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**Chief Executive**  
South Derbyshire District Council,  
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Our Ref

Your Ref

Date: 27 February 2023

Dear Councillor,

### **Planning Committee**

A Meeting of the **Planning Committee** will be held at **Council Chamber**, Civic offices, Civic Way, Swadlincote on **Tuesday, 07 March 2023 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Labour Group**

Councillor Tilley (Chair), Councillor Shepherd (Vice-Chair) and  
Councillors, Gee, L Mulgrew, Pearson and Southerd.

**Conservative Group**

Councillors Bridgen, Brown, Dawson, Haines, Redfern and Smith.

**Non-Grouped**

Councillor Wheelton



## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 45**
- 5** DEED OF VARIATION – LAND AT SK2420 2230 DRAKELOW PARK,  
WALTON ROAD, DRAKELOW **46 - 47**
- 6** SECTION 106 VARIATION – HACKWOOD FARM MICKLEOVER **48 - 49**
- 7** SECTION 106 VARIATION – NEW HOUSE FARM MICKLEOVER **50 - 52**

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

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

# **Report of the Strategic Director (Service Delivery)**

## **Section 1: Planning Applications**

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

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## 1. Planning Applications

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

Reference	Item	Place	Ward	Page
<a href="#">DMPA/2022/1202</a>	1.1	Woodville	Woodville	6
<a href="#">DMPA/2022/1153</a>	1.2	Mickleover	Etwall	16
<a href="#">DMPA/2022/0476</a>	1.3	Melbourne	Melbourne	33
<a href="#">DMPA/2022/1330</a>	1.4	Midway	Midway	40

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

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

## Glossary of terms

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

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

Item No. 1.1

Ref. No. DMPA/2022/1202

Valid date: 29/08/2022

Applicant: Kabal

Agent: Adil Bashir

Proposal: Conversion of existing 4 bed dwelling to childrens care home at 61 Ashby Road, Woodville, Swadlincote, DE11 7BZ

Ward: Woodville

### Reason for committee determination

This item is called to Committee by Councillor Taylor following a request from Woodville Parish Council.

### Update report

The application was deferred at the February Committee meeting due to concerns raised by Members relating to additional information on the nature of the children being cared for and the expertise/ experience of the company to deal with this and further clarification on the maximum number of people on the site at any one time. The previous report is attached as an appendix.

The applicant has provided some information to address the Members' concerns, and this is set out below:

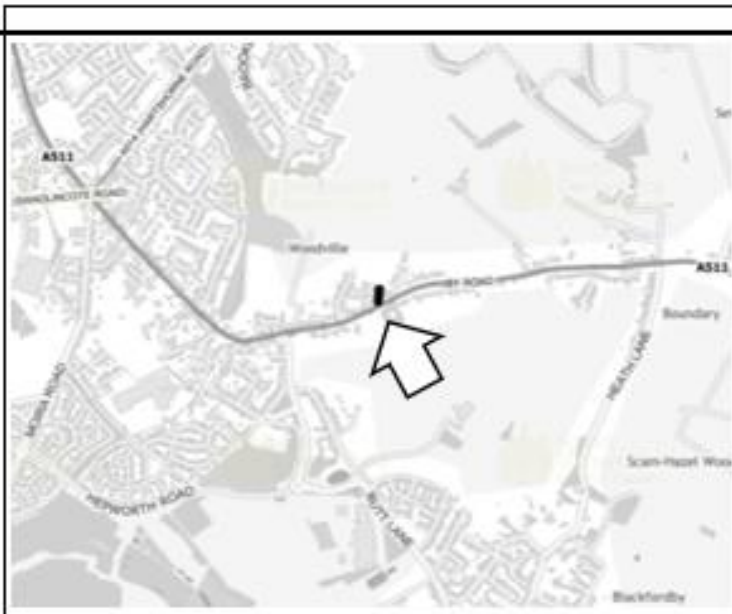
#### **1. Clarity on sleeping arrangements for the one member of staff given there are four bedrooms which would potentially have a child in each.**

*The home will be registered with Ofsted for only 3 young people allowing a room upstairs to be a staff bedroom.*

#### **2. Any dialogue with the police on the application particularly in relation to the potential for absconding/ anti-social behaviour**

*As a provider all young people will be assessed prior to moving into the home. Young people that will be placed in the home will be carefully matched. As a provider we will not be accepting children who have a history of criminal activity. We will register to provide care for children who have been through trauma, abuse and neglect. All staff will have a robust training induction and will have extensive experience in children's homes.*

*Prior to children being admitted into the home professional meetings will take place to ensure we can meet the child's needs and the location of the home is suitable for the child. Robust risk assessments are also completed prior to admission. As a provider our ethos is building brighter futures and that is what we aim to do with our children, by ensuring our homes are family orientated and children feel supported and cared for thoroughly.*



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*We will actively keep a close relationships with local stakeholders such as; Police, Schools, Fire service, Youth centres and the council to ensure the home is engaging and well-run.*

### **3. Parking/ visitor arrangements including from all support staff likely to visit such as social workers etc.**

*We have the capacity for 8 vehicles to park within the property boundary (front drive). We have extended the opening of the gate to enhance the ease for drivers to manoeuvre in and out of the property, which in turn will lead to no disruption on the public footpath and road. We will also be actively encouraging and supporting our staff to utilise public transport, cycle to work schemes and incentivise shared transport.*

*At any given time, the maximum number of people on site will be 3 staff and 3 children. The maximum number of vehicles on site, during any time, will be 4, which consist of 1 company vehicle and 3 staff vehicles.*

*We can confirm all meetings including Staff meetings, contact with social workers and other professionals will be conducted at our head office, located at Anglesey Business Centre, Anglesey House, Burton Upon Trent, DE14 3NT. It must be noted that since covid the majority of professional meetings now take place online, hence further ensuring no increase in vehicles at the property.*

*All staff training will be conducted in specialist training facilities and not within the home itself.*

### **4. Our experience in running such Children's care homes**

*As part of our structure, we have on board a consultant who has over 20 years' experience in the care sector and more specifically in Children's care homes. She has a wealth of experience in both managing and running children's homes, as well as registering new children's homes. She will be responsible for ensuring suitable children are placed in the home and the smooth running of the home itself. She has also been responsible for all the staff recruitment ensuring they are of the right skill level and fit for the children, the team and the relevant roles. Furthermore, she has in place a robust training schedule to ensure the team is highly skilled and experienced.*

*In regard to our director, he has extensive experience in the healthcare industry having worked for a wide range of organisations including: NHS Trusts, Virgin Care, Healthcare at Home and Voyage Care. His experience in the latter is especially pertinent as they were a specialist care provider catering for small residential care homes for children.*

### **Considerations**

Taking into consideration the above information, a maximum of 3 children will be permanently living within the dwelling at any one time with the presence of 1 carer for overnight stays. 3 children and 1 adult to a house reflects that of a family unit which is considered to be appropriate and acceptable within the surrounding residential area.

In regard to parking the applicant has confirmed the maximum number of vehicles on site, during any time, will be 4, which consist of 1 company vehicle and 3 staff vehicles. This will be the maximum and will not always be the case with less cars being parked on the driveway. This number of cars can be accommodated on site.

Conditions will be attached to ensure no more than 3 children and 1 staff member will live in the premises at any one time and that the maximum number of cars on site at any given time will not exceed 4.



Therefore, the Committee is asked to resolve that planning permission be granted in accordance with the recommendation below including the newly proposed conditions outlined above.

## **Recommendation**

**Approve** subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing(s) ref. Location Plan and Site Plan Dr No. A102, Existing and Proposed Floor Plans Dr No. A103, Existing and Proposed Elevations Dr No. A104, Supporting Statement received 29<sup>th</sup> August 2022, Supporting Statement received 5<sup>th</sup> February 2023 and Supporting Statement received 21<sup>st</sup> February 2023 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the premises shall be used solely for the purposes of a children's care home, as defined by Class C2 of that legislation, and for no other purpose whatsoever. Proposals to use the premises for any other purpose within that class shall not take place unless a separate formal planning application has been first submitted to, and approved in writing by, the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain a degree of control over the development and to avoid unsustainable development.

4. The use hereby approved will accommodate a maximum of 3 children and 1 carer living within the dwelling at any one time and this arrangement will not be altered and will remain for the lifetime of the development.

Reason: In the interests of preserving the amenity of the surrounding neighbouring properties.

5. The use hereby approved shall have a maximum of 4 cars on the front driveway at any one time and shall not exceed this amount for the lifetime of the development.

Reason: In the interests of highway safety in the area.

07/02/2023

**Item No.** 1.6**Ref. No.** DMPA/2022/1202**Valid date:** 29/08/2022**Applicant:** Kabal**Agent:** Adil Bashir**Proposal:** Conversion of existing 4 bed dwelling to childrens care home at 61 Ashby Road, Woodville, Swadlincote, DE11 7BZ**Ward:** Woodville**Reason for committee determination**

This item is called to Committee by Councillor Taylor following a request from Woodville Parish Council.

**Site Description**

The site relates to a two storey red brick building set back from Ashby Road. There is a paved parking area located to the front of the property and a sizeable garden located to the rear.

The surrounding properties vary in size and architectural style and the area is predominantly residential in nature.

**The proposal**

The application seeks permission to change the use of a 4 bed residential dwelling into a children's care home (Use class C2).

**Applicant's supporting information.**

The applicant has submitted a number of documents to support this application including;

- Location Plan and Site Plan Dr No. A102,
- Existing and Proposed Floor Plans Dr No. A103
- Existing and Proposed Elevations Dr No. A104
- Supporting Statement received 29th August 2022

