appeal B by the deletion of the proposed brick built amenity block, shown on submitted plans and details. He also sought to vary the proposal to be for a maximum of 3 caravans (rather than 5) for the extended family of Mr Smith on 2 pitches. The Council made no objection to such an amendment at this stage, which would involve a lower level of use. I shall approach the merits of the development in both appeals on this basis.
2. At the hearing the Appellant indicated that he was a Romany gypsy who now occupied the site with his wife and 2 dependent children, together with his married daughter and her one year old son. For 15 years they had wintered in the South Derbyshire/Burton-on-Trent area, and had travelled all around Scotland each summer. Because of the problems associated with the appeals' site he indicated that he had only travelled away from it for 1 week during the course of 2005. The Council did not argue that gypsy status had at this stage been lost as a result of recent events, and I agree. The merits of the unauthorised development fall to be considered on the basis that the land is being used as a caravan site for gypsies.

3. The site in both appeals is the same, and the development to be considered is also effectively the same. They involve a rectangular shaped land parcel of about 0.2 hectares lying alongside the northern edge of Uttoxeter Road, in countryside at a distance of about 650 metres to the west of the main limit of development at the settlement of Hilton.
4. The site is flat and bounded on all sides by forms of hedge vegetation. To the north the hedge is fairly complete and substantial; to the west is a recently planted hedge of mixed species, including a small number of established trees; to the east is a more substantial established hedgerow with gaps filled by recent planting of mixed species; and to the southern roadside boundary are recently planted lines of *prunus laurocerasus* (laurel) bushes. This boundary is also marked by post and rail fencing. A vehicular access to Uttoxeter Road is centrally positioned. Within the site is an access strip, together with some areas of hardstanding of road planings and crushed stone leading to the rear of the site where 2 caravans were stationed at the date of the hearing. One was a residential caravan, and the other a smaller tourer. Most of the site remains vegetated with grass, and there are a number of mature trees indicative of the earlier status of the land as a small orchard.

### Ground (a) appeal, the deemed application and the appeal against refusal of planning permission

#### *Planning policy*

5. The development plan for the area comprises, in addition to the Regional Spatial Strategy for the East Midlands of March 2005, the Derby and Derbyshire Joint Structure Plan (2001) and the South Derbyshire Local Plan (1998). Both plans contain criteria based policies for gypsy site provision. The replacement Draft Local Plan, which had contained a criteria based gypsy site policy similar to the adopted plan, has now been withdrawn. The Council is pursuing instead the preparation of its Local Development Framework [LDF].
6. In terms of national guidance, the Consultation Paper on Planning for Gypsy and Traveller Sites (December 2004) remained in draft form at the date of the hearing. It thus carries only limited weight, although the draft provisions relating to local housing assessments already have a status deriving from the terms of the Housing Act 2004 and *PPG3: Housing* (2000). The Council indicated that it was intended to prepare a needs assessment on a collaborative basis with other Derbyshire authorities as an input to the LDF process. This had not, however, formally been commenced with financial arrangements and a timetable for the process yet to be finalised.
7. Although the works would be required as an input to draft Development Plan Documents [DPD], it is not yet possible to put a clear timescale to the study of local needs and any site specific implications.

#### *The main issues are*

- the effects upon the character and appearance of the countryside;
- the adequacy and safety of the access to Uttoxeter Road;
- the sustainability of the site as a location for residential development, having regard to the particular difficulties associated with the location of gypsy sites;
- whether any harm in these respects is outweighed by a need for gypsy sites in the locality and the personal circumstances of the Appellant and his family, having regard to national and local policies for the accommodation of gypsies, including the processes to be followed in relation to the emerging LDF in quantitative assessment of need for gypsy sites in South Derbyshire.

#### *Impact on the countryside*

8. The site lies in relatively flat countryside, some way removed from the built up area of the expanding settlement of Hilton, and alongside the old A50 road, now a Class C highway. The open landscape surrounding the appeals site is attractive, predominantly agricultural land. In view of the limited existing tree/hedge screening around the site, caravans on the land are readily seen from a number of points, most notably along Uttoxeter Road at the approach from the west and alongside the land. From locations to the east, the caravans sited towards the rear

of the plot are shielded to view to some degree by the buildings and garden land at the dwelling known as Moorend.

