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For assistance in understanding or reading
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this Agenda or on the “Public Participation”
initiative please call Democratic Services
on 01629 761133 or
e-mail committee@derbyshiredales.gov.uk

3 November 2014

To: All Councillors

As a Member or Substitute of the Southern Area Planning Committee, please treat this
as your summons to attend a meeting on Tuesday 11 November 2014 at 6.00 pm in the
MAIN HALL, ASHBOURNE ELIM PENTECOSTAL CHURCH, THE WATERSIDE CENTRE, ASHBOURNE DE6 1DG.

Yours sincerely

Sandra Lamb
Head of Corporate Services

AGENDA

SITE VISITS The Committee is advised a coach will leave the ASHBOURNE ELIM PENTECOSTAL CHURCH at 1.10pm PROMPT - MEMBERS PLEASE ASSEMBLE IN THE FOYER. A schedule detailing the sites to be visited is attached to the agenda. (MEMBERS ARE ADVISED TO WEAR SUITABLE FOOTWEAR AS SOME SITE VISITS WILL INVOLVE WALKING ACROSS FIELDS)

1. APOLOGIES/SUBSTITUTES

Please advise the Committee Team on 01629 761133 or e-mail committee@derbyshiredales.gov.uk of any apologies for absence and substitute arrangements.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

14 October 2014.

3. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council’s Code of Conduct. Those Interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close
friends. Interests that become apparent at a later stage in the proceedings may be declared at that time.

4. APPLICATIONS FOR DETERMINATION

Please note that for the following items, references to financial, legal and environmental considerations and equal opportunities and disability issues will be embodied within the text of the report, where applicable.

PUBLIC PARTICIPATION

To provide members of the public WHO HAVE GIVEN PRIOR NOTICE (by no later than 12 noon on the working day prior to the meeting) with the opportunity to express their views, ask questions or submit petitions relating to planning applications under consideration. Representations will be invited immediately before the relevant item of business/planning application is discussed.

4.1 APPLICATION NO. 14/00450/ful (Site Visit)  5 - 23
Change of use of land to 20MW solar farm with associated infrastructure, land at Aston House Farm, Aston Lane, Sudbury.

4.2 APPLICATION NO. 14/00558/ful (Site Visit)  24 - 27
Erection of garage at West Lodge House, Derby Road, Doveridge

4.3 APPLICATION NO. 14/00354/out (Site Visit)  28 - 63
Residential development of up to 145 dwellings with associated public open space (outline) at Leys Farm, Wyaston Road, Ashbourne.

4.4 APPLICATION NO. 14/00611/ful (Site Visit)  64 - 67
Shed/summerhouse at Church Cottage, Church Street, Brassington.

4.5 APPLICATION NO. 14/00537/vcond  68 - 76
Section 73 application variation of conditions 2 & 3 (09/00803/vcond) to allow 85 square metres of existing sales areas to be used for the sale of any A1 non-food goods by a catalogue showroom retailer at Homebase, Waterside Road, Ashbourne.

5. APPEALS PROGRESS REPORT  77 - 101
To note a report on appeals to the Planning Inspectorate.

NOTE

For further information about this Agenda or on the Public Participation initiative contact the Committee Team on 01629 761133 or e-mail committee@derbyshiredales.gov.uk.
Members of the Committee: Councillors Richard Bright, Ken Bull, Steve Bull, Albert Catt, Tom Donnelly (Vice Chairman), David Fearn, Richard FitzHerbert, Steve Flitter, David Frederickson, Cate Hunt, Angus Jenkins, Tony Millward, BEM (Chairman), Garry Purdy, Lewis Rose, OBE, Andrew Shirley, Peter Slack, Geoff Stevens, MBE.


SITE VISITS

Members will leave the ASHBOURNE ELIM PENTECOSTAL CHURCH at 1.10pm prompt for the following site visit. NB: MEMBERS TO ASSEMBLE IN THE FOYER.

(MEMBERS ARE ADVISED TO WEAR SUITABLE FOOTWEAR AS SOME SITE VISITS WILL INVOLVE WALKING ACROSS FIELDS)

1.35pm Application No. 14/00450/FUL
ASTON HOUSE FARM, ASTON LANE, SUDBURY
Requested by the Ward Member to enable members of the Planning Committee to assess the impact of the development on the surrounding area.

2.20pm Application No. 14/00558/FUL
WEST LODGE HOUSE, DERBY ROAD, DOVERIDGE
Requested by the Ward Member to enable members of the Planning Committee to assess the impact of the development on its surroundings.

3.00pm Application No. 14/00354/OUT
LEYS FARM, WYASTON ROAD, ASHBOURNE
Requested by Ward Members to enable members of the Planning Committee to fully appreciate the issues involved.

4.00pm Application No. 13/00611/FUL
CHURCH COTTAGE, CHURCH STREET, BRASSINGTON
Requested by the Ward Member and Officers to assess the impact of the development on its surroundings.

4.40pm Return
COMMITTEE SITE MEETING PROCEDURE

You have been invited to attend a site meeting of the Council’s Planning Committee/Advisory Committee. The purpose of the meeting is to enable the Committee Members to appraise the application site. The site visit is not a public meeting. No new drawings, letters of representation or other documents may be introduced at the site meeting. The procedure will be as follows:

1. A coach carrying Members of the Committee and a Planning Officer will arrive at the site as close as possible to the given time and Members will alight (weather permitting)

2. A representative of the Town/Parish Council and the applicant (or representative can attend.

3. The Chairman will ascertain who is present and address them to explain the purpose of the meeting and sequence of events.

4. The Planning Officer will give the reason for the site visit and point out site features.

5. Those present will be allowed to point out site features.

6. Those present will be allowed to give factual responses to questions from Members on site features.

7. The site meeting will be made with all those attending remaining together as a single group at all times.

8. The Chairman will terminate the meeting and Members will depart.

9. All persons attending are requested to refrain from smoking during site visits.
14/00450/FUL

Land at Aston House Farm, Aston Lane, Sudbury

Derbyshire Dales DC

Date: 31/10/2014

100019785
THE SITE AND SURROUNDINGS:
The application relates to 45.4 hectares of farmland located between the A50 and Leathersley Lane. The eastern boundary of the site is the district boundary with South Derbyshire. The land generally slopes down very gently from north to south and the majority of the site comprises of individual fields used for arable farming which are separated by hedgerows incorporating mature hedgerow trees and small pockets of vegetation. The site is bounded by arable farmland to the east and west and further farmland is located to the south of Leathersley Lane.

Aston House Farm, with its farmhouse and collection of agricultural buildings to the north west, currently farms the land under a tenancy agreement as part of a larger tenanted holding. The application site incorporates the access road that runs to the north of Aston House Farm before linking to the highway network to the west.

Leathersley Farm, a Grade II Listed farmhouse, is located to the south of Leathersley Lane approximately 60m from the site boundary. Historic and modern outbuildings lie between it and Leathersley Lane. To the west of the site separated by 2 fields at a distance of approximately 500m is Maidensley Farm which comprises of a main dwelling with further dwellings created from outbuilding conversions. A commercial yard lies to the west of the dwelling group.

Sudbury Conservation Area lies 600m to the west at its closest point and Sudbury Hall, a Grade I Listed building is located 1.1km to the west. The Hall has an associated registered park and garden which extends to the immediate south and for approximately 3km to the north beyond the A50. The Registered Park and Garden is approximately 1km away at its closest point. There are other dwellings to the north of the A50.

THE APPLICATION:
Planning permission is sought for the change of use of the land to accommodate a 20MW solar farm with its associated infrastructure.

The solar farm will comprise of banks of photovoltaic panels sat on a metal frame angled at 22º and facing south. The frameworks would be set 0.8m off the ground and have an overall height of 2.34m and are designed to take 4 panels from top to bottom with the length of the frame varying depending on the location within the fields.

The siting of the arrays is designed to retain existing vegetation within and around the boundary of the site.

In addition to the panel arrays, the application includes the formation of 4m wide access tracks which both spur from an existing access between the fields through the centre of the site and link between this and an existing field access opposite the entrance to Leathersley Farm. A total of 10 inverter substations are proposed around the site which have individual dimensions of 2.4m wide by 6.1m long and 2.6m high and set slightly off the ground. Also proposed is a DNO substation 9.1m x 3m x 4m high, a customer
switchgear building 6m x 2.5m x 3.4m high and a site storage container 3m x 2.5m x 2.6m high. An 11kv overhead line on 8m high posts will run across the site from north west to south east and a short section will run south from this to Leathersley Farm. A small telecom mast and wind sensor pole will be located in the centre of the site.

The application includes details of a 2m high stock proof fence which will be set in from the site boundary and encircle the site. Double leaf gates will be installed both on the Leathersley Lane entrance and at the track entrance into the site from Aston House Farm to the north west. Closed circuit television cameras are to be installed on 4m high posts around the boundary of the site. These will be dispersed at regular intervals such that 7 will be located along the length of the Leathersley Lane frontage with similar separation all around the boundary.

The application has been submitted with a range of supporting documentation as follows:-

Planning Statement
Design and Access Statement
Landscape and Visual Impact Assessment
Ecological Appraisal
Flood Risk Assessment
Heritage Desk-Based Assessment
Construction Traffic Management Plan
Alternative Site Search Assessment
Detailed Heritage Settings Assessment
Agricultural Assessment
Archaeological Geophysical Survey

These documents have been made available on the public file and circulated to consultees. Their contents as appropriate and further dialogue with consultees are discussed in ‘The Issues’ section of the report. However, it is relevant to briefly summarise the applicants case as made in the Planning Statement submitted:-

1. The selected site is considered appropriate as it can accommodate the proposed solar park without significantly affecting landscape character or amenity of residents.

2. The temporary and reversible nature of the development, together with measures taken to enhance and encourage ecological diversity will ensure that in the long-term the site can be restored to its current use and it will have been ecologically improved.

3. The wider environmental benefits and sustainability credentials associated with the production of energy from renewable sources represents a significant case in favour of the development.

4. The application proposed is consistent with planning policy and will achieve a high quality design.

5. All relevant planning considerations have been addressed through detailed reports in the submission.
6. The proposal meets the requirements of the National Planning Policy Framework’s presumption in favour of sustainable development and is compliant with the policies of the adopted Development Plan. As such, permission should be granted, subject to appropriate conditions.

RELEVANT HISTORY:
None relevant.

CONSULTATIONS:
Local Highway Authority:
No objection subject to conditions relating to the following:-

1. Temporary signage scheme to be put in place on roadways immediately to the west during the construction phase to warn vehicles of site access, works traffic and large vehicle manoeuvres.
2. All construction and future maintenance traffic to be via the existing Aston House Farm access with no direct vehicle access from Leathersley Lane.
3. The mature hedgerows surrounding the site shall be maintained at a minimum height of 2m to minimise glare / distraction to highway users.

Parish Council:
No response received.

Environment Agency:
No objection subject to conditions to ensure the development is carried out in accordance with the approved Flood Risk Assessment and the design drawings for surface water management accord with those submitted and approved.

English Heritage:
As the application potentially affects a Grade II Registered Park and Garden, Listed buildings and Conservation Area, the statutory requirements to have special regard to the desirability of preserving a listed building or its setting or any features of special interest must be taken into account in reaching a decision.

In this case the potential impact of the solar farm on the significance which heritage assets derive from their setting is considered in the submitted report. The report notes in particular the impact that the development has on the significance which Grade II Leathersley Farm derives from its setting, as the building is in close proximity to the solar farm. This impact on setting will require assessment.

The report also considers the potential impact on the setting of the Grade II Park and Garden at Sudbury. The supporting statement acknowledges a change in character in terms of the visual experience of visitors approaching Sudbury Hall through farmland that would have supported the estate. The report concludes that this does not harm the significance that the Grade II registered park derives from its setting. The Local Planning Authority should consider the impact of the development on the significance of the Grade II PAG (which forms the setting to the Grade I Listed Hall), bearing in mind that the harm to the significance that the PAG derives from its setting is not limited to issues of visibility only but changes in character as well.
The Local Planning Authority is advised to determine the application in accordance with National and Local Policy guidance and on the basis of its own specialist conservation advice.

Peak and Northern Footpaths Society:
No objection. The northern end of Footpath 15 Sudbury crosses the proposed access route and this must remain unobstructed at all times. However, this route is very little used and do not consider that the construction or the development will adversely affect the public.

County Council Rights of Way:
No footpaths identified on the definitive map cross the site and there are no applications currently under consideration claiming rights of way across the site. Therefore, raise no objections.

Crime Prevention Design Adviser:
Whilst the site has no record of crime, the sites accessibility, near to the A50, means that security measures should be incorporated at this stage to avoid easy access.

Have concerns that the proposed 2m deer fence will not be a deterrent in this relatively remote location. Suggests a 2.4m fence of a higher security standard.

Require a full breakdown on where lighting and CCTV is going to be positioned.

County Council Minerals:
The site is underlain by good quality resources of sand and gravel and is covered by a Minerals Consultation Area. This is designed to ensure that minerals of economic importance are safeguarded from needless sterilisation.

The site is part of a larger site that has been put forward by Sudbury Estates for consideration as a new site for sand and gravel extraction. Borehole data indicates an average deposit depth of 3m which represents a good deposit of economic value.

The applicant was therefore requested to provide further details in the quantity and quality of the mineral and the extent to which the development might lead to sterilisation.

Having considered the applicant’s response are now satisfied that there are no overriding concerns in relation to minerals safeguarding.

Development Control Archaeologist:
The site lies at the floodplain edge of the River Dove on a shallow south-facing slope with gravel terrace alluvial geology. Such terrace-edge locations are highly correlated with prehistoric and Romano-British archaeology along the Trent and Dove Valleys. The site was, therefore, considered to have high potential to contain previously unrecorded prehistoric and / or Romano-British archaeology.

The application as originally submitted did not include a geophysical survey as a necessary first phase of evaluation which would allow potential hotspots to be identified. In the absence of this the initial submission was not considered to meet the requirements of the National Planning Policy Framework.
In relation to visual impacts on the setting of Sudbury Hall and its registered Park and Garden an assessment of likely written impacts should be provided.

In relation to Sudbury Hall, which is Grade I Listed eastward views from the upper floors should be provided as whilst arguments about lack of intervisibility are persuasive the status of the building requires more definitive evidence.

In relation to Leathersley Farm, the solar farm sits immediately adjacent to the designated asset and its curtilage. Although the applicant suggests that the farmland to the north does not contribute to the significance of the asset through its setting, this appears too neat a conclusion. The rural setting clearly makes a contribution to its significance and the partial transformation of this to a solar park will impact on its significance. Some further analysis of this impact is requested.

In light of the above, initially raised a holding objection on the basis of the application failing to accord with paragraph 128 of the National Planning Policy Framework.

Derbyshire Wildlife Trust:
Have considered the ecological appraisal originally submitted and initially raised concerns over the impact of development on ground nesting birds. Have subsequently considered further submissions by the Ecologists. This further submission identifies a number of UK BAP priority bird species recorded on site during the survey including the ground nesting species yellow wagtail and skylark. Small numbers of these may nest in the fields. The creation of the solar farm would make the fields largely unsuitable for future nesting of these species and, therefore, would overall have an adverse impact on ground-nesting priority bird species.

The results of the survey are verified by cross reference to Derbyshire Ornithological Society records and no further survey work is required but mitigation will be necessary.

In addition to planning restrictions to the timing of works to avoid the bird breeding season, it is advised that mitigation measures should include the provision and appropriate management of habitat suitable to provide nesting opportunities for yellow wagtail and skylark either within the development or on adjacent land in the control of the applicant to maintain suitable nesting habitat for ground-nesting birds. A condition requiring a scheme of ecological mitigation should include this.

The raising of sections of perimeter fencing will continue to allow brown hare and badger to cross the site and this fencing detail should be included in the ecological mitigation condition.

A detailed ecological mitigation condition is proposed and on that basis no objection is raised.

South Derbyshire District Council:
The proposal would represent an industrial presence in a rural landscape, when viewed from Leathersley Lane. Therefore, views from the south should be mitigated by a comprehensive landscaping scheme which would be secured by condition if you are minded to approve the application.
REPRESENTATIONS:
One letter of objection received raising the following points:-

1. The development renders good agricultural land obsolete.
2. The panels as a general principle could be much more sensibly sited on roofs of prisons, industrial buildings and hospitals which would be less visually obtrusive.
3. Whilst this might not be as attractive to investors it would in the long-term be a much better use of space.

A total of 57 copies of a standard letter supporting the development have been received from residents of Hilton. The letter raises the following points:-

1. The development is a clean source of energy for around 5,500 homes annually.
2. A community benefit fund of up to £40,000 to support local good causes will result.
3. The provision of habitat enhancement for the site including native hedgerow planting and the installation of bird boxes will result.

POLICIES:
1. Adopted Derbyshire Dales Local Plan (2005)
   SF4: Development In The Countryside
   SF5: Design And Appearance of Development
   SF6: Protection Of The Best Agricultural Land
   NBE6: Trees And Woodlands
   NBE7: Features Important In The Landscape
   NBE8: Landscape Character
   NBE16: Development Affecting A Listed Building
   NBE21: Development Affecting A Conservation Area
   NBE23: Conservation Of Historic Parks And Gardens
   NBE24: Archaeological Sites And Heritage Features
   NBE27: Crime Prevention
   TR1: Access Requirements And The Impact Of New Development
   CS5: Renewable Energy Installations

2. National Planning Policy Framework

3. Planning Practice Guidance

4. Peak Sub-Region Climate Change Study: Focussing on the capacity and potential for renewable and low carbon technologies, incorporating a landscape sensitivity study of the area (July 2009).

ISSUES:
1. Introduction and Policy Context

Before considering the planning merits of this particular proposal it is pertinent to consider the general approach advocated by the government reflected in the National Planning Policy Framework, Planning Practice Guidance and relevant ministerial statements on solar energy installations.
The National Planning Policy Framework makes it clear in paragraph 93 that planning plays a key role in helping to shape places in a manner that reduces greenhouse gases, minimises vulnerability to climate change and supporting the delivery of renewable and low carbon energy and associated infrastructure.

Paragraph 97 recognises the need to increase the supply of renewable and low carbon energy by having positive strategy to promote energy from new and low carbon sources and designing policies to maximise renewable and low carbon energy development whilst ensuring that adverse impacts are addressed satisfactorily, including cumulative and visual impacts.

Paragraph 98 in relation to determining applications advises that Local Planning Authorities should not require applicants to demonstrate the overall need and recognise that even small-scale projects provide a valuable contribution to reducing greenhouse gas emissions. It goes on advise that unless material considerations indicate otherwise local planning authorities should approve applications if their impacts are (or can be made) acceptable.

This overarching guidance has an essentially positive attitude whilst recognising that other planning considerations can outweigh the benefits to be derived from renewable energy.

The Planning Practice Guidance published by government provides some specific guidance on renewable and low carbon energy. It restates that the need for renewable energy does not automatically override environment protections and the planning concerns of local communities. As with other types of development it stresses that it is important that the planning concerns of local communities are properly heard in matters that directly affect them.

In relation to ground mounted solar photovoltaic farms it states the following: -

The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively.

Particular factors a local planning authority will need to consider include: -

- Encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value;

- Where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.

- That solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use.
The proposals visual impact, the effect on landscape of glint and glare and on neighbouring uses and aircraft safety.

The extent to which there may be additional impacts if solar arrays follow the daily movement of the sun.

The need for, and impact of, security measures such as lights and fencing.

Great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset.

The potential to mitigate landscape and visual impacts through, for example, screening with native hedges;

The energy generating potential, which can vary for a number of reasons including, latitude and aspect.

The approach to assessing cumulative landscape and visual impact of large scale solar farms is likely to be the same as assessing the impact of wind turbines. However, in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero.

Recent ministerial speeches on solar farms have expressed a preference for provision on brownfield land. Where solar farms are not on brownfield land the need to focus on low grade agricultural land which works with farmers to allow grazing as well and can be appropriately screened is stressed.

Policy CS5 of the adopted local plan although not specific to solar farms, is considered to be broadly consistent with the thrust of current government policy on this matter in recognising the benefits of renewable energy whilst also recognising the need to balance this against the environmental impact.

Policy NBE8 of the adopted plan seeks to protect landscape character and appearance and is broadly consistent with the framework.

Policy SF4 protects the countryside from unwarranted development. Whilst this is in accordance with the broad aims of the National Planning Policy Framework it has to be recognised that major energy projects often require rural locations.

Policy SF6 of the local plan seeks to protect the best agricultural land and is focused on directing development to either brownfield land or land in grades 3b, 4 and 5.

Policy NBE16 of the Local Plan seeks to protect the setting of listed buildings and is relevant in relation to both Leathersley Farm and the wider setting of Sudbury Hall and broadly accords with policies in the National Planning Policy Framework.
Policy NBE21 seeks to safeguard the character and appearance of Conservation Areas and their setting and has to be applied in relation to Sudbury Conservation Area. It is broadly in line with the National Planning Policy Framework.

Policy NBE23 seeks to avoid development which has an adverse impact on the setting of a Registered Park or Garden which accords with the aims of the National Planning Policy Framework.

Policy NBE24 seeks to safeguard archaeological interests from adverse impacts in line with National Policy.

The submission draft of the emerging Local Plan has been withdrawn in response to the Inspector’s initial findings. In the context of this application it can be afforded only very limited weight. As its policies, which had a bearing on the application were drafted to comply with the National Planning Policy Framework, it is considered logical to assess the different environmental impacts against the policy position in the National Planning Policy Framework in conjunction with the adopted plan rather than needlessly assess the emerging plan policy position where this has so little material weight to decision-making.

Finally, in terms of policy context the Council commissioned the Peak Sub Region Climate Change Study 2009. This document has been invaluable in assessing landscape sensitivity and renewable installations particularly in relation to wind turbines. This document recognised the significant potential for solar power but at the time of writing no solar farm had been proposed or established.

From this policy background, the details of the application, consultee comments and public comment, the key considerations in this case are the compatibility of the scheme with the aims of national policy on solar farms in particular in regard to what land is utilised, the impact of development on heritage assets, impact on landscape character and appearance, ecology and highway safety. These matters will then be weighed in the balance against the significant production of renewable energy proposed.

2. **Compatibility of the scheme with the aims of National Policy in relation to locational choices**

It is clear from the above analysis that whilst recognising the benefits of solar farms the Government is keen to promote these on brownfield sites or agricultural land of lower quality thereby safeguarding the better quality land for varied agricultural use.

Paragraph 112 of the National Planning Policy Framework advise local planning authorities to take account of the economic and other benefits of the best and most versatile agricultural land. This is defined in the annex to the National Planning Policy Framework as land in grades 1, 2 and 3a. The guidance continues that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poor quality land in preference to that of higher quality.

Policy SF6 of the Local Plan has a presumption against development on the best and most versatile agricultural land unless the development cannot be accommodated on
previously developed land and lower grade agricultural land or there are overriding benefits resulting from the development that would outweigh the harm caused to the best and most versatile agricultural land.

The application site comprises of approximately 27.5% Grade 2 and 40.5% Grade 3a land giving an overall balance of 68% or approximately \( \frac{2}{3} \)rds of the site falling within the category of best and most versatile agricultural land. The use of land of this quality for a solar farm is potentially contrary to the aims of national and local policy dependent of the degree to which other sites could be developed as an alternative and subject to the overall balancing exercise that needs to be carried out which weighs the benefits of the development against the adverse impacts.

The applicants, in relation to the former, have submitted an Alternative Site Search Assessment. This document explains that to be viable a 20MW Solar Farm needs to be located within 5km of a suitable grid connection. Confining their search area to Derbyshire Dales they note that the locality is constrained in relation to access to potential connection to the 11kv or 33kv electricity supply grids. A 33kv supply grid that they have consent to connect to runs east / west broadly following the route of the River Dove and accordingly they have done a site search within 5km of this route. This assessment looked at potential sites 5km either side of the grid route and quickly established the absence of brownfield options. The applicants have then narrowed the search to 9 possible sites and assessed their suitability on a scoring matrix which scores them on grid capacity, site size, land availability, highway access, topography, agricultural grading, site allocation, flood risk, sensitive human receptors, landscape and visual considerations, sensitivity of area, heritage assets and brownfield nature. It is suggested from this exercise that there are no alternative sites which are sequentially preferable.

