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**North East
Derbyshire**
District Council

Our Ref:

Contact: Alan Maher

Tel: 01246 217391

Email: Alan.maher@ne-derbyshire.gov.uk

Date: Monday, 14 September 2020

To: **Members of the Planning Committee**

Please attend a meeting of the Planning Committee to be held on **Tuesday, 22 September 2020 at 2.00 pm by Conference Call**. Access credentials to the meeting will be sent to you separately. The public parts of the meeting will be streamed from the Council's website.

Virtual Attendance and Hybrid Meetings

I have provided the Leader and Deputy Leader with advice on the holding of "hybrid" meetings outlining the risks including to employees dealing with the Chamber and to Members. Hybrid meetings are those where some attendance is in person in the Council Chamber and some is virtual.

I would encourage you all to attend virtually.

Accordingly if you attend in person you will be deemed to have accepted the following disclaimer as applying.

Risk Assessment Disclaimer

When attending this meeting in person, I confirm that I have read and understood the contents of each of the following risk assessments and agree to act in line with its content.

- ☐ RA – Return to Work Mill Lane Covid 19 V9
- ☐ Mill Lane Coronavirus Control Measures V4

Both documents have been emailed to Members and are available on the Modern.Gov App library.

The same advice is given to officers who are also encouraged to participate in the meeting remotely.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Skeneberg".

Joint Head of Corporate Governance and Monitoring Officer

Members of the Committee

Conservative Group	Labour Group
Councillor Diana Ruff Councillor William Armitage Councillor Peter Elliott Councillor Mark Foster Councillor Carol Huckerby Councillor Maureen Potts Councillor Alan Powell	Councillor Jayne Barry Councillor Tracy Reader Councillor Jacqueline Ridgway Councillor Kathy Rouse
Liberal Democrat Group	Independent Group
Councillor Ross Shipman	Councillor Andrew Cooper

Any substitutions required are to be made to Alan Maher, Senior Governance Officer by 4.00 pm on the day before the Committee meeting.

For further information about this meeting please contact: Alan Maher 01246 217391

A G E N D A

1 Apologies for Absence and Substitutions

To receive any apologies for absence and notices of substitutions from Members.

2 Declarations of Interest

Members are requested to declare the existence and nature of any disclosable pecuniary interests and/or other interests, not already on their register of interests, in any item on the agenda and withdraw from the meeting at the appropriate time.

3 Minutes of Last Meeting (Pages 5 - 9)

To approve as a correct record and the Chair to sign the Minutes of Planning Committee held on 25 August 2020.

4 Reports of the Planning Manager - Development Management

- (a) NED/20/00349/FL - Land at the Northern junction of Hillhouses Lane and New Road, Wingerworth (Pages 10 - 22)
- (b) NED/20/00506/TPO - Land to the North and West of The Poplars, Ankerbold Road, Old Tupton (Pages 23 - 33)
- (c) NED/20/00166/OL - Land between Overton Lodge and Brookside Cottage, Fallgate, Milltown, Ashover (Pages 34 - 45)
- (d) Late Representations - Summary Update Report
To Follow

5 Appeals Lodged and Determined (Pages 46 - 49)

6 Planning Enforcement Plan (Pages 50 - 61)

Report of the Assistant Director of Planning

7 Matters of Urgency

To consider any other matter which the Chair is of the opinion should be considered as a matter of urgency.



North East
Derbyshire
District Council

***We speak
your language***

Polish

Mówimy Twoim językiem

French

Nous parlons votre langue

Spanish

***Hablamos su
idioma***

Slovak

***Rozprávame Vaším
jazykom***

Chinese

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PLANNING COMMITTEE

MINUTES OF MEETING HELD ON TUESDAY, 25 AUGUST 2020

Present:

Councillor Jayne Barry – Vice-Chair (in the Chair)

Councillor Andrew Cooper
Councillor Carol Huckerby
Councillor Alan Powell
Councillor Kathy Rouse
Councillor Pat Antcliff
Councillor Lee Hartshorne

Councillor William Armitage
Councillor Mark Foster
Councillor Maureen Potts
Councillor Jacqueline Ridgway
Councillor Ross Shipman
Councillor Roger Hall

Also Present:

A Kirkham	Planning Manager - Development Management
G Cooper	Senior Planning Officer
J Fieldsend	Legal Team Manager (non contentious)
A Maher	Senior Governance Officer
D Stanton	Governance Officer
M E Derbyshire	Members ICT & Training Officer
A Bryan	PA to Cabinet and Civic Officer

PLA/ Apologies for Absence and Substitutions **20/2**

0-21 Apologies were received from Councillors P Elliott, T Reader and D Ruff. Councillors R Hall, L Hartshorne and P Antcliff substituted respectively.

PLA/ Declarations of Interest **21/2**

0-21 No declarations of interest were received.

PLA/ Minutes of the meetings held on 28 July at 10am and at 2pm **22/2**

0-21 The minutes of the special Planning Committee held at 10am on Monday 28 July 2020, were approved as a true record.

The minutes of the Planning Committee held at 2pm on Monday 28 July 2020 were approved as a true record.

