

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

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

Item 1.1

Reg. No. 9/2010/0021/U

Applicant:

Hansons Auctioneers
36 Main Street
Etwall
Derby
DE65 6LP

Agent:

Peter Diffey & Associates
Cotesbach Villa
54 Woods Lane
Stapenhill
Burton on Trent
DE15 9DB

Proposal: The Change Of Use From Hatton Bathroom Supplies To Auctioneers At Property At Brookfields Business Park Heage Lane Etwall Derby

Ward: Etwall

Valid Date: 07/01/2010

Site Description

The building occupies a site that lies off the roundabout on the A516 north east of Etwall and is accessed off Heage Lane. There is a ditch passing to the north of the building, beyond which there are employment/workshop units and a day nursery. Beyond them is land with planning permission for additional workshops. To the south of the site is the Seven Wells Public House.

Proposal

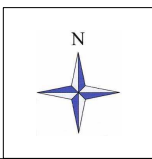
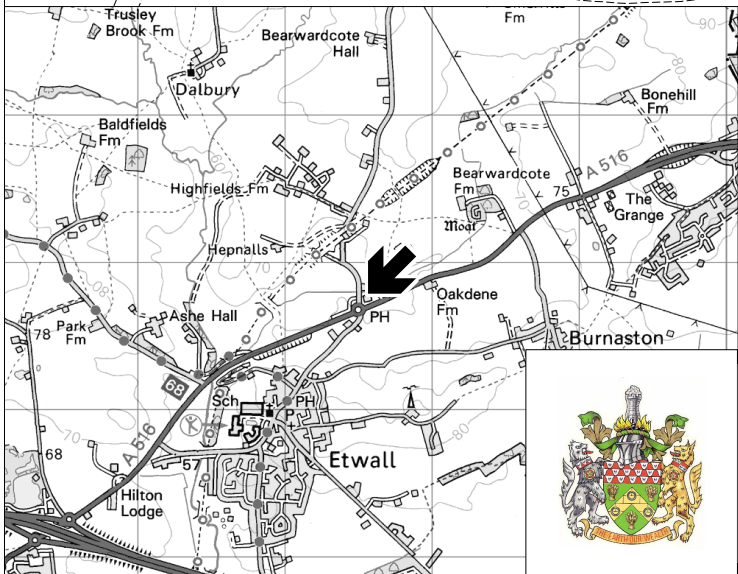
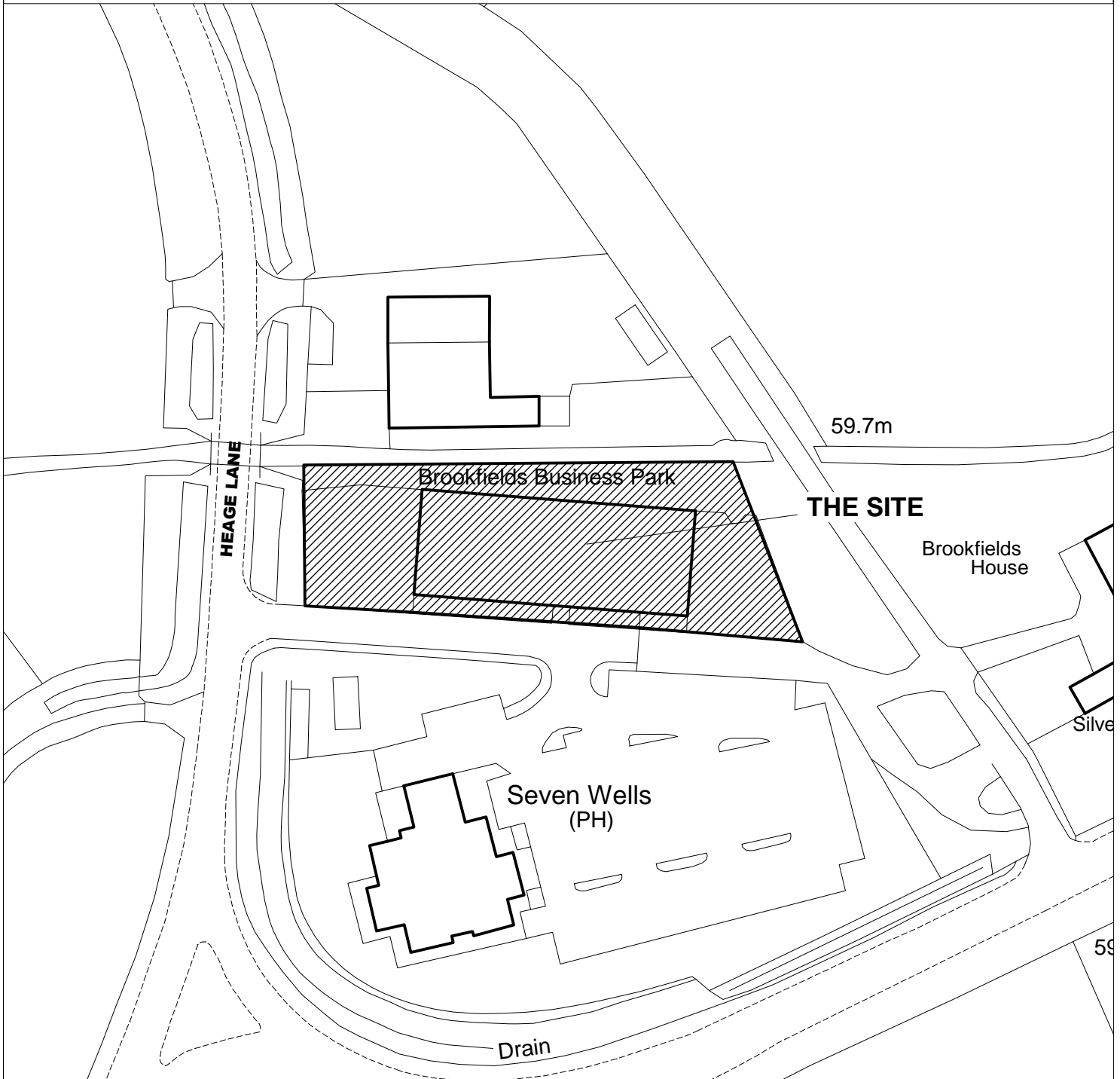
The existing use of the site is limited by condition to a bathroom showroom and associated workshop to ensure that the building does not, through permitted development rights, become a shop that may detract from the vitality and viability of the nearby Etwall village centre. The proposed use of the now vacant building for auction rooms, by a local valuer and auctioneer currently based in Etwall, therefore requires planning permission by virtue of the condition.