**Relevant planning history**

9/2016/0668 – The erection of a rear extension

9/2000/0467 - The erection of a part two storey extension

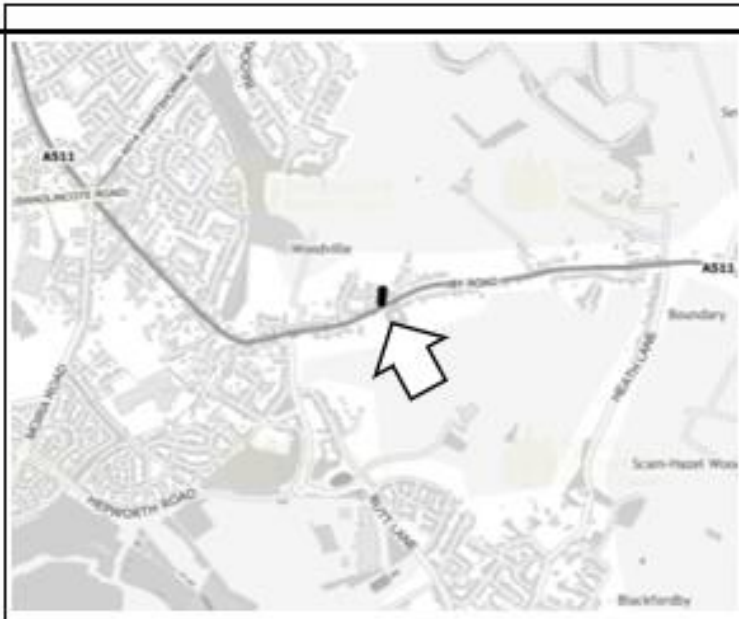
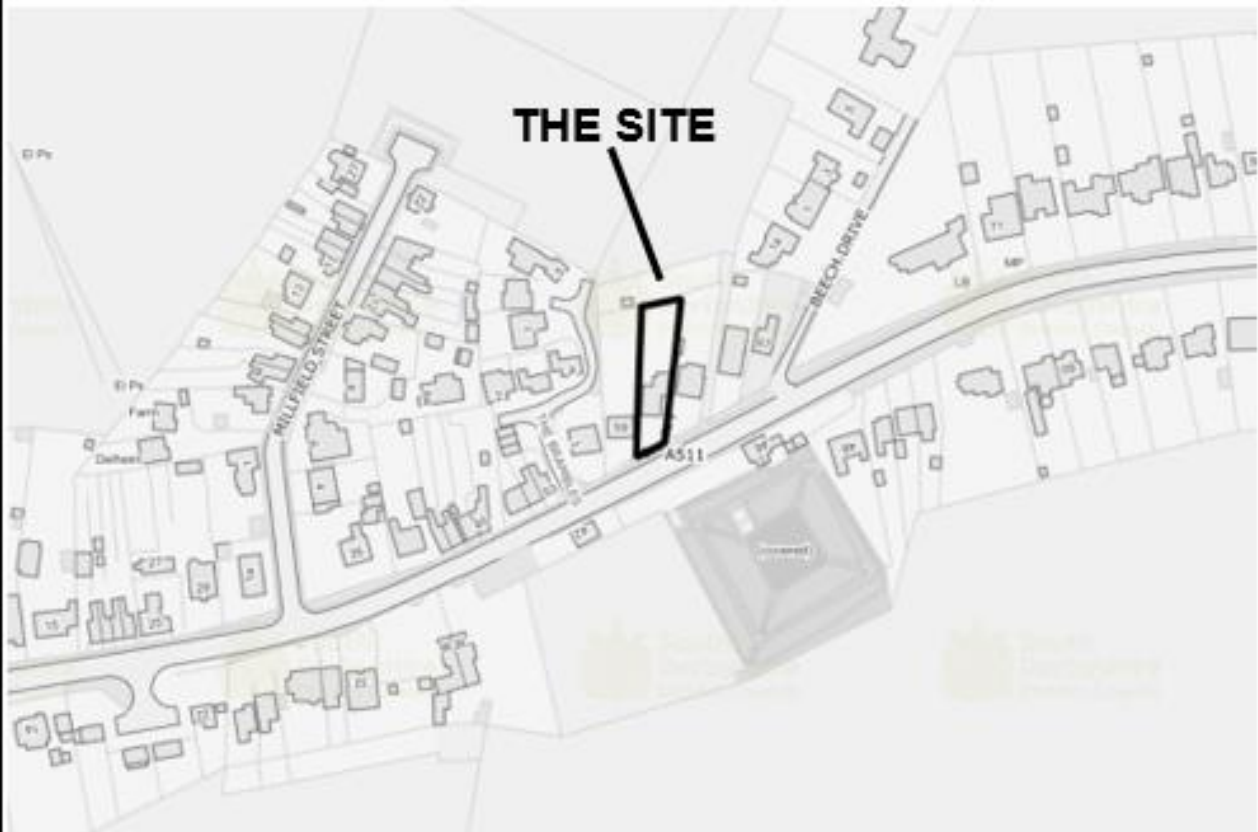
**Responses to consultations and publicity**

Derbyshire County Council Highways Authority

No objection.

Environmental Health Officer

No objections.



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## Public Responses

One letter of objection has been received from a neighbouring property outlining the following concerns;

- a) increase of noise from deliveries, cleaners and volume of visits.
- b) privacy issues to our front bedrooms.
- c) traffic congestion issues with parking of visitors and deliveries.
- d) will the children be able to bring friends home? Will the children have disabilities? Is one carer (per shift) enough to clean, cook and look after four children at the same time? Is there any scope to extend the number of employees or children? The application states only 3 parking spaces, is this guaranteed? Who is going to be responsible for transportation of all 4 children to school or activities?

## Woodville Parish Council

We have concerns regarding the impact on the amenity of the area, access and adequate parking provision. We would like to request the application is called in before the planning committee.

### **Relevant policy, guidance and/or legislation**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications shall be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) Planning Practice Guidance (PPG), National Design Guidance (NDG) together with the South Derbyshire Design Guide Design Supplementary Planning Document (SPD).

### The relevant Development Plan policies are:

Local Plan Part 1 2016: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), INF2 (Sustainable Transport), E7 (Rural Development).

Local Plan Part 2 2017: SDT1 (Settlement Boundaries and Development)

### **Planning considerations**

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

- Principle of the proposed development
- Impact upon the character and appearance of the area
- Residential amenity
- Adequacy of parking and highway safety

## Planning assessment

### Application Site

The site relates to a two storey detached, red/brown brick five bedroom property which lies outside the settlement boundary of Swadlincote. The surrounding area is predominantly residential where the properties are varied in size and style. There is a sizeable garden at the rear and a large paved parking area to the front of the property.

### The proposed development

Planning permission is sought for the change of use of a single residential dwelling (Use class C3) to a residential children's care home (use class C2). The scheme involves the re-use of the existing building with no exterior alterations proposed. The supporting statement states that the home would accommodate 4 children under 17 years old and 1 full time carer working alternative shift patterns.

### Principle of the proposed development

The site lies outside the settlement boundary of Swadlincote approximately 285m from the edge of the boundary. In this case, no new development or alterations are proposed, and the application seeks to use the existing dwelling as a care home.

In terms of the proposed change of use Policy E7 of the Local Plan is relevant to rural development (outside settlement limits) in general terms. This policy states that:

*'Development proposals which diversity and expand the range of sustainable employment activities on land outside settlement boundaries will be supported by the Council provided they support the social and economic needs of rural communities in the District.'*

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

- i) it is supported by a sound business case,*
- ii) the local highway network is capable of accommodating the traffic generated,*
- iii) development will not give rise to any undue impact on neighbouring land,*
- iv) it is well designed and of a scale commensurate with the proposed use,*
- v) visual intrusion and the impact on the character of the locality is minimised.'*

The supporting text to Policy E7 refers primarily to changes of use from agriculture to other forms of development, however the policy does not preclude consideration of other changes of use. With regard to the current proposal, although the new employment opportunities are limited to the single carer at any one time, this in itself is insufficient reason to conclude non-conformity with policy E7 which does not stipulate a minimum amount of employment to be provided. Although of limited economic benefit due to the number of jobs created, the applicant has provided a supporting statement which comprises a sufficiently robust business case to demonstrate that the proposal will support the social needs of the wider community (including the rural community) in that the proposal is providing for the care needs of children.

In this instance the children's home could have more comings and goings than a single residential use however it is unlikely to be significant. It is located within a predominately residential area and a care home such as the proposed would be an acceptable use within a residential area. With 4 children and 1 carer present at any one time, the proposal is not dissimilar to any other family dwelling within the area. Furthermore, use of the garden could be argued to be no different to that of a family.

It is therefore considered that the proposed development forms part of the social aspect of sustainable development as set out with S2 and NPPF, and consequently the proposed development is deemed acceptable in principle in this instance subject to the design, character and appearance, amenity and highway issues which are considered further below.

#### Impact upon the character and appearance of the area

No external changes are proposed to the dwelling and taking this into account, the proposal would not have a detrimental impact on the street scene or character of the area and would be in accordance with Policies E7iv) and v), S2 and BNE1 of the development plan.

#### Residential Amenity

The scheme does not involve any enlargement of the building and no new windows will be installed. Therefore, the development will not have any significant effect upon the level of light currently received by the surrounding properties nor will it lead to any greater degree of overlooking of the neighbouring dwellings than may currently be occurring.

Some concerns have been raised on potential noise from the occupiers and from the cars with the shift change over and this would impact upon the residential amenity afforded the occupiers of neighbouring properties. This application indicates that the maximum number children which could be accommodated at the property would be 4 with 1 carer per shift. Therefore, it is considered that the impact from noise is likely to be relatively low and would not be at a level which could justify refusal, particularly given that it would not be dissimilar to that of a family dwelling. The children will be supervised 24/7 and noise will be monitored and addressed by the carers on shift. The level of cars leaving and entering the site at any one time (especially during shift changeovers) would not be considered excessive and any noise to arise from the comings and goings of the site would again be similar to a family dwelling with 3 cars.

It is noted the Environmental Health Officer has assessed the scheme and raises no concerns with the proposed development. In view of the above it is considered that the development will reasonably safeguard the amenities currently enjoyed by the neighbouring properties and on this basis, it is considered that in pure neighbour amenity terms it will reasonably satisfy the requirements of Policy E7iii), SD1 and BNE1 of the development plan.

#### Parking and Highway Safety

Policy INF2 of the LP1 requires that appropriate provision is made for safe and convenient access to and within the development. The existing access will be utilised, and 3 parking spaces will be provided within the driveway which will be used only by the carer on duty and visitor space. Derbyshire County Council (Highways) have reviewed the proposal and raised no objections. The proposal is therefore considered to be in accordance with Policy E7ii) and INF2 of the development plan.

#### Planning Balance

It is acknowledged that the use of the property as a small-scale children's home is not an overly intensive use of the site and such a proposal located in a residential area is considered to be appropriate in this context. No external changes are proposed to the dwelling and the change of use would not negatively impact on the street scene. On the matter of residential amenity, given the limited number of children and staff associated with the home, coupled to the comments of the Environmental Health Officer it is considered that it would be difficult to substantiate a reason for refusal on the grounds that the use would adversely affect the amenities of neighbouring residential properties.



Therefore, on balance it is considered that the proposal accords with development plan policies E7, S2, SDT1, SD1, and BNE1, together with guidance set within the NPPF and planning permission should be forthcoming.

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

## **Recommendation**

**Approve** subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing(s) ref. Location Plan and Site Plan Dr No. A102, Existing and Proposed Floor Plans Dr No. A103, Existing and Proposed Elevations Dr No. A104, Supporting Statement received 29<sup>th</sup> August 2022, unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the premises shall be used solely for the purposes of a children's care home, as defined by Class C2 of that legislation, and for no other purpose whatsoever. Proposals to use the premises for any other purpose within that class shall not take place unless a separate formal planning application has been first submitted to, and approved in writing by, the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain a degree of control over the development and to avoid unsustainable development.