PLA/ NED/19/01174FL - Fleur De Lys Hotel, Main Road, Unstone, Dronfield S18 4AB **23/2**

0-21a The report to Committee explained that an application had been submitted for the erection of a two storey building, comprising four 2 bedroom flats, with parking for six cars and associated landscaping, all within the curtilage of the former public house, Fleur De Lys Hotel, Main Road, Unstone, Dronfield S18 4A for Crispfine Limited Nick Stoddard and Daly.

The application had been referred to Committee by the ward Member, who had raised concerns about it.

One Objector, Councillor A. Dale the Ward Councillor spoke against the application. No one spoke in support of the application.

Committee considered the application. In particular, it took into account the relevant Planning issues in reaching its determination on the application. These included the potential impact on the Greenbelt, its location outside the Settlement Development Limits and whether it would have an impact on the countryside and character of the area. Committee also considered the possible impact on neighbouring properties, drainage and the proposed access to parking.

Members discussed the application. In particular, they heard of concerns that had been raised about the possible environmental impact of the development including the risk of surface water affecting neighbouring properties. They also discussed the location of the proposed development within the Greenbelt and concerns about the potential road safety implications of the development, especially if it resulted in greater on-street parking.

RESOLVED -

(a) That the application be rejected, contrary to officer recommendations.

(b) That the ground for rejection focus on the following grounds:

1. The application is considered unacceptable, as by reason of its location on the site close to the highway, the proposed building would cause substantial harm to the openness of this Green Belt location. It would therefore represent inappropriate development which is, by definition, harmful and which should not be approved except in very special circumstances. In this case, the provision of affordable housing is not considered to represent very special circumstances to override the substantial harm that would be caused. As such, the proposal would be contrary to policies GS2 and H9 of the North East Derbyshire Local Plan, policies SS10 and LC3 of the North East Derbyshire Local Plan (2014-2034) Publication Draft and the National Planning Policy Framework when read as a whole.
2. The application is considered unacceptable as the level of car parking, when taken cumulatively with that catering for the approved scheme for the conversion of the Fleur de Lys building itself, is insufficient to cater for demand for such a facility and would result in parking being displaced onto the public highway. This would have an unacceptable impact on highway safety contrary to the National Planning Policy Framework when read as whole.
3. The application is considered unacceptable as the proposed building would be located only 3 metres from the culvert that passes through the site. This minimal distance is considered insufficient to ensure the ongoing and proper operation of the culvert and so compromise the surface water drainage of the site and surrounding land. As such, it is considered

contrary to policy CSU4 of North East Derbyshire Local Plan and the National Planning Policy Framework when read as whole.

PLA/ 24/2 0-21 **NED/20/00376/TPO - 156 Holymoore Road, Holymoorside, Chesterfield S42 7DS**

The report to Committee explained that an application had been submitted to fell 2 Ash trees and 1 Sycamore tree covered by North East Derbyshire Tree Protection Order (TPO) No.57 at 156 Holymoore Road, Holymoorside, S42 7DS for Trevor Coates.

The application had been referred to the Committee by a local Ward Member, who had requested that the application be decided by Planning Committee, so that it could assess the amenity value of the trees on site.

Four objectors spoke against the application.

The Agent for the application spoke in support of it.

No supporters spoke in favour of the application.

Committee considered the application. In this context, it took into account the relevant Planning issue in reaching its determination on the application. These included the existing and emerging Local Plan requirement that suitable replacements should be planted when trees are lost to development and the impact of the public amenity value of the group of trees covered by this Tree Protection Order.

Committee discussed the application. In particular, it discussed the health of the three specified trees, whether with appropriate action some of them could be saved and what size any replacement trees might be. Members also discussed the role of the Planning Authority and the future maintenance arrangements for those trees covered by the order.

RESOLVED -

- (a) That in line with officer recommendations permission be granted to remove the tree designated as T1, suffering from Ash Die Back, with a condition that a substantial tree be planted to replace it.
- (b) That permission not to remove the other two designated trees not be granted, contrary to officer recommendations.

PLA/ 25/2 0-21 **NED/18/01278/OL - Cottage Farm, Matlock Road, Wessington**

The report to Committee explained that an application for outline planning permission had been submitted for the conversion of existing car sales and storage buildings to create a farm shop, garden centre, restaurant and tearoom, erection of a holiday lodge complex with reception facilities, construction of a new access (Major Development) at land surrounding Cottage Farm, Matlock Road, Wessington for Wessington Park Developments Ltd, Matlock Road, Wessington, c/o the Agent.

The report explained that officers considered the scale and character of the development, together with the degree of public interest, was such that Committee determination on the application would be appropriate.

Eight objectors spoke against the application, including Councillor Charlotte Cupit as a ward Member.

One supporter spoke in favour of the application.

Members were directed to the recent late comments report, which had been issued the afternoon prior to the meeting.

Committee considered the application. It took into account the relevant planning issues in reaching its determination on the application. These included the location of the application site outside of the Settlement Development Limits, the impact on the landscape, character and appearance of the area and its layout and detail. The Committee also considered the potential implications for road safety and the impact on the ecology of the area.

Members discussed the application. In particular, Members discussed the scale of the proposed development and its intrusion into the countryside. Concern was also raised about the possible environmental impact, the sustainability of the proposed development and whether any harm would be offset by possible benefits. As part of this, Members heard the concerns that had been raised about the development and the support for it which had been expressed.