This exercise in alternative site assessment should be analysed with an appropriate degree of caution. There is no specific target set in national policy for Derbyshire Dales District in relation to solar energy but the site assessment is directed to identifying a site within the district. In addition the analysis is specifically related to finding a site for a 20MW scheme. Again this is a parameter imposed by the applicants although it is relevant to have regard to the plausibility of a grid connection. Notwithstanding this self imposed narrowing of the search, it is accepted that much of the locality will have best and most versatile land within a 20MW scheme and notwithstanding this the characteristics of the site reflected in the scoring undertaken make a 20MW scheme easier to assimilate into this site than the alternatives explored.

Overall, on this point, whilst the content of the assessment is acknowledged, the development of best and most versatile agricultural land for a solar scheme of the scale is to some degree in conflict with national guidance and local plan policy. This degree of conflict needs to be weighed in the final balance.

3. Impact on Heritage Assets

The proposal has the potential to impact on a range of heritage assets comprising the setting of the Grade II Listed Leathersley Farm, which lies a short distance to the south, the setting of Sudbury Hall (Grade I) to the west, the setting of Sudbury Conservation Area, the setting of the Grade II historic park and garden associated with Sudbury Hall and archaeology within the site. The National Planning Policy
Framework gives guidance on the weight to be given to impact on heritage assets in assessing planning applications in Chapter 12 and in accordance with this guidance the applicants have submitted a desk top heritage assessment, landscape and visual assessment, heritage settings assessment and archaeological geophysical survey.

It is logical to assess each heritage asset in turn for impacts.

Leathersley Farm – The main farmhouse lies approximately 60m to the south. The assessment undertaken describes how the farmhouse sits facing south to enjoy the views with outbuildings to the north between it and Leathersley Lane. The elements of the setting that are considered to contribute to its significance are the farm group and views to the south with a limited contribution made by land historically farmed to the north of the Lane. This is considered to be a fair and reasonable assessment. Some impact will result to the setting from the use of the land as a solar farm but this impact can be mitigated by planting and as such is below the level of substantial harm. Careful consideration will need to be given to how CCTV cameras are designed and located so as not to exacerbate harm. This less than substantial harm to the setting of Leathersley Farm will need to be weighed in the planning balance.

Sudbury Hall – Sudbury Hall is a Grade I Listed building located 1.2km to the west of the site. The Hall is the historic seat of the Vernon family and has an extensive setting to reflect its grandeur and local importance with associated registered park and garden to the south and north and Sudbury estate village immediately to the east. The applicants as part of the heritage assessment assessed the impact on the setting of the building. The presence of the village to the east, distance and intervening vegetation between the sites mean that there is little, if any, intervisibility. Whilst the land may still have historical ownership and farming ties it was considered not to contribute to the setting of the building in terms of its significance.

At the suggestion of Officers and the D.C. Archaeologist the applicants submitted further analysis in terms of taking photographs from the upper floor window of the Hall to establish any intervisibility. This confirmed that the site cannot be viewed and walking around the site itself has confirmed a lack of direct views between the two. It has been concluded that there will be no effect on the significance of this important heritage asset resulting from the development.

Sudbury Conservation Area – This incorporates the Hall and its associated village to the east and extends along the highway to be approximately 600m from the site at its nearest point. However, the nearest buildings are approximately 900m to the west of the site. To the east the setting of the Conservation Area is considered limited. The eastern fringe is heavily vegetated and major highway infrastructure associated with the A50 and construction of roundabout create an obvious physical and visual barrier between the village and outlying farmland associated with the estate. The impact on the setting of the Conservation Area is therefore negligible.

Registered Park and Garden – The Grade II Registered Park lies to the south west and north of the Hall extending well beyond the A50 to the east of the A615. The element to the south and a small component to the north up to the boundary with Sudbury Prison are also within the Conservation Area. The Heritage Assessment has assessed the impacts on the setting of the Registered Park. All of the element to the south of A50 is screened from the site by buildings and intervening vegetation.
The northern part of the Registered Park could potentially get glimpses of the site at a considerable distance but this will be across a landscape dramatically changed by the introduction of the Prison and A50 and associated infrastructure. Whilst there will be further change to agricultural land associated with the estate close to the boundary of the Registered Park in the context described above the impacts are not significant.

Archaeology – As identified by the DC Archaeologist a site of this size in this location has the potential for archaeological interest. As a result the applicant was requested to carry out a geophysical survey of the site. This revealed an area of some potential archaeological interest close to the eastern boundary. In response to this the applicants have decided to pursue a policy of non-disturbance in this area with panel frames fixed to concrete shoes that sit on top of the ground rather than piled foundations. The DC Archaeologist is happy that with appropriate conditions any interest on the site can be safeguarded.

Overall, on heritage matters, the only significant impact that has emerged from the analysis above, is the less than substantial impact on the setting of Leathersley Farm. This impact can be mitigated to some degree but is a negative impact of the development which needs to be weighed in the planning balance.

4. Impact on landscape character and appearance

The application is accompanied by a Landscape and Visual Impact Assessment. This has been undertaken in accordance with best practice and includes an assessment of the effects of both landscape character and visual amenity likely to be experienced following development.

The assessment concludes on landscape character making the following points:-

(i) The proposed development would represent a change from agriculture to a landscape containing renewable energy infrastructure. However, the proposal would not change the existing key characteristics and features of the landscape. It is of an appropriate scale and will be visually contained by existing, newly planted proposed hedgerows.

(ii) The existing vegetation within the site will be retained, with opportunities to enhance the key characteristics of the landscape through in filling of existing hedgerows and the creation of new hedgerows.

(iii) Whilst the site and its immediate surroundings are rural in nature, within the wider area there are many built and infrastructure influences. The proposed solar park would add an additional infrastructure element into a landscape that already contains similar influences within the wider area.

(iv) Consequently it can be said that the development would not harm the existing landscape character of the wider area.

(v) Following a review of the published character assessments and the author’s own review of the landscape character up to 2km from the site, it has been assessed that, at a local level, the site has a medium sensitivity to change.
(vi) All the positive landscape elements of the area (the wooded character in part, the gently rolling agricultural landscape, the trees and hedgerows) would all remain physically unaffected with the exception of the removal of short sections of hedgerows and some hedgerow trees to allow for the construction of access tracks and security fencing. Their planting of additional hedgerows and hedgerow trees together with long term management measured being put in place would significantly enhance the landscape character of the area.

(vii) On completion, the proposed development would bring about a high magnitude of change to the site itself. However, for the wider landscape the proposal would give rise to a low magnitude of change. As a result, it is considered that there would be a minor adverse effect on the local landscape character in the short term.

(viii) Following decommissioning at the end of the operational life of the panels, the site could be returned to its current condition but the landscape enhancements, such as the hedgerow in-filling and new boundary hedgerows along the northern and eastern edges would remain. There would be minor long-term benefits to the local landscape character resulting from these enhancements.

In relation to visual amenity the following conclusions were reached.

(i) This assessment seeks to give a reasoned judgement on the scale of the changes to visual amenity brought about by the proposed development of a solar park. However, the importance of these changes will vary amongst the receptors due to their own personal opinions about renewable energy and their association with the local landscape. For the purposes of this assessment it is assumed that effects of the proposed solar farm are adverse unless indicated otherwise.

(ii) It is evident from this assessment that the actual zone of visibility associated with the proposed solar park, in comparison to the computer generated ZTV, would be much reduced.

(iii) The proposed development would be visible from the A50 immediately to the north and from elevated parts of the Needwood Clayland ridge situated across the valley, 2.5 to 3.0km to the south, with visibility reduced further from within the wider landscape.

(iv) There is one viewpoint where it is assessed that the visual effect would be Major (Viewpoint 4) between Coton in the Clay and Hanbury. Four viewpoints would be Moderate (Viewpoints 2, (Leathersley Lane to south of site), 3 (Leathersley Lane to east of site), 7 (A50 to north) and 9 (cycle path to south of A50)) with the remaining viewpoints assessed as negligible to minor. Existing hedgerows would be subject to a management regime that promotes screening objectives which would soon produce positive effects given the mature nature of existing hedgerows generally within and surrounding the site.

(v) In general, the greatest visual impacts of the development are likely to be experienced by road users travelling on the A50 along the northern site boundary and cyclists on the local cycleway alongside the A50 and along Leathersley Lane. However, it is felt that these receptors are already used to
the visual impacts caused by the need for farm diversification. The photomontages at viewpoints 1 (looking east from A515 to site), 3 (Leathersley Lane) and 7 (A50) demonstrate that the effects of the proposed development will be low as the site fencing is set back from site boundaries and often behind existing hedgerows and would not affect the skyline.

In Summary

(i) In summary it is considered that the screening provided by surrounding woodland margins, existing hedgerows and hedgerow trees and the site’s location heavily filtered from residential properties and to some extent highways, make this site suitable for development as a solar park.

(ii) The landscape sensitivity of the site is assessed to be low. Although the landscape character of the site would be changed with the proposal in place, any effect would be restricted to the site itself and the key landscape elements and features of the site and surrounding area would remain unaffected. A new notable landscape element would be introduced, in the form of renewable energy infrastructure, causing a medium magnitude of change for the landscape character of the immediate area. As a consequence the effect on the local landscape character would be minor.

(iii) It is considered that the proposed development could be successfully accommodated and assimilated into the surrounding landscape without causing unacceptable harm to the landscape character and visual amenity of the site and surrounding area.

Council Officers have reviewed this assessment and it is considered to be a broadly accurate representation of the sensitivities of the locality and impacts of the development. A solar farm on this scale will clearly cause significant localised change to landscape character. However, what is clear from visiting the site is that this area has already been subjected to significant change with the introduction of the A50 immediately to the north and the historic construction of prison complexes to the north west and east.

The site slopes only gently down from north to south and already benefits from enclosure with hedgerow and planting. The site is effectively screened in views from the north by the road infrastructure and views from the west and east are broken up by woodland pockets. The most conspicuous view will be from the south from higher ground to the south of the River Dove. However, this is a relatively distant view and with time the management of hedgerows and planting will serve to screen and break up the view of the panels. The panels and associated infrastructure could also appear prominent in views from the cycle route and from Leathersley Lane. However, it will be a requirement to close up the field access and plant the gap and the management of hedgerows and vegetation will serve to lessen views into the site in time. Perhaps the most conspicuous element of the scheme will be the siting of CCTV camera posts. It is suggested that these surround the site and a regular spacing of towers along the Leathersley Lane frontage could be quite intrusive. In this regard it is suggested that the number and location of CCTV posts be reconsidered to minimise their impact. This can reasonably be dealt with by condition.
Overall, on landscape character and appearance, it is considered that the solar farm can be assimilated into the landscape without causing significant harm to character and appearance.

5. Impact on Ecology

The application is accompanied by an ecological survey which was assessed by Derbyshire Wildlife Trust. The main ecological interest on the site identified was its potential for ground nesting birds. In response to the request for further analysis on this point the applicant’s ecologists have given details of the bird species recorded during the site survey which was undertaken during the bird breeding season. This survey recorded the BAP priority ground-nesting yellow wagtail and skylark. Derbyshire Wildlife Trust consider that small numbers of these species may nest within the fields and that the development of the solar farm would make the fields largely unsuitable for future nesting thereby resulting in an overall adverse impact upon ground-nesting priority bird species.

The results revealed have been verified against Derbyshire Ornithological Society records. Based on this, an earlier request for further survey work is not to be pursued by Derbyshire Wildlife Trust, but they do require a scheme of mitigation. This will include the creation of habitat within the site or on adjacent land under the applicants control to provide suitable habitat for ground-nesting for the skylark and yellow wagtail.

The site has the potential to be utilised by large mammals such as the brown hare and badger and following discussions the applicant is to provide some raised areas of perimeter fencing to allow these species free access across the site.

Conditions to secure habitat creation for ground-nesting birds and other ecological mitigation and enhancement are suggested by Derbyshire Wildlife Trust and with these measures in place it is not considered that there will be an overall adverse impact on wildlife interests.

6. Highway Safety

The Local Highway Authority have considered the application and its supporting Construction Traffic Management Plan. Their initial response highlighted some concern over the potential for glint and glare impacting on motorists on the A50, signage to warn people exiting the A50 regarding construction traffic and the safety of the existing field access onto Leathersley Lane as the long-term maintenance access because of its substandard visibility.

In response to these concerns the applicants have submitted details of temporary signage. In addition they have explained in more detail that the panels will face south, only 9% of light is reflected and mature hedge exists and will be allowed to grow up to screen the site from the A50. Finally, they are agreeable to all access being taken from the A515 rather than Leathersley Lane.

Based on these clarifications and modifications the Local Highway Authority are happy for the development to proceed subject to conditions regarding warning signage during construction, all construction and maintenance traffic accessing the site from the A515 and the maintenance of hedgerows to a minimum height of 2m.
7. Other Matters

The County Council initially raised some concerns over the potential for this development to sterilise part of a safeguarded sand and gravel resource. Following a dialogue with the applicant where the extent of the deposit and the timespan of the solar farm were fully discussed, the County Council have confirmed that they have no residual concern in relation to the sterilisation of this resource.

A development of this scale has to be referred onto the Environment Agency because of its potential to cause a flood risk. The applicants were during the consideration of the application asked by the Environment Agency to provide design drawings of swales and infiltration drainage features for the inverters to supplement the Flood Risk Assessment. On the basis of this submitted information the Environment Agency have no residual concerns in relation to flood risk subject to the development being carried out in accordance with the submitted details.

The Crime Prevention Design Advisor has raised some concerns regarding the potential for theft from this site and suggested more robust fencing. However, given that the Leathersley Lane access will be closed off and the site will be monitored by CCTV cameras, the visual intrusion of higher fencing than deer fencing is not warranted in this case.

8. The Planning Balance

The consideration of the overall planning balance on this application requires an assessment of its adverse impacts and conflict with the development plan and national guidance to be weighed against the benefits to be derived from this substantial renewable energy installation.

There are 3 elements that weigh against this development which vary in their magnitude. The first of these relates to the greenfield nature of the site and the quality of the agricultural land being utilised. The site is approximately ⅔rds classified as best and most versatile land. Local Plan Policy SF6 seeks to protect this from development unless the development cannot be accommodated on poorer quality land or there are overriding benefits resulting from the development that would outweigh any harm caused to the best and most versatile land.

In addition to this requirement of the local plan, government guidance also seeks to protect such land for agriculture, paragraph 112 of National Planning Policy Framework and Planning Practice Guidance asks local planning authorities to consider encouraging the effective use of land by focusing large scale solar farms on previously developed and non-agricultural land. Where a proposal involves greenfield land local planning authorities are asked to assess if the use of agricultural land has been shown to be necessary and to assess if poorer quality land can be used in preference to higher quality land.

The applicants are aware of this requirement and submitted an Alternative Site Search Assessment. This document limited the search area based on Derbyshire Dales District and the availability of a viable grid connection and focused consideration on delivering a 20MW scheme. Amongst the sites considered in the area of search, which has relatively good quality agricultural land, it is accepted that
this is a preferable site. There remains concern however that the proposal is to some degree in conflict with the aims of Government policy which seeks to promote brownfield above greenfield and the use of lower quality agricultural land over higher quality land. Although it will be possible to still graze animals between the panels there is in terms of the location chosen and the quality of the agricultural land, a degree of conflict with Government policy and the Local Plan.

The second area of concern which needs to be assessed is the impact on heritage assets. Whilst the very important heritage assets of Sudbury Hall, its registered park and garden and Conservation Area, should not suffer any significant effects the setting of Leathersley Farm (Grade II) will be adversely affected. It is important, however, to quantify this harm. The setting of Leathersley Farm is mainly a combination of its immediate context and views to and from it to the south. Whilst the farmland to the north of the lane has been partially farmed from Leathersley Farm and it is seen in views together travelling east and west, when the potential for largely screening the solar farm is taken into account, the overall harm to its setting is less than substantial. Paragraph 134 of the National Planning Policy Framework nevertheless requires the decision-maker to weigh this harm against any public benefit.

Finally, in terms of harm a solar farm of this scale will have some adverse impact on the character and appearance of the landscape. In this case the predominant impact is on character but this has to be assessed in the context of the impact of the A50 and other manmade infrastructure in the locality. The impact of development beyond the site is limited by local topography and boundary screening and although there may be views from the south they are at a distance and will be broken by existing and proposed planting. Overall, whilst there will be harm to landscape character and appearance, the nature of the site in terms of its location and topography mean that these impacts can be contained and are not of a significant adverse magnitude.

Having identified these adverse impacts it is logical to weigh these against the benefits to be derived from a renewable energy installation of this scale.

Paragraph 98 of the National Planning Policy Framework recognises that even small-scale projects can make a valuable contribution to cutting greenhouse gas emissions and it states a presumption in favour of approving applications if the impacts are (or can be made) acceptable. Having regard to this and that the core planning principles in paragraph 17 of the National Planning Policy Framework and Statement in paragraph 93 recognise the key role of the planning system in supporting the transition to a low carbon future by amongst other things encouraging the development of renewable energy, it is considered that the benefits of the provision of renewable energy of this scale should be given significant weight in the balancing exercise.

Weighed against these major benefits of this renewable energy installation the less than substantial harm to the setting of a heritage asset and modest harm to landscape character and appearance are not considered to carry significant weight. The use of better quality agricultural land for the installation does carry significant weight, but in the final balance, given that the use of the land can be reversed in the future and some agricultural use can be made during installation, in the final reckoning this conflict with local and national policy is not considered to outweigh the benefits to be derived from the scheme and general conformity with the aims of
planning policy and the balance of consideration is in favour of granting planning permission.

OFFICER RECOMMENDATION:
Grant planning permission subject to conditions covering the following issues:-

1. Standard time limit for implementation.
2. Amended Plan.
3. 25 year time span of permission.
4. Drainage scheme to be implemented in accordance with Flood Risk Assessment and further details of surface water management supplied to and agreed by Environment Agency.
5. Notwithstanding the submitted details the final position, height and colour treatment of CCTV posts shall be submitted and agreed in writing and implemented as agreed.
6. Hours of construction to be agreed.
7. Construction vehicles to be routed as detailed in the application and temporary warning signage to be implemented in accordance with the submitted details during the construction period.
8. Provision of landscaping scheme and landscape management plan to incorporate closing of hedge gaps including existing access onto Leathersley Lane and management of hedges to a height of not less than 2m during lifetime of development.
9. All construction and future maintenance traffic associated with the Solar Farm shall utilise the existing access to Aston House Farm with a direct vehicle access from Leathersley Lane.
10. A habitat management and monitoring plan for all retained and created habitats, including any off-site compensatory provision shall be submitted to and approved in writing by the Local Planning Authority. This plan specifically shall incorporate ongoing monitoring and remedial measures for key species, including yellow wagtail and skylark.
11. Wheel cleaning facilities to be provided on site.
12. Scheme of archaeological mitigation to be submitted and agreed to protect the potential area of archaeological interest on the eastern boundary of the site identified in the archaeological evaluation and highlighted on the amended plan.

Footnotes:

1. The Local Planning Authority have during the consideration of this application engaged in a positive and proactive dialogue with the applicant which has resulted in revised proposals which overcame initial problems with the application relating to ecology, archaeology and highway safety.
14/00558/FUL

West Lodge House, Derby Road, Doveridge

Derbyshire Dales DC

Date: 31/10/2014

100019785

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14/00558/FUL  ERECTION OF GARAGE AT WEST LODGE HOUSE, DERBY ROAD, DOVERIDGE FOR MR AND MRS EDWARDS

Parish Council: Doveridge          Date of receipt: 11.08.14
Application type: Full            Case Officer: Mr C. Whitmore

THE SITE AND SURROUNDINGS:
West Lodge House is a red brick and tile semi-detached dwellinghouse fronting Derby Road, at the eastern end of Doveridge. The property can be accessed from Cavendish Close to the south and from a recently formed access onto Derby Road. The boundary with Derby Road is defined by a high wall and an access gate. The elevation facing Derby Road contains the main front door to the property. The application site relates specifically to an area of garden to the north west of the building upon which a timber framed car port structure has been partially erected.

THE APPLICATION:
This application comprises a resubmission of a scheme (code ref: 14/00239/FUL) to erect a building on the same footprint as the existing car port structure, which was 5m high to ridge and 2.7m to ridge (almost 1m above the height of the existing boundary wall), which was refused for the following reason:

1. The proposed building by reason of its siting, height and appearance would be out of scale and context with the existing dwellinghouse and its surroundings and would have a detrimental impact on its character and appearance and the character and appearance of this part of Derby Lane contrary to the aims of Policies SF1, SF5 and H2 of the Adopted Derbyshire Dales Local Plan (2005), Development Management Policies 1 and 9 of the Derbyshire Dales Local Plan Submission Draft (May 2014) and guidance contained within the National Planning Policy Framework (2012). A recommendation of refusal is put forward on this basis.

Following refusal of the above application the applicant has reduced the height of the structure. It is now proposed to introduce a dual pitched roof, which will be 4m high to ridge and 2.3 high to eaves (0.6m above the height of the boundary wall). The footprint of the building (5.2m by 5.6m) will not change. The walls will be clad in timber and the roof in plain brown tiles. The east facing gable end will be open.

RELEVANT HISTORY:
14/00239/FUL  Erection of garage  Refused
12/00029/FUL  New vehicular access  Granted

CONSULTATIONS:
Local Highway Authority:
  No objections.

Parish Council:
  No comments received.

REPRESENTATIONS:
  None
POLICIES:
Adopted Derbyshire Dales Local Plan (2005):
  SF1: Development within Settlement Framework Boundaries
  SF5: Design and Appearance of Development
  H2: Extensions to Dwellings
  TR1: Access Requirements and the Impact of new Development

Other:

ISSUES
1. The main issue to assess in the consideration of this application is the impact of the proposed building on the character and appearance of the existing dwelling house and its surroundings. Although the structure would be high at 4m, its siting and footprint is such that it would not overshadow or appear overbearing when appreciated from the adjoining semi.

2. Policy SF5 of the Adopted Local Plan aligns with guidance contained within the National Planning Policy Framework in respect of design and states that planning permission will only be granted for development that preserves / enhances the quality and distinctiveness of its surroundings and where it reinforces the sense of place engendered by the presence of distinctive local building styles and materials. Policy H2 of the Adopted Local Plan deals specifically with extensions to dwellings and states that planning permission will be granted for extensions that would not result in a detrimental impact on the character and appearance of the dwelling and its surroundings.

3. The building would sit within 2m of the properties boundary with Derby Road and its overall height exceeds 2.5m. Planning permission is therefore sought to retain the existing structure and to introduce a dual pitched roof.

4. In respect of the previous application the Local Planning Authority considered that the footprint and overall height of the building was such that it would read as a highly conspicuous building that would be out of scale with the existing dwelling and its surroundings. Being clad in a contrasting material it was also considered that the building would compete visually with the main dwellinghouse and appear odd within its context. Noting the above concerns, the applicants have reduced the height of the building, so that its exterior walls sit just 0.6m above the height of the boundary wall and the height to ridge has been reduced by 1m. The reduction in height is such that the resultant building would not appear as conspicuous within the street scene nor would it be out of scale / context with the main dwellinghouse. Although the exterior walls will be faced in a contrasting material, they would not be as readily visible from public view and as a consequence there would be no significant harm to the character and appearance of the existing dwellinghouse or its surroundings. A recommendation of approval is put forward on this basis.
OFFICER RECOMMENDATION:
Planning Permission to be granted subject to the following conditions:

1. Condition ST02a: Time Limit on Full.

2. A sample roofing tile shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development. The development shall be constructed in accordance with the approved details.

Reasons:

1. Reason ST02a.

2. To ensure a satisfactory external appearance of the development in accordance with the aims of Policies SF5 and H2 of the Adopted Derbyshire Dales Local Plan (2005) and guidance contained within the National Planning Policy Framework (2012).

Footnote:

1. The Local Planning Authority prior to the submission of the application engaged in a positive and proactive dialogue with the applicant which resulted in the submission of a scheme that overcame initial concerns with regard to the height of the proposed building.

This Decision Notice relates to the following documents:
1:1250 Scale Site Location Plan;
1:250 Scale Proposed Block Plan, and;
1:50 Scale Proposed Elevations, Layout and Perspective Drawings received by the District Council on the 1st and 11th August 2014.
14/00354/OUT
Leys Farm, Wyaston Road, Ashbourne

Derbyshire Dales DC
Date: 31/10/2014
100019785

1:3,500

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Derbyshire Dales District Council,
Town Hall, Barle Road, Matlock, Derbyshire DE4 3HN.
Telephone: (01629) 761190.
Website: www.derbyshiredales.gov.uk
THE SITE AND SURROUNDINGS:
The application site comprises just over 7 hectares of pastoral fields adjoining the southern urban edge of Ashbourne. Irregular in shape, the site is bordered by Wyaston Road to the east, housing to the north and west along Premier Avenue and several small cul-de-sacs, and open land to the south which drops down to the A52 Ashbourne by-pass.