Applicants' supporting information

The applicant operates out of Etwall with goods for sale currently stored in premises at Ednaston that are then moved to the Mackworth Hotel for sale days. This split site operation causes difficulty for the business. The application building is currently vacant and has been identified as suitable for the business as it is large enough to store goods prior to sales taking place; the site is also considered to have adequate parking facilities.

Auctions take place on average once a month with viewing days normally taking place on the day before an auction. The company specialises in the sale of antiques, household goods, contents furnishing and furniture all of which could be stored in the

9/2010/0021 - Property at Brookfields Business Park, Heage Lane, Etwall
DE65 6LS



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South Derbyshire District Council. LA 100019461. 2010

proposed site. Storage is generally short-term but might last up to several months waiting for a specialist auction; most of the goods stored are bulky.

The business employs 4 full-time staff with a further 10 – 12 part-time staff immediately employed before auctions and on the day of the sale. Unloading and loading would be located at the rear of the building. 15 parking spaces are shown on the frontage to the site to Heage Lane. The applicants acknowledge that parking provision on the site may be inadequate on sale and viewing days. With this and the objection from the County Highway Authority in mind, the applicant has negotiated an agreement with the owners of the Seven Wells Public House for up to 40 spaces within its car park to be occupied on viewing and sale days. This would give a total of 55 spaces on viewing and auction days. The applicant is also looking to secure 7 parking spaces at the rear of the premises but this is not part of this application.

The applicant has satisfied the Environment Agency in respect of land drainage issues to a point where the Environment Agency has no objection to the development.

Planning History

This site has evolved over time with the original permission being granted for the relocation of the then Etwall Garage, with its motor vehicle repairs, car and van sales and petrol filling station and a roadside facility for overnight accommodation. Given the terms of the original permission, the site owners were able to demonstrate that the erection of the pub (the Seven Wells) would be acceptable. Also separate units evolved on other parts of the site one of which is now in use as a day nursery. The former Hatton Bathrooms building was the last to arrive on the site and was permitted on the basis that it would be used for the purposes described in the then application.

Responses to Consultations

Etwall Parish Council has no objection.

The County Highway Authority raised concerns over the lack of parking space within controlled land that could lead to parking on the highway, and that the agreement between the applicant and the brewery would result in a loss of available parking spaces associated with the public house. However, it notes that on numbers of occasions the public house car park appears to be under utilised. Although the agreement between the two parties can be terminated with 1 months notice, if a condition can be included which would permit the proposed use only whilst the agreement is in place, then the authority considers an objection on highway grounds would be difficult to sustain. Therefore subject to such a condition and one relating to the laying out and maintenance free of impediment of carparking and manoeuvring space the County Highway Authority would have no objection. If such a condition could not be attached then concerns about vehicles parked on Heage Lane, damaging grass verges and obstructing visibility, and around the traffic island even for a limited number of times a year would not be in the best interests of highway safety and the Authority would recommend refusal of the application. (Please see comments below in 'Planning Assessment' on this aspect of the proposal and the suitability of a planning condition)

Following clarification of the foul drainage situation for the existing building The Environment Agency has no objection.

The Environmental Protection Manager has no comments.

Responses to Publicity

One letter welcomes the change of use but expresses concern about the lack of parking particularly on auction days.

Development Plan Policies

The relevant policies are:

EMRP: 1,3,12 & 20

Saved Local Plan: Environment Policy 1; Shopping Policy 2, Employment Policies 4 & 5.

National Guidance

PPSs 4 & 7

Planning Considerations

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

- The retail use of the building in the context of the Development Plan
- Highway safety issues arising from parking provision at the site.

Planning Assessment

The proposed use is more retail than the mix of retail and business use approved for the Hatton Bathrooms application. However, the retail element is intermittent as the building would largely be used for storage of items prior to sale days. It is therefore unlikely, given the specialist nature, that the retail sales would impact on nearby retail centres in particular Etwall. The site is on a bus route and there is a cycleway/bridleway close by. Accordingly a condition is recommended to secure the use to that described in the application, in order that the Local Planning Authority can control future occupation of the premises, as was the case with the previous use of the building.

The County Highway Authority's concern is that the proposed use has potential for causing traffic obstructions on auction days. In order to try and meet these concerns the applicants have negotiated an agreement with the owners of the Seven Wells public house that would allow up to 40 private motor vehicles to utilise the car park on viewing and auction days. Unfortunately a condition tying the permission to that agreement as sought by the County Highway Authority is not capable of being enforced, as the additional car parking lies outside of the application site and is only available to the applicant under the terms of the agreement with the brewery. The terms of the agreement enable either side to cancel with 1 months notice after an initial 3-month period. If terminated the planning permission would not be capable of implementation and such restriction is therefore unreasonable as a planning condition. That being the case the County Highway Authority's response is therefore a recommendation that the application be refused.

However, the applicants have stated that there would be generally one auction a month with viewing days prior to each auction. It is considered that the viewing days would present less of a problem in terms of highway safety because visitors would be spread

out over the working day. Thus the potential problem would be limited to the main auction days. It is considered that a limited number of days in a calendar year would not seriously harm highway safety. Information from the applicant's web site indicates that this year 11 auctions are proposed. Whilst there would be a risk of traffic parking on the highway on auction days, its frequency would be such that there would be minimal impact on highway safety, unlike a situation where cars were parked on the highway on a daily basis. In order to minimise the risks of parking occurring at peak times or happening more than say 14 times each calendar year (approximately one per month plus 2 additional) legitimate conditions could limit the time auctions can take place and take account of the word 'generally' in the supporting information.

In conclusion the determination of the application therefore rests on whether the use of the building is going to adversely impact on highway safety with sufficient frequency such that permission should be refused. It is considered that the proposed use could be of benefit to the local economy and provide a reasonable alternative use for an empty building in the countryside and that the highway safety considerations can be minimised by imposing a limit on the number of auctions that can be undertaken in any calendar year. Subject to the recommended conditions the proposed use is considered acceptable for the reasons set out above.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The use shall not be commenced unless and until the parking and manoeuvring area has been laid out within the site in accordance with the plan C1012/1 received on 15 February 2010 for 22 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear.
Reason: In the interests of highway safety.
3. Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) (Amendment) Order 2005 the use of the premises hereby permitted shall be limited to those operations described in the application documents and for no other purpose.
Reason: In order to retain the Local Planning Authority's control over the retail use of the premises. Whilst the proposed use of the building is considered acceptable, unrestricted retail use may prejudice the health and vitality if shops in the nearby Etwall village centre.
4. No auction shall commence within the building prior to 10:00 am on any day when an auction is to be held.
Reason: In order that the start of auctions does not clash with peak traffic flows in the morning period.
5. No more than 14 auctions shall be held in the premises in any calendar year.
Reason: In order to ensure that the number of auctions held at the premises is limited in the interests of minimising the impact of traffic being parked on the public highway.