**Item No.** 1.2

**Ref. No.** [DMPA/2022/1153](#)

**Valid date:** 19/09/2022

**Applicant:** Will Martin

**Agent:** Litchfields

**Proposal:** **The variation of condition 31 of outline permission ref. DMPA/2020/0543 (relating to the residential development of up to 1,100 dwellings, an extra care facility, a local centre comprising: a small supermarket with a floorspace not exceeding 1000 sqm (net); a smaller retail unit with a total floorspace not exceeding 200sqm (net); a cafe/restaurant with a floorspace not exceeding 200 sqm (net); a public house with a floorspace not exceeding 650 sqm (net); a doctors surgery or crèche; and a community facility, as well as a primary school together with associated playing fields and the provision of associated infrastructure (including roads, footpaths, cycleways, sustainable urban drainage and open space)) on Land at New House Farm, Etwall Road, Mickleover, Derby, DE3 0DN**

**Ward:** Etwall

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

This application is presented to the Committee as it is a major application subject to more than 4 objections.

#### **Site Description**

The site is situated to the west of Mickleover and extends to approximately 50.9ha (125.9 acres) and comprises mainly improved grassland. A section of the site is now under development by Avant Homes, pursuant to a reserved matters approved under the existing outline permission (see below). The site is located to the north of the A516 Etwall Road, which connects Mickleover with the A38 to the east and the A50 further west. The northern boundary of the site is defined by the former railway line which is now part of the National Cycle Network (NCN) Route 54. Radbourne Public Footpath no. 8 runs along the eastern edge of the site but just off it, accessed off Greenwood Court and the new Bloor Homes development site.

#### **The proposal**

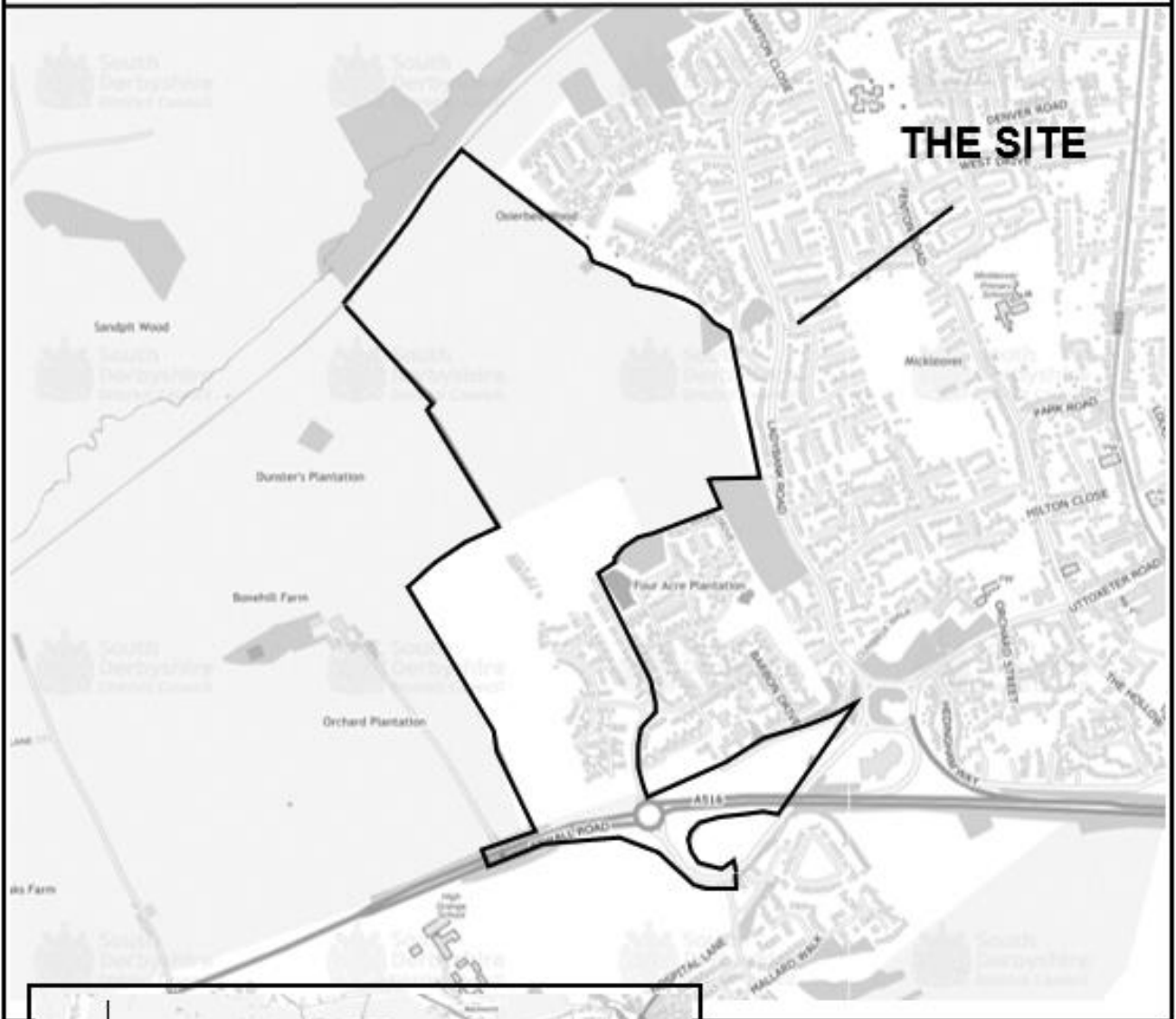
The last outline permission was granted subject to a condition (number 31) which limits the number of dwellings which can be occupied prior to the commencement of the grade separation works at the A38/A5111 Kingsway junction, to 317 dwellings. This current application seeks to vary condition 31 to increase the number of dwellings that can be occupied to 617 dwellings.

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

A [Covering Letter](#) confirms that Highways England were consulted prior to submission and agreed that it would be reasonable to amend the condition. It is considered that, given this and the enclosed justification, the variation can take place without detriment to the purpose of the condition and allows for an increased housing delivery on an allocated, sustainable site in South Derbyshire.



**DMPA/2022/1153 – Land at New House Farm, Etwall Road, Mickleover, Derby, DE3 0DN**



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A Supporting Statement states that there have been unexpected delays in issuing the Development Consent Order (DCO) to allow the A38 Derby Junction to commence following the original DCO decision being quashed by the High Court Order on 8 July 2021 which is still being re-examined with no publicly available timeframe on when a decision is likely to be issued. As a result, four years on from the grant of the original outline permission works have not yet started on the A38/A511 Kingsway junction.

It states that the applicants met with National Highways who advised that they would require additional survey work in order for them to consider any increase in the number of houses occupied before the A38/A511 Kingsway junction works start. The requisite survey work has been undertaken and accompanies this application, that document being the Technical Note - Impact of Development Generated Trips on A38 Kingsway Junction and at a subsequent meeting with National Highways an increase in the number of houses that could be occupied was agreed as being approximately 600.

A Technical Note - Impact of Development Generated Trips on A38 Kingsway Junction which concludes that the post occupation traffic surveys show there has been a material change to the level of development generated trips impacting on the existing A38/A5111 junction and that occupation of all 1,100 dwellings allowed under planning permission reference DMPA/2020/0543 will have no material impact upon the operation and levels of highway safety at the existing A38/A5111 junction. It states that the residual cumulative impact of the development is not significant and therefore is not severe and hence it is concluded that Condition No.31 is not now necessary and should be removed.

An EIA Supporting Statement notes the original outline application was supported by an Environmental Statement (ES) due to the development being within Schedule 2 of the Town & Country Planning (Environmental Impact Assessment) Regulations. It states this current application does not change the scale, type or nature of development coming forward on this site and therefore does not alter the impacts nor the mitigation measures identified under the original ES. Nor does it change the mitigation proposed by the ES. The change will therefore not have a practical implication and the condition will remain effective in safeguarding the operation on the A38 and states that no further environmental information is required.

### **Relevant planning history**

9/2017/0349: Outline permission for the residential development of up to 1,100 dwellings, an extra care facility, a local centre comprising: a small supermarket with a floorspace not exceeding 1000 sqm (net); a smaller retail unit with a total floorspace not exceeding 200sqm (net); a cafe/restaurant with a floorspace not exceeding 200 sqm (net); a public house with a floorspace not exceeding 650 sqm (net); a doctors surgery or crèche; and a community facility, as well as a primary school together with associated playing fields and the provision of associated infrastructure (including roads, footpaths, cycleways, sustainable urban drainage and open space) - Approved October 2018

9/2018/1240: Approval of reserved matters of appearance, landscaping, layout and scale, pursuant to outline permission ref. 9/2017/0349 for the construction of 311 dwellings, public open space and associated infrastructure (New House Farm phase 3) - Approved March 2019

DMPA/2019/1459: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2017/0349 (for the erection of 317 plots in lieu of 311 plots) previously approved under reserved matters approval ref. 9/2018/1240 along with substitution of plot 101 - Approved August 2020

DMOT/2020/0342: Approval of details required by condition 8 (materials) attached to permission ref 9/2017/0349 (for the residential development of 311 dwellings, public open space and associated infrastructure pursuant to reserved matters approval ref. 9/2018/1240) – Approved September 2020.

DMPA/2020/0543: The variation of condition 39 of outline permission ref. 9/2017/0349 to increase the number of dwellings that can be occupied to 317 dwellings before works commence on the A38 Kingsway/A511 junction, rather than before those works are complete.

### **Responses to consultations and publicity**

County Highway Authority has no objection.

National Highways has no objection.

Planning Casework Unit at the Department for Levelling Up, Housing and Communities has no comments to make on the Environmental Statement.

Derby City Council objects to the application, stating that The City Council's concern with increasing the housing occupations is that the development was predicated on the construction of the A38 Junctions Scheme. Whilst the applicant has submitted evidence, through number plate matching surveys, that the distribution split through the Kingsway Junction is half the predicted volume estimated in the original transport assessment, no evidence has been provided on the overall percentage match and therefore the statistical confidence of the survey is questionable. They understand that the signalisation of the southbound arm of the A38 junction will now be triggered and provided by Tilia Homes as part of their planning obligations for the development at Kingway and this will provide some relief to the problems on Derby City's network and queuing that occurs on the A5111 approach to the Kingsway Junction.

They state that the Grampian style condition was placed on the development because of the uncertainty over the construction programme of the A38 Derby Junctions and that it has significant concern over the proposed variation of condition 31 to allow more housing to come forward before the A38 Grade Separation scheme commences. They request that they are involved in any future discussions and possible assessment of the impacts on the city's highway network. They also advise that there is still a need to secure a local distributor road through this site, and safeguarding land for a possible link north to join future possible growth. The acceptability of any potential further growth in this area will require additional infrastructure to provide access for public transport and to distribute traffic onto the most appropriate routes.

7 objections have been received raising the following concerns:

- a) Housing developments in the area has added significantly to road traffic.
- b) Covid offset increases in traffic in 2020, 2021, and early 2022, but since summer 2022 traffic has increased significantly, with traffic diverting from the A38 through Mickleover via Uttoxeter Road or Station Road.
- c) Avoiding obligations for the A38 upgrades will add to the existing problems.
- d) I would like the speed limit across the whole site to be reduced to 20mph, with buses route through the site as well as an additional entrance/exit.
- e) There have been accidents on the exit island, including one fatality, and this proposal will increase the potential for more unless an additional entrance/exit is provided, and traffic calming on the A516 to the A38.