Leys Farm buildings border the north-east corner of the site adjacent to Wyaston Road and two groups of trees (Ash and Oak) that are subject to Tree Preservation Order protection are located along the site boundary with Premier Avenue, Netherfield Close and Northwood Rise properties. The site is open fields for the most part, but has sporadic trees and a hedgerow boundary with occasional trees along its Wyaston Road frontage, which extends to some 170m. On the opposite side of Wyaston Road are well established houses at Oak Crescent off Willow Meadow Road, with a newly approved housing estate under construction to the south. Ashbourne Hilltop Infant and Nursery School is close by across Wyaston Road.

The site lies outside the current Local Plan Settlement Framework Boundary for Ashbourne but adjoins this boundary to the north and west.

THE APPLICATION:
Outline planning permission is sought with all matters reserved for subsequent approval for the residential development of up to 145 dwellings with associated public open space. The application is accompanied by the following supporting documents:-

- Design and Access Statement
- Site Plan and Illustrative Masterplan
- Transport Assessment
- Flood Risk Assessment
- Landscape and Visual Appraisal
- Noise Assessment
- Phase 1 Ecological Appraisal
- Arboricultural Survey
- Desk-Based Archaeological Assessment
- Residential Travel Plan
- Geophysical Survey Report

These documents have been available for public inspection on the case file and Councils website and circulated to the relevant consultees for their consideration. The detailed contents of the supporting information is not reproduced in full in this report, except where relevant to the consideration of the development in the ‘Issues’ section of this report.

However a summary of the applicant’s case may be presented as follows:-
1. The proposal relates to a maximum number of 145 dwellings being constructed on the application site.
2. The dwellings will be 2 to 5 bedroom properties with the precise mix to be confirmed at the reserved matters stage.

3. The development will provide for affordable housing in a manner to be agreed by the District Council.

4. Vehicular access will be from Wyaston Road, built to Adoption Standards with 2.4m by 43m visibility splays. This will involve frontage hedgerow being located back into the site.

5. The illustrative internal road layout provides for a primary road/street through the site with a number of secondary streets and private driveways leading off, to create an informal character.

6. Internal and boundary hedges will be retained wherever possible. The illustrative Masterplan utilises strong hedgerows in conjunction with the topographical character to define the edge of the built form.

7. A public open space, enclosed by hedgerows is proposed near to the south-east corner of the site (its treatment to be finalised with the District Council).

8. A play area is indicated in the north-east corner of the site with a pedestrian link to Ashbourne Hilltop school adjacent to it. (Other informal open space is indicated).

9. A drainage pond for on-site surface water attenuation is shown at the western end of the site with open space and a potential footpath link through to cross Premier Avenue to the north-east of Clumber Close.

The main reports included in the submitted details are also referred to and summarised by the applicant’s agent, as follows:-

Transport Assessment
The assessment demonstrates that there are no adverse impacts on the local highway network and the necessary access may be constructed without detriment. There is no evidence of road safety issues and opportunities will be provided for journeys on foot, by cycle and bus. There are a range of local facilities within appropriate distances, travel plan measures to reduce the reliance on the motor vehicle are outlined that may be made subject to a planning condition.

Flood Risk Assessment
The assessment concludes that the proposed development site has a low risk of flooding from any means. A SUDS technique is proposed to minimise surface water volumes that would enter the drainage system in the vicinity of the site; the surface water will be attenuated to the critical storm duration and the 100 year plus; and allowance for climate change. Flood risk to others will also be mitigated by storm surface water run-off measures.

Landscape and Visual Appraisal
The appraisal concludes that the development would not result in significant harm to the existing landscape. Landscape benefits will accrue over time with new planting measures, physically accessible green space and securing of the long term management of the
landscape and ecological resources. Visual impacts of significance are to be restricted to the immediate boundaries of the site and can be mitigated in the longer term.

**Noise Assessment**
Subject to layout, design and construction measures, noise can be mitigated and the development will lower noise levels experienced by existing residents.

**Ecological Appraisal**
There are no national, regional or local designations concerning the site, nor great crested newts. There is a badger sett to the south of the site on controlled land and this will be protected in accordance with good practice. There is limited bat roosting potential. Trees with such potential will be retained. There are no reptile habitats.

**Desk-based Archaeological Assessment**
There are no heritage designations on the site. It is located within the ‘postulated’ extent of a mediaeval deer park, but there is no physical evidence within the site. A magnetic survey did not reveal buried archaeological features. Evidence of previous ploughing, plus ridge and furrow cultivation, suggests that archaeological features, if they had been present, would have previously been detected. The assessment concludes that the site has no, or negligible potential, for significant archaeological evidence of all periods.

**Arboricultural Survey**
It is stated that the arboricultural survey demonstrates that there are no trees of particular note on the application site.

**RELEVANT HISTORY:**
14/00183/OUT Residential development of up to 145 dwellings with associated public open space (outline) – Withdrawn

**CONSULTATIONS:**
**Ashbourne Town Council:**
Members feel that the outline application is
- disjointed from the rest of the town,
- will have a negative visual impact from the bypass,
- the existing roads can’t take any further increase in volume of traffic,
- there are no sizes of proposed houses,
- it is on a ‘greenfield’ site,
- some of the information provided by Travis Baker is wholly inaccurate e.g. 4.1.5 refers to a public house (the Plough Inn) being within 1000m, a public house which has been converted into apartments some years ago and 4.1.6 which refers to Boothby Meadow School which closed in 1996.

**Local Highway Authority:**
Initially, the Highway Authority responded to the submitted Transport Assessment and made the following points which are summarised:
(i) The Transport Assessment incorrectly noted that the 30mph speed limit was due to be extended to the south to serve the approved housing development at Willow Meadow Farm. (However, this should be an aspirational improvement to promote, especially given the considerable numbers of new properties intended).
(ii) The Highway Authority was ‘consulted’, prior to the Transport Assessment being submitted about its scope, in particular about data collection at a number of
A number of transport assessments for different sites were examined (i.e. Willow Meadow Farm, Hillside Farm, Old Derby Road, Ashbourne Airfield) and the effect on eight junctions was considered. Assumptions on the routing of the traffic were made, which the Highway Authority were not entirely in agreement with, commenting that the Assessment should consider the logical trips and destinations that would be made by end-users.

(iii) Trip routes were considered to be a little conservative given the sites location and the cumulative impact of similar developments in this part of Ashbourne. Low trip rates similar to those for the Airfield site (which includes for employment and community facilities, public transport improvements / site penetration) were suggested. A more robust analysis of the trip rates should have been undertaken in the opinion of the Highway Authority, even if this was for sensitivity testing purposes. The assessment considered that the existing highway network could ‘cope’ with the additional traffic. However, traffic movements in the Ashbourne area will increase and whilst not becoming such as is regarded as generally severe, an exception is the signalised junction of Derby Road / Sturston Road etc.

(iv) Recent correspondence regarding other development sites in Ashbourne shows that the signal controlled Derby Road / Sturston Road etc., junction is operating at the very limits of its capacity, with a reserve capacity of zero during the morning peak hour. The proposed development will add additional traffic movements to pass through this junction but, unfortunately it was not included in the modelling exercise of the Transport Assessment. A requirement for a comprehensive improvement scheme at this location should be a high priority to support the additional developments in the area.

(v) Whilst previously some development has been allowed and tolerated, due to its ‘limited’ impact, it is now the case that further development will increase the burden placed on this junction, as it becomes saturated with the effects of cumulative development. This may manifest itself in increased congestion, add new pressure points in the town centre and exacerbate accident statistics in the Ashbourne area. Hence, the need for a more comprehensive solution arises and developer contributions are considered appropriate, where development is demonstrated to contribute to a worsening in the capacity/operation of this and other junctions.

(vi) The Ashbourne Airfield development has identified this junction as a particular issue requiring further intervention and further improvements. Hence, to address or off-set the proposed developments impact the Highway Authority seek a financial contribution which, based on the scale of development, could exceed £100,000.

The Transport Assessment included analysis of accident data, which shows that a total of 6 accidents have occurred in the study area, in the proceeding 5 years. The Assessment does not consider that the quantum of additional traffic arising from the proposals would result in a material deterioration of the accident situation and there are no common causation factors evident in the recorded accidents. This does not however, include the assessment of the Derby Road /Sturston Road signalised junction, which would considerably increase the number of accidents to be considered within the extended study area (9 accidents alone at the signalised junction).
(ii) **Travel Plan**

Design considerations:
The Highway Authority advised that:

- The applicant should consider provision of secure and accessible cycle storage and an electric vehicle charging point to all residences.
- Reference to Northamptonshire policy documents should be replaced with relevant Derbyshire documents.
- Consider monitoring of travel plan targets progress for a five years after 100% occupation of the development and maintain the Residents Travel Plan coordinator role for this period.
- Provide residents with information on sustainable residential travel options via websites in addition to any other relevant local operator websites.
- Monitoring of the Travel Plan is the developer’s responsibility. Any fee payment to Derbyshire County Council will be to cover reasonable costs incurred i.e. processing submitted reports, meetings and site visits to ensure the Travel Plan meets its targets.
- Consideration should be given to annual travel surveys being undertaken for five years on the anniversary of the first survey, or, (as previously stated) for five years following 100% occupation of the development, whichever is the latter.

Given the additional scale of development now being proposed to be served by this part of Wyaston Road, it would benefit from being widened further, to 5.5m with a fronting footway provided for pedestrians, along the controlled frontage. This site is now being promoted by the same developer as the Willow Meadow Farm site.

Visibility splays are also based on vehicle speed of 30mph; however, measured vehicle speeds have been captured for the adjoining site, which suggest that vehicle speeds on this section of road are somewhat higher. The figures quoted for splay lengths also presumably pre-empt a lowering of the speed limit along the frontage of the site. Whilst this may be acceptable in principle to the Highway Authority, its implementation relies on successful modification of speed limit Orders and could therefore not be conditioned as part of any consent (ultra-vires). However, given the controlled frontage available to the applicant, it is likely the full extended sightlines could be achieved if necessary; although given the change in nature of this part of Wyaston Road, modifying the speed limit would be the preferred option to pursue – this could be done as a best endeavours obligation in a Section 106 Agreement. The applicant would however be required to meet the County Council’s reasonable costs in modifying the speed limit, including any associated works involved in extending the limit. This, along with the widening of Wyaston Road may require amendment to the indicative site access drawing – SK01 contained in the Transport Assessment document.

Whilst the proposals are likely to be acceptable from a highways aspect there are nevertheless some issues and further clarification that may need to be provided, before the Highway Authority may be in a position to offer formal conditions and notes. This includes the following key items:

- Extending the traffic modelling to include the Derby Road / Sturston Road signalised junction, to identify any additional impact from the proposed development on this junction.
- Sensitivity testing residential trip rates (compare with other similar residential applications in the Ashbourne area).
- A mitigation package to off-set any identified development related impact at this junction or financial contribution towards a more comprehensive improvement package for the Ashbourne area.
- Amendments to the Travel Plan, to incorporate the items highlighted above.
- Agreement to the Travel Plan monitoring contribution.
- Widening of Wyaston Road to 5.5m across the site frontage.
- Agreement to fund the County Council’s reasonable costs to modify the fronting speed limit on Wyaston Road (sum to be included in Section 106 Agreement and include all associated works including street lighting etc).

Following negotiations with the applicants’ Highway Consultant regarding the transportation issues raised, further analysis of the signalised junction has been undertaken. This has involved replicating the information / modelling that supported the Airfield Industrial Development Site, recently resolved to be approved by the District Council. The following comments have now been provided (30.10.14).

The main issue from a highway perspective relates to the potential impact of the development on the existing highway network, particularly in Ashbourne town centre, where a relatively high proportion of the development traffic will gravitate to, for access to everyday facilities. This will create additional pressure on the existing signalised junction (Station Street /Compton Street /Sturston Road /Derby Road /Old Hill), which already experiences frequent peak hour congestion and is the source of a number of accidents over recent years; quite a number involving pedestrians (however, other junctions within the town centre are likely to see an impact, although these have not been modelled as part of this process). Based on the likely intensification in use of the junction and supporting accident statistics the Highway Authority would need to consider if this was ‘severe’ as to warrant rejecting the proposals on highway safety grounds.

The results summary of the LINSIG analysis submitted for the existing signalised junction considers the additional traffic impact from the Leys Farm development. The analysis considers the existing scenario in 2013 as a ‘benchmark’ and then considers a 2016 horizon year with committed development and the Leys Farm development.

Following receipt of the additional information the County Council’s Traffic Signals team arranged to visit the junction on a neutral week-day peak period (Thursday PM peak) to observe the traffic at this junction. The 2013 base-line survey identifies that the junction has ‘practical reserve capacity’ both in the AM and PM peak periods, however, observed queues on Derby Road far exceeded those identified in the analysis results – it was observed (and from other site visits) that the queue of vehicles on Derby Road frequently extends to the top of the hill, which is significantly more than the queue length identified from the theoretical analysis. Whilst this was only a ‘snapshot’ into the operation of this junction it would suggest that there is significantly less practical reserve capacity at this junction than the analysis assumes, which will potentially have a more detrimental impact at this junction, resulting in longer queues and more congestion for Ashbourne.

It is noted that the Leys Farm Development would add circa 29 No vehicles to the Derby Road signalised junction in the AM peak period and 32 No during the PM peak. On the analysis provided, which as identified above may not be truly representative based on actual site observations, this could result in an additional 3 No vehicles queuing on Sturston Street and 4 no vehicles queuing on Derby Road (2.6 and 3.4 quoted but this is an impractical measure of a vehicle). Whilst the length of queue on Derby Road can be physically accommodated, Sturston Road only has a very limited and finite capacity for
‘held’ vehicles between the two signalised junctions – therefore adding an additional 3 No vehicles to the existing queue may not be feasible without having a ‘knock-on’ impact on Park Road. It should also be noted that the two signalised junctions are linked and therefore both will be very sensitive to increases in traffic. If fact at the time of the County Council’s recent visit long queues of vehicles were also observed on Park Road.

As you will be aware from previous consultation responses, and more recently in connection with the approved Airfield Development, the County Council has sought developer contributions towards improvement of the Derby Road signalised junction, or other such smaller interventions that may be identified by a scheme of monitoring, to improve capacity, safety and potentially circulation of traffic around Ashbourne town centre. The applicant has the opportunity of developing a scheme that completely mitigates against the identified impact of their development i.e. achieving ‘nil-detriment’ or alternatively provide an agreed financial contribution so that the Highway Authority can accumulate funds to provide a more comprehensive solution or package of improvements. Comparing the peak hour impacts for the Airfield development with that of the Leys Farm development provided, a pro-rata level of contribution would be circa £120,000 – this is however based on up to 145 No residential units, as advised by the transport assessment. If it transpires that the final scale of development is less than envisaged it is likely any contributions could be reduced further on a pro-rata basis. It is therefore suggested that a sum up to £120,000 is included in the Section 106 Agreement at this stage, based on the envisaged scale of development.

The Highway Authority suggests any expenditure of such highway improvement funds be at the Highway Authority’s discretion for the purposes of, but not limited to, further transport studies and traffic monitoring and designing and implementing targeted highway improvement schemes within a local area. This may not fully fund the entire works necessary to offset the impact of the development and it may well require additional public or development related funds to support any comprehensive improvement package, however, the sum identified would be considered a reasonable contribution to offset the impact arising from this development.

It is suggested that a timeframe be attached to the funding stream, given it will be some years before the full effects of the development are realised – this could be 5 year period post substantial completion of the site (say 90%) approved under this application (which would tie in with travel plan monitoring and allow an additional period of time to facilitate any further improvement works if necessary).

The Travel Plan is a working document and should not be considered exhaustive. It is subject to change in the light of the proposed development, actions and initiatives undertaken, and pending results of residential travel surveys. The document evolves with the site and will require continual monitoring, especially through the early years of the development. The Highway Authority would wish to be involved in this process to ensure the aspirations of the travel plan and development as a whole accords with the assumptions made at this stage within the transport modelling. The developer shall therefore pay a contribution, not exceeding £5000, towards the future review / monitoring processes associated with the Travel Plan in association with Derbyshire County Council and Derbyshire Dales District Council. Responsibility for the monitoring of the Travel Plan ultimately rests with the developer and any fee paid to Derbyshire County Council will cover reasonable costs incurred by the Authority in the processing of submitted progress reports, undertaking site visits and attending meetings as appropriate, to ensure the Travel Plan meets its agreed targets.
The application is in outline form with all matters reserved. Master-plan drawings have been submitted indicating what the access and development may look like, however, in the absence of these elements being determined at this stage little weight has been given to the details submitted and the master-plan is treated as being indicative only. A more detailed assessment / comment on access and internal layout will be dealt with at a future reserved matters stage and appropriate conditions can be formulated on this basis. The Developer should however be encouraged to view the County Council’s current 6C’s design guide if they are intending to pursue potential adoption of the proposed estate streets at a future date.

On the basis that the District Council is seeking to favourably determine the application and the applicant is willing to provide a financial contribution to off-site highway improvements, in lieu of a formally presented / designed scheme to fully offset the impact of their development, I would suggest the following Section 106 content, conditions and notes, or similar based on the same, be included in any consent issued, in the interests of highway safety:-

Suggested Section 106 Agreement content

a) The Travel Plan is a live document that evolves with the site and will require continual monitoring, especially through the early years of the development. The Highway Authority would wish to be involved in this process to ensure the aspirations of the travel plan and development as a whole accords with the assumptions made at this stage within the transport modelling. The developer shall therefore pay a contribution, not exceeding £5000, towards the future review / monitoring processes associated with the Travel Plan in association with Derbyshire County Council and Derbyshire Dales District Council. Responsibility for the monitoring of the Travel Plan ultimately rests with the developer and any fee paid to Derbyshire County Council will cover reasonable costs incurred by the Authority in the processing of submitted progress reports, undertaking site visits and attending meetings as appropriate, to ensure the Travel Plan meets its agreed targets.

b) The developer shall provide a financial contribution, not exceeding £120,000, towards highway network improvements within an identified area, to offset any detrimental highway impact arising as a result of the proposed development. The contribution may be applied to, but not be limited to:-

i. Installation of permanent traffic monitoring stations at agreed locations within Ashbourne (to obtain pre-development, during and post development traffic data).

ii. Further transport studies.

iii. Identifying, designing and implementing targeted highway and pedestrian safety or capacity improvements, within the identified area.

iv. Improving public transport infrastructure and walking / cycling routes between the site and Ashbourne Town centre.

All as may be agreed in writing with the Local Planning Authority. The contribution shall be available for agreed highway improvements for a period up to 5 years post substantial completion of the site (90% of the total development completed), with any un-used deposited monies being returned to the developer within 3 months after expiry of the 5 year period.
The Highway Authority has also recommended a number of relevant Conditions based on the “all matters reserved” nature of the proposed development.

**Head of Housing**

Working from a starting point that the affordable housing provision is 45% on site, the Housing Authority is prepared to consider a split provision, with 25% (of the total number of homes) on site and 20% (of the total) off site.

The affordable housing provision should be spread throughout each phase of the scheme to ensure that all of the units do not come through in one go.

Of the on-site provision 15% of the total housing should be focused on meeting the needs of older people and people with disabilities and be in the form of bungalows, which should comprise 2 bed 3 person properties, built to the life time homes standard. A further 5% of the total housing reflected in on-site provision should be 2 bed 3 person bungalows built to the wheelchair design standard. The remaining 5% should be provided as 3% 2 bed 4 person homes and 2% 3 bed 5 person homes.

All homes should be secure by design and achieve code for sustainable homes level 3.

The overall tenure split should comprise 30% shared ownership and 70% affordable rent.

**Environment Agency**

No objections in principle to the proposed development, subject to a planning condition being imposed that requires details of a surface water drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development. (Advisory notes are provided for the applicant’s attention regarding foul sewage provision, surface water run-off and management.

**Derbyshire Wildlife Trust:**

DWT has checked the site against the Trust's data sets and considered the relevant submitted documents with particular reference to the Ecological Appraisal Report prepared by FPCR dated February 2014. A Phase 1 habitat survey was undertaken in January 2014, which the report acknowledges is a sub-optimal time of year to assess vegetation. The survey included an assessment of hedgerows and grassland, which, notwithstanding the survey date, strongly suggest that the vegetation is low diversity.

Assessments for bats were limited to the potential for trees to provide opportunities for roosts. Evidence of badger was searched for during the Phase 1 Survey and water bodies were assess for their potential for amphibians, including great crested newts. The survey confirmed that currently there are no statutory or non-statutory nature conservation designations on or immediately adjacent to this site. However, the report correctly identified that part of the site had been shown to be semi-natural acid grassland (Premier Avenue fields – south) in the late 1990’s potentially having nature conservation value. The survey results suggest that the grassland vegetation is largely species poor, with a few smaller areas of more diverse semi-improved grassland present.

Six hedges, one of which is species rich according to a detailed HEGS assessment, were identified. However, all of the hedgerows are habitats of principal importance under the NEPC Act, Section 41 and are priority habitat. Several mature trees were also identified.
With regard to fauna, the following comments were made by DWT:

**Badgers**
The survey identified badger being present within the wider site and surroundings, with an active sett present within one of the fields. There is little detail on feeding activity aside from mention of foraging activity in the west and within the tree belt running alongside the A52 to the south.

**Bats**
Three trees have been identified supporting features suitable as a bat roost. They are assessed as low-moderate potential. No built structures are present that could provide potential for bat roosts.

**Birds**
Without a bird survey, a general conclusion was made that due to areas of scrub, rank grassland, trees and hedgerows will support a range of common farmland breeding, including urban fringe, species. The likelihood of the grassland vegetation within the fields supporting birds of conservation concern is probably fairly low due to the fields being intensively managed and their small size.

**Great Crested Newts (GCN)**
There are no known populations of GCN in the locality and the nearest potential pond did not have any water during the survey visit (verified by DWT this summer). It seems unlikely that it would provide suitable breeding habitat for GCN. Ponds known to occur to the south are on the opposite side of the A52, a significant barrier likely to prevent dispersal of newts from the surrounding area. It is also the case that there are no records of GCN’s within any of these ponds. With the site subject to being closely grazed pasture, it appears unsuitable or at least sub-optimal for newts. (DWT also concur with the report’s conclusion regarding reptiles and further surveys are at this time probably not needed).

**Potential impact of the development on nature conservation**
Loss of seven hectares of semi-improved neutral grassland, mostly species poor but with small areas of more diverse grassland will result in low impact but with some loss of biodiversity, locally 140m of species rich hedgerow will be lost (but may alter subject to final design). There is the potential for indirect impact upon badgers, as a result of disturbance and loss of foraging habitat. The measures designed to mitigate the developments likely impacts are considered to be broadly acceptable and should be incorporated into an ecological design and mitigation plan(s). However, additional measures are desirable across the land south of the development boundary, to ensure gains for badger, grassland habitats and hedgerows.

**Conclusion and Recommendations**
DWT consider that sufficient information is available in the ecological report to enable informed assessment of the site’s ecological value, and the type and scale of mitigation and/or compensation required. It is considered that additional surveys are unlikely to alter the main conclusions reached in the ecology assessment, based on the submitted Masterplan. As things stand, the needs of badgers can be accommodated in line with Natural England’s standing advice. Notwithstanding this, the current proposals could alter at the Reserved Matters stage, potentially altering/increasing the footprint of the proposed development. Should this be the case, impact on badger could potentially become more significant and potentially require a license from Natural England, prior to the development proceeding. Impacts on grassland habitat may become more significant.
It is unclear how the land to the south of the application site, the remainder of the fields, will relate to the development, and what mitigation/ enhancement measures may be appropriate. Will the management of the land fall within the scope of the development or will it continue to be managed as farmland. Ideally, and certainly in respect to badgers the land should be subject to enhancement for biodiversity gain and brought within the scope of the development for long-term management.

Accordingly, the LPA should consider attaching conditions to cover:

i. A badger mitigation and habitat enhancement strategy to be submitted and approved prior to commencement of development

ii. An ecological Design Strategy (EDS) to be submitted and approved by the LPA, prior to development commencing, to address protection, compensation and enhancement measures for grassland, wetland and hedgerow habitats, badgers, bats and amphibians.

iii. A landscape and ecological management plan (LEMP) to be submitted to and agreed in writing by the LPA prior to development commencing:

iv. No mature trees to be felled or pollard unless additional surveys for bats have been undertaken to ensure no bat roosts are present.

v. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August, unless detailed checks by a competent ecologist are undertaken for active birds’ nests and appropriate mitigation is carried out where necessary.