Informatives:

Attention is drawn to the Highway Authority's concern regarding potential parking on the public highway and the applicant is therefore encouraged to pursue and implement the agreement with the adjacent land owner to allow use of the Seven Wells Public House Car Park on auction days.

Item 1.2

Reg. No. 9/2010/0120/NO

Applicant:

Hilton Property Partnership
Wellard Road
Hilton
Derby

Agent:

Mr P Diffey
Peter Diffey & Associates
Cotesbach Villa
54 Woods Lane
Stapenhill
Burton on Trent
DE15 9DB

Proposal: The Erection Of A Temporary Building For Use As A Pharmacy At Wellbrook Medical Centre Welland Road Hilton Derby

Ward: Hilton

Valid Date: 09/02/2010

Reason for committee determination

Councillor Mrs Patten has requested that the Committee determine this application as local concern has been expressed about the security of the structure.

Site Description

The container would occupy that part of the medical centre site currently laid out as lawn, adjacent to the footpath that leads from the medical centre to the main part of the shopping centre on Witham Close. It would be situated some 4.2 metres from that part of the medical centre boundary security fence adjacent to the parking area closest to the medical centre entrance.

Proposal

The container is a purpose built structure containing the pharmacy in one part and the retail area in another. Photographs of the interior of the structure will be displayed at the meeting.

The plans submitted with the application also show an extension to provide a pharmacy at the medical centre but this does not form part of this application. The requested temporary permission for three years is to allow time for the submission of a planning application for the permanent extension, and, if permitted, its construction.

Applicants' supporting information

The applicant confirms that the structure is purpose designed and is incorporated in a steel container and would be located on the frontage of the medical centre pending the

9/2010/0120 - Wellbrook Medical Centre, Welland Road, Hilton DE65 5GZ



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construction of a permanent building as an extension to that building. Should planning permission be granted for the permanent extension then this temporary structure would be removed within 2 weeks of the new facility opening.

The applicants argue that this facility is to replace the one that was previously housed in the Tesco store in Hilton.

Security of the structure was of paramount concern to the applicants, it needed to occupy a prominent location and the chosen site would be outside the area needed for the construction of the anticipated extension to the medical centre where it can easily be connected to services. It would be white painted with a flat roof, two doors and window in the retail part of the structure; all three openings are provided with steel shutters for security. A disable person access ramp is proposed off the existing access to the medical centre. Parking facilities are provided in the medical centre car park and the site is well related to existing parking facilities at the commercial centre.

In response to an objection from the owners of Jhoots pharmacy in the local centre the applicant has responded as follows. [Please see 'Responses to Publicity below for the summary of the objection]. The fact that the objector refers to competition as a ground for objection is not a valid reason for refusing planning permission; the proposed use is appropriate in a local centre.

In terms of traffic generation the use would not potentially generate more traffic as in most cases the journey will be made in conjunction with a visit to the medical practice. There would be some adverse albeit marginal visual impact from the temporary structure that in any event would be removed once the permanent structure was built, subject to planning permission. Assertions by the objector about traffic generation are not backed up by any evidence; on this basis the applicant asserts there is no significant highway impact that arises from the re-establishment of the pharmacy that once existed in the Tesco store based on the above information.

The objector also asserts that the development is contrary to the provisions of PPS 4 – the applicant states that the use is ancillary to the main use of the site as a doctors' surgery and as such cannot compromise the vitality and viability of the local centre. The hours of operation are to match those of the main surgery and no out of hours service is proposed.

In response to the assertion that the structure would not meet the requirements of the Royal Pharmaceutical Society, the applicants note that the structure is purpose designed to function as a pharmacy and as such all requirements of the society would be met. Health and Safety issues are raised and whilst not directly related to the consideration of the planning application, facilities for pharmacy workers would be provided within the surgery premises.

Planning History

The land on which the doctors' surgery stands was granted planning permission in outline in 1993 when the redevelopment of the Hilton depot was granted planning permission. An application to erect the surgery was granted planning permission in early 2002.

Responses to Consultations

Hilton Parish Council objects on the basis that the structure will represent a security issue; there is a large chemists nearby that is not mentioned; the chemists will only be open when the surgery is open so there would be difficulty accessing it – the existing chemist is open from early morning to late evening; there would be more congestion at the hammerhead at the end of Welland road.

The County Highway Authority has no objections to the application but points out that should not infer a permanent pharmacy extension will not require additional parking facilities.

Severn Trent Water has no objection.

The Environmental Protection Manager draws attention to the potential for unidentified contamination within the site and recommends a condition.

Responses to Publicity

A total of 6 objections have been received that can be summarised as follows; the objections from the adjacent pharmacy appear first then objections from the community.

- a) The pharmacy would almost certainly have to operate as a 100-hour facility and would have to provide service to a wider range of the community (ie all NHS patients), not just visitors to the surgery. As a retail pharmacy it would also attract customers in its own right rather than just providing a pharmacy for dispensing prescriptions. It would also need to offer drug abuse services at unconventional hours.
- b) There would be a loss of open space to the medical centre.
- c) There would be an increase in the number of visitors to the medical centre and the length of time they stay at the premises. This could lead to additional pressure on local parking facilities. It is asserted that the car park at the medical centre is often full. Welland Road is already used as an overspill car park for the medical centre. Traffic problems would be exacerbated if this pharmacy were permitted the application is therefore contrary to Transport Policy 6 in the Local Plan. A traffic survey must be carried out by the applicant and traffic mitigation measures provided.
- d) The development would not be in accord with the Swadlincote Retail and Leisure Study along with the requirements of PPS 4, as it would amount to a substantial new retail business outside the town centre.
- e) The development is contrary to Employment Policy 5 Industrial and Business Development in Rural Areas and Shopping Policy 2 - out of town shopping. This is not a town centre site and as such it would detract from the vitality and viability of town centres. Existing pharmacies in town centres adequately serve their communities and this may take trade away from such centres. This new business should not be allowed in a residential area. Patients from other areas could be drawn to the site if it operates as a 100-hour pharmacy. The proposal does not meet any of the four requirements (listed) for new shops from Shopping Policy 2.
- f) There is a proliferation of pharmacies that shows there is no specific need for another pharmacy that would adversely affect the amenities of occupiers of neighbouring houses. A 100-hour pharmacy would operate late at night so the hours of operation should be limited to those of the surgery (0800 - 1830 Monday to Fridays).