- f) Issues on the A38 previously led to gridlock in Mickleover.
- g) I object as there is only one single access to the whole estate and that access, the roundabout on the A516, is the scene of many crashes and near misses – residents will be unable to enter/exit the estate if there is an accident on the roundabout or access road and this should have been considered.
- h) Parking around schools is a major problem with no one walking any more – schools in Mickleover have had to establish no vehicle policies on the roads nearby.
- i) It will cause gridlock thorough the whole of our estate, especially when extra vehicles for the planned doctors/shops arrive.
- j) There should be a second access via the Bloor Homes estate on to Ladybank Road.
- k) As a resident of the Barrett estate and frequent user of the A516.A38 there has been a significant increase in traffic since these homes have been occupied with northbound A38 tailbacks back to Toyota to Kingsway Island.
- l) We wish to appeal commencing planning opposite our new house and wish to speak to an adviser.
- m) Traffic in the area and on Kingsway/Markeaton is already unacceptable so expansion should not be allowed until the roads are rectified.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

2016 Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H19 (Land West of Mickleover) and INF2 (Sustainable Transport);

The relevant national policy and guidance is:  
 National Planning Policy Framework (NPPF)  
 Planning Practice Guidance (PPG)

### **Planning considerations**

This application seeks to vary a condition attached to a previous approval, pursuant to section 73 of the Town and Country Planning Act 1990 (as amended). The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the condition concerned. Taking this into account along with the documents submitted and the site and its environs, the main issue central to the determination of this application is whether the proposed variation of condition 31 would bring about unacceptable impacts on the strategic highway network – the reason that the condition was imposed in the first place, at the request of National Highways.

Furthermore, as a grant of permission under section 73 of the 1990 Act results in a further permission, leaving the original permission and its conditions intact, it subsequently open for the developer to implement either permission; consideration also needs to be given to the remaining conditions and whether they have been discharged (either in part or in whole).

### **Planning assessment**

#### The variation of condition 31

The existing outline permission was granted subject to condition 31 which limited the number of dwellings which might be occupied prior to the commencement of the grade separation



works at the A38 Kingsway island:

"No more than 317 dwellings shall be occupied until construction works have commenced on the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway junction."

The reason given for the condition was "to ensure that the A38 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from traffic entering and emerging from the application site and in the interests of road safety." It is thus important to note therefore that this condition was not intended to mitigate impact on the local highway network. Indeed, it was not requested by Derby City Council or the County Highway Authority.

The applicant seeks to vary the wording of the condition to:

"No more than 617 dwellings shall be occupied until construction works have commenced on the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway junction unless otherwise agreed in writing with the Local Authority".

The main consideration for the application relates to the impact that increasing the number of dwellings that can be occupied on the site before the A38 Kingsway/A511 junction works commence would have on the strategic highway network. The re-determination of National Highways submitted DCO, which is the process for approving the project, has taken longer than expected, and there is no indication at this stage as to when that will occur. When the previous application to amend the condition on the permission to allow 317 homes to be occupied before the A38 Kingsway improvements works commenced, rather than be completed and open for traffic, it was anticipated that works would have commenced in Spring 2021 and be open to traffic by March 2023, but clearly this has not happened.

Condition 31 was imposed at the behest of Highways England, now National Highways, to ensure the safe operation of the strategic highway network, i.e., the A38. In terms of assessing the impact of the proposed uplift in the number of homes allowed to be occupied, the key consultation is with National Highways, who have advised that the original Transport Assessments were overly robust, and that based on the distribution changes alone, the trigger point could increase significantly without adversely impacting of the strategic road network. It is noted that Derby City Council raise an objection to the application and question the validity of the evidence which accompanies it. However, the evidence was produced on the advice of National Highways and they have also assessed the information supplied. National Highways have raised no objection. On that basis, notwithstanding the comments received, it is considered that in terms of the impact of the proposal on the strategic road network, the application is acceptable.

The revised wording for condition 31 proposed by the applicant also includes the tailpiece "...unless otherwise agreed in writing by the Local Planning Authority". The implications of this part of the wording is that should the delivery of the A38 Kingsway Junction works be subject to further delays, or, indeed, abandoned altogether, then rather than submit a further S73 which leads to a further planning permission needing to be being issued, then the matter can be dealt with through correspondence, still in conjunction with National Highways. This approach is considered to be appropriate in light of the reason for the condition being the safe operation of the strategic road network.

Other matters

Derby City Council also state that they continue to want a local distributor road to be provided through this site, and for there to be safeguarded land within if for a possible link north to join future possible growth. They state that the acceptability of any potential further growth in this area will require additional infrastructure to provide access for public transport and to distribute traffic onto the most appropriate routes. This matter is not relevant to the consideration of this application and imposing a condition requiring this to be provided at this stage would be unreasonable.

Delivery of homes on the site has continued apace with the developer, Avant Homes, anticipating that approximately 154 of the homes they have approval for will be completed by the end of March 2023. These 154 homes will form part of the 317 homes limit. Furthermore, a reserved matters application is currently under consideration for the remainder of the homes for this development, to the north of the existing homes, progresses which further demonstrates confidence that the site is likely to continue to help to deliver much need housing.

### Status of remaining conditions

The existing conditions have been discharged in part where they relate to the Avant Homes site. They remain to be satisfied across the remainder of the site, so the wording of the conditions have been adjusted to reflect that are set out below. In addition, the necessity of various conditions have been revisited with it noted that conditions should not be used on outline permissions to control matters which would be expected under the reserved matters approvals. Furthermore, condition 32 limits the number of housebuilders that can operate on the site to 2 until July 2023, however, as the overall number of homes delivered is only a matter for the strategic road network, then condition 31 adequately controls this, and it is not considered necessary to repeat condition 32 as a result.

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

### **Recommendation**

**A.** Secure the completion of a section 106 agreement (a Deed of Variation) to carry forward the obligations from the existing outline permission, with delegated authority given to the Head of Planning and Strategic Housing to agree the finer detail of that agreement;

**B.** Subject to A, **APPROVE** permission subject to the following conditions:

### **Recommendation**

1. a) Application for approval of the reserved matters shall be made to the Local Planning Authority before 19 October 2028.  
  
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 appearance, landscaping, layout and scale (hereinafter called the reserved matters) for each phase or sub-phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase or sub-phase. Plans and particulars of the reserved matters for each phase or sub-phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.

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

3. The development hereby approved shall be implemented in accordance with the following plans approved under outline permission ref. 9/2017/0349. The approved plans are:

- a) Site Location Plan (Ref: IL50105-000 Rev C);
- b) Parameter Plan - Land Use & Extents (Ref: PS50105-063 Rev C);
- c) Parameter Plan - Access & Movement (Ref: PS50105-067 Rev C);
- d) Parameter Plan - Heights (Ref: PS50105-065 Rev C);
- e) Parameter Plan - Density (Ref: PS50105-066 Rev C);
- f) Parameter Plan - Landscape & Open Space (Ref: PS50105-064 Rev C); and
- g) Proposed Shared Footway (Old Etwall Road) (Ref: 10-117-TR-048).

Reason: For the avoidance of doubt and to specify the plans to which the permission relates.

4. The Phase 2 Proposed Shared Footway/Cycleway on Old Etwall Road, Ref: 10-117-TR-048 shall be provided prior to the occupation of the 50th dwelling in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The route shall be maintained throughout the lifetime of the development available for public use along its entire length.

Reason: In the interests of providing a sustainable development.

5. The development shall proceed in accordance with the phasing plan ref. AC50105 08 107 Rev F and the phasing scheme ref. 50105/11/JG/NMi (dated 18 December 2018), as approved pursuant to condition 6 of outline permission ref. 9/2017/0349 unless, prior to the commencement of a phase or sub-phase pursuant to this permission a revised scheme for phasing of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme for phasing shall show the boundaries of the proposed phases of the development and shall include reference to the provision of the children's play spaces and other open spaces. The development shall be carried out in accordance with the approved scheme.

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

6. Notwithstanding the submitted master plan, the reserved matters submitted in accordance with condition 2 shall include the following urban design principles and details with each application for a phase or sub-phase:

- a) the creation of separate character areas in accordance with the principles set out in

the submitted Design and Access Statement [D&AS] [7.15-7.18];

b) the provision of greenway routes/green corridors to connect key green spaces in accordance with the principles set out in the submitted D&AS [7.42-7.53 and the Green Infrastructure Plan, Planting Plan & Play Areas Plan];

c) provision for future pedestrian and cycle access as indicated in the submitted D&AS [8.3-8.7 and the Movement Plan];

d) the creation of a 'village centre' comprising an area of shops, community facilities and open space as described in the submitted D&AS [7.19-7.22 and 7.28-7.29] as well as Indicative Local Centre and Playing Field Detail ID50105-091;

e) the provision of a centrally located primary school as described in the submitted D&AS [7.23-7.27];

f) measures to minimise the risk of crime to meet the specific security needs of the application site and the development;

g) details of the lighting to roads and footpaths, and where relevant the public areas, shared driveways and courtyards;

h) the internal layout of the site shall accord with the Highway Authority's Design Guide and national guidance set out in Manual for Streets;

i) the gradient of the new estate street junctions shall not exceed 1:30 for the first 10m and 1:20 thereafter, whilst driveway gradients shall not exceed 1:20 for the first 5m and never exceed 1:12;

j) space for the parking of vehicles on the basis of 2 spaces for 2 or 3 bedroom dwellings, and 3 spaces for 4 or 4+ bedroom dwellings. For the avoidance of doubt, where a garage is classed as a parking space, the internal dimensions shall measure at least 3m x 6m for a single and 6m x 6m for a double garage;

k) a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site;

l) bin collection points placed within private land at the entrance to shared private accesses so 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;

m) a detailed scheme of noise mitigation measures to demonstrate how the development will be protected from traffic noise as set out in the recommendations of the Chapter J of the Environmental Statement: Noise, dated March 2017, as received with application ref. 9/2017/0349.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory, and in the interests of sustainable development and highway safety.

7. Unless details are approved in conjunction with the matters of scale and/or landscaping under condition 2, no development of a particular phase or sub-phase shall commence before details of the finished floor levels of each building within the phase or sub-phase and any regrading works have first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase or sub-phase shall be constructed and external areas and levels laid out in accordance with the approved details.

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

8. Each dwelling or unit shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling or unit will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in



G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

9. No development of the relevant phase or sub-phase of the development which includes playing field provision as set out in the Phasing Scheme (approved in accordance with condition 5) shall take place unless and until:

a) a detailed assessment of ground conditions of the land proposed for the new playing field land shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and

b) based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority.

The works shall be carried out in accordance with the approved scheme within a timescale to be approved in writing by the Local Planning Authority

Reason: To ensure that the site surveys are undertaken for playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality of playing fields.