Development Control Archaeologist:

There are records of four and possibly five prehistoric burial monuments within 0.5km: at Old Hill to the north (HER 301) where one or possibly two round barrows were present: Tinkers Inn bowl barrow north (HER 4303) to the south and two bowl barrows at Osmaston Fields (HER 24001 and 24002). Tinkers Inn south barrow (HER 4304) lies some 1km from the proposal boundary. Within 200m of the proposal boundary is a record for a linear earthwork (HER 4306) now subsumed within Ashbourne Golf Course and no longer thought to be extant.

The surrounding cluster of prehistoric burial monuments suggests that the area was subject to prehistoric activity / settlement and the topography of the site, with a gentle south facing slope towards Tutbury Hollow and the A52 makes it an extremely favourable location for human settlement.

The archaeological potential has been addressed through a desk-based assessment and geophysical survey submitted as part of the planning application. These studies, in particular the geophysical survey, have proved sufficient to address the requirement of NPPF para.128 for heritage information.

The geophysical survey has not identified any major or incontrovertible archaeological remains, although there are a number of features where an archaeological origin is possible, including a group of linears and a cluster of pit-like features. Given the local evidence for prehistoric activity and the topographic situation there is a significant possibility of other features not identified by the geophysical survey. Although these features will require assessment through trial-trenching evaluation to characterise their date and significance, this would now be best achieved through a conditioned scheme of archaeological work carried out at the post-consent stage, in line with para 141 of the NPPF.
This scheme of work should comprise a trial trenching evaluation in the first instance, targeted on the geophysical survey, but also aiming to provide a meaningful sample of the full site area. Should significant archaeological remains be identified, a further scheme of archaeological strip-and-record will be necessary to record the relevant areas of interest.

The Development Control Archaeologist recommends that conditions should therefore be attached to any planning consent relating to a Written Scheme of Investigation and he will be responsible for monitoring the conditioned work on behalf of the Local Planning Authority.

Derbyshire County Council – Minerals Planning
The site lies within an identified sand and gravel resource consultation area. A minerals consultation area as defined in the Derby and Derbyshire Minerals Local Plan. The consultation aims to ensure that a mineral reserve is taken into account when surface development proposals are being considered, to avoid needless sterilisation, if it was found to be economically important. This is endorsed in the NPPF at paragraph 144. Policy MP17 of the adopted minerals Local Plan states that the mineral planning authority will resist proposals for development which would sterilise economically workable mineral deposits, except where that the is considered to be an overriding need for the development and it is shown that prior excavation of the mineral cannot reasonably be undertaken, or is unlikely to be practicable or environmentally acceptable.

Hence, at this stage the applicant should provide information to clarify whether the extraction of the mineral prior to the proposed development is both viable and practicable.

Derbyshire County Council – (Strategic Infrastructure and Services)
In accordance with the NPPF and the Developer Contributions protocol, it is requested that the development meets the following demands which are related to the development in terms of strategic infrastructure:-

- Access to high speed broadband services for future residents (in conjunction with service providers);
- Undertaking a full ground investigation to explore the option of ground infiltration to manage surface water in preference to discharging to a surface water body or public sewer system;
- Provision of Greenways by the applicant;
- £136,788.12 financial contribution towards 12 primary school places for Hilltop Infant and Nursery School;
- £193,783.17 financial contribution towards 17 primary school places for Parkside Community Junior School;
- £377,875.74 financial contribution towards 22 secondary school places for Queen Elizabeth’s Grammar School;
- £167,651.11 financial contribution towards 9 post-16 education places for Queen Elizabeth’s Grammar School;
- New homes designed to Lifetime Homes standards.

(At Annex A of the response, the County Council sets out in detail their case / justification for the requested contributions / provisions).

Crime Prevention Adviser:
No comments at this stage but requests consultation at any details stage.
Derbyshire Fire and Rescue Services:
Strongly recommend the installation of a domestic sprinkler system. A minimum 32mm water supply capable of delivering the required volumes would allow this to be carried out easily in the future.

REPRESENTATIONS:
Some 57 representations some in duplicate have been received from local residents and a 66 signature petition from school age children. Their objections / concerns may be summarised as follows:-

- This is a 'greenfield' site outside the existing built-up area.
- There would be an impact on the countryside surrounding Ashbourne.
- There would be a large increase in traffic in the area.
- The proposal is speculative seeking to take advantage of the lack of an agreed local plan.
- No account is being given to the wishes of local people. The airfield site is preferable.
- There are already sufficient sites in Ashbourne both approved and in progress.
- With some 220 new households accessing their homes via Old Derby Road and Springfield Avenue, the roads and infrastructure around this area cannot cope with further development.
- The developers will not have to live with the consequences in the years that follow.
- The traffic would be a danger to pedestrians and pupils around Hilltop School.
- The huge increase in population that would result does not have adequate infrastructure in terms of medical facilities, schools, shops and employment.
- Our privacy needs to be protected from houses overlooking us from approximately 3m higher ground.
- Loss of light and overshadowing will occur. Noise will be an issue.
- Impact of development on nature conservation. There are badger setts and other wildlife use these fields. Badgers are legally protected.
- Wildlife will disappear and the countryside will be gone forever unless people stop destroying it.
- Clifton, which used to be small Parish, is now only a couple of fields away from being an Ashbourne suburb. Before long Wyaston and other surrounding villages will go the same way.
- Loss of view of greenfield site
The potential pedestrian / cycle link on the Masterplan through the Shires estate is on a bank of land directly in front of my house affording pedestrians direct views of my, and my neighbours bedrooms. The banking is not a public footpath / through route as it is sited at the end of a closed street.

The development will not add to the towns’ historic character.

Views from across the valley, including from the golf club and bowling club would be impacted on adversely by the proposed development.

The impact on local roads will be detrimental, adding to the vehicles that the sites at Hillside Farm and Willow Meadow Farm will generate.

Gas mains under the land already have leakage issues. How will this be addressed?

The development goes against the plan-led approach which is a core value of the NPPF.

Recent decisions has made free land for housing and the Councils assessment for housing targets suggests there will be 129% provision. The applicants 5346 figure for required housing, compared to the Councils 4400 houses, would still fall within this percentage making the applicants case self-defeating. The application is not warranted.

Refusal of the Derby Road site raises similar concerns to this site and the same arguments apply. The application should be refused.

Over-development will impact on this small town and dilute the attractiveness of Ashbourne which is popular with tourists.

In our 35 years of residence in the area, we have seen the traffic congestion get worse. The congestion prompts us to walk into town and back but as we get older this is becoming less feasible given the steep Old Derby Road hill.

There is congestion around Hill Top School at drop-off and pick-up times. In winter residents of the Shires estate have to leave their vehicles on Wyaston Road due to snow. This may happen with residents of the proposed housing with the result of more congestion.

There are no jobs for the potential growth in population. Moy Park, Frank Wright and Nemplas are at maximum capacity for production and have nowhere to expand. They are already looking to move out of town, meaning fewer jobs.

Whilst the airfield is mentioned as a potential source of employment, wages would not support the purchase of a 4/5 bedroom house (or even a 2 bedroom property).

More water is entering the water table and this is a potential disaster waiting to happen.
• Ashbourne has already demonstrated that it has met its housing needs for the next 15 years, so this development is not needed. The 15/20 minute walk referred to by the applicants into the town centre will not take place, as people will use their cars. Rat-running will occur.

• For the applicants to state that they do not foresee a significant increase in traffic is ridiculous. 145 house x 2 cars per average household is close to 300 cars. Even if only once a day journeys are undertaken (i.e. to work and back) this is almost 600 journeys. This does not include school runs, shopping trips etc.

• In the Travel Plan, a 4 plus bedroom dwelling should have parking for 3 cars, so even more journeys will occur.

• The house would be seen from the A52 bypass and be towering down the valley and look a mess.

• The Traffic Statement is meaningless without a confirmed breakdown of the size of dwellings.

• The travel document refers to the ‘Plough Inn’ as a public amenity. Perhaps someone should tell the residents there, that it has not been a pub for several years.

• Lack of local knowledge is evident – Boothby Meadows School has been taken into account as an education facility.

• The Government announced in June that they wish to accelerate new homes being built on disused industrial sites. Why then should Greenfield land such as this be buried in houses?

• The extra traffic will only add to the congestion and gridlock that the town endures and have an adverse impact on health due to noise and pollution levels.

• The main field of the site includes a badger sett and earth frequently used by foxes and an ash tree in which kestrels nest.

• Planning permission for the Ashbourne area appear to be being undertaken in a random and reactive way, rather than with a planned vision for the town.

• The submitted plans have two garages against our hedge and a house that will tower over our garden, blighting our property. A wider gap should be provided.

• The submitted proposals claim benefit in that potentially, in future it could improve biodiversity. This is simply nonsense. Viewing the land throughout the year, rather that the superficial studies, I see bats in the oak trees that border the land. There are red-legged partridges and buzzards on the land and the trees are an annual roosting point for large flocks of thrushes.

• The Submission makes more claims about how the Derbyshire Dales can’t refuse the Submission than what the benefits of it would actually be. I am aware that the Willow Meadow Farm appeal identified that the Council has a shortfall, but there is no
calculation of recent housing permissions in the submitted details, just dismissal of the housing estimate of the District Council.

• I note Radleigh Homes have reduced the number of houses they are planning to build on Hillside Farm. If they don’t wish to pursue the potential at another site, I don’t think they can claim shortage of housing as a justification in this case.

• The applicants allege that there was an issue with the scoping mechanism for site selection. This was subjective in the first place, but then based on the public ranking of acceptable sites.

• The access lane is frequently driven along by cars at high speed and is used by dog owners and walkers but lacks a footpath for a considerable distance. Bikers need extra clearance when riding up the steep hill. Rat running to the A515 via Dobbin Horse Lane will greatly increase, making the lane unacceptably dangerous for both existing and new users.

• The whole transportation issue makes this application unworkable in what is effectively a cul-de-sac, putting an intolerable strain on Derby Road traffic, already subject to long delays.

• Overloading the road system is reason enough to reject this application, given the permissions already granted.

• Hilltop School is likely to be completely overwhelmed and local families unable to place their children there, will be justifiably dissatisfied with both the District and County Council. Refusing the application will significantly reduce this problem.

• We strongly oppose building on green fields as we do not want to grow up in an overcrowded town, with no green fields and busy, dangerous residential streets.

• QUEGS is already crowded with 30 plus children in classes. Any more new students would result in the school being overrun.

• There really are insufficient amenities (shops, schools) for additional households. Concentrating development on a single site such as the airfield rather than these disparate locations is more likely to provide the ‘critical mass’ that would support investment in new facilities.

• The NPPF was meant to give local people power to plan and manage their own areas through the democratic process. The applicant acknowledges that Premier Avenue residents will suddenly have rear gardens and large houses bordering them, resulting in noise, fumes, loss of open space, open skies and views. Some existing residents may lose their view of green fields but marketing / advertising of housing will refer to ‘views to the beautiful Derbyshire Dales’ on the western side of the site.

• This large housing application, together with other proposals will amount to over 700 new homes, many with families who have young children requiring school places. Such an influx of children cannot be readily accommodated as there does not appear to be room in either of the school grounds for even mobile classrooms.
• The NPPF sets out the need for social / affordable housing and the Radleigh application acknowledges this but appears not to make a commitment to build a truly mixed housing development. Will this go the way of the Willow Meadow Road site which, after the appeal, opted not to build social housing in lieu of a financial contribution?

• The footpath links that are shown do not appear to connect to safe crossing places. The sheer number of properties will result in Hilltop School being besieged at going home time with accidents likely to happen.

POLICIES:
1. Adopted Derbyshire Dales Local Plan (2005)
   SF4: Development in the Countryside
   SF5: Design and Appearance of Development
   SF7: Waste Management and Recycling
   H4: Housing Development Outside Settlement Framework Boundaries
   H9: Design And Appearance Of new Housing
   H13: Affordable Housing Exceptional Sites in Rural Areas
   NBE4: Protecting Features Or Areas Of Importance to Wild Flora and Fauna
   NBE5: Development Affecting Species Protected by Law or are Nationally Rare
   NBE6: Trees and Woodlands
   NBE7: Features Important in the Landscape
   NBE8: Landscape Character
   NBE12: Foul Sewage
   NBE24: Archaeological Sites and Heritage Features
   NBE26: Landscape Design in Association With New Development
   NBE27: Crime Prevention
   TR1: Access requirements and the Impact of New Development
   TR2: Travel Plans
   TR3: Provision for Public Transport
   TR8: Parking Requirements For New Development
   CS8: Provision of Community Infrastructure
   L6: Outdoor Playing and Play Space in New Housing Developments

   Paragraphs 14, 17, 47, 49, 50, 56, 57, 58, 60, 61, 64, 65, 69, 72, 73, 93, 94, 95, 96, 99, 103, 109, 112, 119, 125, 186, 187, 188, 189, 190, 191, 185, 196, 197, 203, 204, 205 and 206.
   Annex 1 Implementation paragraphs, 210, 211, 212, 213, 215 and 216.


4. Landscape Character and Design Supplementary Planning Document (July 2007)

ISSUES:
1. Planning Policy Context
   Before assessing the planning merits of this particular application, it is important to set out the policy context (local and national) and the weight to be given to the different components of the development plan. Conformity or conflict with the policy context will then need to be weighed in the planning balance with other material considerations.

The Derbyshire Dales Local Plan was adopted in November 2005 and covered the period to 2011. In May 2008 the District Council requested that the Secretary of State issue a
direction to save specified policies beyond 24th November 2008. On 20th November 2008 the Secretary of State issued a direction under paragraph 1 (3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004 saving the majority of policies in the Adopted Local Plan beyond the initial three years.

The National Planning Policy Framework (NPPF) was published in March 2012. Whilst the Framework does not change the statutory status of the development plan as the starting point for decision-making (Paragraph 12), in accordance with Paragraph 212 the policies contained within the Framework are material considerations which must be taken into account.

Paragraph 214 of the Framework gave full weight to existing plan policies for 12 months from March 2012. Paragraph 215 advises that beyond the end of March 2013, due weight should still be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The current application therefore needs to be determined having regard to Paragraph 215 advice.

Paragraph 14 advises that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development. For decision-taking, this means approving development proposals that accord with an up-to-date Local Plan; and also in circumstances where the development plan is absent, silent or relevant policies are out-of-date, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites.

The Adopted Local Plan
Key to the consideration of any application for housing development in the countryside are Policies SF4 and H4 of the Local Plan. It was established at the Willow Meadow Farm Appeal that because these policies were written in the context of development being able to be accommodated within the existing Settlement Frameworks, they have only limited relevance to the current situation. Currently, the District Council have to provide additional land for housing in the context of meeting its objectively assessed needs and the emerging Local Plan will, to a greater extent, have to make allocations outside existing Settlement Frameworks. Hence, it is the case that Policies SF4 and H4 have only limited relevance to the current situation. The District Council have to provide additional land for housing in the context of meeting its objectively assessed needs and the emerging Local Plan will, to a greater extent, have to make allocations outside existing Settlement Frameworks.

Whilst Policy SF4 does perform a dual role in seeking to also protect the character and appearance of the countryside, which is consistent with the wider aims of the National Planning Policy Framework, these key policies of the Adopted Local Plan (2005) could at best be only be given very limited weight in the consideration of an application such as this which seeks to make a strategic contribution to meeting the housing needs of the District.

This has been accepted in considering previous planning applications, such as Willow Meadow Farm and Hillside Farm in Ashbourne, which were both greenfield and not draft
housing allocations as part of the emerging Local Plan. Whilst other plan policies quoted in this report may have a relatively high degree of consistency with the National Planning Policy Framework, and carry significant weight in decision-making, Policies SF4 and H4, because of the arguments expressed above, cannot form a sound primary basis for assessing housing schemes beyond existing Settlement Framework Boundaries on greenfield sites.

Emerging Local Plan and Housing Land Supply
The NPPF in Paragraph 47 sets out that local planning authorities need to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements with an additional buffer of 5% or 20% to ensure choice and competition in the market for land. Based on the initial findings of the Inspector referred to below the District Council is not currently able to demonstrate a five year supply of deliverable housing sites.

This is a greenfield site, which sits outside the built area of Ashbourne, The site was identified by the District Council as a potential housing site (ASH3) that could be brought forward to meet the housing needs of Derbyshire Dales as part of the Housing Options Consultation undertaken between June & August 2012. As a result of the public consultation and the site prioritisation exercise undertaken by the Local Plan Advisory Committee the site was not, however, allocated by Council for residential development in the Derbyshire Dales Local Plan.

The revised Derbyshire Dales Local Plan was submitted to the Secretary of State in May 2014 and two initial hearing days were held in July 2014. The Inspectors concluding comments from these hearings, was that the emerging Local Plan did not address the Objectively Assessed Needs for housing in the District. He recommended that the housing provision for Derbyshire Dales should be at least 6,500, and not the 4,400 set out in the Derbyshire Dales Local Plan Pre Submission Draft.

Therefore in order to meet the higher level of housing requirement identified by the Inspector the District Council needs to ensure that additional sites for housing development are brought forward.

The decision-maker has to revert back to paragraph 14 of the National Planning Policy Framework in particular and the other sections of the National Planning Policy Framework to assess if any adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Paragraph 14 of the National Planning Policy Framework states that there is a presumption in favour of sustainable development which, for decision-takers, means:-

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent or relevant policies are out-of-date granting permission unless:-
  - any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the framework taken as a whole; or
  - specific policies of the framework indicate that development should be restricted.
The concluding section of this report will analyse the scheme against this policy requirement.

2. Other Material Considerations
In assessing the scheme against the above test it is considered relevant to both weigh the benefits of release of the site for housing and also weigh the harm that would result and conflict with elements of the Development Plan and National Planning Policy Framework before reaching a balanced judgement. To aid this assessment of the scheme the remainder of the Issues Section is set out as follows, before returning to the planning balance at the end of this report.

(i) The sustainability of housing in this locality
(ii) The impact of development on the character and appearance of the area
(iii) Impact on amenity of adjoining residents
(iv) Provision of affordable housing
(v) The impact on Archaeology
(vi) Highway/pedestrian safety
(vii) Provision of infrastructure through developer contributions
(viii) Open Space
(ix) Impact on flora and fauna
(x) Drainage
(xi) Minerals

(i) The Sustainability of Housing in the Locality
The development of greenfields outside the Settlement Boundary is to a degree unsustainable but this has to be judged in the wider context of the need to provide an adequate supply of housing to meet the future needs of the town. Even if all brownfield sites came forward, there would still be a requirement for greenfield sites to meet the requirement for 6,500 plus dwellinghouses.

The site is situated on the periphery of Ashbourne, which is one of three market towns across the local planning authority area. As such Ashbourne is considered to be a sustainable location for new development, because it provides the opportunity for residents to access a full range of services and facilities without having to be overly reliant upon the use of a private car.

Whilst the public comments on sustainability are noted these could logically be applied to most sites considered for the expansion of a settlement. It is the case that the site is adjacent to existing housing estates in terms of its proximity to the towns facilities and services.

Another consideration of sustainable development is whether the best use of land is being made. The illustrative layout indicates a development well below the ‘145’ dwellings for which permission is in principle is being sought. Greater density has the potential to lessen the land take and promote public transport and infrastructure. However, this has to be weighed in the balance with the character and appearance of the area, which is considered next.

(ii) The Impact of Development on the Character and Appearance of the Area
The submitted proposals indicate an illustrative Masterplan, with a housing density of approximately 32 dwellings per hectare. There is abundant formal and informal open space with ‘green corridors’ weaving through the site. In comparison to housing on
both the Willow Meadow Road and Premier Avenue housing estates, the layout may be regarded as ‘low density’. Previously, when the larger site of “ASH3” was under consideration, it was concluded there was some scope for development in the extreme south-west of the site, where belts of screen planting and roadside vegetation largely obscure views. However, the application site is in a more exposed location and landscape impact cannot be avoided if the site is developed. Due to this, and not withstanding the submitted details concerning landscape impact, the Council has sought an appraisal by an independent Landscape Consultant (LDA Design). The main aim of the appraisal was to inform the Council whether the potential harm of developing this site is great enough to outweigh the benefits, in the absence of a five-year housing supply. Having considered the supporting information, the Consultants comments may be summarised as follows:-

(i) The submitted Landscape Visual assessment (LVA) does not provide a detailed, structural and transparent description of how judgements have been reached.

(ii) It is concluded that adverse effects on local landscape character and land-use and on visual receptors close to the site boundary would be ‘significant’ in the short and long term. However in the absence of a five year housing supply, this on its own, in our opinion would not amount to a strong case at appeal.

(iii) The extent of development proposed, excluding the balancing pond, would form an appropriate permanent delineation of the urban / rural edge of this part of Ashbourne. Further encroachment onto the steeper slopes should be avoided, and options for this should be explored.

(iv) The steeper slopes would form the immediate setting of Ashbourne. The character and appearance of the land and the urban / rural interface needs further consideration and detail to ensure that it retains a rural character and appropriate setting.

(v) Parts of the southern edge of the housing development, presented in the submitted Design and Access Statement (DAS), would be exposed and create a hard and abrupt urban edge to Ashbourne. The southern edge should have substantial areas of planting (currently not illustrated) to screen and soften proposed housing development, providing a less abrupt interface between the town and its setting.

(vi) The proposed balancing pond is likely to appear artificial due to its location partway down a slope, the extensive earthworks that would be necessary and its prominent location. An alternative location towards the bottom of the slope, adjacent to the A52 should be explored. However, if retained in its illustrated location further design and illustrative material should be provided to “secure sensitive profiling in conjunction with new tree and hedgerow planting measures to limit any likely adverse landscape and visual effects”. (Extract from paragraph 6.3 of the LVA)

(vii) The applicant should confirm whether the existing trees that lie within the hedgerow along Wyaston Road, which is to be transplanted are to be retained or removed. Further illustration should be provided to show the effect on the character and appearance of this edge of development on this approach into Ashbourne.
Based on the Consultants findings it is considered that should outline planning permission be granted, Conditions should be imposed that cover the following matters:-

- Trees protected by TPO shall be retained and given, as well as other retained trees, due regard to their height and growth potential when the definitive layout is arrived at.

- Boundary hedgerow be retained as far as possible, where hedgerow has to be removed appropriate transplanting/ replacement planting is secured.

- A robust planting scheme from the entire southern site boundary be introduced to provide an appropriate interface between the development and retained areas of fields.

- A general landscaping scheme throughout the development site, with native species planting.

(iii) Impact on Amenity of Local Residents
The concerns that have been expressed by local residents regarding the potential impact on residential amenity, particularly on privacy, light and outlook are noted and appreciated. However, whilst these concerns are understandable it must be remembered that the Masterplan layout is indicative and as such may be subject to appreciable change when the detailed / reserved matters application is submitted.

(iv) Provision of Affordable Housing
The Councils Head of Housing has set out in the ‘Consultations’ section of this report, what is considered to be appropriate. The applicants state that “the development will provide for affordable housing in a manner to be agreed with the District Council”. Such matters will need to be agreed by a planning condition / legal agreement.

(v) The Impact on Archaeology
Notwithstanding the submitted details, the Development Control Archaeologist has identified the archaeological potential of this site and recommends that Conditions be imposed to secure a Written Scheme of Investigation (WSI) in line with the advice at Paragraph 141 of the NPPF.

(vi) Highway/Pedestrian Safety
This is a substantial residential development which obviously has the potential to significantly add to traffic and congestion on the local road network. In this respect, the Highway Authority has thoroughly appraised the applicant’s submission and sought answers to the concerns they raised regarding the local highway networks ability to absorb the likely additional traffic. Reference is made to highway congestion, accident statistics and whether the proposed development, in terms of traffic impact, was so ‘severe’ as to warrant the application being refused on highway grounds. By seeking developer contributions the Highway Authority are looking to achieve ‘a nil-detriment’ situation. As advised the requested developer contribution may not fully fund the entire works necessary to offset the impact of the development and it may well require additional public or development related funds to support any comprehensive improvement package. However, the sum identified is considered reasonable by the Highway Authority to offset the impact arising from this development.
With regard to the site itself and its immediate surroundings it is the case that longer visibility splays are required than those initially put forward by the applicant for the site junction with Wyaston Road. It is evident that there is sufficient controlled frontage to facilitate the requisite splays. Another potential safety measure may involve the speed limit being reduced in the vicinity of the site entrance, which currently in ‘D’ restricted. Ultimately, whatever the definitive junction and highway design is, in any subsequent reserved matters/ detailed planning submission, the Highway Authority will seek to ensure highway safety is a fundamental consideration, as is their remit.