RESOLVED -

(a) That the application be refused, contrary to officer recommendations

(b) That the reasons for refusal focus on the following grounds:

The application site is located in the countryside. The application is considered unacceptable as its scale and character is not considered compatible with the proposed location, it would result in a prominent intrusion into, and not be in keeping with, the countryside and fail to conserve, protect and enhance the natural environment. As such, it is contrary to policies GS1, GS6 and NE1 of the North East Derbyshire Local Plan, policies 1, 2, 3 and 8 of the Wessington and the National Planning Policy Framework when read as whole.

PLA/ Appeals - Lodged and Determined

26/2

0-21

No appeals had been lodged, allowed or withdrawn.

The following appeals had been dismissed:-

Mr T Brooks – Application for prior approval for the change of use of an existing agricultural barn to two dwellings (Resubmission of 16/01049/CUPDMB) at Bacons Springs Farm, Mill Lane, Clay Cross (19/01117/CUPDMB)

Mrs Denise Greenhough – Application for the construction of a new dwelling (revised scheme of 18/00848/FL) at 24 Caldey Road, Dronfield (19/00764/FL)

PLA/ **Matters of Urgency**
27/2
0-21 None.

PLANNING COMMITTEE – 22 September 2020

REFERENCE NUMBER: 20/00349/OL

Application Expiry Date:
25.09.2020

Application Type:

Outline application (all matters reserved)

Proposal Description:

Outline application with all matters reserved except for access, layout and scale for single storey sectional detached Log Cabin within existing equestrian facility for holiday let accommodation (Private Drainage System)

At:

Land at the Northern Junction of Hillhouses Lane and New Road, Wingerworth

For:

Mr John Cocker

Third Party Reps:

Parish:

Wingerworth Parish Council

Ward Name:

Wingerworth

Author of Report: Emily Cartwright

Date of Report: 04 September 2020

MAIN RECOMMENDATION: CONDITIONALLY APPROVE



1.0 Reason for Report

- 1.1 Local ward member Councillor Antcliff has formally requested that it be considered by members of planning committee due to concerns relating to safety of road users and the school children. There are a lot of problems currently with the volume of traffic and parking, and would not wish that risk to be increased.

2.0 Proposal and Background

Site Description

- 2.1 The application site forms land to the west of New Road and north of Hill Houses Lane.
- 2.2 The site is surrounded on all sides by mature and substantial field boundaries, and benefits from an existing access point set back and taken from New Road opposite Wingerworth Village Hall. Open fields bound the site to the north and west.
- 2.3 The site comprises an existing private equestrian facility, featuring a timber 'N' shaped stabling block to the centre, a ménage to the western part of the site and associated grazing land.
- 2.4 The land slopes in a south westerly direction away from, New Road and down Hillhouses Lane, the difference in levels from New Road to the bottom of this field is approximately 10m.
- 2.5 The site is located outside the settlement limits for Wingerworth, in open countryside but is not located with Green Belt.

Proposal

- 2.6 Outline permission, with matters relating to access, layout and scale is sought for a single storey sectional detached log cabin within existing equestrian facility for holiday let accommodation, indicative layout plan and drawings are included.
- 2.7 The indicative layout shows one detached two bedroom log cabin accessed from the west of New Road. Positioned to the north west of the access, with two parking spaces.
- 2.8 The application is accompanied by a Design and Access Statement

3.0 Relevant Planning History

- 3.1 03/01186/OL – Outline application (details of siting and access submitted) for the creation of new vehicular access, and construction of hay barn and stable block comprising 8 loose boxes, tack and food stores (REFUSED)
- 3.2 06/00873/FL – Application for erection of timber stable block and manege for private use including a new vehicular access and ancillary works (Amended Plans) (APPEAL ALLOWED)
- 3.3 08/00753/FL – Resubmission application of an amended scheme of 06/00873/FL for the erection of a timber stable block, tack and feed store along with manege, new access and works (CONDITIONALLY APPROVED)

4.0 Consultation Responses

- 4.1 The **Parish Council** submits an objection and would ask Planning Department what assurances they can provide, that if approved, this property will remain as a holiday let and not be approved as residential in future applications? The Council would also like to raise concerns that if approved, this could lead to further development on this site, or in neighboring locations, which would impact residents living in the area. We would also support DCC Highway comments regarding the surface for the approach/driveway and request that these are included as a condition.
- 4.2 County **Highways Authority** raise no highway concerns, as it is considered the existing access would be acceptable to accommodate the increase in perceived traffic movements associated with a single holiday let use subject to inclusion of conditions.
- 4.3 The **Councils Environmental Health Officer (EHO)** raised comments regarding the farming/equestrian history of the site. As no supporting information has been submitted with the application in relation to potential land contamination, EHO request pre-commencement conditions are attached to any decision to ensure the site is suitable for its proposed use in accordance with paragraphs 178 of the National Planning Policy Framework (NPPF) 2019. EHO also raised comments relating to noise and odours and assume that the use of the holiday let will in some way be linked to the equestrian activities taking place or at least would assume that guests will be explicitly informed of the nature of the land in which the use sits so as to avoid concerns being raised by guests about potential noise and odour issues from these otherwise incompatible uses. EHO would have serious concerns if the ownership of the equestrian use was not the same as the holiday lets as the linked ownership necessitate good controls to ensure their compatibility.