9. Residential use of the site is noticeable, and has intruded into the rural landscape. As most of the partial screening by hedge and tree vegetation appears deciduous, I would expect the development to be more prominent during winter months.
10. The small scale of the caravan use thus far (and as now being proposed following reduction of the Appeal B proposal to 3 caravans) would, however, limit the degree of harm to the character and appearance of the countryside, as would a condition of the kind proposed by the Appellant restricting the size of caravan units on the land. Features associated with residential occupation in terms of hardstanding for vehicular access and sheds/smaller structures were at the time of the hearing relatively modest in their impact. Such widely used features on caravan sites add to the urbanising effect of the development. The originally proposed brick amenities block is, however, no longer part of the proposal. These limits to landscape impact reflect the character of the development as a 'small family site'.
11. Landscape planting around the site margins would be capable over time of assimilating it into the rural scene rather better than now, but this would take a number of years to become effective. The landscaping which has already been carried out, particularly to the western boundary, is a hedge of reasonable species mix and density, although as this has used small plants it will be of limited value over the short term. The planting of laurel along the roadside might be more effective more speedily in screening views of the site, although the 'ornamental' feature thus created would appear somewhat incongruous in the local landscape.
12. As to compliance with criteria (iii) and (v) of adopted local plan Policy H15, these apply broad tests of acceptability which require an overall subjective assessment. Whether "ACCEPTABLE IN ENVIRONMENTAL TERMS" depends upon the degree of intrusion into the rural scene. The requirement for a site to be "CAPABLE OF SYMPATHETIC ASSIMILATION INTO ITS SURROUNDINGS (INCLUDING LANDSCAPING AND SCREENING)" does not suggest a requirement for complete screening of caravans on the land. That would be perhaps unrealistic. Over the short term, the degree of prominence of the site and relative lack of screening must count against the development, but this could be significantly mitigated over the medium term by perimeter planting shielding from view or softening the perceived outline of caravan and associated structures. Conflict with these elements of H15 is not clear cut.

#### *Highway safety*

13. The evidence contains no detailed analysis of the visibility characteristics of the existing site access to Uttoxeter Road, a Class C single carriageway subject only to the national speed limit of 60 mph alongside the site. Although regarded by the Council as a fast and busy stretch of road with a long "straight" to the west, a 40 mph limit applies a short way to the east of the site. As laid out at the time of the hearing with a post and rail fence aligned to permit the required setback for visibility along the carriageway, the access appeared to meet the requirements set out in Table A of *Places, Streets and Movement: A good practice guide* for visibility along the major road.
14. Notwithstanding this, the Council and local residents were concerned about safety because of the speed and type of traffic using Uttoxeter Road and difficulties perceived where slow moving vehicles emerged from the site. There were no figures of existing or predicted traffic flows along the road or the HGV component. I accept that growth of the nearby business park is likely to add to current levels, but there was no statistical basis for the expressed concern about the characteristics of this Class C route linking through traffic routes with the settlement of Hilton and the new employment areas. I would not expect occasions when slow moving vehicles left the site, in the form of towed caravans, to be sufficiently frequent to pose a separate safety concern. Where such events took place, I would expect users to exercise reasonable care in executing manoeuvres safely. This matter does not lead to undue concern for highway safety.
15. Over and above this matter there was concern about additional difficulties which would arise where there were incidents of flooding of the nearby carriageway or conditions of fog. This area was said to be susceptible to both. Photographs showed one flood occasion where shallow water stood on the carriageway. In both of these respects I consider that all road users would be expected to exercise due diligence, and both the local conditions and level of site traffic



generation would not result in a situation where the development could be said to be prejudicial to highway safety.

16. In overall terms my conclusion is that the site reasonably complies with H15 (vi).

*Sustainability of the location*

17. One of the key steps in delivering sustainable development set out in *PPS1 (2005)* is the provision of improved access for all to health, education and other community facilities by ensuring that new development is located where these can be reached on foot, bicycle or by public transport rather than having to rely on access by car. This builds upon the longer standing advice of *PPG3:Housing (2000)* on the promotion of more sustainable patterns of development in rural areas by a focus on existing towns and identified service centres. In line with this approach, *PPS7(2004)* re-iterates longstanding advice that new house building in the countryside, away from established settlements, should be strictly controlled.
18. Residential use of the appeal site would run counter to this overall approach. The site is physically detached from the settlement of Hilton and its range of local services. Notwithstanding the available highway edge footway, and local facilities being within 2 km, walking distances are such as to make it likely that residents on the appeal site would for most purposes use motor vehicles to gain access to them. This should count against the grant of planning permission for caravan site development in the same way that I would expect permanent residential development to be resisted in locations such as this. I do not agree with Mr Brown's assertion that the needs of gypsies require a location in countryside.
19. It was argued for the Appellant that in practice gypsy sites were only likely to be found in such locations physically detached from settlements. That may well be true of many authorised sites as a reflection of the pattern of amenity concerns often associated with their location. It may also be that similar unsustainable locations are put forward in the future in recognition of such potential problems. It does not, however, follow that such an approach should be pursued. In developing site specific proposals for gypsy provision via the LDF process, I would expect the Council to seek to meet the terms of national guidance in the same way as they would be likely to be applied to permanent forms of residential development. In advance of such a search process it would be inappropriate to identify or permit sites which went against these concerns on the general premise that gypsy sites, otherwise acceptable in locational terms, could only be found in isolated rural locations.
20. Although more remote locations than the appeal site may sometimes be proposed for gypsy sites, my conclusion is that the travel implications of the development for access to some of the most important local services weigh against permission for the development on sustainability grounds. This is notwithstanding that H15 does not impose a test of equivalent strength in its requirement for sites to be "REASONABLY ACCESSIBLE TO COMMUNITY SERVICES AND FACILITIES", and which the appeal site may be said to meet.