(vii) Provision of Infrastructure through Developer Contributions
In accordance with the Developer Contributions Protocol set out in the NPPF, Derbyshire County Council have considered the effect of the proposed development on strategic infrastructure and services. In their consultation response they set out the developer contributions that would be likely to be required as a result of the developments anticipated impact, primarily in respect to school places. They consider the requirements accord with the three tests set out in the NPPF at Paragraph 204 in that they are:
- Necessary to make the development acceptable in planning terms
- Directly related to the development, and
- Fairly and reasonably related in scale and kind to the development.

It is of course the case that the application is outline and for ‘up to 145 dwellings’. Should any reserved matters/full planning submission be less in dwelling numbers, the financial contributions may need to be adjusted on a ‘pro-rata’ basis.

(viii) Open Space Provision
There is a requirement under Adopted Local Plan Policy L6 to make appropriate provision for open space and play areas within developments of this scale. The applicant has provided an indicative layout of how this could be achieved on the site. Nevertheless, the provision of up to 145 houses on a 7 hectare site is at a low density that should provide plenty of scope for open space and this could reasonably be conditioned.

(ix) Impact on Flora and Fauna
The site is not densely covered in trees but there are two groups of protected trees along the sites northern boundary, mainly bordering rear gardens of Premier Avenue properties. These trees comprise Scots Pine, Oak and Ash, the current mean height of which is stated to be 20m, with an estimated mature height of 25m. Two of this group are stated to be infected with ‘Inonotus hispidus’ and are recommended to be felled. Notwithstanding this, the trees are afforded a ‘B’ category which, under the BS5837:2012 ‘Trees in Relation to Design and Construction Recommendations’ are trees of moderate quality and value, including public amenity value. Such trees should be considered for retention. Several other ‘B’ category trees are located within the site but others have been removed earlier this year along the hedgerow bordering Wyaston Road. Sections of Hawthorn hedgerow within the site are also recommended to be retained. Whilst the submitted layout is indicative, some properties are shown fairly close to protected trees. Consideration should be given in any detailed submission, in respect to the height of the trees (both now and when fully grown) and also to leaf litter, and blowing over of trees in strong winds on this exposed site etc, when substantiating the definitive layout of the housing estate.
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Derbyshire Wildlife Trust (DWT) has assessed the submitted documents with particular reference to the Ecological Appraisal Report prepared by FPCR dated February 2014 and their comments are contained in the “Consultations” section of this report.

Overall DWT consider that sufficient information is available in the ecological report to enable informed assessment of the site’s ecological value, and the type and scale of mitigation and/or compensation required and that additional surveys are unlikely to alter the main conclusions reached in the ecology assessment, based on the submitted Masterplan. The needs of badgers can be accommodated in line with Natural England’s standing advice subject to the Reserved Matters details not altering/increasing the footprint of the proposed development. If this occurs then impact on badger could become more significant and require a license from Natural England, prior to the development proceeding.

Whilst DWT are concerned about the land to the south of the application site there are currently no proposals under consideration. Whether or not mitigation / enhancement measures can be introduced i.e. in respect to badger, is unknown at this stage.

(x) **Drainage**

The Environment Agency has no objections in principle to the proposed development, subject to a planning condition being imposed regarding details of a surface water drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

(xi) **Minerals**

The comments of the County Council’s Mineral Planning Section are noted. Policy MP17 and the thrust of paragraph 143 and 144 of the NPPF seek to resist proposals that would sterilise ‘economically workable’ mineral deposits. The site lies immediately adjacent to, and has a long boundary with, established housing. Further new housing development is underway to the south-east and a primary school is just across the road. Any sterilisation of minerals needs to be taken in context to its location. Not only is a 7 hectare site likely to be economically unviable but with no appreciable buffer from existing housing it is considered that planning permission for mineral extraction would not be granted.

3. **Conclusion**

Part 1 of this ISSUES section sets out the current planning circumstances concerning the Adopted Local Plan (2005), the emerging Local Plan and Inspector’s findings, the current housing land supply situation and what this means for decision-making in terms of the overarching policies of the National Planning Policy Framework. The emerging Local Plan has been withdrawn from the examination in public and considerable further analysis and public engagement is required in relation to meeting the District Council’s Objectively Assessed Needs for housing.

In the meantime, the District Council cannot reasonably decline to determine applications on prematurity. Policies SF4 and H4 of the adopted Local Plan are also not a sound basis to reject a scheme such as this, as they are both out of kilter with the Framework and Paragraph 49 of the Framework is explicit in ruling them out-of-date in the context of the District Council not being able to demonstrate a 5 year housing supply.
Therefore, in the current set of circumstances, the overarching basis for assessing this application is Paragraph 14 of the National Planning Policy Framework. This guidance requires decision-takers in assessing sustainable development, where the development plan is absent, silent or relevant policies are out-of-date, to grant permission unless:

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

Whilst this guidance has a presumption in favour of sustainable development it is not a green light to approving development that is clearly unsustainable in terms of its location and comparative scale.

Therefore, in balancing the merits of this scheme, it is first important to reach a judgement on the sustainability of the location. In this regard, whilst the site lies outside the current residential framework of Ashbourne, it does abut the Settlement Framework Boundary. Although there are impacts on the character of the area, the site is reasonably accessible to the town centre to access services and employment opportunities and is close to an established bus service serving the locality, thus having the potential to reduce car borne journeys. Therefore, as the site is considered to be in a generally sustainable location for development, the test in Paragraph 14 requires the decision-maker to assess if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

The potential impacts have been assessed above. Whilst the exposed location of the site is a potentially significant concern, independent consultants have advised that this impact can be mitigated to the extent where it would not justify refusal. In conclusion on adverse impact, it is considered that none of the issues raise such concern that, in granting permission for the development, it would result in such an adverse impact that doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the National Planning Policy Framework.

In the final balance, whilst the release of development sites ahead of the Local Plan process running its course is understandably unpopular, the publication of the National Planning Policy Framework has changed the balance in decision-making to promote more housing and other forms of sustainable development. In the current circumstances, and having due regard to the contents of Paragraph 14, it is concluded that the benefits of granting permission for this generally sustainable development, broadly accords with relevant Adopted Local Plan Policies which are consistent with the Framework and are not significantly and demonstrably outweighed by any adverse impacts. As such, the granting of outline planning permission is appropriate.

OFFICER RECOMMENDATION:
That authority be delegated to the Development Manager to grant outline planning permission subject to the completion of a Section 106 Planning Obligation Agreement to secure the appropriate on-site affordable housing provision, a financial contribution towards off-site affordable housing provision, a financial contribution towards provision of education facilities, a financial contribution towards off-site highway improvements; and any other matters that cannot be dealt with by conditions, and subject to the following conditions:
1. Application for approval of all reserved matters must be made not later than the expiration of three years from the date of this permission. The development hereby permitted must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval of such matters on different dates, the date of the final approval of the last such matter to be approved.

2. An application for details of the following matters (hereafter referred to as the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before the commencement of any works:-

   a) the scale of the development;
   b) the layout of the development;
   c) the external appearance of the development;
   d) details of access arrangements;
   e) the landscaping of the site.

   The development shall thereafter be implemented in accordance with the approved details.

3. No development shall take place, including any works of demolition, until a construction management plan / construction method statement 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 plan / statement shall provide for:

   a. Parking of vehicles for site operatives and visitors
   b. Storage of plant and materials and site accommodation
   c. Routes for construction traffic
   d. Method of prevention of mud / debris being carried onto the public highway
   e. Proposed temporary traffic restrictions
   f. Arrangements for loading / unloading and turning vehicles within the site.
   g. Site access arrangements and any roadside hoarding.

4. Before any other operations are commenced a detailed design for the permanent estate street junction to Wyaston Road shall be submitted to and approved in writing by the Local Planning Authority. The access shall comprise a carriageway 5.5m wide minimum flanked by 2m wide footways and be provided with minimum 2.4m x 65m visibility splays in each direction, or such other dimensions as may subsequently be agreed in writing by the Local Planning Authority, the visibility splays being measured up to 1m into the carriageway at the extremity of the sightline. The area in advance of the sightlines shall also form part of the estate street or extended highway margin and not form part of any plot or other subdivision of the site.

5. Before any other operations are commenced detailed designs for the following shall be submitted to and approved in writing by the Local Planning Authority:-

   i. widening of Wyaston Road, to achieve a 5.5m carriageway width, from the western site boundary up to and including the new estate street junction,
   ii. a 2m wide frontage footway (on the development side of the road) from the development site, linking to existing pedestrian provision to the north,
   iii. measures to assist pedestrians crossing Wyaston Road.

   The approved details being laid out and constructed prior to occupation of any dwelling, the subject of the application. For the avoidance of doubt the developer will be required to enter into a Highways Act 1980 Agreement (Section 278) with the Highway Authority in order to comply with the requirements of this condition.
6. No development shall be commenced until a temporary access for construction purposes has been provided to the public highway (Wyaston Road) in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall be retained in accordance with the approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

7. Prior to the first occupation of any dwelling on the site the permanent estate street junction to Wyaston Road shall be laid out and constructed in accordance with the details approved under Condition 4 above. For the avoidance of doubt the developer will be required to enter into a Highways Act 1980 Agreement (Section 278) with the Highway Authority in order to comply with the requirements of this condition.

8. Notwithstanding the submitted information a subsequent reserved matters or full application shall include designs of the internal layout of the site in accordance with the guidance contained in the “Manual for Streets” document issued by the Departments for Transport and Communities and Local Government and in accordance with the ‘6C’s Design Guide – http://www.leics.gov.uk/htd.

9. Prior to the first occupation of any dwelling the estate street carriageways and footways between the dwelling and the adopted highway shall be constructed to a minimum binder course level with highway surface water drainage and street lighting in accordance with details to be submitted to and approved in writing with the Local Planning Authority. The streets being fully completed with final surfacing applied to the carriageways and footways in accordance with a timescale agreed in writing, in advance, with the Local Planning Authority.

10. No dwelling shall be occupied until space has been provided within the site curtilage / plot for the parking and manoeuvring of residents and visitors vehicles associated with that dwelling, together with secure cycle parking, all to be laid out, constructed and approved in writing by the Local Planning Authority. The facilities shall be retained throughout the life of the development free from any impediment to their designated use.

11. Within 28 days, or other such period of time as may be agreed with the Local Planning Authority, of the junction, (the subject of condition 7 above), being constructed all other means of access to Wyaston Road (existing or temporary) shall be permanently closed and the existing vehicle crossover(s) reinstated with full height kerbs and appropriate footway / verge construction in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

12. Works shall not commence on site until a scheme for the disposal of highway surface water has been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to occupation of the dwellings and retained accordingly thereafter.

13. The premises, the subject of the application, shall not be occupied until a full Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including a timetable), to promote travel by sustainable modes which are acceptable to the Local Planning Authority, and shall be implemented in accordance with the timetable set out therein, unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the
planning consent, to the Local Planning Authority for approval for a period of five years from substantial completion of the whole development.

14. (a) 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 satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and

1. The programme and methodology of site investigation and recording
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

(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.'

15. No phase of development shall take place until a surface water drainage scheme for the site based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to, and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall also include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.
- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system, and the outfall arrangements.
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- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

16. (a.) A badger mitigation and habitat enhancement strategy to be submitted and approved prior to commencement of development.

    (b.) An ecological Design Strategy (EDS) to be submitted and approved by the LPA, prior to development commencing, to address protection, compensation and enhancement measures for grassland, wetland and hedgerow habitats, badgers, bats and amphibians.

    (c.) A landscape and ecological management plan (LEMP) to be submitted to and agreed in writing by the LPA prior to development commencing.

    (d.) No mature trees to be felled or pollard unless additional surveys for bats have been undertaken to ensure no bat roosts are present.

    (e.) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August, unless detailed checks by a competent ecologist are undertaken for active birds’ nests and appropriate mitigation is carried out where necessary.

17. No development shall take place until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the Local Planning Authority. The scheme shall include the following elements:

    i) detail extent and type of new planting (NB planting to be of native species);
    ii) details of maintenance regimes details of any new habitat created on site;
    iii) details of treatment of site boundaries and/or buffers around water bodies; and
    iv) details of management responsibilities.

18. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

No equipment, machinery or materials shall be brought on to the site for the purpose of the development, until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with British Standard 5837 (2005): Trees in Relation to Construction, has been submitted to and approved in writing by the Local Planning Authority, and; the protective fencing has been erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and
the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

In this condition ‘retained tree’ means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.

19. The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

   a) the numbers, type, tenure and location of the on-site affordable housing provision to be made which shall consist of not less than 25% of housing units/bed spaces with an off-site financial contribution based on an equivalent financial sum necessary to subsidise the affordable provision of 20% of the approved dwellinghouse;
   b) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
   c) the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing) if no Registered Social landlord is involved;
   d) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
   e) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

20. No dwelling shall be first occupied until:
   a) A scheme for the laying out and equipping of amenity spaces and a play area, to include landscaping, boundary treatment and provision for future maintenance and safety checks of the areas and equipment, has been submitted to an approved in writing by the Local Planning Authority; and
   b) The amenity areas and play area have been laid out, and in the case of the play area equipped, in accordance with a phased scheme to be approved in writing by the Local Planning Authority.

21. With regard to the requirements of condition 2(e) of this decision notice, the applicant should have due regard to the landscaping proposals concerning the proposed balancing pond and the southern boundary of the application site, which adjoins open fields. The balancing pond needs careful consideration in context of the site’s contours to ensure its design / landscaping ensures it assimilates it into the landscape. The southern boundary of the site requires a dense belt of native tree planting with native hedgerow to form an appropriate landscaping treatment to this new urban / countryside boundary of the town.

Reasons:
   1. ST01a
   2. ST03a
14/00354/OUT Continued

3 - 13 In the interests of highway safety to comply with government policy contained in the National Planning Policy Framework and the aims of Policy TR1 of the adopted Derbyshire Dales Local Plan (2005).

14. To assess and protect any remaining archaeology and to be in accordance with Policy NBE24 of the Adopted Derbyshire Dales Local Plan (2005) and paragraph 141 of the National Planning Policy Framework.

15. To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures to comply with government guidance contained in the National Planning Policy Framework.

16. To protect protected species and their habitats within and adjacent to the development site to comply with government guidance contained in the National Planning Policy Framework and the aims of Policies NBE4, NBE5 and NBE6 of the adopted Derbyshire Dales Local Plan (2005).

17. Reason LA13a

18. To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity in accordance with the aims of Policies SF5, H9, NBE6 and NBE8 of the Adopted Derbyshire Dales Local Plan (2005) and to comply with Government guidance contained in the National Planning Policy Framework.

19. In order to secure the provision of affordable housing in accordance with the advice at part 6 of the National Planning Policy Framework, Delivering a wide choice of high quality homes.

20. To ensure the provision of an adequate level of play space facilities to the development site, in accordance with the advice at part 8 of the National Planning Policy Framework, Promoting healthy communities.

21. To ensure a satisfactory standard of landscaping in the interests of visual amenity, in accordance with the aims of Policies NBE8, NBE26, H9 and SF4 of the Adopted Derbyshire Dales Local Plan (2005) and guidance within the National Planning Policy Framework (2012).

Footnotes:

1. The Local Planning Authority have during the consideration of this application engaged in a positive and proactive dialogue with the applicant which has resulted in revised proposals which overcame initial concerns with the application relating to a highway considerations.

2. The following Advisory Notes are provided by the Local Highway Authority:

(i.) Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (telephone : 01629
The applicant is advised to allow approximately 16 weeks in any programme of works to obtain a Section 38 Agreement.

(ii.) Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant’s responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

(iii.) Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council’s website http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp, email - ETENetmanadmin@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.

(iv.) Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.

(v.) Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (telephone: 01629 538578). The applicant is advised to allow approximately 16 weeks in any programme of works to obtain a Section 278 Agreement.

(vi.) Pursuant to Section 50 (Schedule 3) of the New Roads and Street Works Act 1991, before any excavation works are commenced within the limits of the public highway (including public Rights of Way), at least 6 weeks prior notification should be given to the Strategic Director of the Economy, Transport and Environment Department at County Hall, Matlock (telephone: 01629 533190 and ask for the New Roads and Street Works Section).

(vii.) Construction works are likely to require Traffic Management and advice regarding procedures should be sought from David Nicholson, Traffic Management - telephone 01629 538685.
(viii.) Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and / or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council. Works that involve road closures and / or are for a duration of more than 11 days require a three month notice; developers’ works will generally fall into this category. Developers and Utility companies (for associated services) should prepare programmes for all works that are required for the development, such that these can be approved through the coordination, noticing and licencing processes. This will require developers and Utility companies to work to agreed programmes and booked slots for each part of the works. Discussions should therefore take place with Derbyshire County Council’s Highway Noticing Section, at County Hall, Matlock at the earliest stage possible.

(ix.) Derbyshire County Council strongly promotes Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy, applying the SuDS management train. The applicant should also seek to promote betterment or meet green-field runoff rates taking into account the impacts of climate change. For more advice regarding the County Council’s requirements please contact flood.team@derbyshire.gov.uk.

(x.) The application site is affected by a public Right of Way (Footpath numbers 21 & 35 Ashbourne on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 08456 058058 and asking for the Rights of Way Duty Officer. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 08456 058058 for further information and an application form. If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order. Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the planning authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

(xi) Further advice regarding the preparation of Travel Plans may be obtained from the Strategic Director of Economy, Transport and Environment at County Hall, Matlock (tel: 01629 580000 and ask for the Sustainable Travel Team).

3. The Derbyshire County Council’s Archaeologist will be responsible for monitoring the conditioned work on behalf of the Local Planning Authority, and the applicant/agent should contact the archaeologist in the first instance for advice on the production of the written scheme of investigation.

4. The following Advisory Notes are provided by the Environment Agency:

(i.) Foul drainage from this development should be directed to the nearby foul sewer. Severn Trent Water Ltd, should be contacted to ensure that the existing sewerage network and Ashbourne Sewage Works has sufficient capacity for this development.
Any upgrades / modifications needed should be completed prior to the development proceeding or the houses being occupied once built.

(ii.) Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management (SUDS). SUDS are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on or near the site as opposed to traditional drainage approaches which involve piping water off site as quickly as possible. SUDS involve a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, green roofs, ponds and wetlands. SUDS offer significant advantages over conventional piped drainage systems in reducing flood risk by attenuating the rate and quantity of surface water run-off from a site, promoting groundwater recharge, absorbing diffuse pollutants and improving water quality. Ponds, reed-beds and seasonally flooded grasslands can be particularly attractive features within public open spaces.

(iii.) The variety of SUDS techniques available means that virtually any development should be able to include a scheme, based around these principles, and provide multiple benefits, reducing costs and maintenance needs.

(iv.) (SUDS should be above ground where possible to maximise the water quality benefits of such systems.

(v.) The development should not cause any deterioration in the WFD status of the nearby Henmore Brook.

5. The applicant should note that there may be badger setts in the vicinity of the site, and as a consequence compliance with certain requirements and provisions of the Badgers Act 1991 may be necessary. If this is the case the applicant is advised to contact Natural England who are responsible for issuing licences relating to development on the site of badger setts.

6. The applicant should note that under the terms of the Wildlife and Countryside Act 1981 and Countryside and Rights of Way Act 2000, it is an offence to disturb nesting birds or roosting bats. You should note that the work hereby granted consent does not override the statutory protection afforded to these species and you are advised to seek expert advice if you suspect that the demolition would disturb any protected species. For further advice, please contact Natural England.

7. Any security measures implemented in compliance with the approved scheme should seek to achieve the ‘Secured by Design’ accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

8. The Town and Country Planning (Fees for Applications and Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (SI 2012/2920) stipulate that a fee will henceforth be payable where a written request is received in accordance with Article 30 of the Town and Country Planning (Development Management Procedure) Order 2010. Where written confirmation is required that one or more Conditions imposed on the same permission have been complied with, the fee chargeable by the Authority is £97. The fee must be paid when the request is made and cannot be required retrospectively. Further advice in regard to these provisions is contained in DCLG Circular 04/2008.
9. This decision notice relates to the following documents:

- Scale 1:2500 Site Location Plan Drawing no. EM1736/002 received 27.05.14
- Scale 1:2500 Block Plan Drawing no. EM1736/003 received 27.05.14
- Scale 1:1250 @ A2 Illustrative Masterplan Drawing No. EM1736/M001/RevB received 27.05.14
- Scale 1:500 @ A0 Drainage Strategy Drawing No.1 received 27.05.14
- Design and Access Statement (Radleigh/Signet Urban Design) received 27.05.14
- Planning Statement Signet Planning received 27.05.14
- Planning Statement Radleigh Group received 27.05.14
- Residential Travel Plan (Radleigh Group /Travis Baker) received 27.05.14
- Flood Risk Assessment (Radleigh Group /Travis Baker) received 27.05.14
- Acoustics Report on Environmental Noise Affecting the Site of a Proposed Residential Development (RPS dated February 2014) received 27.05.14
- Arboricultural Survey Report and Method Statement (dated January 2014) received 27.05.14
- Ecological Appraisal (FPCR dated February 2014) received 27.05.14
- Landscape and Visual Appraisal (Golby and Luck dated February 2014) received 27.05.14
- Archaeological Desk-Based Assessment (CgMs dated February 2014) received 27.05.14
- Geophysical Survey Report G1406 (GSB/CgMs) received 27.05.14
- Transport Assessment (Radleigh Group /Travis Baker) received 27.05.14
- Appendix A Draft Proposed Development Masterplan (Radleigh Group /Travis Baker) received 27.05.14
- Appendix B Local Cycling Facilities (Radleigh Group /Travis Baker) received 27.05.14
- Appendix C Local Bus Information (Radleigh Group /Travis Baker) received 27.05.14
- Appendix J Picardy Models (Radleigh Group /Travis Baker) received 27.05.14
- Appendix K Arcady Models (Radleigh Group /Travis Baker) received 27.05.14
- Appendix L Sensitivity Test Traffic Flows (Radleigh Group /Travis Baker) received 27.05.14
- NTS General Site Location Plan Figure 1 received 27.05.14
- NTS Detailed Site Location Plan Figure 2 received 27.05.14
- NTS Pedestrian Catchment and Local Facilities Plan Figure 3 received 27.05.14
- Further supporting information received on 29th September 2014 including
  - Updated Residential Travel Plan (T14008 Rev B) dated 24/09/2014
  - Amended site access drawing, T14008 – SK01 Rev B
  - LINSIG Results dated 23/09/2014
THE SITE AND SURROUNDINGS:
Church Cottage sits adjacent St James’s Church (Grade II* Listed), which is recognised in the Brassington Conservation Area Appraisal as a principal landmark within Brassington Conservation Area. The cottage sits on sloping ground which is retained by a high stone built retaining wall. It is highly visible from Church Street and Public Footpath no.1 Brassington which runs alongside the site to the east. The principal elevation of the cottage contains dormer windows. The building is faced in render and plain clay roof tiles.

The application site relates specifically to an area of garden at the front of the property, upon which a shed / summerhouse structure has been erected.

THE APPLICATION:
Retrospective planning permission is sought to retain the shed / summerhouse structure. The application is accompanied by photographs of a structure which sat on the site prior to the new shed / summerhouse being erected, which show a modest building with dark stained timber and blockwork walls and a felt roof. The land surrounding the structure is heavily landscaped, screening it from view. The new shed is 2.9m wide by 3.2m long. It has a dual pitched roof, 3m high to ridge. The outer walls are clad in untreated Larch above a rendered plinth. The roof is faced in plain clay tiles, finished a cherry colour. The south facing gable end of the building contains a large feature window.

RELEVANT HISTORY:
None.

CONSULTATIONS:
Local Highway Authority
No objections.

Parish Council
The Parish Council support the application in principle, but, recommend the following items to lessen the impact of the building: -
• replace existing rosemary tiles with Staffordshire Blue
• planting to screen the building
• the colour of the building should be subdued either naturally or by treatment.

REPRESENTATIONS:
A letter of objection has been received from a neighbouring resident, in which the following concerns are expressed:
• The building does not resemble a shed but more of a small house.
• It directly overlooks my house and garden and possibly into my bedroom window. I have lost any privacy I once enjoyed.
• It is extremely intrusive and out of keeping with the village.

POLICIES:
Adopted Derbyshire Dales Local Plan (2005)
SF4: Development In The Countryside
ISSUES:

1. The main issues to assess in the consideration of this application are;
   a. the impact of the shed / summerhouse structure on the character and appearance of the existing cottage and its surroundings,
   b. its impact on the quality and distinctiveness of its surroundings, including the setting of St James’s Church (Grade II* Listed),
   c. whether it preserves or enhances the character and appearance of this part of Brassington Conservation Area, and;
   d. would there be any resultant loss of privacy / impact on the amenity of the occupants of neighbouring residential properties.