- g) There is a nearby pharmacy that provides a full range of services; the uncertainty relating to this development has meant it has been difficult to recruit qualified staff. The company has invested heavily in its shop and has recently refurbished the shop floor. This recently established business is being stifled by the threat of a new pharmacy.
- h) A Section 106 Agreement is required to improve local road facilities along with a Section 38/278 Agreement with the County Highway Authority. To implement a scheme of yellow line markings in the vicinity of the site to prevent on street parking and for parking meters and speed humps.
- i) It is understood that there is considerable local opposition in the village to this proposal.

Other objections: One of the objectors has drawn attention to numerous policies in the Local Plan

- j) It would be a complete waste of time to locate another pharmacy in Hilton; a dentist would be far more useful. There are plenty of pharmacies in the area one of which is within one minute's walk of the proposed site. The new pharmacy would jeopardise the future of the existing pharmacy that provides a comprehensive service. There is no urgent need for a temporary structure, the applicants should apply for a permanent extension now.
- k) The building is not secure enough to guarantee the safekeeping of drugs; it would be vulnerable to vandalism as people try to get access to drugs.
- l) Parking would be an issue with cars already parking on Huntspill and Welland roads. Huntspill Road is used as a rat run and with parked cars highway safety would be prejudiced.
- m) There is a lack of advertising of the application; nobody has been notified of the application.
- n) People should be notified as to why the development is or is not permitted.
- o) There is no reference to the nearby Jhoots pharmacy in the application documents – it is only 30 metres from the application site.
- p) The development would detract from the appearance of the site.

Development Plan Policies

One of the objectors has drawn attention to numerous policies in the Local Plan, however:

The relevant policies are:

EMRP: 1, 2, 12,

Local Plan: Housing Policy 1, Shopping Policy 3

National Guidance

PPS 4.

Planning Considerations

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

- The impact on amenities of the area.
- Highway and parking issues
- Other objections.

Planning Assessment

The proposed steel container is a white painted purpose built structure designed to take account of security issues. The main issue is the impact of that structure on the amenity of the area and local residents. The structure would be located in the area allocated in the Master Plan for Hilton for community and commercial activities under the provisions of Housing Policy 1 of the adopted Local Plan. It is sited well away from the boundaries of neighbouring houses and would occupy a prominent position within the Wellbrook Medical Centre. This is both a strength and a weakness, as the container would be visible but that visibility helps with its supervision should there be an attempt to break into it. On the basis that this is an application for temporary planning permission it is considered that the structure is appropriate for the use that relates well to both the clinic and the adjacent shopping area. The small size of the structure would make it difficult to justify a significant impact on residential or wider public amenity.

The County Highway Authority has raised no objection to the temporary use of this part of the site. It would be difficult in these circumstances to argue that the provision of an additional 28 sq metres of gross floor space with a net tradable area of 10 sq metres would trigger the type of highway problems envisaged by objectors. For this use adequate parking facilities are provided.

Given Shopping Policy 3 (the terms of which it is correct to consider this application against) the absence of adverse impact on the amenities of neighbouring properties and the provision of adequate access, parking and servicing facilities means that the proposal is in accord with the provisions of the development plan.

The question of opening hours has been raised and the applicants have asserted that the shop would operate only when the medical centre is open and as such a condition is recommended to secure this in the interests of the amenity of the occupiers of nearby houses.

It is not for planning to judge between competing businesses. It is understood that the chemist seeking the permission here is seeking to keep an existing pharmacy registration from the PCT alive, and it would be for the PCT to determine if that should continue. Whether or not the structure complies with the Royal Pharmaceutical Society/PCT requirements for health and safety is not a planning matter and neither is whether there is an urgent need for another pharmacy; the application should be judged against relevant planning policy and any other material planning considerations.

Insofar as the assertion that no publicity was undertaken, for a small, in terms of floor area, application such as this, the immediate neighbouring residential properties together with Jhoots chemists (who had asked to be notified should an application be submitted) received a letter from the Local Planning Authority notifying them of the application. This is in accordance with adopted and published notification policy.

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

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 30th April 2013 on or before which date the structure shall be removed and the site reinstated to the satisfaction of the Local Planning Authority.

Reason: The temporary permission is granted in accordance with the request set out in the application documents to meet the short-term needs for accommodation at the site.

2. The structure hereby permitted shall only operate at times when the Wellbrook Medical Centre is open for medical visits.

Reason: The structure is located within the fenced area of the Wellbrook Medical Centre and the opening of the structure at times when the medical centre is closed may adversely impact on the residential amenity of adjacent properties.

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

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

Informatives:

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

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

Item 1.3

Reg. No. 9/2010/0124/FH

Applicant:
Mr Gary Brown
21 Edgecote Drive
Newhall
Swadlincote
DE11 0LD

Agent:
Mr Gary Brown
21 Edgecote Drive
Newhall
Swadlincote
DE11 0LD

Proposal: The Conversion Of The Garage To Playroom At 21
Edgecote Drive Newhall Swadlincote

Ward: Midway

Valid Date: 10/02/2010

Reason for committee determination

The applicant's wife is a Council employee.

Site Description

The application property is set within a residential housing estate. The dwelling is set back from the highway allowing sufficient room for 2 cars at the frontage.

Proposal

The application proposes to convert the rear part of an existing tandem double garage into a playroom whilst leaving the required dimensions for an internal single garage available in the front part.

Applicants' supporting information

None.

Planning History

None.

Responses to Consultations

None.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

RSS8: N/A

Local Plan: Housing Policy 13

National Guidance

None.

Planning Considerations

The main issue central to the determination of this application is the effect the proposal would have on parking.

Planning Assessment

After conversion the property would still have off road parking for 3 vehicles, which is considered acceptable for the size of dwelling.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

Item 1.4

Reg. No. 9/2010/0294/L

Applicant:

South Derbyshire District Council
c/o The Agent

Agent:

Mr Kevin Stackhouse
Head of Finance & Property Services
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Proposal: Alterations To The Steps And Walls At The Grade II
Listed Town Hall The Delph Swadlincote

Ward: Swadlincote

Valid Date: 26/03/2010

Reason for committee determination

The Council is the applicant.