4.4 **NEDDC Drainage** were consulted, however no comments have been received

4.5 **Yorkshire Water** were consulted, however no comments have been received

5.0 Representations

5.1 The application was publicised by way of neighbour letters and the display of a site notice – A number of material objections have been received from three letters of representations which can be summarised as follows:

- The application is outside the Wingerworth housing development plan and there is no need to develop on this side of New Road
- The lodge will be situated in a previously green field with amply wildlife
- The lodge is very large at almost 20m long by 6.5m which is bigger than most detached properties
- The field already has horse stables and a ménage built into which makes the site unsuitable due to smell and safety as the access will be shared
- The site is situated on steep gradient making access difficult at times
- If permission is granted then it is likely that it will open the door for further development in the surrounding area
- Is there any need for this development as within a 10minute drive there is Ernest's Retreat Glamping site, Slate House Farm glamping, Hazlehurst Lodges, Peak Edge Hotel and Darwin Forest lodges
- If permission is granted then if the lodge is no longer required as a holiday let then it should be removed and no further development allowed
- The exit is next to a bus stop, and close to a busy road junction this could be an accident blackspot

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan (Adopted November 2005)

6.1 The following policies of the Local Plan are material to the determination of this application:

- GS1 Sustainable Development
- GS6 Open Countryside
- H12 Design and Layout of New Housing
- E11 Tourism Accommodation
- NE1 Landscape Character
- BE1 General Design Principles
- T2 Highway Access and the Impact of New Development

T9 Car Parking
CSU4 Surface and Foul Water Drainage
CSU6 Contamination Land

Emerging North East Derbyshire Local Plan (Under Examination)

- 6.2 The Draft Local Plan (DLP) was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18 February and 21 March, 2019. Following local elections in May 2019, the Council paused the Plan, pending consideration of its options around housing numbers and Green Belt release. On 27 February, 2020 the Council announced the un-pausing of the Plan to allow it to proceed to the next stage of consultation on the Main Modifications. It is expected that this consultation will take place in the autumn with Plan adoption by the end of 2020.
- 6.3 The emerging Local Plan is therefore at an advanced stage and should be attributed appropriate weight in decision making.
- 6.4 The following emerging Local Plan policies are material to the determination of this application:

SS1	Sustainable Development
SS9	Development in the Countryside
WC7	Tourist Accommodation in the Countryside
SDC3	Landscape Character
SDC11	Flood Risk and Drainage
SDC12	High Quality Design and Place Making
SDC14	Land potentially affected by Contamination or Instability

Wingerworth Neighborhood Plan

- 6.5 The Wingerworth Neighborhood Plan (WNP) was adopted in July 2018. The following policies should carry weight in any decision:

W2	Development in the Countryside
W12	Design Principles
W15	Important Views and Vistas
W17	Highway Safety

National Planning Policy Framework (NPPF)

- 6.6 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application. The main sections are covered in the assessment below.

Other Material Planning Considerations

- 6.7 Successful Places Interim Planning Guidance, adopted December 2013.

7.0 Planning Issues

Principle of Development

- 7.1 The proposed site is located outside of any defined Settlement Development Limit (SDL), falling within a countryside location.
- 7.2 Local Plan Policy GS1 states that all development proposal will be located within the defined SDL's, unless the development is acceptable in the countryside, or overriding exceptional circumstances are demonstrated. The purpose of the SDL's is to restrain development in the countryside and to focus development upon sites within the SDL's and/or allocated sites to achieve a sustainable pattern of development.
- 7.3 Policy GS6 states that new development will only be supported where it is in keeping with the character of the countryside and should not represent a prominent intrusion into the countryside.
- 7.4 Policy E11 states that proposals for new tourist accommodation in countryside locations will be permitted where they involve the re-use and conversion of existing buildings or extension of existing tourist facilities only.
- 7.5 The saved Policies were formulated based on SDLs that were drawn up with the intention to address development needs up to 2011. The policies are more restrictive in their terms than the policies in the NPPF. As such, they are considered out of date and are therefore given significantly reduced weight.
- 7.6 The Council is now at an advanced stage in the production of a new Local Plan which reflects national guidance in the NPPF and provides for the development needs of the district for the period 2014 – 2034. The Plan was submitted to the Secretary of State for examination at the end of May 2018. This document has been subject to extensive consultation and sets out clearly the Council's strategy for sustainable development and should be afforded weight in decision making.
- 7.7 Policies WC6 and WC7 of the Emerging Local Plan considers District wide visitor economy and tourist accommodation in the countryside. Proposals will be supported where they can demonstrate that a rural location is appropriate, is easily accessible, is appropriate to the site in terms of its