2. Policy SF4 of the Adopted Derbyshire Dales Local Plan (2005) requires development to be appropriate in nature and scale to a rural area in order to preserve / enhance the character and appearance of the countryside and minimise any adverse impact on the local environment. Local Plan Policy SF5 deals with design and appearance of development and requires that it preserves or enhances the quality and local distinctiveness of its surroundings. Also relevant is Policy NBE21 of the Adopted Local Plan which advises that planning permission for development proposals within or adjacent to a conservation area will be granted provided that they preserve or enhance the character and appearance of the area.

3. Whilst there was a previous garden shed on the site the orientation of the building was on the same alignment as the cottage and in that respect assimilated itself (coupled with its ephemeral and dark coloured cladding) more to the site and its context. The position of the previous shed was closer to the cottage and, therefore, with its alignment/orientation, provided an acceptable grouping of built form. The new structure does not have the same character and appearance as the previous building. The previous building was clearly, in ‘design’ terms, an ephemeral garden shed/store. The current structure is clearly ‘designed’ to be a summerhouse with architectural considerations. Its construction is architectural and substantial. This is represented by the rendered plinth, the horizontal (untreated) boarding, the large framed & glazed windows to the south, the bargeboards to the roof gables and the tiled roof. All of these elements present a very different building to its predecessor. All these elements contribute to its prominance and its alien effect & appearance on the setting of the cottage & on the streetscene.
4. The alignment of the new summerhouse is a fundamental issue. In changing its orientation the structure has become so much more prominent within the garden, within the context of the cottage and within the general streetscene. In terms of the latter two points, it is considered that the new summerhouse distracts from the cottage and creates/presents an overtly distracting element within the streetscene. This leads to the conclusion that the current structure does not (and cannot) enhance or preserve the Conservation Area and is, therefore, harmful to the special character and appearance of the Brassington Conservation Area.

5. The proximity of the cottage, its garden and the new summerhouse to the Grade II* Listed church and churchyard also needs to be considered. It is considered that the current structure appears as an alien and over-architectural building, highly prominent and harmful to the general streetscene and, partially to the setting of the listed church and its associated churchyard (contrary to Local Plan Policy NBE16).

6. Whilst the concerns of the occupant of the neighbouring residential property are noted, it is not considered that the relative position of the shed / summerhouse and the nature of its use would not result in a significant loss of privacy that refusal on this ground could be sustained at appeal. The harm to the cottage, its surroundings, the character and appearance of this part of Brassington Conservation area and setting of St James’s Church is, however, considered to be significant and a recommendation of refusal is put forward on this basis.

OFFICER RECOMMENDATION:
That planning permission be refused for the following reason:

1. The shed / summerhouse, by reason of its siting, alignment, scale and appearance is a highly prominent and incongruous structure within the curtilage of the existing cottage, harmful to its character and appearance, its surroundings, the setting of St James’s Church, which is a Grade II* Listed Building and the character and appearance of this part of Brassington Conservation Area, contrary to Policies SF4, SF5, NBE16 and NBE21 of the Adopted Derbyshire Dales Local Plan (2005) and guidance contained within the National Planning Policy Framework (2012).

Footnote:

1. The Local Planning Authority considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.

This Decision Notice relates to the following documents:
1:1250 Scale Site Location Plan;
1:500 Scale Block Plan;
Photographs of the Previous Shed Structure, and;
1:20 Scale Proposed Shed / Summerhouse Elevations and Floor Layout Plans received by the District Council on the 1st and 9th September 2014.
14/00537/VCOND

Homebase, Waterside Road, Ashbourne

Derbyshire Dales DC

Date: 31/10/2014

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Telephone: (01629) 761160.
website: www.derbyshiredales.gov.uk

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Parish Council: Clifton & Compton  
Application type: Variation of Condition  
Date of receipt: 14/08/2014  
Case Officer: Mr W Shaw

THE SITE AND SURROUNDINGS:
The application relates to the existing Homebase retail unit with garden centre on the Waterside Retail Park, Clifton Road, Ashbourne. The unit is the largest store on the retail park which also includes Halfords, Marks and Spencer Simply Food, Majestic Wine, Mountain Warehouse and 99p Store. There is a large customer car park in front of the units and a service yard to the rear with access down the side of the Majestic store. Homebase is at the western end of the parade.

THE APPLICATION:
The application seeks to vary conditions 2 and 3 of a previous variation of condition permission, under application reference no 09/00803/VCOND. The wordings of the conditions are as follows, with the proposed variation set out below each one: -

Condition 2

‘Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking, re-enacting or modifying those Orders, the retail unit, the subject of this application, shall not be occupied by catalogue shop retailers and shall be restricted to the retail sale of the following goods: a) furniture; b) floor coverings; c) household textiles; d) soft furnishings; e) domestic appliances; f) kitchen and bathroom equipment; g) audio visual equipment; h) DIY and decorator supplies; i) garden Centre and associated products; j) car accessories and parts; k) ancillary goods permitted in accordance with the terms of condition 3’.

The proposed variation adds the following to the above condition: -

‘Notwithstanding the above the sale and display of any non-food retail goods will be permitted from up to 85 square metres of the sales area of the Homebase unit only if occupied by a catalogue showroom retailer. For the avoidance of doubt a catalogue showroom retailer is defined as a retailer selling a wide selection of non-food goods selected by the visiting public from a catalogue or digital browser and supplied to them fully packaged.’

Condition 3

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or the Town and Country Planning (General Permitted Development) Order 1995, or any Order revoking, re-enacting or modifying those Orders, there shall be no display for retail sale, or retail sale, of any of the following goods within the retail unit the subject of this application: a) food (excluding ancillary snacks and confectionary); b) alcoholic drinks;
c) tobacco; d) fashion clothing and fashion footwear; e) chemist/pharmaceutical goods; f) jewellery/fancy goods; g) stationery, books, newspapers and magazines (unless sold as ancillary to the sale of other types of goods permitted within this development); crockery, glassware, china and kitchenware (unless sold as ancillary to the sale of other types of goods permitted within this development); i) perfume and toiletries; j) sports clothing and equipment; k) audio and visual recordings (unless sold as ancillary to the sale of other types of goods permitted within this development); l) mobile phones (unless sold as ancillary to the sale of other types of goods permitted within this development); m) toys (other than outdoor toys, outdoor games and recreational garden apparatus) or musical instruments; n) animals or fish; o) luggage (unless sold as ancillary to the sale of other types of goods permitted within this within the application premises).

The proposed variation to condition 3, repeats that proposed to be added to condition 2.

Accompanying the application is a ‘Supporting Retail Statement’ for Home Retail Group (HGR) by GR Planning consultancy and a Report into suitable retail opportunities for Argos in Ashbourne by Kenneymoore Property Consultants. The supporting retail statement addresses the planning and retail implications of the proposed variation and includes a Design and Access Statement. HRG is the owner of Argos and Homebase, as well as Habitat. The statement explains that no external works are proposed and the proposal only relates to up to 85 square metres of existing internal retail floorspace. Located close to the stores entrance lobby in the front right side corner of the unit, the insert will be similar to a ‘concession’ normally found within large retail warehouses. However, this is for information purposes as the precise location could change at the fit-out stage, but the unit would be limited at up to 85 square metres. This amounts to only 3.4% of the store’s gross internal area. The insert will function as a click and reserve store, with a small public area at the front for browsing catalogues or digital browsers and collecting goods, and a racked storage area to the rear.

The statement advises that HRG, in responding to a challenging retail market in the recent economic downturn, has reviewed its portfolio and store format to identify ways it can improve customer convenience and provide easier access to the goods that customers require, capitalising at the same time from the ongoing growth in internet based shopping. Argos completed on-line sales over the Christmas 2013 period amounted to 46% of its transactions. Trading has been boosted over the last two years by the promotion of initially its click and collect service and now its click and reserve service (also referred to as check and reserve). Customers are able to reserve and pick up goods from their nearest Argos store in preference to pre-paid home delivery, which is not always convenient for working customers. The emphasis behind this is to make the purchase of goods simpler and quicker, enhancing customers overall shopping experience.

HRG are investing heavily in reinventing Argos as the leading digital retailer in the UK, through promoting new store formats and new design concepts for all its existing stores (i.e. the new digital format). The ‘insert’ concept is programmed for some 10 stores, where planning permission is not required, before the end of 2014. Planning permission has/is being sought for some 14 further inserts (including Waterside Park) with permission having already been granted in Walthamstow, Sittingbourne, Newmarket and Milngavie (Glasgow) Homebase stores.

The commercial business case and benefits of the insert format are stated to be significant, enabling:
14/00537/VCOND (Continued)

- Minimum disruptions to customer layout of Homebase Stores whilst making better use of HRG’s assets.
- Shared use of existing facilities by staff, servicing and storage arrangements keeping costs to a minimum and allowing investment that may not otherwise be viable
- With both stores owned by HRG it secures other operational purchasing benefits
- It encourages linked shopping trips

The statement analyses relevant planning policy and looks at the retail implications of the proposed development, concluding that the proposal does not give rise to any land use planning or retail implications. It concludes that it would not be at variance with the retail, design and transport policies of the NPPF or the development plan.

Argos transaction data shows that approximately 64% of the proposed inserts turnover will be in goods that are either already permitted by the operational consent or are already lawfully sold from the Homebase store. This, it is stated, reemphasises the minor nature of the variation being sought.

The report by Kenneymoore Property Consultants examines the likelihood of a new Argos store of 500-1000 square metres being located in Ashbourne. It focuses on the principal issues of availability, retailer demand, rental tone and opportunities. These considerations will be referred to in the ‘Issues’ section of the report.

RELEVANT HISTORY:

13/00252/VCOND Modifications of conditions 2 and 3 of planning permission 12/00784/VCOND to allow the sale of additional non-food goods and ancillary sales of food and drink goods and installation of non-trading mezzanine floorspace at unit A2.

12/00784/VCOND Section 73 application – Retention of development subject to variation of conditions 26 and 27 of planning permission 07/00499/VCOND to enable sale of additional non-food goods and ancillary sale of non-perishable food and drink products - Granted

11/00169/VCOND Section 73 application – variation of conditions 2, 3 and 4 of planning permission 08/00619/VCOND – Refused (appeal upheld)

10/00309/VCOND Section 73 Application – Retention of development subject to Variation of Conditions 26 and 27 of planning permission 05/00759/OUT to enable the sale of alcoholic drinks from Unit B4b only. – Granted

10/00313/FUL Alterations to front and rear elevations pursuant to implementation of planning permission 08/00619/VCOND – Granted

09/00803/VCOND Section 73 Application – Retention of development subject to variation of Conditions 26 and 27 of planning permission
14/00537/VCOND (Continued)

07/00499/VCOND to enable the sale of outdoor toys/games and recreational apparatus - Granted (Unit A1 Only)

09/00017/FUL Section 73 Application – Use of completed Units B2 and B3 for retail purposes (Use Class A1) without compliance with Conditions 26 and 27 of planning permission 06/00738/VCOND (restriction on sale of retail goods) – Granted

08/00618/FUL Section 73 Application – Use of completed units B2 and B3 for retail purposes (Use Class A1) without compliance with Conditions 26 and 27 of planning permission 06/00738/VCOND (restriction on sale of retail goods). –Refused

08/00619/VCOND Amendment of Condition 28 of planning permission 07/00499/VCOND to reduce the unit size of Unit B4 from 500m² to 370m². – Granted

08/00728/FUL Provision of a mezzanine to provide storage and ancillary services for Units B2 and B3, provision of a plant compound to rear of units and minor amendments to front elevation. - Pending Consideration.

07/00499/VCOND Section 73 Application - Redevelopment of site for housing, non-food retail, employment and community uses, associated car parking and access (amendment to Condition 28 of planning permission 05/00759) - Granted

06/00763/REM Redevelopment of site for mixed use non-food retail, employment (use classes B1 and B2) and car parking – Approval of reserved matters – Granted

06/00780/FUL Highway works pursuant to redevelopment of former factory site in accordance with outline planning permissions 05/00759/OUT and 05/00771/OUT – Granted

06/00738/VCOND Section 73 Application - Redevelopment of site for housing, non-food retail, employment and community uses, associated car parking and access (amendment to Condition 2 of planning permission 05/00759/OUT) – Granted

05/00759/OUT Redevelopment of site for mixed-use non-food retail, employment (Use Classes B1 and B2), erection of 70 residential units, associated car parking, access and community uses (outline) – Granted

CONSULTATIONS:
Local Highway Authority
No objections

Parish Council
No response

REPRESENTATIONS:
None

POLICIES:
1. Adopted Derbyshire Dales Local Plan (2005)
14/00537/VCOND (Continued)

EDT3: Redevelopment Of Land At Clifton Road Ashbourne
TR1: Access Requirements And The Impact Of New Development
TR8: Parking Requirements For New Development


ISSUES:

The nature of this particular application is to modify the wording of two conditions imposed on application 09/00803/VCOND, which prescribe the range of goods which may be sold from the Homebase unit, and those that may not be displayed or sold. Condition 2 specifically prevents the unit from being occupied by catalogue shop retailers. Both conditions were imposed in the interests of maintaining the vitality and viability of Ashbourne town centre since Waterside Retail Park was specifically approved for the sale of bulky goods only. Indeed, in 2011 a Section 73 application (reference 11/00181/VCOND) was refused permission for unit A2 to be used by a catalogue retailer (Argos). This application was however, significantly different to the current application in that it related to the whole of Unit A2 and also proposed the insertion of a mezzanine floor of 515 sq.m which would be used for storage and back office purposes.

The 2011 application was refused planning permission on the grounds that it would be likely to cause significant adverse impact on the in-centre trade and turnover of Ashbourne town centre taking account of current and future consumer expenditure and the cumulative effect of recent permissions. It was also considered that the proposals would cause significant harm to the vitality and viability of the town centre and likely to have some adverse impact upon the planned investment of independent retail and service traders within the town centre.

The main issues to consider in respect to this particular application are the principle of the proposed variations to conditions 2 and 3 of application 09/00803/VCOND and the potential impact on the vitality and viability of Ashbourne town centre. Under the provisions contained at Section 73, the Local Planning Authority is restricted to considering only the operation of the conditions subject to which planning permission should be granted. Permission may be granted, refused or, if appropriate, be granted but in terms that differ from those sought by the applicant. As stated, the proposals seek to enable a small amount of floorspace of the Homebase store being operated by Argos. No increase in floorspace is involved and there are no external alterations proposed, albeit, if approved, it is likely that some form of advertisement signage will be sought. Unlike application 11/00181/VCOND this application does not propose Argos to occupy its own unit, merely for it to function in an ancillary manner to Homebase. In terms of planning policy it is the case that the saved policies of the Adopted Derbyshire Dales Local Plan (2005) do not include policies that deal with retail proposals outside of existing centres, such as at Waterside Retail Park. Similarly, there is no adopted or saved threshold for the submission of retail impact assessments.

Following the Councils recent decision to withdraw the emerging local plan, the application falls to be considered with regard to relevant guidance within the National Planning Policy Framework (2012), and the recent Planning Practice Guidance (March 2014). Paragraph 14 of the National Planning Policy Framework refers to the presumption in favour of sustainable development, advising in respect to decision taking that where the
development plan is absent, silent or where relevant policies are out-of-date planning permission should be granted. However, this is on the basis that there would not be any significant adverse impact or specific policies of the National Planning Policy Framework indicate that permission should not be granted. Paragraphs 23-27 of the National Planning Policy Framework under ‘Ensuring the Vitality of Town Centres’ require new retail development proposals outside of existing town centres to follow a sequential approach. Applications for main town centre uses should be in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. The emphasis of the sequential test is towards new town centre uses or new retail development. However, the recently published Planning Practice Guidance advises that the sequential test for new or main town centre uses ‘should also be proportionate and appropriate for the given proposal.’ When such sites are being considered, preference should be given to accessible sites that are well connected to the town centre.

Paragraph 26 of the NPPF sets out the impact tests that apply to applications for retail, leisure and office development that are located outside town centres and are not in accordance with an up-to-date Local Plan. The current application is in an out-of-centre location and it is not in accordance with an up-to-date Local Plan. However, the size of the application proposal is below the 2,500 sq.m threshold set out in Paragraph 26 of the NPPF and there is no alternative locally-set threshold. In strict terms, therefore, the application does not face the impact tests set out in Paragraph 26 of the NPPF.

Waterside Retail Park is now a well-established shopping destination with all of its units trading and is linked to the town centre by a free shuttle bus service that was introduced as part of the M & S Simply Food outlets permission.

Given the limited scale and the ancillary nature of the proposed Argos insert, it is not considered necessary to apply the sequential approach to site selection in this particular case.

Notwithstanding the above, the applicant has commissioned an appraisal for a new town centre Argos store, which is different to the proposed ‘insert’, based on their business model requirements. Premises in the areas of Dig Street, Church Street, St John Street and Market Place, including the existing retail supermarkets, were subject to consideration. However, for reasons due to lack of availability, poor servicing and parking facilities and also size, Kenneymore Consultant’s advised the applicants that for an Argos to be introduced to Ashbourne town centre, an existing occupier would need to vacate premises, which was not likely, based upon their enquiries to date. The proposed ‘insert’ does not involve the same requirements as a town centre Argos store. No separate entrance, servicing space, staff facilities, goods display and larger racked storage facilities are required and as such financial outlay is significantly less. The ‘insert’ concept forms an integral part of the applicants strategy to become a multichannel retailer, a move away from a catalogue based retailer towards a digital based business to ensure it remains a sustainable and profitable business in the face of strong competition from internet only based businesses and from supermarkets.

It will complement the applicants existing town centre stores and is not intended to replicate the offer or role that these stores perform. It will improve customer access to the company’s bulkier range and generate extra sales within a viable format, particularly in towns which do not presently have access to an Argos. HRG no longer has an active store acquisition programme according to the supporting statement and see the future
success of their business being focussed on an existing portfolio of digitally based stores and new inserts.

Paragraph 12 of the recent PPG recognises that the ‘town centre first’ policy can be more expensive and complicated and advises that LPA’s ‘need to be realistic and flexible in terms of their expectations’. Had the NPPF required a retail impact assessment, it would appear from the supporting information that Argos would find it difficult to open a store within Ashbourne. However, the opportunity exists for opening an ancillary insert within the Homebase store, also owned by the applicant, that will predominantly act as a collection point or click and reserve store. Only some 36% of the proposed inserts turnover will be goods that are not currently permitted or sold by Homebase or are able to be sold by them. As such, the applicants consider that no material impact implications will arise if planning permission was to be granted. Their research suggests that turnover will largely be generated from Homebase customers, clawing back customers who presently shop at Argos stores in Derby, Leek and Burton-on-Trent, and there will be linked purchases from other operators on the Waterside Retail Park.

In conclusion, it is considered that the given the limited size of the proposal, the application will not result in any significant adverse impact on Ashbourne the town centre. The proposals raise no design issues, nor is there any customer parking or servicing concerns. The proposed modifications to conditions 2 and 3 would allow the Argos insert whilst still retaining control over the remainder of the range of goods Homebase is permitted to sell.

Waterside Retail Park is now a well-established retail destination that forms an overall part of the shopping offer at Ashbourne and the proposals would secure further investment and retail jobs.

Accordingly, it is considered that the proposed variations to conditions 2 and 3 of application 09/00803/VCOND may be approved.

OFFICER RECOMMENDATION:
Planning permission be granted subject to the following conditions: -

1. ST02a Time Limit On Full

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or the Town and Country Planning (General Permitted Development) Order 1995, or an Order revoking, re-enacting or modifying those Orders, the retail unit, the subject of this application, shall not be occupied by a catalogue shop retailers and shall be restricted to the retail sale of the following goods: a) furniture; b) floor coverings; c) household textiles; d) soft furnishings; e) domestic appliances; f) kitchen and bathroom equipment; g) audio visual equipment; h) DIY and decorator supplies; i) garden centre and associated products; j) car accessories and parts; k) ancillary goods permitted in accordance with the terms of condition 3. Notwithstanding the above the sale and display of any non-food retail goods will be permitted from up to 85 square metres of the sales area of the Homebase unit only if occupied by a catalogue showroom retailer. For the avoidance of doubt a catalogue showroom retailer is defined as a retailer selling a wide selection of non-food goods selected by the visiting public from a catalogue or digital browser and supplied to them fully packaged.

3. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or the town and Country Planning (General Permitted Development) Order
1995, or any Order revoking, re-enacting or modifying those Orders, there shall be no display for retail sale or retail sale of any of the following goods within the retail unit the subject of this application; a) food (excluding ancillary snacks and confectionary); b) alcoholic drinks; c) tobacco; d) fashion clothing and fashion footwear; e) chemist/pharmaceutical goods; f) jewellery/fancy goods; g) stationery, books, newspapers and magazines (unless sold as ancillary to the sale of other types of goods permitted by this development); h) crockery, glassware, china and kitchenware (unless sold as ancillary to the sale of other types of goods permitted by this development; i) perfume and toiletries; j) sports clothing and equipment; k) audio and visual recordings (unless sold as ancillary to the sale of other types of goods permitted by this development); m) instruments; n) animals or fish; o) luggage (unless sold as ancillary to the sale of other types of goods permitted within this within the application premises). Notwithstanding the above the sale and display of any non-food retail goods will be permitted from up to 85 square metres of the sales area of the Homebase unit only if occupied by a catalogue showroom retailer. For the avoidance of doubt a catalogue showroom retailer is defined as a retailer selling a wide selection of non-food goods selected by the visiting public from a catalogue or digital browser and supplied to them fully packaged.

Reasons:
1. ST02a

2. In the interests of maintain the vitality and viability of Ashbourne Town Centre, in accordance with the advice at Paragraphs 23 – 27 of the National Planning Policy Framework (2012).

3. In the interests of maintain the vitality and viability of Ashbourne Town Centre, in accordance with the advice at Paragraphs 23 – 27 of the National Planning Policy Framework (2012).

Footnotes:

This permission relates to the following documents:

- 1:250 Scale red edged site location plan received 14th August 2014
- NTS Homebase store layout plan including service yard, drawing no 850 – Ashbourne – 01 Rev 1
- 1:50 & 1:250 Scale proposed ground floor and part ground floor layout plan, drawing no 2194.001.
- Experian Good Plan (A4 size) of Ashbourne Town Centre, received 14th August 2014
- Plan of Ashbourne’s regional location received 14th August 2014
- Supporting Retail Statement by GR Planning Consultancy dated 13th August 2014
# PLANNING APPEAL – PROGRESS REPORT

Report of the Corporate Director

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<tr>
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<td>ENF/13/00014</td>
<td>Hasker Farm Cottage, Hasker Farm Stainsborough Lane, Callow</td>
<td>LI</td>
<td>Appeal dismissed (upheld with modifications) – copy of decision letter attached</td>
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<tr>
<td>13/00889/LBALT</td>
<td>Churchfields Farm, Brailsford</td>
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<td>14/00361/PDA</td>
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<td>WR</td>
<td>Appeal being processed</td>
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WR - Written Representations
IH - Informal Hearing
LI - Local Inquiry
HH - Householder

**OFFICER RECOMMENDATION:**

That the report be noted.
Appeal Decisions

Inquiry held on 9 September 2014
Site visit made on 8 September 2014

by Jane V Stiles  BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 October 2014

Appeal Refs: APP/P1045/C/13/2209667 & 2209668
Hasker Farm Cottage, Stainsborough Lane, Kirk Ireton, DE6 3JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Wood & Mrs Sarah Wood against an enforcement notice issued by Derbyshire Dales District Council.
- The Council's reference is PLS/BM/3P.7432.
- The original notice (served on 28 October 2013) was re-issued on 6 November 2013.
- The breach of planning control as alleged in the notice is without planning permission:
  (a) The material change of use of an agricultural building in the position marked 'X' on the attached plan for a mixture of uses including residential, business / workshop, garage, art studio and equestrian use.
  (b) Building works consisting of the enclosure of the open sided bays with concrete blocks and timber boarding, internal subdivision, erection of a conservatory extension and flue pipe on the barn marked 'X' on the enclosed plan.
- The requirements of the notice are to:
  1. Permanently cease the use of the building for residential and business use.
  2. Permanently remove the conservatory extension, flue pipe, all external walls and interior subdivisions and reinstate the building to an open sided hay store as it stood prior to the unauthorised works (set out at (b) above) being carried out.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal Ref: APP/P1045/C/13/2209668, the application for planning permission deemed to have been made under section 177(5) of the Act as amended fails to be considered in respect of APP/P1045/C/13/2209668 only.