Site Description

The Town Hall is a Grade II listed building located on the north side of The Delph within the pedestrian zone of Swadlincote town centre. The site also lies within the Swadlincote Conservation Area.

Proposal

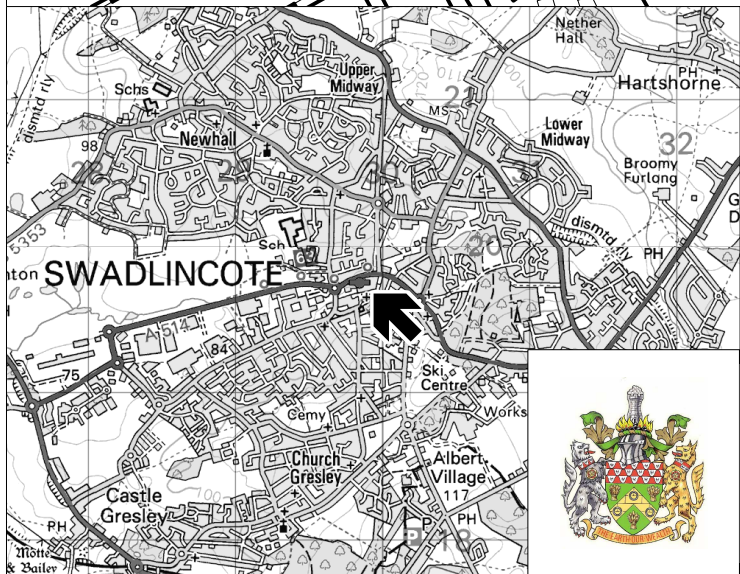
Listed Building Consent is required for the proposed alterations to the existing steps and walls to the front and sides of the building in order to accommodate the ongoing highway enhancement works that form part of the Swadlincote Town Centre Masterplan.

Applicants' supporting information

A Design and Access Statement has been submitted as part of the application and the following summarises its contents:

- The proposed works are part of the Swadlincote Town Centre Masterplan, which has been through public consultation in March 2006 and in February 2009.
- The whole of The Delph is to be repaved in sandstone as part of a scheme to enhance the setting of the Town Hall and make it a more attractive focus for The Delph. The sandstone paving will be laid right up to the buildings edge and due to the awkward levels around the Town Hall, alterations to the existing steps are

9/2010/0294 - Town Hall, The Delph, Swadlincote DE11 0AG



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required. The erection of plinth walls with railings above will also be incorporated into the scheme of works due to the ground level changes.

- External funding has been obtained for The Delph works and these are currently being costed up and the extent of the works will be decided when final costs are known. The submitted plans show a plain set of railings but it is hoped that funding will allow the incorporation of blacksmith artist's design into the scheme.
- The proposed scheme allows for the retention of the existing disabled arrangements, which include a ramp to the west side of the main entrance and outward opening doors that allow access into the building itself. A 1.4 metre clearway has been retained between the existing steps to the Town Hall entrance and the new plinth wall adjacent to the west side ramp for wheel chair access.
- To facilitate better access for the partially sighted, corduroy paving and strips of contrasting colour on the steps will be incorporated.

The submitted Heritage Statement is summarised as follows:

- The Town Hall is a red brick one storey building with a slate roof and was built as a Market Hall in 1861 and is dated as such in the modern centre plaque on the front elevation.
- The building is Grade II listed and stands on the corner of High Street, Market Place and Midland Road in Swadlincote town centre. The lower half of the front elevation was clad in modern brick in the 1980s at the same time that the entrance canopy was erected.
- All new brick walls and paving will abut the modern brick cladding and as such these works will have no impact on the historic fabric of the Grade II listed building. The 1980s porch is to be retained.
- The new walls and paving are to be laid by the same contractor who is currently undertaking the paving works to West Street in the town centre, which is also part of the Swadlincote Town Centre Masterplan. The work will be carried out to a high standard and when complete will enhance and thereby preserve the setting of the Grade II listed Town Hall and the character and appearance of the Swadlincote Conservation Area.

Planning History

The Town Hall has had numerous applications for alterations and improvements that have required listed building consent as well as planning applications for the erection of the shop units to the east side of the building. None of these works are of relevance to this current application.

Listed building consent was granted in March 2007 for works to the exterior of the building that were required by the Disability Discrimination Act 1996. The works involved the installation of handrails to the main entrance, the provision of non-slip edgings to steps, tactile paving and a new sign.

Responses to Consultations

The consultation period expires on 20th April and any responses received will be reported verbally at committee.

Responses to Publicity

The notification period expires on 20th April and any responses received will be reported verbally at committee.

Development Plan Policies

The relevant policies are:

RSS8: Policy 27

Local Plan: Saved Environment Policies 12 and 13

National Guidance

Planning Policy Statement 5 – Planning for the Historic Environment.

Planning Considerations

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

- The impact of the works on the historic fabric, character and setting of the listed building; and
- The impact of the proposal on the character and appearance of the conservation area.

Planning Assessment

The proposal conforms to the above-mentioned policies and the planning policy statement.

The proposed works form part of the ongoing highway enhancement works for the town centre that underwent extensive public consultation between 2006 and 2009 as part of the Swadlincote Town Centre Masterplan. The Council's Conservation Officer has been involved in the process from the beginning and is overseeing the works to the town centre.

The proposed works would have minimal impact on the historic fabric of the listed building and would therefore not adversely affect its character and setting.

The proposed works will contribute positively to the public realm and will therefore enhance and preserve both the setting of the listed building and the character and appearance of the conservation area.

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

Recommendation

GRANT permission subject to the following conditions:

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.
Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990.
2. No part of the development shall be carried out until samples of the facing materials to be used in the execution of the works have been submitted to and

approved in writing by the Local Planning Authority. The agreed materials shall then be used in the development hereby approved.

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

3. Large scale drawings to a minimum Scale of 1:10 of railings, including method of fixing, shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The details shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

4. A specification for adjusting the height of the wall shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The works shall be executed in accordance with the approved specification.

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

5. Unless otherwise agreed pointing shall be carried out using a lime mortar the specification for which shall be submitted to and approved by the local Planning Authority.

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

6. A sample panel of pointed stonework 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority before the work is generally executed. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building(s) and the locality generally.