10. The playing fields laid out in accordance with condition 9 shall be used for Outdoor Sport and for no other purpose (including without limitation any other purpose in Class D2 of the Use Classes Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To protect the playing field from loss and to maintain the quality of and secure the safe use of sports pitches.

11. The trading hours of the Class A1 floorspace hereby permitted shall be restricted to 07:00 to 23:00 daily and the Class A3/Class A4 floorspace hereby permitted shall not trade between the hours of 24:00 and 07:00 daily.

Reason: In order to minimise the impact of the proposed use upon the amenities of the residents of nearby properties.

12. All hard and soft landscape works approved pursuant to the landscaping reserved matters approval shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the relevant phase or sub-phase of the development. Any tree or shrub which forms part of the approved landscaping reserved matters approval which within a period of five years from planting (ten years for trees) fails to become, established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

13. No site clearance works or development of a phase or sub-phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2012. The area within each phase or sub-phase surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- a) There shall be no changes in ground levels;
  - b) No material or plant shall be stored;
  - c) No buildings or temporary buildings shall be erected or stationed;
  - d) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - e) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

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

14. For any phase or sub-phase no works which include the creation of trenches or culverts or the presence of pipes within the phase shall commence until measures to protect badgers and hedgehogs from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the local planning authority. The measures may include:
- a) creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

The approved measures shall be implemented as part of the development of the phase.

Reason: To ensure adequate protection of the species.

15. For any phase or sub-phase, no development shall take place until an Ecological Design Strategy (EDS) addressing mitigation, compensation and enhancement has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:

- a) details of retained habitats;
- b) details of newly created habitats including ponds and swales;
- c) identification of green corridors;
- d) locations and specifications for a range of bird boxes in line with the recommendations in section 5.2.12 of the Ecological Appraisal dated February 2017 to include the installation of boxes in the fabric of the new houses for house sparrow, swift and starling, the erection of boxes on trees for cavity dwelling species and the installation of a barn owl box.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: To ensure ecology is adequately addressed.

16. For any phase or sub-phase, no development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
  - a) Risk assessment of potentially damaging construction activities.
  - b) Identification of biodiversity protection zones
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (to include consideration of lighting) (may be provided as a set of method statements).
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person.
  - h) Use of protective fences, exclusion barriers and warning signs

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To ensure ecology is adequately addressed.

17. For any phase or sub-phase, no development shall take place until a Construction Management Plan (CMP) has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic signing or restrictions.

Reason: In the interests of highway safety and amenity.

18. For any phase or sub-phase, prior to the first occupation of each dwelling/use of each building therein, the new street(s) between each respective plot/unit and the existing public highway shall be laid out in accordance with the plan(s) approved under condition 2, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageway and footway(s) in front of each respective plot/unit shall be completed with the final surface course within 12 months (or 3 months in the case of a shared surface road) from the first occupation of that plot/unit.

Reason: In the interests of highway safety.

19. For any phase or sub-phase, works shall not commence on site until a scheme for the disposal for highway surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained accordingly thereafter.

Reason: In the interests of highway safety.

20. The bin collection facilities approved pursuant to the reserved matters 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 and the visual appearance of the development.

21. A detailed Travel Plan, to accord with the updated Framework Travel Plan dated April 2019, as approved pursuant to condition 29 of outline permission ref. 9/2017/0349, shall be submitted with each application for approval of reserved matters for each phase or sub-phase, approved in writing and implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets.

Reason: In the interests of highway safety and sustainability.

22. For any phase or sub-phase, no development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015) and the CIRIA SuDS Manual C753, has been submitted to and approved in writing by the Local Planning Authority. All attenuation ponds and swales shall be fully designed and constructed in line with CIRIA SuDS manual C753. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing. Details to be submitted shall also include the regime for supervision, inspection and certification of each phase of the surface water system by suitably qualified professionals.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

23. No building works which comprise the erection of a building required to be served by water services shall be undertaken in connection with any phase or sub-phase of the development hereby permitted until full details of a scheme including phasing, for the provision of mains foul sewage infrastructure on and off site has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the approved scheme.

Reason: To prevent flooding, pollution and detriment to public amenity through provision of suitable water infrastructure.

24. No rainwater, contaminated with silt/oil from ground disturbed as a result of the construction phase of the development, shall drain to a surface water sewer or watercourse, without sufficient settlement. Under the Environmental Permitting Regulations 2010, the prior agreement of the Environment Agency is required for any discharge of dewatering water, from excavations, to controlled waters.

Reason: To prevent pollution of the Etwall Brook and its tributaries.

25. a) For any phase of sub-phase, no development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme 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 Written Scheme of Investigation.

The evaluation phase of the archaeological scheme shall have taken place, and the report submitted to the local planning authority, before the submission of a reserved matters application with details of layout.

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

26. No phase or sub-phase of the development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the phase. The approved measures shall be implemented throughout the construction period.

Reason: To protect the amenities of nearby residents.

27. During the period of construction, no construction work shall take place within 200 metres of the eastern boundary of the site outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residents.

28. a) No phase or sub-phase the development shall 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; 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. Local Planning Authority

b) Prior to occupation of any phase 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) If required by the conceptual model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the 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'.

Reason: In the interests of pollution control.

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

Reason: In the interests of pollution control.

30. The development shall be implemented in accordance with the approved noise mitigation measures approved pursuant to the reserved matters and such measures retained as approved throughout the lifetime of the development.

Reason: To protect future occupiers from noise.

31. No more than 617 dwellings shall be occupied until construction works have commenced on the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway junction unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the A38 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from traffic entering and emerging from the application site and in the interests of road safety.

#### Informatives:

- a. 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.southderbyshire.gov.uk/our-services/environment/pollution/contaminated-land](http://www.southderbyshire.gov.uk/our-services/environment/pollution/contaminated-land). 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 Health Department. Further guidance can be obtained from the following:
- i. CLR 11: Model Procedures for the Management of Contaminated Land
  - ii. CLR guidance notes on Soil Guideline Values, DEFRA and EA

- iii. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
  - iv. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
  - v. Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
  - vi. BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).
  - vii. BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.
- b. Activities such as dust suppression during construction, filling of any ponds/lakes and maintaining pond/lake levels may require an abstraction license. The proposed development site lies within the Lower Trent and Erewash abstraction licensing strategy (ALS) area. Under the Water Resources Act 1991, any abstraction of water greater than 20 cubic metres per day, requires an abstraction licence from the Environment Agency. Whilst this catchment abstraction management strategy (CAMS) area is open to new applications for abstraction from ground and surface waters, local conditions may apply. Further information is available at: [www.gov.uk/guidance/water-managementabstract-or-impound-water](http://www.gov.uk/guidance/water-managementabstract-or-impound-water).
- c. The developer is advised that in regards to the surface water drainage condition they will need to demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 3.3 of the CIRIA SUDS Manual C697. This type of development usually requires at least 2 treatment stages before outfall into surface water body/system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status.
- d. The applicant is advised that in regards to the surface water drainage condition to ensure all of the below parameters have been satisfied:
1. The production and submission of a scheme design demonstrating full compliance with DEFRA's Non-statutory technical standards for sustainable drainage systems:
    - a) Limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.
    - b) 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 to comply with S7 & S8.
    - c) 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.
    - d) Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.
    - e) Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.
    - f) Where reasonably practicable demonstrate that the runoff volume of the site reflects the requirements of S4.
- e. The applicant is advised that the reserved matters should include a footpath route along the western boundary to service that side of the development with a traffic free route.

- f. In granting planning permission the Local Planning Authority has taken into account the environmental information submitted in the original Environmental Impact Assessment, as now supplemented by the supported statement.
- g. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- h. In order to minimise the need to attach further conditions on a reserved matters approval, the developer is encouraged to provide the following information pursuant to the reserved matters listed under condition 2:
  - a) details of surfacing materials for roads, driveways, footpaths, car parking areas and courtyards, and details of facing materials to the external surfaces of the buildings;
  - b) details of the position and appearance of boundary treatments, including the provision of walls where gardens abut/face onto public areas, public routes and shared parking areas; and
  - c) details of verges, eaves, reveals, headers and cills.
- i. The landowner/developer should be aware, at an early stage, of the County Council's requirements as an adjoining landowner for a connection to the Great Northern Greenway, including contributions towards forward maintenance, design, satisfactory legal arrangements, etc.



**Item No.** 1.3

**Ref. No.** [DMPA/2022/0476](#)

**Valid date:** 04/04/2022

**Applicant:** DMPA/2022/0476

**Agent:** Andrew Large Surveyors

**Proposal:** Demolition of existing building and erection of a 4-bed detached dwelling at Breedon View, Robinsons Hill, Melbourne, Derby, DE73 8DJ

**Ward:** Melbourne

### **Reason for committee determination**

The application does not fully accord with the provisions of the Development Plan.

### **Site Description**

The site is located within the parish of Melbourne. It is accessed via a right of way off Robinsons Hill and currently consists of steel portal framed building with blockwork walls with fibre cement sheeting over.

### **The proposal**

The application seeks permission for the demolition of an existing commercial building and erection of a detached dwelling.

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

The applicant has submitted a Design and Access Statement and Proposed Plans and Elevations to support this application.

### **Relevant planning history**

DMPA/2020/0608 - Conversion and change of use of building from industrial unit (Use Class B1c to dwellinghouse (Use class C3)) at building east of Breedon View, Robinsons Hill, Melbourne, Derby – Approved 12th November 2020

### **Responses to consultations and publicity**

SDDC Environmental Health – No objections subject to a number of conditions in relation to time period of construction deliveries and recharge points for electric vehicles.