Decision

1. The enforcement notice is corrected by deleting from requirement 2. at paragraph 5. of the Notice the words: as it stood prior to the unauthorised works (set out at (b) above) being carried out; and varied by changing the Time for compliance at paragraph 5. of the Notice from 6 months to 9 months. Subject to this corrections and this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
Procedural matters

2. The Appellants failed to submit a Planning Contravention Notice (PCN) even after they were reminded by the Council of the consequences of not doing so.

3. The Council served a s330 Requisition for Information upon the Appellants on 9 May 2013 which was collected and signed for on 18 May 2013. The Appellants failed to return the document within 21 days. As a consequence, the Council undertook further enquiries in regard to those persons who have an interest in the site. It was revealed that the National Westminster Bank have a legal interest in the site. As such, it should also be served with a copy of the notice. Accordingly, the Council notified the Appellants by letter date 6 November 2013 that it was withdrawing the notice dated 28 October 2013 with immediate effect and that it was thereby issuing a revised enforcement notice which had been served upon all relevant parties.

4. The Appellants made a retrospective application for planning permission on 16 May 2013 for the conversion and extension of a former hay barn (the outbuilding) to provide artist's studio, ancillary living accommodation to Harker Farm Cottage, stabling, woodstore, workshop and garaging (Ref: 13/00338/FUL). The application was refused by notice dated 14 August 2014.

5. All evidence was taken on oath or solemn affirmation.

6. An unsigned s106 Agreement was submitted at the Inquiry securing that the outbuilding would not be used as a single dwellinghouse. Following the close of Inquiry, a signed s106 was submitted dated 18 September 2014.

7. At the start of the Inquiry the Council accepted the Appellants' points on ground (d) in respect of the operational development that had taken place prior to the Appellants moving to Harker Farm Cottage. Those works involved the enclosure of 2 bays at the north-west corner of the outbuilding (now the artist's studio). Drawing Nos. 494/03, 494/04, and 494/05 illustrate the extent of these works.

8. The Appellants requested that the requirements of the Notice be amended to exclude the removal of that enclosure. A suggested form of words was submitted to the Inquiry (document 10) which relied upon on Drawing Nos. 494/03, 494/04, and 494/05.

9. Post-Inquiry correspondence from both main parties confirmed that the appearance of the enclosure at the north-west corner of the outbuilding as shown on Drawing Nos. 494/03, 494/04, and 494/05 has now changed. In particular, the external cladding and openings are different and the area no longer contains a workshop with inspection pit and an office. The Appellants consider that it would be unreasonable for the notice to require the building to be returned to its condition in 2010. Instead they request that the notice be amended to retain the openings and cladding as shown on plan 494/01A and that the vehicle inspection pit is not required to be reinstated.

The Appellants' ground (c) appeal.

10. As part of the Appellants' ground (c) appeal they have argued that the outbuilding has been in domestic use (solely) since 2002, and before then was in a mixed business and domestic use. They say the period was more than 10 years before the Enforcement Notice was served and so they claim it is lawful.
They go on to argue that their use of the outbuilding also for domestic use was not therefore a change of use (as alleged in breach (a)). However, in the absence of a planning permission or a lawful development certificate for a change of use of the agricultural building to a residential use (or a mixed business and domestic use), I shall treat this as a hidden ground (d) appeal (and not a ground (c) appeal).

Main Issues

11. The main issues are:

Appeal A

Ground (c) - Whether or not there has not been a breach of planning control

(i) Whether the appeal building stands on land which forms part of the residential curtilage of Hasker Farm Cottage and in turn whether the operational development is permitted development.

Ground (d) - Whether at the time the enforcement notice was issued, it was too late to take enforcement action

(ii) Whether, as a matter of fact and degree, and on the balance of probability the alleged material change of use of the agricultural building to residential uses took place more than 10 years before the enforcement notice was issued (i.e. prior to 6 November 2003)

(iii) Given that the Council has accepted that operational development involving the enclosure of 2 bays of the outbuilding at its north-west corner to form a workshop/office took place more than 4 years before the enforcement notice was issued (i.e. prior to 6 November 2009), whether the requirements of the Notice should be corrected.

Ground (a) - Whether planning permission should be granted for what is alleged in the notice

(iv) The effect of the subject building on the character and appearance of the surrounding rural area.

(v) Whether the appellant has a fallback position in terms of PD rights (see ground (c) above)

Ground (f)

(vi) Whether the steps required to comply with the requirements of the notice are excessive and whether lesser steps would overcome the objections

Ground (g)

(vii) Whether the time given to comply with the notice is too short.
Reasons

Ground (c) – whether there has been a breach of planning control

Alleged breach of planning control

12. First, the Appellants claim that the outbuilding has been in domestic use from August 2002, and that before then it was in a mixed business and domestic use. Further they claim that the period was more than 10 years before the notice was served and so it was lawful. As such, they claim that their use of the outbuilding for (what they describe as) domestic use incidental to the enjoyment of the dwelling was not therefore a change of use.

13. The Appellants argue that the building has not been in agricultural use for nearly 20 years and so there cannot be a breach of planning control consisting of a material change of use from use as an agricultural building because the use was abandoned and/or the domestic use of the building has achieved immunity from enforcement action.

14. Secondly, the Appellants argue that the outbuilding is within the curtilage of Hasker Farm Cottage and so the use of the building for purposes incidental to the dwelling do not constitute development because ss5(2) of the Act specifies: “the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such” [is not development].

15. However, there is no Lawful Development Certificate (LDC) for a change of use of the outbuilding from an agricultural use. Therefore, the first limb of the Appellants argument is really a matter for ground (d) i.e. they are claiming that the entire use of the outbuilding for domestic use had become lawful by the passage of time. Whilst the Appellants’ ground (d) appeal is limited only to the enclosure of 2 of the bays (at the north-west corner) for about half the width of the building, I am prepared to consider the matter of the use of the outbuilding for domestic use as a hidden ground (d) appeal.

Chronology

16. Before considering the Appellants' grounds of appeal, I shall set out the chronology of this case as provided by the Appellants. For the early part of the planning history of the outbuilding, the Appellants rely upon a witness statement by Mr David Potter dated 19 August 2005 which formed part of an application for a certificate of lawfulness; and a Statutory Declaration of David Potter dated 1 August 2014 (SD) submitted with the current appeal. However, Mr Potter did not attend the Inquiry to be cross-examined, and from the evidence of the Council, Mr Potter is an unreliable witness in any event. No names were given for alleged occupants of the various farm buildings for the period 1992-2000, and no such persons attended the Inquiry to be cross-examined. Furthermore no documents were submitted in support of Mr Potter’s Statement and SD such as tenancy agreements, utility bills, Council Tax records or copies of the electoral register. For these reasons, I can attach only limited weight to Mr Potter’s witness statement and SD.
Mr Potter’s Statement 2005

17. Mr Potter’s statement points to a number of developments carried out without the benefit of planning permission:

- In February 1993 Mr Potter and his wife extended Hasker Farm to the north by converting the farm dairy into living accommodation.

- In November 1993, Mr Potter and his wife began converting the disused milking shed attached to the south of Hasker Farm to a lounge/living area, adding a new bay window and French doors. He says the conversion was completed within a year (i.e. by the end of 1994). I take this to be the building referred to in his SD as “Hasker Farm Barn”

- In June 1997 Mr Potter and his wife built an indoor covered pool to the west of Hasker Farm.

- In 1998, the pool was connected to the main dwelling (which I take to mean Hasker Farm Barn) when they built a covered conservatory style corridor.

Mr Potter’s 2014 SD

The outbuilding

18. I shall set out my own comments in respect of Mr Potter’s SD in square brackets [ ]. The SD states that Mr Potter lived at and owned Hasker Farm from December 1992 to February 2013. In December 1992 Hasker Farm consisted of:

- The original farm house, now known as Hasker Farm Cottage [i.e. the Appellants’ dwellinghouse]

- A converted dairy, now known as Hasker Farm Barn [I note that the presence of a converted dairy in December 1992 somewhat contradicts the 2005 statement which talks about the conversion of the dairy and milking shed taking place between February 1993 and the end of 1994].

- 3 stone built stables and outbuildings now converted into dwellings known as Lake View, No. 2 Hasker Farm Cottages, and No. 3 Hasker Farm Cottages

- 2 large agricultural barns

- An Atcost concrete pillared barn [hereafter referred to as the appeal outbuilding]

- A steel framed stock shed

19. Mr Potter says he lived in Hasker Farm Barn for 21 years from December 1992 to February 2013. But, I note the dates suggest a period of 20 years and 2 months. Moreover, it is not clear to me whether or not the building now known as Hasker Farm Barn was capable of independent residential occupation in 1992 (i.e. prior to the extension and alterations) for a family with 2 or 3 children.

20. Mr Potter claims (somewhat vaguely) that at some time between 1993 and 1995, without planning permission, he had 2 of the 5 bays at the north west
end of the (Atcost) outbuilding blocked up and clad in box steel sheeting, a concrete floor installed with a vehicle inspection pit and 2 vehicle entrance doors fitted. Within this enclosed area an office was partitioned off. I note that the extent of these works has now been accepted by the Council.

21. Mr Potter says at that time, the vehicle workshop was built to support his business which consisted of the buying, selling and necessary repairing of motor vehicles. He says the area ceased to be used in connection with his business (Field Developments (Chesterfield) Limited) when his company ceased trading around August 2002.

22. Mr Potter claims that the remaining bays were used between December 1995 and August 2002 as domestic vehicle garaging and storage by the occupants of Hasker Farm Cottage and Hasker Farm Barn. But he is not specific as to which property used which bays; or indeed whether all of the bays were in continuous domestic use. He is also unclear as to how many planning units existed at that time.

23. Mr Potter says that subsequent to August 2002 (i.e. when his business use of the vehicle workshop ceased) the whole of the outbuilding was used solely in connection with the 2 dwellings as garaging and storage. He says this was used by the various (short-hold) tenants of Hasker Farm Cottage (which changed every 2 to 3 years) and by him whilst living at Hasker Farm Barn. Since at this point there would appear to be 8 undivided bays in addition to the vehicle workshop, it is unclear to me who used which bay or bays, or for what purpose.

Mr Potter is the only person who has provided information to the Inquiry, he has not been specific about his own usage, and he did not attend the Inquiry to be cross-examined.

24. As a matter of fact and degree, and on the balance of probability, continuous and uninterrupted use of each and every part of the outbuilding for domestic use has not been proven.

The ménage

25. Mr Potter says sometime between 1993 and 1995, he installed the ménage in the field. He says the work was done for a tenant who briefly started a livery at the property incorporating some of the stone stables. But, it is not clear to me whether or not this was an equestrian business use, or a domestic use. Again, neither Mr Potter nor the alleged tenant attended the Inquiry to be cross-examined.

Static caravan

26. Between 2002 and 2003 Mr Potter says he installed a static caravan type mobile home. Whilst he is not specific as to dates, he says the static caravan was occupied continuously. He does not state who lived in the caravan or why, so I am unclear as to its relevance. He also says that the caravan was serviced by the electricity supply from the outbuilding and connected to a septic tank belonging to Hasker Farm Cottage. This is somewhat at odds with the Appellants' own evidence which is that currently the electricity supply and water supply to the outbuilding, comes from Hasker Farm Cottage and that the waste disposal from the outbuilding goes to Hasker Farm Cottage. As such, the Appellants say that the outbuilding does not have its own service connections.
So it is hard to understand how the 2002/03 mobile home could have been serviced by electricity from the outbuilding.

Sale of buildings and land

27. In December 2009, Mr Potter says he marketed for sale the 3 converted stone outbuildings (Lake View, No. 2 Hasker Farm Cottages, and No. 3 Hasker Farm Cottages) and Hasker Farm Cottage.

28. Hasker Farm Cottage was marketed with what Mr Potter describes as "the established garden" and the remaining land and outbuildings were advertised as further options for purchase, subject to negotiation. I note that there is no previous mention of "an established garden" or which property used such a garden. Prior to the subsequent sales of properties, defined individual boundaries were drawn up for Land Registry or local authority purposes.

29. In February 2010, Mr Potter sold Hasker Farm Cottage, the outbuilding and the field and ménage as a single lot to the Appellants.

30. Mr Potter states that at no time between December 1995 and February 2010 was the outbuilding used for agricultural purposes. However, the precise use of each and every part of the building remains unclear.

31. In any event, the Council points to Mr Potter's June 2005 planning application which stipulates that the land including the appeal site has the use of "agriculture".

The evidence of Miss Crowley

32. The Appellants' agent (Miss Crowley) states that the lawful use of the group of buildings for residential purposes and without an agricultural tie was secured over 2 applications in 2005.

33. Miss Crowley says that Hasker Farm Barn began life as an agricultural outbuilding (built contemporaneously with the farmhouse). The unit was extended and converted into additional living accommodation in 1984 and tied to an agricultural occupancy condition. I note this is not referred to by Mr Potter. This tie was removed by the grant of an application for a certificate of lawfulness in 20051. Mr Potter began to occupy it as a single dwelling sometime after 1992 at which time he began to let Hasker Farm Cottage on a short hold tenancy. Although no mentioned by Mr Potter, Miss Crowley says that both of these dwellings shared the use of the garden to the north (now solely within the ownership and use of Hasker Farm Cottage). Accordingly, it would not appear to me to have formed part of the residential curtilage of either dwelling.

34. Pool Cottage began life as a domestic indoor pool, and was granted an LDC in 2005 for use as living accommodation with incidental use (indoor pool). In 2013 it was granted an LDC for use as a single dwellinghouse2.

35. Planning permission for conversion of a range of outbuildings into 4 additional units (for use as holiday cottages) was granted in 2005 (05/01087/OUT); a reserved matters approval followed in 2007 (07/00162/REM). That permission was granted without an occupancy condition. Four separate dwellings were subsequently created, none of which was subsequently put to use as holiday

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1 05/00831/CLEUD --Occupation of premises without compliance with agricultural occupancy condition
2 13/00260/CLEUD use of formal domestic pool and dwellinghouse

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www.planningportal.gov.uk/planninginspectorate
cottages. In 2010, Mr Potter began parcelling up the buildings and selling them off as 6 individual private dwellings:

- Hasker Farm Cottage – the original farmhouse with outbuilding
- Hasker Farm Barn – the original dairy
- Pool Cottage
- The 3 cottages (built as holiday cottages) known as: Lake View (1), and Nos. 2 and 3 Hasker Farm.

**The evidence of Mr & Mrs Wood**

36. Mr Wood states that in February 2010 he and his wife bought from Mr Potter Hasker Farm Cottage, together with what he describes as "its garden", and the outbuilding on the eastern edge of the garden, together with a field to the north of the garden and outbuilding. Whilst all of these elements of the Appellants’ property are held under one title at the Land Registry, it is clear to me on the Land Registry plan that they form 2 distinct parcels of land with the house having a very tight curtilage drawn around it, and being separated from the parcel of land containing the outbuilding by the access to the pool building (now known as Pool Cottage and in separate ownership). The access which severs the 2 parcels of land in the Woods’ ownership currently remains in the ownership of Mr Potter.

37. Mr Wood states that subsequently they bought from Mr Potter the field to the east of, and adjacent to the one they originally bought. This is registered to Mr and Mrs Wood under a separate title.

38. When the outbuilding was purchased, 20% of it (the north west corner) had already been enclosed with a variety of materials and had obviously been used as a vehicle workshop with an inspection pit installed. An office had been partitioned off within this workshop. As I have already stated, this is now accepted by the Council.

39. Mr Wood states that all of the work he and his wife have done to the outbuilding was done in the belief that they had permitted development rights (PDRs) as Hasker Farm had ceased to be a working farm some considerable time previously. When he gave his evidence he also claimed that because he thought it was PD, he had understood there was no need for Building Regulation Approval.

40. However, in cross-examination it was revealed that Mr and Mrs Wood both independently and jointly, had previously undertaken alterations and improvements to properties. Indeed, one such property “the old Grammar School in Wirksworth a Grade II* listed building, was featured on TV and in various magazines and it was shortlisted for various awards. Mrs Wood’s evidence points to her belief that she and her husband have a high level of work ethic for all their work both professional and personal.

41. Mrs Wood has been a professional fine artist and painter since leaving school. Her evidence outlines the properties from which she has worked and those which she has renovated and/or converted culminating in the studio which she now has within the outbuilding. She says it is the best work environment that she has ever had and is something she has strived and worked for over the last
20 years. She argues that whilst very comfortable, it is primarily a work space and that her daily family life is based around the kitchen and space within the farmhouse.

Ground (d) Appraisal

42. A Ground (d) appeal is decided solely on the basis of the evidence submitted, as a matter of fact and degree, and on the balance of probability. Planning policy, or any other such consideration, is not relevant. The onus and the burden of proof are firmly on the Appellants to prove what they assert. Planning policy, or any other such consideration, is not relevant. Further, "independent" evidence to corroborate the Appellants’ 'is not required in order for the Appellants’ account to be accepted and the appeal should be allowed provided that there is no evidence contradictory to the Appellants’ version of events and that the Appellants’ evidence is sufficiently precise and unambiguous.

43. The Council has enforced against (a) the material change of use of the agricultural building; and (b) the building works to that building. The relevant date for the alleged material change of use is 10 years prior to the date upon which the notice was served i.e. the relevant date is 6 November 2003; and the relevant date for the alleged building works is 4 years prior to the date upon which the notice was served i.e. the relevant date 6 November 2009.

44. The onus and the burden of proof is on the Appellants to demonstrated that each and every part of the barn (i.e. the outbuilding) marked 'X' on the plan attached to the notice must have been used at some time in such a way as to constitute that material change of use and that the use of each part must continue for 10 years. Once the lawful use is established, then there may be dormant periods where parts of the building are not used continuously, but such dormancy on any part of the land during the accrual of the 10 year lawful period will serve to break the continuity on that part.

45. There is no dispute that the appeal outbuilding was originally an Atcost agricultural barn in use as a hay barn. Whilst it is not clear to me exactly when the agricultural use ceased (or was abandoned) no other lawful use has been established. As such, the building would have a nil use.

46. The subject building was originally an open fronted Atcost agricultural building with a roof supported on 3 rows of 6 columns. Thus it is divided longitudinally into 5 bays between 6 concrete columns and widthways it is essentially divided into 2 with a central row of columns such that there are 10 bays in total, and 18 concrete columns in total.

The enclosure of the north-west corner of the building

47. The Appellants claim that at the date the enforcement notice was issued, it was too late to take enforcement action against certain parts of the development. Namely, certain works to the building were carried out under previous ownership which involved the enclosure of 2 of the 5 bays at the north-west corner to create an office and a workshop. They say those works were carried out more than 4 years prior to the issue of the notice. In turn, if the appeals on grounds (c) and (a) fail, the Appellants seek to have the Notice amended in order to retain the enclosure of the north-west corner.
48. The main parties agree that Drawing Nos. 494/03, 494/04, and 494/05 are an accurate reflection of the elevations in 2010. Those drawings show a broadly square shaped enclosure containing a small internal office and an L-shaped workshop with an inspection pit. The L-shaped area had 2 large vehicle entrance doors in its north-east wall which itself was formed between the line of columns running down the centre of the outbuilding.

49. The Council therefore accepts that the enclosure shown on Drawing Nos. 494/03, 494/04, and 494/05 took place before the Appellants purchased the property in 2010 (i.e. more than 4 years before the Notice was served).

50. However, from the plans and from what I saw on site, the inspection pit and the office shown on Drawing No. 494/03 are no longer present; the perimeter enclosure has been substantially replaced or rebuilt with a thicker construction, with different cladding and with an entirely different arrangement of windows and doors; and internally the area is now subdivided by partitions to include a store, dark room and W.C. As a matter of fact and degree what is now on site is materially different from what is shown on Drawing Nos. 494/03, 494/04, and 494/05. In particular, the 2 French doors in the south west elevation and the large horizontal opening in the north west elevation and the timber cladding (all of which were installed by the Appellants) do not feature on Drawing Nos. 494/03, 494/04, and 494/05.

51. As confirmed by the Appellants in post-Inquiry correspondence, what is now on site is illustrated on Drawing No. 494/01A. The corresponding elevations (of what is on site today) shown on Drawing No. 494/02 are materially different from those of the original works shown on Drawing Nos. 494/04 and 494/05. Accordingly, the current works, which from the Appellants’ own chronology were undertaken from March 2010 onwards, had not become authorised by the passage of time at the time the Notice was served.

52. Furthermore, to reinstate the building to an open sided hay store as it stood prior to the unauthorised works (set out at allegation (b)) ‘being carried out (i.e. what was there in 2010) would require removing the Appellants’ construction and rebuilding the enclosure to its former unauthorised state, which the Appellants consider would be an unreasonable requirement. However, if that were done, the latter works would themselves be new works. Accordingly they would not be exempt from enforcement.

53. For clarity, and in response to a point raised by the Appellants in post-Inquiry correspondence, given that the Atcost barn was not a Listed Building, the Notice would not require the building to be returned to its former unauthorised state (i.e. with the 2 bays enclosed). As such, the Notice should not require the reinstatement of the original enclosure or the inspection pit. To this limited extent, I shall correct the Notice for clarity.

54. However, in these circumstances, I am unable to amend the Notice to require the retention of the current enclosure of the north-west corner of the building. Consequently, the retention of the artist’s studio, store, darkroom and W.C. would require a fresh planning permission.

55. The suggested form of words to amend the requirements of the Notice is somewhat confused (document 10). The Appellants do not, in reality, seek to reinstate the building to its former unauthorised state as shown on Drawing Nos. 494/03, 494/04, and 494/05. Instead, as confirmed in correspondence,
the Appellants seek to retain the artist's studio, store, darkroom and W.C. as shown on Drawing NO. 494/01A. However, that is a matter for ground (f).

Agricultural Use

56. The Appellants' agent has argued that the outbuilding has not been in agricultural use for nearly 20 years and that the agricultural use was clearly abandoned. However, even if the agricultural use was abandoned, the building would fall to a nil use. No lawful development certificate has been applied for, for a change of use for either business or residential purposes (or for that matter any other use).

57. Mr Potter's statement is unclear to me because he claims on the one hand that "Hasker Farm" was occupied by him and his wife between December 1992 and February 2005 (together with at various times his son and daughter, and his step son) and that no-one else lived at Hasker Farm throughout this period; but on the other hand that between 1992 and August 2005 they rented out the farm house known as Hasker Farm Cottage (previously known as Hasker Farm) on a continuous short-hold tenancy basis for domestic residential use with the occupants changing every 2-3 years.

58. It is hard to know which building Mr Potter and his wife were occupying between 1992 and 2005. If by "Hasker Farm" he meant "Hasker Farm Cottage", then I am unclear where the tenants lived between 1992 and 2005. If by "Hasker Farm" he meant "Hasker Farm Barn" it would appear to contradict his statement that the dairy and milking parlour were converted between February 1993 and the end of 2004.

59. There is no evidence whatsoever of any tenancy agreements, names of tenants, entries on the electoral register, utility bills or Council tax payments. Moreover there is no hard evidence of whether or how or to what extent any such tenants used the appeal outbuilding. There is also no evidence as to how the land surrounding the buildings was being used save for the brief mention of a tenant who started a livery business incorporating the stone stables.

60. The Appellants purchased the property in February 2010. Whilst the Appellants' agent has referred to 'photographs taken contemporaneously with the purchase', the submitted photographs are dated October 2010 (albeit the Appellants claim they started the operational development in March 2010). As such, I have no hard evidence as to the purpose for which the outbuilding was in use prior to the point at which it was purchased by Mr and Mrs Wood.

61. Mr Wood is now retired. Mrs Wood is an artist who has been described by her agent as "the sole breadwinner". However, Mrs Woods' evidence is that although she is the only employed person at home, she is not under a great deal of pressure to provide a large income. At the Inquiry, Mrs Wood stated that she only works part time as she has a young baby and a horse, both of which take up significant amounts of her time. The Appellants' closing submissions refer to the building as being not just in one use, but many which are complementary and incidental to the use of the cottage.

62. In summary, there is insufficient evidence to demonstrate to me when the use of the outbuilding for agricultural purposes ceased. Similarly there is insufficient evidence to demonstrate to me that a material change of use to residential or a mixture of uses including residential, business/workshop,
garage, art studio, and equestrian use took place in each and every part of the building or that it has continued without interruption for the requisite period of 10 years.