- scale, design or materials; and respects the character and appearance of the open countryside.
- 7.8 New visitor accommodation will be permitted where it is not used for permanent residential occupation and supports future business viability or is in accordance with countryside policies. New chalets, will be permitted where they are adequately screened all year round, laid out in a manner which would not adversely affect the character of the area, the materials and colour along with any infrastructure is appropriately designed to reduce the visual impact of the proposed development and does not significantly adversely affect the amenity of local residents.
- 7.9 The Wingerworth Neighbourhood Plan (WNP) carries full weight in the decision process. Policy W2 is relevant to the development as the policy states that outside the settlements limits of Wingerworth, it will be treated as open countryside. Policy W2 seeks to protect the countryside and only allows development which is appropriate in a rural location or supports thriving rural communities.
- 7.10 Paragraphs 83 and 84 of the National Planning Policy Framework (NPPF) states that decisions should enable the sustainable growth and expansion of all types of business in rural areas through well designed buildings and the development and diversification of land based businesses. The NPPF also states that it is important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads.
- 7.11 The NPPF also states that decisions should enable sustainable rural tourism developments which respect the character of the countryside. Paragraph 84 goes on to state that in rural areas it is important to ensure that development is sensitive to its surroundings and does not have an unacceptable impact on local roads.
- 7.12 In principle, holiday let accommodation on this site is acceptable

Landscape Considerations

- 7.13 The application site represents an existing equestrian facility to the west of New Road and north of Hillhouses Lane. The surrounding area is mixed; the eastern street scene of New Road comprises the built form edge of Wingerworth Village whilst the western element is open countryside which is rural in character.
- 7.14 The application site is made up of steeply sloping equestrian land, featuring a ménage at the lowest point, an 'N' shaped timber stable block to the center and a gravel access track leading up to the access point. All four boundaries comprise of mature hedgerow.

- 7.15 The layout plan illustrates that the proposed log cabin would be set back from the highway, behind the mature hedgerow facing out and engaging with the countryside. Sited to the north of the existing gravel track, the existing access would be used and two parking spaces would be provided. The contours of the site have been utilised to allow for the log cabin to be sited approximately 3-4m below the street scene level. Views of the log cabin from along New Road would be completely screened when travelling in a south to north and north to south direction.
- 7.16 When approaching the village along Hillhouses Lane, far reaching views of the site would be possible along PRoW 22 due to the land levels. It is considered, however, that the contained scale and low level height of the log cabin would ensure that it would be viewed in context with the existing stable block and against the backdrop of the Village Hall to the east. It is therefore, not considered that the proposed accommodation would represent an intrusion into the countryside.
- 7.17 In view of the above, it is considered that the proposed would be prominent from public viewpoints. Whilst detailed consideration of appearance and landscaping would be assessed at a subsequent "reserved matters" it is considered that the form and scale of the development set out in the layout plan and drawings are deemed acceptable, and it is considered that the site can accommodate the log cabin without harming the sites setting, the character of the countryside and the wider landscape.

Privacy and Amenity Considerations

- 7.18 The proposal is seeking outline consent (access, layout and scale not reserved) for the construction of one log cabin for holiday let accommodation.
- 7.19 The layout plan indicates that the log cabin would be sited approximately 50m away from the closest neighbouring property, providing an acceptable distance in terms of overlooking and loss of privacy.
- 7.20 It is noted that the existing use of the land is equestrian and the proposed log cabin would be sited approximately 12m from the stable block on site. Environmental Health have raised concerns relating to potential noise, odour and flies linked to the equestrian activities if the ownership of the equestrian use was not the same as the holiday lets. It is confirmed that the proposed holiday accommodation is in the same ownership as the equestrian use, as such it is possible to control the compatibility of both uses. This can be controlled by way of an appropriately worded condition attached to any decision.

- 7.21 In view of the above, it is considered that a single log cabin could be satisfactorily accommodated within the site without giving rise to any loss of privacy and amenity to neighbouring residents.

Highway Safety Considerations

- 7.22 The proposal is for a single detached log cabin, with matters relating to access under consideration.
- 7.23 The layout plan demonstrates that the existing access off New Road would be utilised, and two parking spaces would be provided for the two bedroom holiday let accommodation.
- 7.24 The County Highways Authority was consulted on the proposal and considered the development acceptable in highway terms providing highway safety conditions are included on any decision issued.
- 7.25 In view of the above, it is not considered that the proposed development would lead to a demonstrable harm to highway safety.

Other Considerations

- 7.26 The application site is within Flood Zone 1, which has a low probability of flooding.
- 7.27 Yorkshire Water Authority and the Council's Drainage Engineers raised no comments to the proposal. However, if permission is to be granted it is considered that conditions relating to foul and surface water drainage could be included in any decision notice.
- 7.28 The Council's Environmental Health Team was consulted and raised comments due to farming/equestrian history of the site. Conditions should be attached to any decision requiring any land contamination to be dealt with.
- 7.29 The application site lies within a Development Low Risk Area as defined by the Coal Authority.

8.0 Summary and Conclusion

- 8.1 Having taken into account all the material considerations, it is considered that the proposed development is acceptable in principle and would have an acceptable impact upon the character of the countryside.
- 8.2 The proposed development would not result in an adverse detrimental impact upon the privacy and amenity of nearby residential properties or neighbouring land uses, nor would it lead to an adverse impact upon highway safety.
- 8.3 It is therefore considered that the proposed development would be in line with the emerging local plan policies of the Council and the overarching aims of the NPPF, therefore the proposal should be granted subject to conditions safeguarding the character and appearance of the building and highway safety.