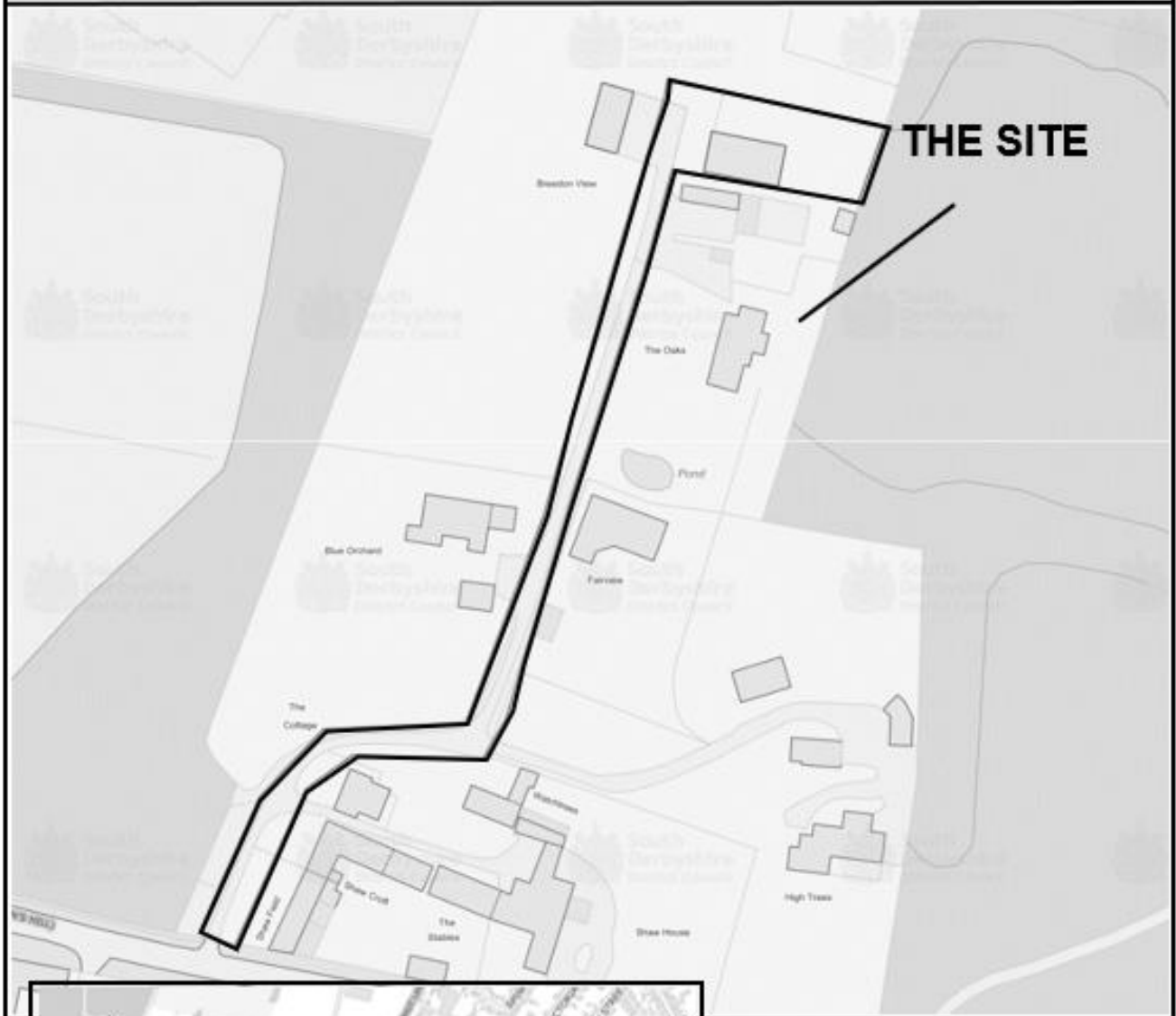
County Highways Authority – No objections subject to a condition in relation to parking provision.

Melbourne Parish Council – No objection.

Melbourne Civic Society – No objection and no support.

Derbyshire Wildlife Trust – No objection refers back to comments made on previously application (ref: DMPA/2020/0608). These previous comments stated *the application seeks permission for the conversion and change of use of an industrial unit to a dwelling house. We have considered the submitted supporting information and, given the nature of construction of the existing unit, we are of the view that there is little likelihood of roosting bats being present*

**DMPA/2022/0476 – Breedon View, Robinsons Hill, Melbourne, Derby, DE73  
8DJ**



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South Derbyshire District Council. LA 100019461.2020

*and affected by the proposed conversion. No ecological survey is therefore considered necessary and there should be no ecological constraints to the proposed development.*

A total of 3 objections have been received from members of the public in respect to the following issues:

- a) The application for the original barn conversion was flawed as the basis that the barn was a light industrial building was incorrect.
- b) Issues of asbestos associated with the existing structure.
- c) No utilities currently serving the existing barn.
- d) The proposal is not in keeping with the character of the surrounding residential developments.
- e) The proposals contradict Policy H1
- f) The proposals are bigger than the existing building.

### **Relevant policy, guidance and/or legislation**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications shall be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) Planning Practice Guidance (PPG), National Design Guidance (NDG) together with the South Derbyshire Design Guide Design Supplementary Planning Document (SPD).

The relevant Development Plan policies are:

2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport)

2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), H24 (Replacement Dwellings in Rural Areas), BNE5 (Development in Rural Areas).

Melbourne Neighbourhood Development Plan (MNDP) – DP1 (Proposals for new development) DP2 (Character and setting of Melbourne and Kings Newton)

The relevant national policy and guidance is:

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

### **Planning considerations**

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

- Principle of the proposed development
- Impact upon the character and appearance of the area

- Residential amenity
- Adequacy of parking and highway safety

## Planning assessment

### Principle of the proposed development

The application site is located outside of any settlement boundary as defined by Policy SDT1 and therefore constitutes development within the rural area/countryside. Here, policy BNE5 governs the appropriateness, or not, of proposals, with support for replacement dwellings allowed for by Policy H24.

It is noted that the application site has been subject of a planning application that grants permission for a residential conversion of the existing building (ref: DMPA/2020/0608). This was permitted by virtue of Policy H28, which permits the conversion of buildings to provide residential accommodation outside of settlement boundaries. As part of this, the existing building was found to be suitable for conversion to residential development without the need for further extension or alteration. The existing building was also found to be of a permanent and substantial construction, which was evidenced by structural surveys provided by the applicant. Indeed, the purpose of Policy H28 is to support the reuse of other redundant rural buildings, and the approved residential conversion of the existing building was supported on that basis.

Policy H24 allows for the provision of replacement dwellings within rural areas provided *i) the form and bulk does not substantially exceed that of the existing dwelling or that which could be achieved as permitted development; ii) is not more intrusive in the landscape than that which it replaces and iii) the new dwelling has substantially the same siting as the existing.* In this case the existing building does not fall within residential use and therefore would not comply with Policy H24 in the literal sense. It is acknowledged however that the building has permission to be converted into a single residential dwelling. If this permission was completed, then a replacement dwelling in the same location would be acceptable in principle under Policy H24 particularly as this policy allows consideration of the scale of development allowing for permitted development.

Policy DP1 of the MNDP also states *proposals for new development beyond the settlement boundaries of Melbourne and Kings Newton will only be supported where they comply in full with the relevant policies of this plan and the adopted south Derbyshire local plan.*

The proposed dwelling would predominantly be built on the existing footprint and would not exceed the height of the current building. It would be 4m<sup>2</sup> smaller than the previously approved scheme and would be considered of high-quality design. Whilst not infilling a gap between buildings, the new building would be in close proximity the existing built development in the immediate area and would be visually subservient. When taking into account the Council's overarching objectives to protect the countryside from harmful development, it is considered this proposal would be consistent with that policy objective. Whilst this proposal would be contrary to a strict interpretation of Policy H24 as the works have not yet been implemented to convert the building to be demolished to a dwelling, the existence of this conversion permission is a strong fall-back position to be taken into account in assessing the merits of the current application. It is considered on balance that the new dwelling would be an acceptable replacement building within this open countryside location and would not amount to an additional dwelling in the countryside beyond that which could be implemented as part of conversion works previously approved. Overall, whilst not in strict accordance with Policy 24 of the Local Plan and Policy DP1 of the MNDP, the proposal would preserve the character and appearance of the surrounding area and would be considered acceptable in principle in this

instance.

### Impact upon the character and appearance of the area

In relation to impacts on the street scene, as the building is located approx. 230m along the access road off Robinson's Hill there would be no views of the site from the main road, although there would be clear views from the access road. It is noted though that there are no public footpaths within close proximity of the site that would increase the visibility from the public realm.

The proposed dwelling would largely be built on the existing footprint of the existing barn with a gable end extension added facing the northern boundary. It would not exceed the height of the existing barn and would actually result in a 4m<sup>2</sup> GEA reduction from the approved scheme. The proposed dwelling could easily be accommodated within the site without appearing cramped or resulting in any overdevelopment within the site. In terms of design, the proposed dwelling would have a traditional feel with the use of red brick and clay roof tiles. These materials along with the pitched roof design would be in keeping with the character and appearance of the surrounding properties in the wider area and would be deemed acceptable in this countryside location. To preserve the rural character of the site, a condition will be attached to control future extensions and alterations at the site.

Overall, the proposal would not have a detrimental impact on the street scene or character of the area and would be in accordance with Policies S2 and BNE1 of the Local Plan.

### Residential Amenity

In relation to the impacts of the proposed development on the residential amenities of neighbouring occupiers that surround the site, the building is located at the end of an access road off Robinson's Hill with the closest dwelling being Breedon View which sits directly adjacent to the proposed building with a 4m separation.

The 3 x first floor windows on the side elevation would accommodate a bathroom, landing and a secondary window to bedroom 2. The rear elevation of Breedon View is blank with no openings present. Therefore, there is no requirement for the first floor windows to be obscure glazed and the proposed dwelling would not result in any overlooking to the existing occupiers of Breedon View. Ample garden space would be provided for the future occupiers also.

It is noted the Environmental Health officer has assessed the scheme and raises no concerns subject to conditions restricting construction hours and installation of electric points. Electric Vehicle charge points are addressed under the requirements of the building regulations. In view of the above it is considered that the development will reasonably safeguard the amenities currently enjoyed by the neighbouring properties and on this basis, it is considered that in neighbour amenity terms it will reasonably satisfy the requirements of Policy SD1 and BNE1 of the Local Plan.

### Parking and Highway Safety

Policy INF2 of the LP1 requires that appropriate provision is made for safe and convenient access to and within the development. The development would utilise an existing access, with visibility in excess of the required 2.4m x 65m splay. There will be no difference in vehicular movements in terms of those associated with the approved residential conversion. Highways have reviewed the proposal and raised no objections. The proposal raises no concerns on highway safety grounds and would be in accordance with Policy INF2 of the Local Plan.

### Landscaping and Biodiversity



The existing trees and hedgerow will remain within the site with an additional hedgerow proposed to supplement the existing post and rail enclosure on the eastern boundary. This level of landscaping is considered appropriate at the site and a condition will be attached to ensure a soft and hard landscaping is submitted and approved by the local planning authority prior to the occupation of the dwelling. Derbyshire Wildlife Trust were consulted on the application and raise no objections or suggested conditions to the scheme. Overall, the proposal would be considered to be in accordance with Policy BNE7 of the Local Plan Part 2.

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

## **Recommendation**

### **Approve with conditions.**

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

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

2. The development hereby permitted shall be carried out in accordance with Location Plan received 4<sup>th</sup> April 2022, Design and Access Statement received 4<sup>th</sup> April 2022, Proposed Site Plan Dr No. 2201-104-A-P01, Proposed Elevations Dr No. 2201-104-A-P03, Proposed Floor Plans Dr No. Dr No. 2201-104-A-P02, Ecological Statement received 4<sup>th</sup> April 2022 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Prior to the occupation of the dwelling a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of the dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure no net loss of biodiversity and in the interest of the character and appearance of the surrounding area.

4. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with the approved drawing Thereafter the onsite parking provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable

vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2021)

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

Reason: In the interests of the neighbouring amenity.

6. Other than where specified on the approved plans/drawings, all external materials used in the development shall match those used in the existing building to be demolished in colour, coursing and texture unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the building(s) and the surrounding area.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwelling hereby permitted shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the effect upon neighbouring properties.