63. Given their previous experience in property development, on the balance of probability, both Mr and Mrs Wood ought to have been aware of the need for Building Regulation Approval for the works they have undertaken; or, at the very least, of the need to check if it was required. I am therefore unable to rule out the possibility that an absence of an application for Building Regulation approval points to a deliberate attempt to conceal the works. Similarly, in the absence of an LCC for a change of use of the building at the time they purchased it, it would have been prudent for them to have attempted to secure one before they commenced their own building works; or to have checked that they had the PDRs they now claim they thought they had. As a matter of fact and degree, and on the balance of probability this points to them knowingly and wilfully building unauthorised works. The fact that the PCN was not returned despite reminders from the Council also places doubt upon their credibility, which I cannot ignore.

64. The artist’s studio and associated W.C., kitchen, darkroom, sitting area and conservatory are used for both business and leisure/hobbies. There is sufficient stabling for 3 horses and there is a hay loft. Whilst Mrs Wood currently owns only one horse, it was noted that she has an interest in breeding warm blood horses but that she has insufficient time for it at present due to having a young baby. The stables are currently also used for providing indoor shelter for the Appellants’ chickens and ducks. Mr Wood utilises part of the outbuilding (sometimes referred to as a mezzanine) for a sizeable office to pursue his interest in computers; and he utilises another part of the outbuilding for a workshop/garage to pursue an interest in restoring vehicles and for sculpture. As a matter of fact and degree, therefore, the building is currently used for a mixture of uses.

65. It is understandable that a kettle and perhaps a microwave might be useful when Mrs Woods is working in the studio; when she is offering refreshment to clients; or when Mr Woods is pursuing his interest with computers in the home office. However, a small kitchenette would accommodate such needs.

66. Nothing turns on the fact that the cooker in the outbuilding kitchen has never functioned properly, as it could easily be repaired or replaced. If there is no need to cook in the kitchen, it rather begs the question as to why such a large area is given over to a kitchen. The fact that the Appellants bought a complete second hand kitchen off an internet auction, and the fact that the outbuilding had the space to accommodate it, does not necessarily mean that they needed to utilise all of it, when perhaps a small kitchenette would have accommodated their needs.

57. In my conclusion, first, as a matter of fact and degree and on the balance of probability, the Appellants have failed to demonstrate to me that each and every part of the outbuilding has been either in a mixed use (including residential uses) or (as the Appellants put it) in domestic use incidental to the enjoyment of the dwelling for a period of 10 years prior to the date upon which the notice was served.

68. Secondly, as a matter of public law people should not be expected to benefit from their own wrong doing and, in this case, I cannot rule out the possibility
that the Appellants have deliberately set out to deceive the Council. But, if that were the case, because the Council served the first enforcement notice on 28 October 2013, it took enforcement action within 10 years of the breach being discovered around April 2013. Then, following the discovery that the National Westminster Bank had a legal interest in the site the Council withdrew the first notice and served the second one on 6 November 2013 pursuant to the ‘second bite’ provisions set out at s171B(4)(b) of the 1990 Act.

69. The appeal on ground (d) succeeds only to the very limited extent that I shall correct the Notice to make clear that the former enclosure of the north-west corner of the building is not required to be reinstated.

Ground (c)

70. As a consequence of my conclusions in respect of the ground (d) appeal, the first limb of the Appellant’s argument in respect of ground (c) also fails because I find that the outbuilding had not acquired a residential use (or a mixed use including residential uses) via the passage of time. I therefore turn to the second limb of the Appellants’ argument which turns on whether the appeal building stands on land which forms part of the residential curtilage of Hasker Farm Cottage and in turn whether the operational development is permitted development.

71. The Appellants have argued, for the purposes of the GPDO, that the curtilage of Hasker Farm Cottage includes not only the land surrounding the dwelling but also the parcel of land to the north of the dwelling which extends up to the ménage and which includes what they have described as their formal garden, the outbuilding and an apron of land to the north of the outbuilding and a strip of land to the east of the outbuilding (STC1 attached to Ms Crowleys’ Proof of Evidence).

72. As things stand, to date, the use of the Land upon which the outbuilding stands has never been formally authorised as a domestic garden extension (i.e. Use Class C3) either by the grant of an LDC, or by the grant of a planning permission for a change of use. Additionally, I am in some doubt as to whether the “formal garden” has an authorised use as domestic garden.

73. The GPDO at Article 3(5)(b) states that “The permission granted by Schedule 2 shall not apply if in the case of permission granted in connection with an existing use, that use is unlawful”. Accordingly, I do not consider that the Land upon which the outbuilding stands would have benefitted from any permitted development rights (PDRs) at the time the subject operational development was carried out, which the Appellant says was from March 2010.

74. For clarity, it also follows that if the subject operational development was carried out from March 2010, it would not have been immune from enforcement at the date upon which the enforcement notice was issued (i.e. 6 November 2013).

75. I therefore need to assess whether or not the Land (i.e. the formal garden and the land upon which the outbuilding stands) can be deemed to have become part of the “curtilage” of Hasker Farm Cottage for the purposes of the GPDO.

76. The term “curtilage” must not be confused with the planning unit or with a use of land. Furthermore, there is no authoritative definition of the term “curtilage”. The term is used in different contexts within the planning system which has
resulted in varying interpretations of the term. As a matter of fact and degree, the term defines an area of land in relation to a building, rather than a use of land. The “residential curtilage” of a property for the purposes of the GPDO is not necessarily comparable to the “curtilage of a Listed Building” for the purposes of the legislation controlling works in relation to a Listed Building.

77. When considering the question: “What is the curtilage?” the Encyclopaedia of Planning Law and Practice refers to the definition contained within the Oxford English Dictionary which states: ‘A small court, yard, garth, or piece of ground attached to a dwelling-house, and forming one enclosure within, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuilding’.

78. Whilst not a Statute, I attach considerable weight to the document published by the Department for Communities and Local Government (DCLG) entitled Permitted Development for Householders Technical Guidance as updated in April 2014, which explains that: Class E sets out the rules on permitted development etc within the area of land surrounding (my underlining) a house. It then refers the reader to guidance under Class A.1(a) for a description of what will be the “curtilage”. That guidance says: What is defined as curtilage for a particular house will vary according to a number of factors, but in most cases it will comprise the area of land around the original house (i.e. what is understood to be the garden/grounds of the house). But the curtilage may be a smaller area in some cases, especially in the case of properties with large grounds set in the countryside.

79. Crucially, there is a distinction between a residential “curtilage” which attracts PDRs and a use of land for garden purposes.

80. Even if the land containing the “formal garden” has an authorised use for garden purposes, by extending that land to include the outbuilding would be nearly doubling the size of it. Given that under Class A.1(a) the GPDO permits extensions (including previous extensions), so long as they do not exceed 50% of the curtilage, it is almost inconceivable that the GPDO would have envisaged that a curtilage could be extended by around twice its original area (as is the case argued here) and still attract PDRs on the extended area of garden/grounds.

81. From the cartographic evidence, the layout of Hasker Farm displays the typical features of a traditional farmstead with the Farm House forming part of a U-shaped arrangement of buildings around a farm yard such that the front of the farm house faces the farm yard while the rear backs onto the surrounding fields, the closest of which contained the subject outbuilding. The domestic curtilage would typically have been drawn tightly around the farmhouse in order to keep farm animals out.

82. In this case, the dwelling Hasker Farm Cottage is surrounded by a tight parcel of land which would have separated it from the original farmyard and agricultural buildings which comprised the original farmstead. The Land upon which the subject outbuilding stands does not “surround” the dwelling. It is a distinct parcel of land, no boundary of which abuts the red boundary surrounding Hasker Farm Cottage on the Land Registry Official Copy title plan. Indeed, the 2 parcels of land are separated by an access now in different ownership. As a matter of fact and degree, therefore, the land upon which the outbuilding stands does not “surround” the dwelling Known as Hasker Farm
Cottage. The dwelling remains separated from the Land by the access to Pool Cottage. As such, it does not form part of one enclosure with the house.

83. The Appellants have formed a formal garden with box hedging and sculpture on the land between the access to Pool Cottage and the ménage. By the Appellants' own admission, the formal garden cannot be seen from the dwelling. Indeed, they have argued that the conservatory addition has doubled up as a 'garden room' from which they can enjoy the formal garden which cannot be seen from the Cottage.

84. The outbuilding has been equipped with a full size domestic kitchen, a sizeable lounge area and 2 W.C.s. In part these are intended to serve the artist's studio and any visiting clients, and in part they are intended to serve the garden room when in residential use. These factors demonstrate to me that as a matter of fact and degree, the outbuilding is physically some distance from the main dwelling, as opposed to being "intimately" connected with it; and that it is so functionally separate as to require its own facilities.

85. I have insufficient evidence to demonstrate to me that the land upon which the formal garden has been created was used as domestic garden by Mr Potter. But, notwithstanding such a use, its disassociation from the dwelling house is enforced by (i) its distance from the dwelling; (ii) its location beyond the boundary of the land which surrounds the dwelling (i.e. that which I consider to be its "residential curtilage"); and (iii) I have no evidence to suggest that it originally formed part of the garden to the farmhouse.

86. In summary I conclude that the Appellants have not demonstrated as a matter of fact and degree and on the balance of probability that

- the subject Land has been used continuously as domestic garden land for the relevant period of 10 years prior to 6 November 2013
- The subject Land does not form part of the residential curtilage for the purposes of the GPDO.

Consequently, there are no PDRs in respect of the outbuilding.

87. I have had regard to the caselaw referred to by the Appellants, however, no useful comparisons can be made. I have considered the ground (c) appeal on its own individual merits and for the foregoing reasons the appeal on ground (c) fails.

The appeal on ground (a)

88. The newly created accommodation includes a kitchen/dining area with mezzanine over, a living room and 2 W.C.s which are intended for domestic as well as business use. As such, I consider that Policy H5 of the adopted Derbyshire Dales Local Plan, which deals with conversion and re-use of buildings to provide residential accommodation outside settlement frameworks and which aligns with paragraph 55 of the National Planning Policy Framework (NPPF), is relevant.

89. From the Appellants' evidence, the artist's studio would have a part business use and it would be visited by clients of Mrs Wood. Additionally the studio and gallery would be likely to be opened to the public on occasion. As such, Policy
EDT16 of the adopted Derbyshire Dales Local Plan, which deals with the re-use of rural buildings for industrial and business use is relevant.

90. In this case, the original open sided Atcost barn was a modern, utilitarian, non-vernacular building of no particular architectural merit. As such, it originally served a functional purpose as a hay barn and was not a building which made a positive contribution to the character and appearance of its surroundings. Instead, it had an unassuming appearance which blended with its agricultural surroundings. I accept that the original roof remains which is supported on the 18 original concrete columns. But, as acknowledged by the Appellants, when they purchased the site, the building was in a poor state of repair.

91. The appearance of the building has changed significantly as a consequence of the bays being enclosed with blockwork and/or timber cladding and through the introduction of a miscellany of doors and windows both glazed and unglazed, as well as roller shutter doors. As a consequence, its appearance is an unresolved mix of industrial, equestrian and domestic features with all sense of a simple open sided agricultural barn having been lost. What looks particularly incongruous is the addition of a projecting glazed conservatory and a flue (to a woodburning stove), both of which are very domestic in appearance. The resulting building, itself some 4 times the footprint of Hasker Farm Cottage, is a jarring and alien feature which causes considerable harm to the stunning rural landscape within which it sits.

92. I acknowledge the support offered to the Appellants by a nearby residential occupier on the basis that the enclosed building is preferable to the redundant open sided barn which was considered to be “an eye sore”. However, conversion of existing buildings to residential or business use in the countryside is only supported where buildings are of a permanent and substantial construction, the form, bulk and general design of the existing building makes a positive contribution to the character and appearance of their surroundings, the buildings can be converted without extensive alteration, rebuilding or extension and the conversion does not have a detrimental impact upon the character and appearance of the buildings.

93. In this case, the Atcost barn could never have been said to make a positive contribution to the character and appearance of its surroundings; at the time it was purchased by the Appellants it was not in a good state of repair; and extensive works of alteration have been carried out which have totally defaced the building. In my conclusion, the extensive works of alteration together with the conservatory extension have resulted in a building which has an incoherent and alien appearance. In turn, I consider that the resultant building causes harm to the rural character and appearance of the group of buildings which comprise Hasker Farm as well as the surrounding open countryside, itself of considerable scenic value. As such, the unauthorised works are in conflict with Policies H5, SF4 and EDT16 of the adopted Derbyshire Dales Local Plan.

94. Whilst I can attach only limited weight to Development Management Policies 2 and 4 of the Derbyshire Dales Local Plan Submission Draft, they generally reflect what is contained in adopted policies H5 and SF4. Development Management Policy 2 does allow for development in the countryside consisting of small-scale industrial or business development that is appropriate to its location. However, in this case the subject outbuilding is remote from basic services and facilities and is not readily accessible by a variety of transport
modes (including public transport). Consequently, it is in this respect inherently unsustainable in conflict with the emerging policies.

95. I have taken account of the fact that the Appellants are willing to have conditions imposed to limit the opening of the premises for public art festivals for no more than one event per year; and to prohibit any art classes taking place at any time; and that they have submitted a s106 Unilateral Undertaking to limit use of the building to ancillary accommodation. However, none of these matters is sufficient to overcome the fundamental harm to the character and appearance of the immediate and wider surroundings which I have identified.

96. Given my conclusions in respect of residential curtilage, I do not accept that the Appellants would be entitled to replace the outbuilding with a proliferation of permitted structures under PDRs. As such, I do not accept that they have a fall-back position.

97. For the above reasons the appeal on ground (a) fails. It follows that planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (f) – that the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections

98. The Appellant’s ground (f) appeal relates primarily to the enclosure of 2 bays prior to their purchase of the property. However, I have already concluded that whilst those works (which involved the enclosure of 2 bays and the formation of an office and workshop with inspection pit by the Appellants’ predecessor) might have obtained immunity from enforcement, those works have been so substantially altered by the Appellants as to no longer exist. Indeed, to reinstate the building to its former unauthorised state would require new works which would not themselves be exempt from enforcement.

99. In any event, even if I were to accept that the current enclosure of the north-west corner of the building was exempt from enforcement (which I do not), at the Inquiry, the Appellants requested that the unauthorised works alleged in the Notice be considered in their entirety given the relationship/interconnectivity of the various uses. In particular, they pointed to the fact that the artist’s studio is heated by means of an underfloor heating system powered by a wood burning stove in the lounge area. As such, it is inseparable from it.

100. In the circumstances, the Appellants would need to make a fresh planning application to salvage any elements they so wished from the current scheme.

101. The appeal on ground (f) therefore fails.

Ground (g)

102. The Appellants consider that 6 months would be insufficient time to comply with the Notice and that 24 months would be more reasonable because:

- Mrs Wood is using her studio;
- The home office is furnished;
- The horse is stabled, wood and hay are being stored;
- Vehicles are being garaged; and
- The Appellants have no other structures on site into which to decant the contents of the outbuilding, and the dwelling itself cannot accommodate the Appellants’ needs.

103. The Appellants say that all of the space required to house these incidental purposes needs to be re-provided before the outbuilding can be vacated. Mrs Wood has no other venue from which to carry on her business; she has just had a baby and if forced to vacate the outbuilding, she would need to find alternative off-site accommodation from which to work. As a consequence she might also need to shoulder the cost of nursery care in proximity to the new premises.

104. Given the extent of the accommodation required, the Appellants say that even if they commenced work on site immediately, it would be unreasonable to expect that all of the building work could be completed; the replacement space would be ready for occupation; and the outbuilding returned to its former state within 6 months especially because Mr Wood intends to undertake all of the construction works himself.

105. In the light of the harm caused by the unlawful operational development which I have identified, the requirements of the Notice should be carried out as soon as practically possible. However, I have already concluded that the Appellants’ do not have the PDRs that they believe they are entitled to. As such, they would inevitably require planning permission for a scheme to accommodate some or all of their needs on site, which itself might require the demolition of the Atcost outbuilding.

106. If the Appellants had no further use for the conservatory and the kitchen, they could potentially be re-sold via internet auction in a relatively short period of time, or they could be put into temporary storage.

107. Much of the outbuilding is being used for hobby activities by Mr Wood. Given that he would be occupied with the necessary building works, those hobby activities could temporarily cease until such time as he is able to arrange alternative accommodation for them. Failing all else, the paraphernalia associated with those activities would need to be put into temporary storage, or disposed of.

108. Arrangements would need to be made for the Appellants’ vehicles, but I see no reason why the tractor could not continue to be stored in the outbuilding.

109. Thus, in the short term, the key considerations would be finding alternative accommodation for Mrs Wood’s business and stabling for her horse. I accept that a period of some months might be required to secure alternative arrangements. However, the oral evidence of Mrs Wood is that she is not under a great deal of pressure to provide a large income and that she currently only works part-time as her young baby and her horse take up a great deal of her time. Therefore, I consider that it would be conceivably possible for Mrs Woods to operate on a temporary basis from the Appellants’ 4 bedroom dwelling, albeit it may not offer the more luxurious accommodation currently provided by the outbuilding.

110. Given that the original 18 concrete columns and the roof of the outbuilding would remain, I consider that 6 months would be sufficient time to remove the
unlawful operational development. But, in the light of the other considerations I have outlined above, I shall extend the period of compliance to 9 months.

111. Should the Appellants wish to submit a fresh application for a different re-use of the building, or for a different proposal to accommodate their business and hobby interests on the site; or should other circumstances come to light, the Council has powers to extend the period of the notice.

112. For the reasons given above I shall vary the compliance period from 6 months to 9 months. The appeal on ground (g) therefore succeeds to this limited extent.

Jane V Stiles

INSPECTOR
APPEARANCES

FOR THE APPELLANT:

Ms Thea Osmund-Smith
She called
Paul Wood
Sarah Wood
Susan Crowley BA(Hons) MSc MRTP

Of Counsel instructed by Amy Truman of DLP Piper UK LLP
The Appellant
The Appellant
Crowley Associates, Planning Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth
He called
Chris Whitmcre BA(Hons) MSc MRTP

do Counsel instructed by Kate Hammel
solicitor for the Derbyshire Dales District
Council

Enforcement Officer Derbyshire Dales
District Council

INTERESTED PERSONS:

Mr Commons
Local resident

DOCUMENTS

1. Council’s letter of notification and list of persons notified.
2. Letter dated 5 September 2014 from NatWest bank to DLP Piper UK LLP
   in respect of s106 Unilateral Undertaking.
3. Application form for planning permission submitted by Mr Potter on 22
   March 2005 Ref: 0500302.
4. Judgement in respect of Emin v Secretary of State for the Environment
   and Mid Sussex County Council.
5. Judgement in respect of Peche D’Or Investments v Secretary of State for
   the Environment and another.
6. Location plan in respect of Planning permission ref:13/0074/FUL
7. Unsigned s106 Unilateral Undertaking handed in to Inquiry
8. Signed s106 Unilateral Undertaking submitted after Inquiry was closed
9. Suggested conditions
10. Suggested wording for correcting the Requirements of the notice
11. Council’s Closing Submissions
12. Appellants’ Closing Submissions
13. Bundle of plans 494/03, 494/04, and 494/05
14. Drawing No. 494/01A
Appeal Decision

Site visit made on 1 October 2014

by R C Shrimplin MA(Cantab) DipArch RIBA FRTP FCIArb MCIL
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 27 October 2014

Appeal Reference: APP/P1045/E/14/2216012
‘Churchfields Farm’, Brailsford, Ashbourne, Derbyshire DE6 3BW

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr J Turkington against the decision of the Derbyshire Dales District Council.
- The application (reference 13/00889/LBALT, dated 27 November 2013) was refused by notice dated 7 February 2014.
- The works proposed are internal alterations to the listed building.

Decision

1. The appeal is allowed and listed building consent is granted for internal alterations to the listed building at ‘Churchfields Farm’, Brailsford, Ashbourne, Derbyshire DE6 3BW, in accordance with the terms of the application (reference 13/00889/LBALT, dated 27 November 2013), subject to the conditions set out in the attached Schedule of Conditions.

Preliminary point

2. No "description of the proposed works" is provided in the relevant section of the application form but it is clear from the application as a whole that the proposed works may properly and succinctly be described as internal alterations to the listed building.

Main issue

3. The main issue to be determined in this appeal is the effect of the proposed internal alterations on the appeal building.

Reasons

4. ‘Churchfields Farm’ is a late eighteenth century farmhouse that forms part of a group of farm buildings, though other buildings have been converted to residential use and the land has been subdivided accordingly. The farmhouse is built in red brick under a plain tile roof and it has an imposing, if slightly eccentric, principal elevation (with a garret window), looking out over an expanse of open countryside. It is listed (Grade II) as a building of special architectural or historic interest.
5. There is a large hall on the ground floor of the house, now used as a living room, with a relatively narrow winding stair leading to the first floor. The landing area at first floor level provides a reasonably commodious space which, nevertheless, has the appearance of having been encroached upon by the study that lies beyond it. An even more cramped winding stair, closed off by a door, leads from the landing to the attic.

6. The attic is a large roomy space, with a sound floor, that has plainly been put to good use over the years, originally, no doubt, for the storage purposes that would readily have been associated with the use of the farmhouse. Even so, the access stair is very restricted, both in terms of its width and its headroom, and the usefulness of the attic for modern living is rather limited, in consequence.

7. Provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 impose obligations on those considering whether to grant listed building consent for works that would affect a listed building. In such cases, it is necessary to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses.

8. That statutory framework is reinforced by the ‘National Planning Policy Framework’, especially at Section 12, which emphasises the importance of conserving and enhancing the historic environment. In cases such as this, the ‘National Planning Policy Framework’ explains that the harm that would be caused to the listed building “should be weighed against the public benefits of the proposal, including securing its optimum viable use” (as stated in paragraph 134).

9. The policies in the Development Plan do not have the same weight in respect of applications for listed building consent as would be the case in respect of an application for planning permission and none is referred to in the Council’s reason for refusal of the application.

10. The appeal proposals would involve various internal alterations, of which the most significant for the historic building is the creation of a new stair between the first floor and the attic. In the attic, two new bedrooms would be created, each with an en-suite bathroom. In addition, certain desirable repair works are also envisaged.

11. The proposals would involve the removal of parts of the historic fabric of the building, primarily the timber joists and lime ash floor at the attic level and a section of partition at first floor level. The effect of the scheme on the plan form of the building would also be important. The juxtaposition of the new stair and the existing stair would be incongruous, no doubt, and the existing stair would be of little practical use in the future, while the character of the landing area would obviously be changed. Clearly, all these matters are to be taken into account in considering the proposed alterations.

12. On the other hand, the large attic is of limited usefulness in a modern context, whereas the new stair would enable the space to be used as habitable accommodation. That is an important factor in this case, since it would mean that the heritage asset would be put to a much better use, which would be a
significant "public benefit" of the proposal in terms of the 'National Planning Policy Framework'.

13. The redesigned landing area would be balanced and satisfactory in architectural terms; the more so if part of the study wall were to be retained as envisaged in the later drawing submitted to the Council shortly before their decision on the application was issued. That matter can be controlled by the imposition of suitable conditions, however, in now approving the later drawing (number JT/CFB/10) rather than that which was previously submitted (number JT/CFB/6B). Bearing in mind the limitations of the application drawings, it is also necessary for conditions to be imposed to control the detailed design and construction of the works and to define the materials to be used, in due course, to ensure that quality is maintained.

14. Subject to those conditions, however, I am satisfied that the proposals would accord with planning policies that are intended to protect the historic heritage, while making good use of heritage assets. In short, I am persuaded that the scheme before me can properly be permitted, subject to conditions and, although I have considered all the matters that have been raised in the representations I have found nothing to cause me to alter my decision.

Roger C Shrimplin
INSPECTOR
SCHEDULE OF CONDITIONS

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

2. The works hereby permitted shall be carried out in accordance with the following approved drawings:
   - drawing number JT/CFB/1A (survey as existing);
   - drawing number JT/CFB/2 (survey as existing);
   - drawing number JT/CFB/10 (proposed alterations);
   - drawing number JT/CFB/10A (proposed alterations);
   - unnumbered site plan;
   - unnumbered drawing of new partition walls to bedrooms;
   - unnumbered section drawing;
   - unnumbered detail of new staircase.

3. No works shall be commenced until samples (or specifications) of the materials and drawings (at appropriate scales) of the construction details to be used in the construction of the new works hereby permitted have been submitted to and approved in writing by the local planning authority. Those details shall include details of the retention of a portion of the existing study wall at first floor level (as shown on approved drawing number JT/CFB/10). The works shall be carried out in accordance with the approved details, using the approved materials.