Item 2.1

Reg. No. 9/2010/0179/B

Applicant:

Mrs Helen Cumberland
Lowes Lane Shooting Ground
195 Thornborough Road
Coalville
Leicestershire
LE67 3TN

Agent:

Mrs Helen Cumberland
Lowes Lane Shooting Ground
195 Thornborough Road
Coalville
Leicestershire
LE67 3TN

Proposal: **Variation of condition 5 of planning permission 9/0589/027 for temporary permission for shooting on sundays between 9am and 3 pm for a twelve month period at Lowes Lane Shooting Club Lowes Lane Swarkestone Derby**

Ward: **Aston**

Valid Date: **04/03/2010**

Reason for committee determination

The application is brought to Committee at the request of Councillor Atkin because the committee should debate the issues in this case, which are very finely balanced.

Site Description

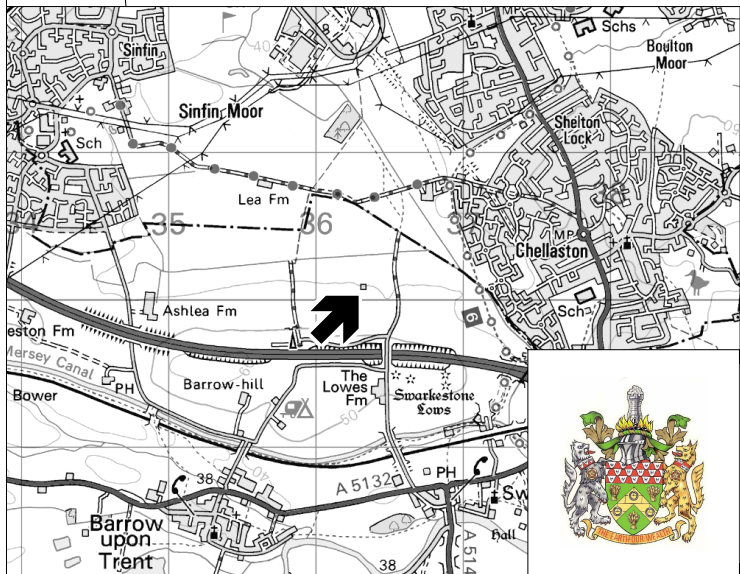
Lowes Lane Shooting Ground is situated about 300 m to the north of the A50. The built up edge of Chellaston is about 0.7 km to the east and Sinfyn some 1.5 km to the north west. A complex of dwellings at Lowes farm is about 0.6 km away to the south of the A50. Swarkestone village is about 1.3 km distant and Barrow on Trent 1.6 km. There are various isolated properties within 1km of the site.

Proposal

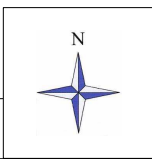
Condition 5 precludes shooting on Sundays. The applicant proposes six hours of shooting on Sundays.

Applicants' supporting information

- The recession has resulted in reduced numbers of shooters and a reduction in the amount they spend. Increased sales are required to enable the applicant to keep trading.
- The ground has 140 members but about 40% of business is with non-members.
- At present the ground opens on Wednesdays 10 am till 8 pm, Thursdays 4 pm till 8 pm, Saturdays 10 am till 6pm and Bank Holidays 10 am till 4 pm. Members' competitions are held on one Monday per month between March and September.



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Opening on other days (apart from corporate days for which there is low demand) has not proved fruitful.

- Sunday is the main shooting day throughout the UK and this is the only day that would generate sufficient custom in order to secure the future of the ground.
- The applicant bought the ground 5 years ago and has worked hard to improve its reputation, which is now good. The applicant has worked with the local authorities, residents and adjoining farmers to improve relationships.
- Adjustments to the operation of the ground have resulted in a significant difference to noise levels. Local residents have commented on this. No complaints have been made in the last few years.
- The local police use the ground for various training exercises.
- Local crime has reduced and the applicant has also instigated meetings to resolve problems of travellers camping in Lowes Lane, to the benefit of the local community.
- Assistance is given to Social Services, at cost rate, to help children. Continued community involvement is intended in the future.
- Local residents (8 households at Lowes Farm) have written in support.
- It is hoped that the ground can be seen as a valued community business worth saving.

Planning History

Permission to use the land for shooting was granted in 1989, subject to limitations on the hours of operation. In 1993 permission was granted for a temporary period (12 months) to enable Sunday shooting to be undertaken on a trial basis. A subsequent application to continue Sunday shooting was refused in 1995 on the grounds that there had been substantial objection in respect of noise. The last application for Sunday shooting (9/2003/0319) was refused for the following reason:

'Because of the site's position relative to residential property around it, noise generated by Sunday shooting would lead to unacceptable disturbance to the occupiers of residential property and also to those involved in passive countryside recreational activities. As such the proposal is also in conflict with Recreation and Tourism Policy 1 of the adopted South Derbyshire Local Plan and Environment Policy 15 of the emerging South Derbyshire Local Plan.'

Responses to Consultations

The Environmental Protection Manager objects because of the potential for disturbance to be caused to the occupiers of residential property. Reference is made to the Chartered Institute of Environmental Health (CIEH) Guidance on the control of noise from clay target shooting.

This guidance states that a noise buffer zone between the shooting and residential property of at least 1.5 kilometres in the general direction of shooting and not less than 1 kilometre in the rearward arc is advisable.

In the case of the Lowes Lane shooting ground, Lea Farm is just under 1km from the front side of the shooting, Ashlea Farm is just under 1.5km from the front side and three dwellings off Moor Lane are all around 1km from the front side of the shoot. To the rear arc a large number of houses (estimated to be many more than 100) are all within 1km.

This number of dwellings within the noise buffer zones, wherein the guidance recommends there should be no houses, explains why complaints about noise from the shoot have been made (and continue to be made). Whilst it is accepted that the shoot was in existence before the current guidance was made available, the guidance does state that "as the noise buffer zone decreases in size, so the frequency and duration of events may also need to be decreased". In addition to this it is generally accepted that Sunday is a special day for residents to be able to get some peace in their homes. Noise on a Sunday is always more likely to be accepted as a statutory nuisance than the same noise on any other day of the week.

Thus far, noise investigations in relation to the shoot have accepted that whilst there is a noise problem, the shoot does have a defence that the "best practicable means" have been used to counteract the nuisance. Quite apart from the issue of loss of amenity to households, it is doubtful that any extension of hours into Sunday would maintain this defence.

Responses to Publicity

A petition of 20 Swarkestone residents has been received objecting because of disturbance caused by shooting.