8. The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.



**Item No.** 1.4

**Ref. No.** [DMPA/2022/1330](#)

**Valid date:** 30/09/2022

**Applicant:** Michael Baker

**Proposal:** **Amended scheme to previously approved (DMPA/2021/0361) For the erection of an extension to the garage and alteration to roof on main dwelling including new roof lights and new rear dormer at 23 Skinners Way, Midway, Swadlincote, DE11 7NL**

**Ward:** Midway

### **Reason for committee determination**

Local concern has been raised about a particular issue.

### **Site Description**

The applicant site is a detached built dwelling in the early 2000's, built in red brick within a cul de sac from the through road of the estate. The property is on a fairly modern estate and features a mix of house types. Most of the houses follow the usual relationship with the road/public realm (as in their front elevations being the most visually prominent). Some properties as in the case here sit at non-standard angles/right angles to the road, as here for example accessed off a private/shared drive. It could be considered that the application site has a more private situation and has a different relationship with the public realm. The application site is the last one in a cul de sac of three, the cul de sac book-ended by way of the existing double garage. Thereafter the house backs onto the sizeable rear gardens on Eureka Road.

### **The proposal**

The proposal is for amendments to previously approved permission ref: DMPA/2022/0361 the amendments are;

- an additional roof light in the front elevation;
- proposed alteration in roof height;
- detached garage doors changed from three single doors to one double and one single door; and
- an additional roof light in the side elevation of the garage.

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

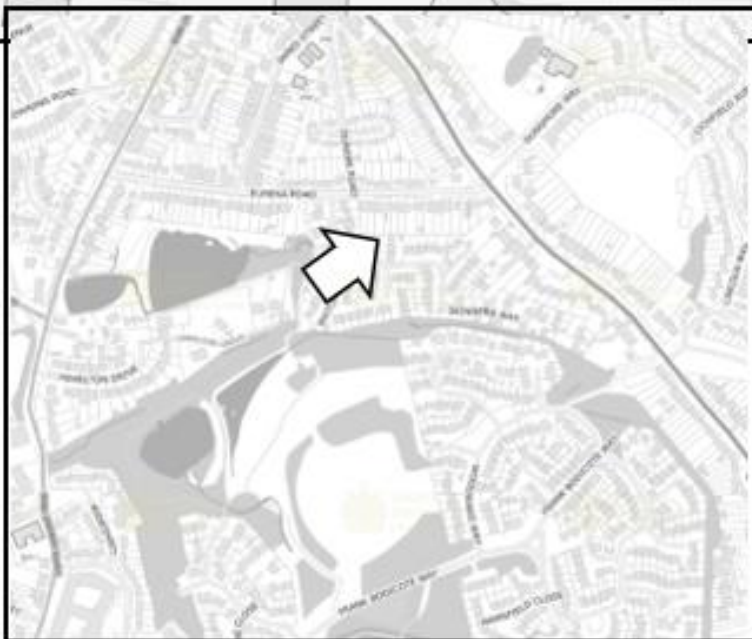
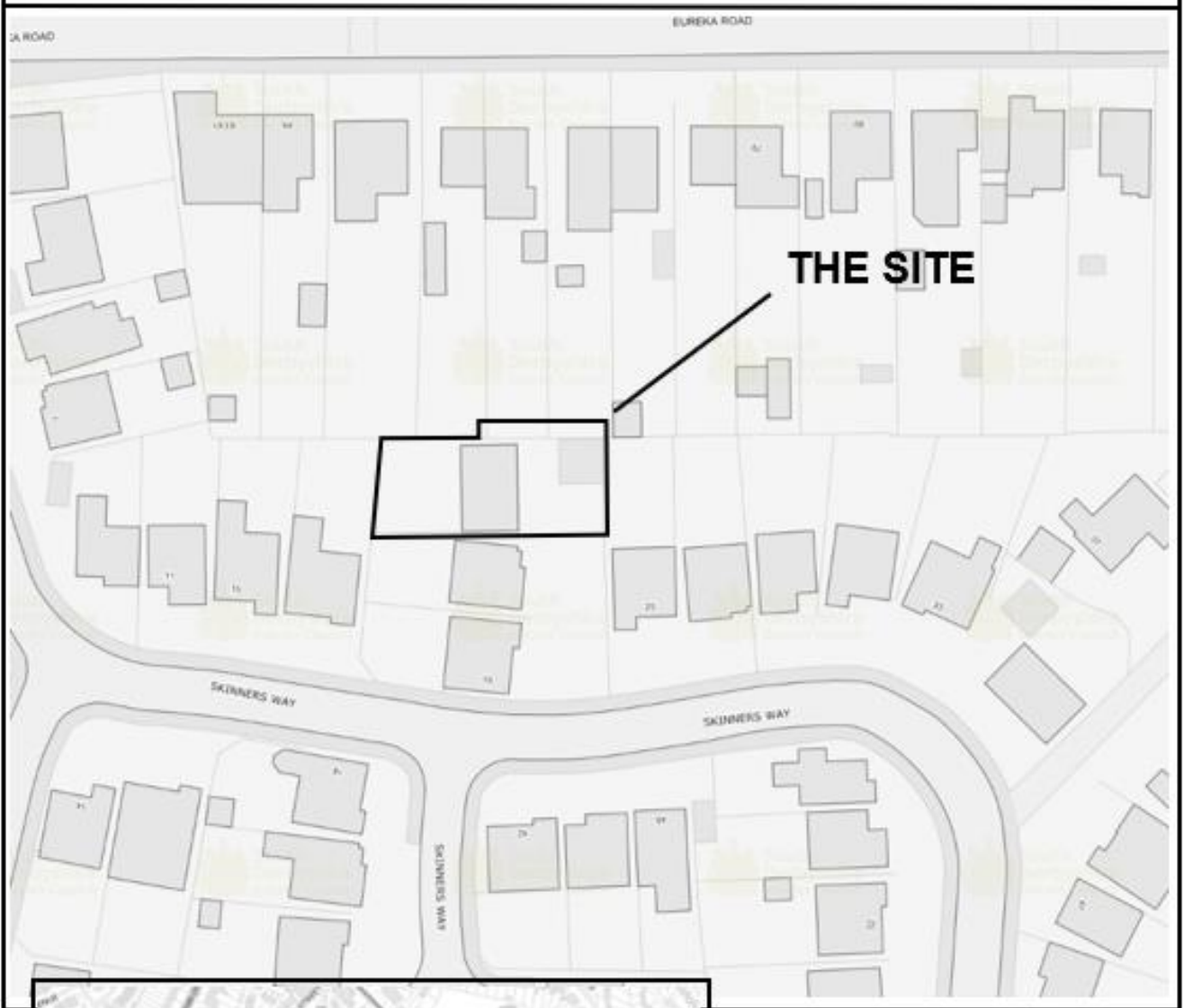
The applicant has submitted plans setting out the amendments for retrospective approval.

### **Relevant planning history**

9/1999/0710 - The erection of 53 houses together with associated access road and public open space - Approved 13.10.2000

DMPA/2021/0361 - The erection of an extension to the garage and alteration to roof on main dwelling including new roof lights and new rear dormer - Approved 27.4.2021

**DMPA/2022/1330 – 23 Skinners Way, Midway, Swadlincote, DE11 7NL**



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## Responses to consultations and publicity

### Public Representations

Six public representations have been received which can be summarised by the following points:

- a) The garage being extended to be used for repair of vehicles and running a business and cause lack of parking and unsociable hours. Inserting a car lift with the increased roof height.
- b) Garage not in keeping with the appearance of surrounding houses & would cause adjoining properties lack of privacy.
- c) Scaffolding was up for a long period of time and debris was falling onto neighbouring properties.
- d) Builders vehicles blocking access, problems with parking and increased traffic.
- e) Works being carried on without approved plans and builders working during the planning process.
- f) Noise levels and hours of working on a Sunday for example.
- g) With the garage position and extension vehicles would be overhanging onto neighbouring driveways.
- h) Concerned about the height of the garage, asked if the increase in garage extend over 4 metres and 2.5 metres for the eaves height.
- i) Increased in height of ridge of new roof.
- j) With the original application querying if the detached garage floor level is at same datum as neighbours.
- k) The double detached garage forms part of boundary wall and loss of significant sunlight and daylight and causing overshadowing to property.
- l) The garage wall is on the boundary and a party wall.
- m) Concerned the garage may be altered later into residential dwelling. Representation visited site to discuss drainage
- n) Additional roof lights and windows in extension will be intrusive to neighbours and cause overlooking.
- o) Alterations with the plans the guttering/down pipe down side elevation into neighbouring garden, this will effect position and height of fence.
- p) Boundary fencing of neighbouring property is effected with the extension.
- q) Want to appeal against the approved planning DMPA/2021/0361.

### **Relevant policy, guidance and/or legislation**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications shall be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) Planning Practice Guidance (PPG), together with the South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant Development Plan policies are:

2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence)  
2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H27 (Residential

Extensions and other Householder Development)

The relevant national policy and guidance:  
National Planning Policy Framework (NPPF)  
Planning Practice Guidance (PPG)

The relevant local guidance:  
South Derbyshire Design Guide SPD (Design SPD)

### **Planning considerations**

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

- Design;
- Amenity and
- Coal Mining Legacy

### **Planning assessment**

#### Design

This is a resubmission application for amendments to previously approved scheme for an additional roof light in the extension front elevation, proposed alteration in roof height, amendments to the doors of the detached garage with the insertion of a roof light in the side elevation of the garage.

In relation to the proposed alteration in roof height, the plans have been assessed and compared to the approved scheme and the amended plans submitted (dwg no 1053\_MB\_PL\_01A). The overall height has been reduced, with the measurement between the eaves and top of ridge has reduced by 0.2 metres (200mm).

The front projecting two storey gable has increased from 7.2 metres to 7.4 metres in height.

While there has been a change to the appearance of the roof from the approved plans, it has been reduced in overall height, with the front projecting gable slightly increasing. It is considered the amendments are minimal, that the design is acceptable and that the overall reduction in height would be acceptable having regard to the approved scheme.

With the additional roof light it is considered that this could be inserted under householder permitted development rights as there are no conditions, either on the original permission for the house or the later approved scheme which would remove these rights. It has been assessed as it was inserted at the point the works were being undertaken and is shown on the plans. It is considered that the roof light is acceptable and would not cause any additional overlooking but would allow more sunlight into the stairway into the attic room.

Plans also show revisions to the detached garage these are altering the garage doors from 3 single to a double and single with a roof light in the side elevation. While these are additional amendments to the approved plans, they are cosmetic changes and are not considered to be unacceptable to the overall design of the garage.

#### Amenity

It is considered that with the amendments carried out and proposed would not cause any

additional loss of overlooking or overbearing or lack of privacy as considered under the approved scheme.

The additional roof light in the front elevation is for the stairway in the attic room on the section of the amended plans this shows the height of the roof light at 4620 mm. It is considered that due to the height and position of the additional rooflight that this would not cause any additional overlooking or loss of privacy.