9.0 Recommendation

9.1 APPROVE Permission for the following reason:-

- 1. Applications for approval of reserved matters are required before development can start and shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be started within two years from the date of approval of the last of the reserved matters to be approved.
- 2. Approval of the details of the appearance of the building and the landscaping of the site shall be obtained from the Local Planning Authority in writing before any development is started.
- 3. The site shall be developed with one log cabin only
- 4. The scheme submitted as part of the reserved matters shall include details of the existing grounds levels, proposed finished floor levels of the log cabin and the proposed finished ground levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
- 5. Before development starts, a scheme for the provision of foul and surface water drainage works shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full before the development is brought into use and shall be retained as such thereafter.

6. Before developments, a plan to show the positions, design, materials, height and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be complete before the first occupation of the dwelling and shall be retained as approved thereafter.
7. Before any other operations are commenced, space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.
8. The proposed holiday let shall not be taken into use until space has been provided within the site in accordance with the application drawing for 3 No. cars to park (spaces of minimum dimensions 2.4m x 5.5m clear of any shared/manoeuvring area) and for vehicles to turn so that they may enter and leave the site in a forward gear.
9. There shall be no gates or other barriers forward of that already existing on the access and any gates shall open inwards only, unless otherwise agreed, in writing, by the Local Planning Authority.
10. Before the commencement of the development hereby approved:
 - a) A Phase I land contamination assessment (desk-study) shall be undertaken and approved in writing by the local planning authority.
 - b) The land contamination assessment shall include a desk-study with details of the history of the site use including:
 - the likely presence of potentially hazardous materials and substances,
 - their likely nature, extent and scale,
 - whether or not they originated from the site,
 - a conceptual model of pollutant-receptor linkages,
 - an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments,
 - details of a site investigation strategy (if potential contamination is identified) to effectively characterise the site based on the relevant information

discovered by the desk study and justification for the use or not of appropriate guidance. The site investigation strategy shall, where necessary, include relevant soil, ground gas, surface and groundwater sampling/monitoring as identified by the desk-study strategy

The site investigation shall be carried out by a competent person in accordance with the current U.K. requirements for sampling and analysis. A report of the site investigation shall be submitted to the local planning authority for approval.

11. Before the commencement of the development hereby approved:

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to CLR 11 and other relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

12. The dwelling hereby approved shall not be occupied until:

- a) The approved remediation works required by 11 above have been carried out in full in compliance with the approved methodology and best practice.
- b) If during the construction and/or demolition works associated with the development hereby approved any suspected areas of contamination are discovered, which have not previously been identified, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in 10b to 11 above and satisfy 12a above.
- c) Upon completion of the remediation works required by 11 and 12a above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved

remediation standard, together with the necessary waste management documentation shall be included.

13. Notwithstanding the provisions of Part C, Class C3 "Dwelling House" to the Schedule of the Town and Country Planning (Use Classes) Order 1987, (or any Order revoking or re-enacting that Order), the premises shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order, without the prior written permission of the Local Planning Authority.

The property shall not be occupied by any persons for a total period exceeding 28 days in any calendar year.

The owner shall maintain a register of occupiers for each calendar year including names, addresses and length of stay, and a copy of the register shall be supplied to the Local Planning Authority by 31st January each year

Sign off
Relevant Officer and title

PLANNING COMMITTEE – 8 June 2019

REFERENCE NUMBER: 20/00506/TPO Application Expiry Date: 31.08.2020
Application Type: Application for Tree Works

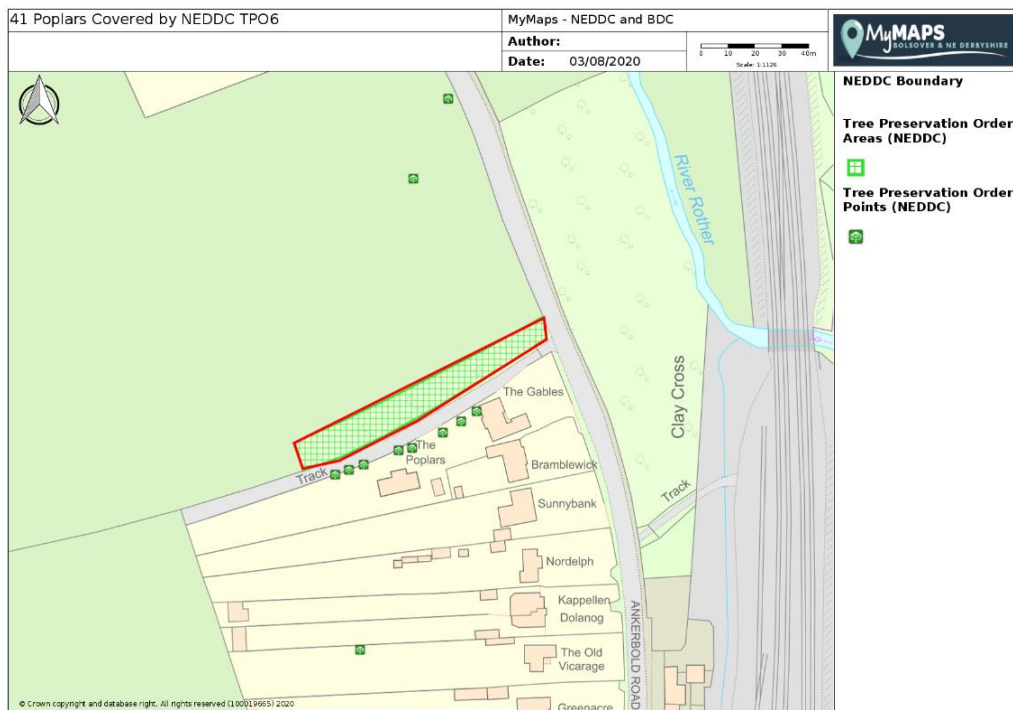
Proposal Description: Application for the removal of 41 poplars covered by TPO number 6 in various stages of decline, with previous failures. Risk now associated with these trees re-evaluated as high, in proximity to development and with only a short viable life expectancy. (Amended Plans)