*Other environmental considerations*

21. A number of other matters of concern were raised by local residents. Having regard to the map and site information on the location of the gas pipeline, concerns for safety in relation to it should not weigh against the development.
22. Councillor Walton gave details of past flood events in the locality. Again, available evidence does not suggest a need for especial concern. Land liable to flooding appears to reach as far northwards as (and including) Uttoxeter Road in the vicinity of the site, but not further to encompass this land itself. Whilst the Environment Agency keeps its maps of land liable to 1 in 100 year flood events under regular review, there was nothing to suggest that the appeal site was directly at risk from such an event.
23. Concerns at the amenity impact of the unauthorised use focused on the occupants of Moorend, as the only residential property in the vicinity. The main part of this property is about 80 metres from the occupied parts of the appeal site. Mr and Mrs Plimmer outlined difficulties which they had had as a result of noise from the diesel generator used on the appeal site, and noise from the barking of dogs kept by the Appellant. I accept that these noise sources have had some effect upon the standard of amenity which they enjoy in this relatively isolated location. Having

regard to the degree of separation and the scale of residential occupation of the appeals site, I do not, however, regard the degree of conflict with H15 (ii) as sufficient in its own right to reject the appeals outright.

#### *Need/personal circumstances*

24. The Council regarded Policy H15 as an 'exceptions' policy in the sense that general countryside policy in Environment Policy 1 seeks to protect the countryside from unnecessary development. The existing criteria based policy H15 does not, however, formally include a test of need for gypsy site proposals. To the extent that the current proposal conflicts with its formal criteria a need for the development would be a factor to weigh in the balance against the development plan position.
25. No quantitative assessment had yet been carried out of local need for gypsy accommodation. In claiming the adequacy of local supply, the Council relied upon some past bi-annual counts which had shown available capacity on authorised sites, including a nearby private gypsy site at Hatton, a short way to the west. The discussion of the circumstances relating to individual listed sites did not, however, clearly support such a conclusion. The status of the Hatton site appeared at this time to be problematic, and unoccupied plots not available to gypsies. Low site turnover and the existence of a waiting list at the large Foston site was not disputed. Notwithstanding a proposal by the County Council to add a further 3 plots at this location, there are clearly doubts about the adequacy of this public provision.
26. In general terms there are doubts about the availability, at least in the short term, of other South Derbyshire sites to accommodate Mr Smith and his extended family in place of the appeals' site. Successive bi-annual gypsy counts had consistently recorded a significant number of caravans on unauthorised sites within the district, including the most recent returns for July 2005. Although the district's position within the A50 transit corridor might explain this to some degree, it is in its own right indicative of a continuing need for further accommodation.
27. The personal circumstances of Mr Smith and his family did not suggest that there are unusual educational or healthcare problems, which might be more serious than those experienced by the majority of gypsy families. Nevertheless, this factor adds some weight to the needs situation in that a base at the appeals site would facilitate access for them to healthcare, education and other community services.

#### *Overall conclusions*

28. Analysis of need in an individual case such as this is often beset by difficulties of the kind discussed above. This emphasises the importance of the broader assessment process, such as is now required by the terms of the 2004 Act and PPG3. Until such time as this has been done, a need for accommodation for the Appellant and his family weighs clearly in favour of allowing the development at least in the interim period, when measured against the strength of the site specific objections.
29. If a quantitative need for further provision were to be shown by the overall study of the district, the relative advantages and disadvantages of the appeals' site would need to be assessed within the LDF process against other options. My analysis of the appeals suggests that there are objections to this site on landscape, sustainability and residential amenity grounds. These are not of sufficient force to rule it out completely at this stage, or to indicate that the land should be vacated as speedily as practicable.
30. The lack of a clear timetable for the emergence of proposals connected with the LDF process is itself problematic. From what I heard of the situation, it cannot be assumed that the matter will be adequately clarified in less than 2 years. My conclusion is that this site should not be permitted at this stage on a permanent basis while this process is carried out.
31. The alternatives would be to permit retention of the site for a 2 year period by time limited permission, or to extend the period for compliance with the enforcement notice on an equivalent basis. If a short term permission is granted, it would not be reasonable to require by conditions of the kinds discussed during the hearing, all improvements to the site which necessitated substantial on-site investment. In this case, immediate harm from the current level of use is relatively modest, some planting improvements have already been carried out to site boundaries,

and the vehicular access to Uttoxeter Road is physically satisfactory in relation to safety standards. There would at the same time be some advantage in securing a measure of control over the scale of caravan use of the land by a permission containing conditions restricting such matters, as well as a number of other controls.