With the roof light in the detached garage, this is facing the applicant's property and any views would be towards the main dwelling.

### Other Matters

In relation to the concerns raised in comments from neighbours, a number of the concerns raised are in relation to the original application that has been approved (DMPA/2021/0361) and issues raised at the time were dealt with at that time. This approved development is a material consideration, but it cannot be revisited as part of the consideration of this scheme.

There is no 3rd Party appeal process for approved schemes.

This following matters are included as part of this application as outlined in the report:-

Additional roof light in the extension of the dwelling, this ordinarily would be able to be carried out under Permitted development. As the roof light was inserted at the time the works to the roof were being undertaken and was an additional element not shown on the approved plans it has been assessed and considered acceptable due to the height and its positioning within the roof which is not considered to cause any additional overlooking or loss of privacy.

Proposed increase in roof height:- There has been alterations to the roof from the approved plans this has been assessed against the approved plans and the amendments proposed an overall reduction in the height of the roof with the front projecting gable being increased in height. The amendments are considered to be minimal with no significant impact on overall design or amenity and are therefore considered to be acceptable.

Additional roof light in the side elevation of the garage. As with the roof light in the extension this could be carried out under permitted development and with the siting of the roof light facing to the applicant's own property it is considered acceptable.

With works carried out without prior approval through the planning process, applications are allowed to be submitted retrospectively. Any works are undertaken at the owners risk and once the application is assessed, if it is not granted approval, enforcement action can be taken to remedy the breach, which in this instance would be building to the approved plans.

Concerns have been raised about builders vehicles blocking access, noise levels and hours of work - these matters if causing a statutory nuisance can be dealt with through other legislation. Indiscriminate parking is a matter for the police.

### Coal Mining Legacy

The site falls within an area identified as High Risk in regards Coal Mining Impacts. The relevant Coal Authority informative should be included on any grant of planning permission.

### Conclusion

Planning permission has been granted for extensions to the property under reference

DMPA/2021/0361. There have been amendments made to the approved scheme during construction and this application seeks to regulate the unauthorised works as set out in the report. The application should not revisit the principle of the approved works but consider the amendments between the approved scheme and that considered under this application.

With this in mind it is considered that the proposals would not result in any significant additional overlooking or overbearance to the occupants of any neighbouring properties and all amendments to the design of the overall scheme are considered to be acceptable.

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

### **Recommendation**

Approve subject to the following conditions:-

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

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

2. The development hereby permitted shall be carried out in accordance with the plans referenced:- Proposed elevations, floor plans and sections (dwg 1053\_MB\_PL\_01A) received 18th January 2023; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt.



<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM:5</b>
<b>DATE OF MEETING:</b>	<b>07 MARCH 2023</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED DOC</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Sarah Beeby</b> <a href="mailto:sarah.beeby@southderbyshire.gov.uk">sarah.beeby@southderbyshire.gov.uk</a>	
<b>SUBJECT:</b>	<b>DEED OF VARIATION – LAND AT SK2420 2230, DRAKELOW PARK, WALTON ROAD, DRAKELOW</b>	<b>REF: DMPA/2020/1460</b>
<b>WARD(S) AFFECTED:</b>	<b>LINTON, SEALES</b>	<b>TERMS OF REFERENCE</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) to include a clause which would allow S73 applications to be made with no impact on the Section 106 Agreement – such that its provisions and all requirements would remain in place, unaffected.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the final wording of the clause to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of the proposed change to the S106 Agreement, Land at SK2420 2230, Drakelow Park.

## **3.0 Background**

- 3.1 Members may recall that the site was granted outline planning permission most recently by means of a Section 73 application to vary conditions on a previous approval for up to 2,239 dwellings. This permission was subject to a new S106 Agreement and can be found under planning reference [DMPA/2020/1460](#).
- 3.2 South Derbyshire District Council are currently dealing with a further S73 application to amend the condition relating to the phasing of the development which would slightly enlarge phase 2 of the development. This application does not seek to amend any of the contributions or triggers identified in the S106 Agreement.

## **4.0 Discussion**

- 4.1 The developers have submitted an application to amend a condition relating to the approved phasing areas of the site, by means of a S73 application. This decision on the S73 application would effectively become 'the permission' for the development.
- 4.2 This application does not seek to amend the contributions within the S106

Agreement or any of the trigger points contained within this legal document.

4.3 However, the S106 Agreement for the site does not include a standard clause, which is frequently used in S106 Agreements, to ensure that the contents of the S106 Agreement remain valid subsequent to any permissions to vary or remove conditions by means of the provisions of S73 of the Act.

4.4 The developers would therefore like to amend the S106 Agreement to include a standard clause to ensure that the S106 Agreement and all requirements contained within this remain valid should the current S73 application or any subsequent such applications which could come forward in the future be approved.

## **5.0 Financial Implications**

5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the developers they have requested the DoV.

## **6.0 Corporate Implications**

6.1 None.

## **7.0 Community Implications**

7.1 None

## **8.0 Background Information**

a) [Section 106 Agreement](#)

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>07 MARCH 2023</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>JESSICA CHEADLE</b> <a href="mailto:Jessica.cheadle@southderbyshire.gov.uk">Jessica.cheadle@southderbyshire.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SECTION 106 VARIATION – HACKWOOD FARM MICKLEOVER</b>	<b>REF: 9/2014/0562</b>
<b>WARD(S) AFFECTED:</b>	<b>ETWALL</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) by means of Deed of Variation (DoV) to include a standard Mortgagee in Possession (MiP) clause into the agreement and other minor amends as the Strategic Housing Team feel appropriate.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of the proposed changes to the S106, primarily the inclusion of a MiP clause.

## **3.0 Background**

- 3.1 Members may recall that the site, known as Hackwood Farm, Mickleover was granted planning permission in October 2015 for up to 290 homes within South Derbyshire as part of a wider cross boundary development for up to 660 homes. The original S106 agreement called for a 25% affordable housing contribution, with a tenure mix of 78% of the affordable homes provided as social rent and/ or affordable rented homes and 22% provided as intermediate (affordable home ownership) homes within South Derbyshire.
- 3.2 To date, the developers has made significant progress in the delivery of affordable homes across the various different phases of the scheme which has contributed to alleviating housing need within the District.

## **4.0 Discussion**

- 4.1 The Strategic Housing Team have been approached by the Affordable Housing Provider (AHP) who are in contact to purchase the affordable homes on the site. They would like to propose a variation to the formally agreed affordable housing definitions across the Redrow phase of the site by means of a DoV.

- 4.2 The proposed change would include a standard MiP clause, which means that in the unlikely instance that the AHP defaults on their loan payments or mortgage terms, their lender can take control of their affordable housing assets against which the loan is secured.
- 4.3 In such instances, the clause offers protection and allows for another AHP, including the Council, to purchase the affordable homes within a specified time period, however, in circumstances where a buyer cannot be found, the lender is free to sell the homes without the affordable housing restrictions to allow them to regain some or all of the loan provided.
- 4.4 The Council now includes the MiP as a standard clause in all S106 agreements in order to allow an AHP to borrow money to purchase the S106 affordable homes on sites. This S106 agreement pre-dates the use of this clause, and therefore these changes seek to rectify this.
- 4.5 The Strategic Housing Team would like to take the opportunity to update the S106 and DoV to be more aligned with current working practice by making other minor amends to the agreement.

## **5.0 Financial Implications**

- 5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the AHP.

## **6.0 Corporate Implications**

- 6.1 None.

## **7.0 Community Implications**

- 7.1 There would be the same number of affordable homes delivered on the site.

## **8.0 Background Information**

- a. Section 106 Agreement:

<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2014/0562>

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>07 MARCH 2023</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>JESSICA CHEADLE</b> <a href="mailto:Jessica.cheadle@southderbyshire.gov.uk">Jessica.cheadle@southderbyshire.gov.uk</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SECTION 106 VARIATION – NEW HOUSE FARM MICKLEOVER</b>	<b>REF: 9/2017/0349 &amp; DMPA/2020/0543</b>
<b>WARD(S) AFFECTED:</b>	<b>ETWALL</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) and subsequent Deed of Variation (DoV) by means of further DoV amendments to the definition of Public Open Space and Schedule 3 of the agreement.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of the proposed changes to the S106, primarily amendments to the Public Open Space definition.

## **3.0 Background**

- 3.1 Members may recall that the site, known as New House Farm, Mickleover was granted planning permission in October 2018 for up to 1,100 homes within South Derbyshire. The Section 106 agreement can be found under planning permission reference 9/2017/0349 and the subsequent Deed of Variation under permission reference DMPA/2020/0543.
- 3.2 To date, the developers has made significant progress in the development of the site across the various different phases of the scheme which has contributed to alleviating housing need within the District.

## **4.0 Discussion**

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- 4.1 The Planning Policy team have been approached by Claremont Planning, who are representing a developer regarding the further development of the scheme. They

would like to propose a variation to the formally agreed Public Open Space definitions by means of a DoV, this will ensure there is a clear definition in place. This change will not reduce the amount that is provided on site. The proposed amendment can be seen below

	<b>Existing Section 106 Agreement Definition</b>	<b>Proposed Amendments to Agreement Definition</b>
<b>Public Open Space</b>	<p>the public open space and play areas to be provided across the Site as a whole and which shall include the following:</p> <ul style="list-style-type: none"> <li>(a) a minimum 3.47 ha of formal open space;</li> <li>(b) a minimum of 2.81ha of informal open space;</li> <li>(c) a minimum of 0.51ha of open space for children and young people, including LEAPs;</li> <li>(d) a minimum of 1.70ha outdoor sports facilities;</li> <li>(e) a NEAP with a minimum of 1,000 square metres of activity space; and</li> <li>(f) MUGA with a minimum of 465 square metres of hard surface area;</li> </ul>	<p>the public open space and play areas to be provided across the Site as a whole and which shall include:</p> <ul style="list-style-type: none"> <li>(a) a minimum 3.47 ha of formal open space;</li> <li>(b) a minimum of 2.81 ha of informal open space;</li> <li>(c) a minimum of 0.51 ha of open space for children and young people, including LEAP's;</li> <li>(d) a minimum of 1.70 ha of outdoor sports facilities;</li> <li>(e) a NEAP with a minimum of 1,000 square metres of activity space (which shall include a MUGA with a minimum size of 465 square metres of hard surface area within the 1,000 square metres of activity space to be provided);</li> </ul>

4.2 It is also proposed that an amendment is made to Paragraph 1.3.2 of Schedule 3 (Public Open Space) to mean that a resident management company is provided for as well as a separate entity for looking after the Public Open Space and SUDs within the development.



## **5.0 Financial Implications**

5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the Developer.

## **6.0 Corporate Implications**

6.1 None.

## **7.0 Community Implications**

7.1 There would be the same amount of Public Open Space delivered on the site.

## **8.0 Background Information**

a. Section 106 Agreement:

<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2017/0349>

b. Deed of Variation

[Planning Application: DMPA/2020/0543 \(force.com\)](#)