Chellaston Residents Association and five residents object as follows:

- a) The proposal is in breach of CIEH guidelines.
- b) Noise can be heard in all parts of Chellaston at certain times and at all times in those parts of the area closest to the site.
- c) Noise carries particularly well on still days, which are most likely to occur in the summer when residents wish to enjoy their gardens. It is reasonable to expect no noise on Sundays.
- d) No environmental assessment is included.
- e) Levels of noise experienced in Swarkestone are no presently no less than before.
- f) Noise and the contamination of the ground may adversely affect public health.
- g) The ground should never have been allowed in the first place.

Development Plan Policies

The relevant policy is:

South Derbyshire Local Plan Saved Recreation and Tourism Policy 1.

National Guidance

PPG24

Planning Considerations

The main issue central to the determination of this application is the noise impact.

Planning Assessment

On the advice of the Environmental Protection Manager the use of the site for shooting on Sundays would likely result in unacceptable disturbance to residents in a variety of

locations around the site. In the absence of firm evidence from the applicant to justify the activity against the CIEH guidelines, and previous records of noise emanating from the site, the proposal is thus contrary to the development plan.

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

Recommendation

REFUSE permission for the following reason:

Because of the site's position relative to residential property around it, noise generated by Sunday shooting would lead to unacceptable disturbance to the occupiers of residential property and also to those involved in passive countryside recreational activities. As such the proposal is also in conflict with Saved Recreation and Tourism Policy 1 of the adopted South Derbyshire Local Plan.

2. PLANNING AND OTHER APPEALS

(references beginning with a 9 is planning appeal and references beginning with an E is an enforcement appeal)

Reference	Place	Ward	Result	Cttee/delegated
9/2008/1095	Castle Gresley	Linton	Dismissed	Delegated
9/2009/0638	Findern	Willington/Findern	Allowed	Delegated



Appeal Decision

Site visit made on 25 February 2010

by **George Arrowsmith BA, MCD, MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

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email: enquiries@pins.gsi.gov.uk

Decision date:
18 March 2010

Appeal Ref: APP/F1040/A/09/2113983

156 Mount Pleasant Road, Castle Gresley, SWADLINCOTE, DE11 9JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Carl Machin against the decision of South Derbyshire District Council.
- The application Ref 9/2008/1095/FM, dated 26 October 2008, was refused by notice dated 22 May 2009.
- The development proposed is the conversion and extension of an existing outbuilding to form a 2 bedroom dwelling.

Decision

1. I dismiss the appeal.

Main issues

2. I consider that the main issues are whether, i) the proposal would undermine the objectives of policies designed to limit the spread of housing development, ii) the occupants of the proposed dwelling and the existing dwelling at No 156 Mount Pleasant Road would be likely to experience disturbance from noise, iii) the occupants of No 156 would suffer a loss of privacy, and, iv) the occupants of the proposed house would have otherwise unsatisfactory living conditions because of a poor outlook and limited outdoor amenity space.

Reasons

Spread of Housing Development

3. The Council say that the site is not located in the Swadlincote urban area and that, in the absence of a shortage of housing land supply in this part of the district, there is no need for planning permission for this site. I do not consider that the absence of need is a sufficient reason for refusing permission. However, the Council add that permission would be contrary to a number of national, regional and local policies and policy statements
 4. The Council refer to Planning Policy Statements 1, 3 and 7 but do not identify which parts of these statements support their decision. My judgement is that the statements' emphasis on sustainability is a key element.
 5. Policy 3 in the East Midlands Regional Plan says that new development will be concentrated primarily in and adjoining the region's principal urban areas, with significant levels of new development in three growth towns and appropriate development of a lesser scale in sub-regional centres, one of which is Swadlincote. As noted above, the appeal site is not within the Swadlincote
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urban area. Even so, Policy 3 also says that the development needs of other settlements and rural areas should be provided for. New development in these areas should contribute to shortening journeys, and priority should be given to making best use of vacant or under-used buildings in urban or other sustainable locations.

6. In a local context I am referred to saved Housing Policy 4 in the South Derbyshire Local Plan, which says that residential development within or on the fringes of the built-up area of Castle Gresley, Church Gresley, Midway, Newhall, Swadlincote and Woodville will be permitted, provided that a number of criteria are satisfied. The appeal site is outside this built-up area as defined on the local plan proposals map but the proposal does involve the conversion of an existing building close to other substantial buildings. In addition the site is not far from the edge of the built-up area and is linked to it by a continuous line of development.
7. I am not given any indication of the local plan's approach to conversions and, whilst the appeal proposal is not a type of residential development permitted by Housing Policy 4, neither do I have any indication that it is explicitly precluded by any local plan policy.
8. The policy information submitted by the Council satisfies me that this is not a location in which residential development should be concentrated, but it is not sufficiently clear-cut to convince me that the conversion of a single existing building on the edge of a built-up area is unacceptable in principle. This does not, however, mean that the detailed aspects of the proposal are acceptable.

Noise and Loss of Privacy

9. I am particularly concerned about the disturbance that would be caused to No 156 and its remaining rear garden by vehicles and people on foot visiting the proposed dwelling. These would pass close to a dining room window and glazed porch in the house's side elevation and along the side of the garden, an arrangement which I consider would cause disturbance and a loss of privacy. In this respect the disadvantages of the proposal would be typical of those associated with tandem development and would conflict with the objectives of saved local plan policy H11. I read that the appellant intends to live in the new dwelling, leaving No 156 to be occupied by his daughter, but it is also necessary for me to consider the needs of future occupants.
10. The outbuilding it is proposed to convert is close to the side wall of a commercial workshop/garage to the north and adjoins a haulage yard to the east. Despite what is said in the Council's appeal statement, their environmental health officers have not produced a separate statement addressing the noise issues. In the absence of any such statement I must be guided by what I saw and heard during my site visit and by my experience.
11. At the time of my visit I heard no significant noise from either the garage or the haulage yard although I recognise that this may not always be the case. I consider that the side wall of the garage/workshop would be likely to prevent serious noise disturbance but I am more concerned about the haulage business. This is partly housed in a converted chapel which has a large doorway at the rear. The doorway, which faces in the general direction of the

proposed dwelling and is only partly screened by an approximately 1.8m high boundary wall, was open at the time of my site visit.

12. In the absence of continuous noise monitoring evidence I cannot be sure that the haulage business would cause sufficient noise disturbance to warrant a refusal of permission. Nevertheless, the possibility of noise disturbance is a consideration which must carry some weight in my overall assessment of the proposal.