32. My overall conclusion is that the circumstances are sufficient to justify a 2 year permission subject to conditions restricting occupancy to gypsies, maximum number of caravans and other matters in the possible conditions discussed during the hearing. This would be a proportionate response to the submissions made on behalf of the Appellant in relation to interference with rights under Article 8 of the ECHR.
33. Requirements for fuller landscaping treatment and measures relating to foul drainage would be excessive at this stage. Similarly, formalisation of access arrangements, including an on-site turning area should not be specified in relation to this short term permission. Current on-site conditions allow for vehicle turning in practice. At the same time, a restriction on maximum vehicle size visiting the site would protect the highways situation, as well as providing a measure of control over the site's appearance. Allied to this would be a condition precluding commercial use of the site. I agree also that the conditions suggested on behalf of the Appellant restricting the size of caravan permissible would avoid intensification of use to the detriment of the appearance of the area.
34. Subject to these matters, I shall allow both appeals, quash the notice and grant planning permission for a 2 years period. The ground (g) appeal does not therefore fall to be considered.

#### Formal Decisions

#### Appeal A against the enforcement notice: Ref APP/F1040/C/05/2002477

35. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land to the north of Uttoxeter Road, Hilton, Derbyshire, as shown on the plan attached to the notice, for the siting of residential gypsy caravans, temporary structures and chattels and the parking of towing and other vehicles subject to the following conditions:
  - 1) The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiry of 2 years from the date of this permission.
  - 2) No more than 3 caravans shall be stationed on the land at any time. No caravan shall be stationed on the site that is not capable of being towed legally on a public road.
  - 3) This permission does not authorise use of the land as a caravan site by any other persons other than gypsies, as defined in Section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended.
  - 4) No commercial activity shall take place on the site.
  - 5) No vehicle shall be parked or stored on the site which exceeds 3.5 tonnes unladen weight.

#### Appeal B against refusal of planning permission: Ref APP/F1040/A/05/1180862

36. I allow the appeal, and grant planning permission for a small Romany gypsy site for 3 caravans on land to the north side of Uttoxeter Road, Hilton, Derbyshire in accordance with the terms of the application, Ref 9/2004/1472/U, dated 5 November 2004, and the plans submitted therewith (as amended by the letter dated 15 November 2005), subject to the same conditions as are attached to the planning permission granted in respect of Appeal A.

  
INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Philip Brown BA(Hons) MRTPI  
Leo Smith  
Siobhan Spencer

Chartered Town Planner and Development Consultant  
Appellant  
Of Derbyshire Gypsy Liaison Group, Ernest Bailey  
Community Centre, New Street, Matlock DE4 3FE

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Roma Walton  
  
Mr T Denning Dip URP MRTPI  
Mr R M Shirley

Ward District Councillor and Member of SDDC Planning  
Committee  
Area Planning Officer, SDDC  
Senior Enforcement Officer SDDC

### INTERESTED PERSONS:

Mr J Lemmon  
  
Ms Margaret Litteljohn  
  
Ms Sue Brown  
Ms Liz Kolkhman

Ward District Councillor for Etwall, c/o Civic Offices,  
Swadlincote DE11 0AH  
Ward District Councillor, of Holmhurst, 19 Fishpond Lane,  
Egginton, Derbyshire DE65 6HJ  
Of 4 The Old School, Hilton Derbyshire DE6 5SW  
Chair of Hilton Parish Council, of The Mill, Mill Lane, Hilton  
DE65 5GP  
Of Moorend, Uttoxeter Road, Hilton, Derbyshire DE65 5FZ  
Of Moorend, Uttoxeter Road, Hilton, Derbyshire DE65 5FZ

## DOCUMENTS

Document	1	List of persons present at the hearing
Document	2	Notification letter sent by the Council
Document	3	Letter dated 16 June 2005 sent by Cllr Walton
Document	4	Note dated 14 November 2005 submitted by Derbyshire Gypsy Liaison Group
Document	5	SDDC: Planning Policy Position Statement, July 2005
Document	6	Letter from Appellant's agent formally amending the application subject to appeal
Document	7	SDDC letter dated 4 August 2005 giving details of gypsy sites within the district, incidents of unauthorised encampments & Jan 2005 gypsy count returns

## PLANS

Plan	A	OS map showing consultation route for gas pipeline in vicinity of the site
Plan	B	OS plan showing development at Hilton and the line of new road
Plan	C	Copy of plan details for the amenity block

## PHOTOGRAPHS

Photo	1	2 photographs of flooding near the appeal site submitted by Cllr Roma
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