At: Land To The North And West Of The Poplars
 Ankerbold Road
 Old Tupton

For: Mr Edward Chandler - TEP Ltd
Third Party Reps: 2 **Parish:** Tupton Parish Council
Ward Name: Tupton Ward

Author of Report: Case Officer Alice Lockett **Date of Report:** 3 August 2020
 Alice Lockett

MAIN RECOMMENDATION: GRANT



1.0 Reason for Report

- 1.1 Objections have been received from two members of the public, the parish council and three ward members. Cllr David Hancock has called the application into Committee on the grounds that there are too many inconsistencies and potential environmental harm resulting from this application that needs to be assessed by the Planning Committee.

2.0 Proposal and Background

- 2.1 This proposal is for the felling of 41 Poplar trees protected under NEDDC TPO 6. The Poplar trees are located on the land to the North and West of “The Poplars” on Ankerbold Road, the site has permission for 193 dwellings. Works have recently begun.
- 2.2 It is proposed that the 41 Poplars will be replaced with 14 trees of a variety of native species
- 2.3 No EIA or screening opinion is required.

3.0 Relevant Planning History

- 3.1 Planning Permission was granted in 2018 for the erection of 193 dwellings and associated infrastructure (18/000056/FL)
- 3.2 In May 2020 an application was submitted to fell the trees in stages over 5 years (20/00419/TPO). This was withdrawn and the current application which supersedes it applies for permission for all the trees to be felled and replaced at one time.

4.0 Consultation Responses

- 4.1 Tupton Parish Council Comments:
Members discussed the application and it was Proposed, Seconded and unanimously resolved
- To object to this application
 - To oppose this proposal on the basis of its immense environmental impact on this site and the surrounding area
 - To receive confirmation of an independent report on the condition of the trees which sets out evidence of the life expectancy of each of the 41 poplars – the application has been submitted by a tree surgeon, a justification for felling was submitted by email on 31 July 2020 (see section 2.3 above)

- If the application is approved a condition be placed on the application for the replacement of all the trees, or more, like for like (This is dealt with in section 7 below)
- To raise extreme concerns about the contribution of this proposal to an already big issue of local flooding. This area has been suffering severe flooding which had not been experienced before and appears to be associated with the tree removal and ground works already undertaken on this site. (This is dealt with in section 7 below)
- To enquire if NEDDC have a tree policy and, if so, how that policy has been applied in relation to this application (This is dealt with in section 7 below)
- If this application is approved to provide evidence on how the flooding problems caused by the removal of these and previous trees will be mitigated (This is dealt with in section 7 below)

4.2 Parks Department Comments

Parks Officers' comments as follows:

- From ground level the trees are in very poor condition and decline showing signs of stress, decay and some signs of canker. Any pruning works (pollarding) to try and regenerate new growth and maintain the poplars would be unsuccessful, in my opinion, and in time they may become dangerous to pedestrians and properties in the immediate vicinity.
- A large proportion of the trees have dead wood in the crown, ivy suffocating the growth which in turn is hiding cavities and restricting any growth and it is clearly evident that the decline has occurred since last pruning works. This could be due to a number of reasons for this poor ground conditions, disease or age of the trees etc.
- I would comment that if the application was approved for the removal of the 41 poplars then they are replaced with other indigenous species of trees and hedgerow. I would suggest oak, field maple, beech or rowan trees etc. to give more natural look and spaced to give the new trees a chance to grow in its natural form.
- I would also suggest planting and filling in between the trees with natural hedgerow of hawthorn, blackthorn, hazel to create a haven for wildlife and also to create a future screen for properties in the surrounding area. I believe that the long term benefits of this would out way the loss of the poplar tress creating a natural habitat and biodiverse area.

In response to the planting scheme Parks Officers have no objections with the amount of trees suggested as this would give them the space to establish naturally and when become mature will potentially cause less problems to nearby properties.