Outlook and Amenity Space

13. The proposed dwelling would have limited outdoor space and the outlook from its front elevation would be dominated by the side wall of the garage to the north, the rear of No 156 to the north east and the haulage yard to the east. To my mind both these factors would have an adverse effect on living conditions. As with the possibility of noise disturbance from the haulage yard, I am not convinced that they are by themselves sufficient to justify a refusal of permission but they reinforce my conclusion that the proposal is unacceptable because of its cumulative adverse effect.

George Arrowsmith

INSPECTOR



Appeal Decision

Site visit made on 2 March 2010

by **Andrew Jeyes** BSc DipTP MRTPI

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

The Planning Inspectorate
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Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

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Decision date:
11 March 2010

Appeal Ref: APP/F1040/A/09/2118125 84 Burton Road, Findern, Derby DE65 6BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mrs Doreen Hoyle against the decision of South Derbyshire District Council.
- The application Ref 9/2009/0638/FO, dated 7 October 2009, was refused by notice dated 3 November 2009.
- The development proposed is a five bedroom detached dwelling with integral garage.

Decision

1. I allow the appeal, and grant outline planning permission for a five bedroom detached dwelling with integral garage at 84 Burton Road, Findern, Derby DE65 6BE in accordance with the terms of the application, Ref 9/2009/0638/FO, dated 7 October 2009, and the plans submitted with it, subject to the conditions contained within the attached schedule.

Main Issues

2. I consider the main issues to be whether the proposed house reflects national and development plan policy relating to sustainable development in the countryside and the effect on highway safety.

Reasons

3. The application is in outline with details of access submitted for consideration. The site forms the north-eastern part of the curtilage of No 84, a two-storey house that fronts Burton Road. To the north-east and adjoining the site is a large pumping station with a similar size building to No 84, which has a pair of semi-detached houses, Nos 86 and 88, behind. Adjoining this is a gas governor installation, with a garden supplies depot on the other side of the road adjacent to a slip road to the A38 trunk road dual carriageway. To the rear of No 84, served by an access that runs along its south-western boundary, is a large commercial garden centre that has large permanent buildings around the rear of the site and a large car park to the south. To the south-west of this access is a run of four houses before a short break in the frontage development that runs along the remainder of Burton Road and into Doles Lane towards the village centre.
 4. The site is not within the defined built-up area of Findern, but is in a line of development fronting Burton Road with a large commercial venture behind it. To my mind, the proposal would represent limited infilling of one house that, because of its position and the surrounding development, would have no unacceptable impact on the character and appearance of the countryside. This would accord
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with saved Housing Policy 6 of the South Derbyshire Local Plan 1998 [LP] that allows for the infilling of a small gap in other rural settlements providing the proposal is in scale and character of the settlement. This policy is indicated to apply to very small rural settlements and ribbon development.

5. Both PPS1¹ and PPS3² indicate that development should be directed towards sustainable locations and PPS7³ indicates that there should be strict control over new housing away from existing settlements. However, this proposal would not represent an isolated house within the countryside because of its position within this line of development, which is itself part of a longer ribbon of development related to Findern. There is a bus stop immediately outside the garden centre and the site is within walking distance of the centre of Findern. I do not therefore consider this a remote unsustainable location. Whilst the Council has expressed concern that a precedent would be created, each proposal should be considered on its own merits and, in this case, I have indicated compliance with saved LP Housing Policy 6.
6. I therefore conclude that the proposal would not conflict with national and development plan policy as it would accord with saved LP Housing Policy 6 and with the principles indicated in PPS7. As the proposal would meet the aims of Saved Housing Policy 6, it should not be considered against saved LP Housing Policy 8 or Environment Policy 1, which relate to housing development within the countryside.
7. Whilst not mentioned in the reasons of refusal, the Council draw attention to Policy 3 of the East Midlands Regional Plan [EMRP] that relates to the distribution of new development across the region. Whilst this indicates that housing should primarily be located within or adjoining the major cities and sub-regional centres, it also indicates that the development needs of other settlements and rural areas should be provided for. I do not therefore see any fundamental conflict with this regional policy.
8. The existing access to No 84 conjoins the busy access serving the garden centre and presents a wide busy pavement crossover. The proposal indicates a direct access to Burton Road, which is regarded as unsatisfactory by the Council and the Highway Authority. However, the Highway Authority has indicated that a shared access with No 84 would be satisfactory and this has been accepted by both the Council and the appellant.
9. A further separate access formed here would give four access points, including the joint access to the pumping station and Nos 86 and 88 and the garden centre access, in a very short space onto a busy local road close to a bend where the road descends from the elevated roundabout that connects with the A38 trunk road. In my view, a separate access would be harmful to highway safety, but the use of a shared access would provide an acceptable solution. This would need to be the subject of a condition.
10. For these reasons, I conclude that a shared access would not be harmful to highway safety and would meet the aims of saved LP Transport Policy 6 for all new development to have adequate provision for access.
11. I have concluded that the proposal would represent limited infilling that would have no unacceptable impact on the character and appearance of the countryside

¹ Planning Policy Statement 1: *Delivering Sustainable Development*

² Planning Policy Statement 3: *Housing*

³ Planning Policy Statement 7: *Sustainable Development in Rural Areas*

and would not harm highway safety and for these reasons, I conclude that the appeal should be allowed.

12. I have considered the conditions submitted by the Council having regard to the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. I have adjusted their wording where necessary in the interests of clarity. As well as the standard outline conditions, I have referred to the permitted plans for the avoidance of doubt and in the interests of proper planning.
13. As I have indicated in my decision, I consider that a shared access is necessary in the interests of highway safety. The Council has suggested a condition requiring three parking spaces or in accordance with published standards. However, bearing in mind the advice in PPG13⁴, I do not consider it appropriate to specify the number of spaces without further justification, and referring to standards or other agreement with the Council would not be precise. Whilst I agree that parking is required in the interests of highway safety, I have therefore altered the condition to require details of the amount and layout to be agreed with the Council.

Andrew Jeyes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the plans submitted with the application and appeal.
- 5) No development shall commence until details of the amount and layout of car parking to serve the site have been submitted to and agreed in writing by the local planning authority. The approved parking details shall be provided in accordance with the approved scheme prior to the first occupation of the dwelling hereby permitted and shall thereafter be retained.
- 6) Notwithstanding the written notes attached to the submitted drawing, details of a shared access and appropriate turning areas to serve both the dwelling hereby permitted and the existing dwelling at 84 Burton Road shall be submitted to and be approved in writing prior to the commencement of any development. The access and turning area shall be provided in accordance with the approved details prior to the first occupation of the dwelling hereby permitted.

⁴ Planning Policy Guidance Note 13: *Transport*