5.0 Representations

5.1 Two of the **Local Ward Members** have objected to the felling of the trees highlighting concerns that:

- Scientific evidence of the condition of the trees had not been submitted (Officer comment: reasons for removal were submitted on 31st July 2020)
- A plan to replace the trees had not been submitted (Officer comment: A plan for replacement was submitted 31st July 2020)
- Removal is detrimental to the local environment and biodiversity (this is dealt with in section 7)
- The arboricultural report, undertaken by The Environment Partnership, in February 2017 and submitted along with the developer's application 18/00056/FL identified only ONE category U tree within influencing distance of the site. (Officer comment: This is dealt with in section 7 below)
- There is no mention of the impact on flooding. (Officer comment-the impact on flooding is a matter for the planning permission for the site not the TPO application)

5.2 Four letters of representation were received from **two objectors** with the following comments (in summary):

- The application to fell 41 poplar trees is in complete contrast to the previous application submitted just a month earlier for '**a phased removal and replacement process**' and to '**establish new trees beneath and around them**'. (Officer comment- this is dealt with in the reasons for removal and section 7 below)
- Screening from the new development properties to protect our privacy is imperative and by removing trees in the G10 group we believe this will significantly reduce our privacy. (Officer comment- this is dealt with in section 7 below)
- Replacement trees should be of mature stock (Officer comment- This is dealt with in section 7 below)
- The removal of trees will increase the risk of flooding(Officer comment-this is a matter for the planning permission for the site not the TPO application)
- TPO'd trees that are removed should be replaced like for like
- A reason for removal has not been submitted (Officer comment: reasons for removal were submitted on 31st July 2020)
- The trees provide important bird nesting habitat (this is dealt with in section 7 below)
- A number of concerns about the landscaping of the wider site (Officer comment: This application is in reference to the TPO'd trees only there is no scope within this permission to deal with the wider site.)

6.0 Relevant Policy and Strategic Context

- 6.1 The development Plan comprises the **North East Derbyshire Local Plan**. The policies applicable to this development are as follows:
NE7 Protection of trees and hedgerows

- 6.2 North East Derbyshire District Council Local Plan (2014-2034) Publication Draft (PD) North East Derbyshire District Council Local Plan (2014-2034) Publication Draft (PD) was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18 February and 21 March, 2019. Following local elections in May 2019, the Council paused the Plan, pending consideration of its options around housing numbers and Green Belt release. On 27 February, 2020 the Council announced the un-pausing of the Plan to allow it to proceed to the next stage of consultation on the Main Modifications. It is expected the Plan will achieve adoption in early 2021. The emerging Local Plan is therefore at an advanced stage and should be attributed appropriate weight accordingly in decision making.

The most relevant policies in respect of determining this application are as follows:

SDC2 Trees, Woodlands and Hedgerows

- 6.3 National Planning Policy Framework
The overarching aims of the National Planning Policy Framework (NPPF) are also material in the assessment of this application
- 6.4 The Town and Country Planning (Tree Preservation) (England) Regulations 2012
The above regulations and the purposes for the making of a Tree Preservation Order are material in the assessment of this application

7.0 Planning Issues

- 7.1 This is an application to fell 41 Poplars, covered by NEDDC TPO 6 (A1). This assessment will consider whether the application is acceptable in terms of the potential impact on the public amenity value of the group of trees protected by the above TPO and whether any identified harm can be offset by appropriate conditions.
- 7.2 Policy NE7 of the adopted Local Plan and the equivalent policy SDC2 of the emerging Local Plan require that where trees, woodland or hedgerows are lost to development, and this is considered to be acceptable, suitable replacement planting on site where it is practicable to do so, or off-site where not, will be required.

7.3 This application is proposed by the applicant because:

“The original planning approval demonstrated a pruning back and phased replacement approach to the G10 group. However, following site visits by the design team and our arboricultural consultants, it was noted that G10 is in poor quality and at risk of natural collapse. Following further research with North East Derbyshire Council’s Estate Team relating to access and ownership, a solution was arrived at to fell these trees and replace with similar to reinstate and improve the screening with the site and its context. Due to the change in approach to the scheme, the design team has submitted a TPO to amend the approach from the original planning application to design out risk and to improve and enhance the development.”

7.4 The 41 Poplars subject to this application are a group of trees (A1) located on the southern boundary of the site known as Land To The North And West Of The Poplars, Ankerbold Road. The trees are situated to the north of the hedge which runs between the site and the properties to the south; “The Poplars” and “The Gables”



Figure 1 Aerial photo showing the trees proposed for removal and neighbouring properties; The Gables and The Poplars.

7.5 The trees were made subject to Tree Preservation Order in 1980.

- 7.6 The Arboricultural Association publish a guide the life expectancy of common trees which suggest that most poplars have a life expectancy of 50-70 years. This is quoted in Forbes Laird Arboricultural Consultancy 2009 TEMPO Tree Evaluation Method for Preservation Orders p3

7.7 Impact on amenity



Figure 2 poplars as viewed from Ankerbold Road

The trees are visually prominent from Ankerbold Road to the north as shown above. This will be reduced by the new housing which has been granted permission on this part of the site. The trees are also prominent from the south but are obscured by the hedge which runs along the southern boundary of the site. The trees in this location have high public amenity value and make a positive contribution to the character of this part of Ankerbold Road.

7.8 Impact on neighbours

It is accepted that the poplar trees will go some way to screening the new homes from the neighbours at The Poplars and The Gables. However, the hedge along this boundary serve this purpose more effectively. The hedge is not covered by the TPO and is not subject to this application. The hedge is proposed to be retained as part of the approved landscaping scheme.

7.9 Reasons for removal

The 41 trees subject to this application are in very poor condition and in decline. They are showing signs of stress, decay and some signs of canker and there is a considerable amount of dead wood in their crowns. The tree survey submitted by the applicant which was carried out in November 2019 show the group of trees as Category C (low quality) and the applicant has taken this along with the condition of the trees to make the decision to apply to fell and replace rather than take a phased approach to management.

These trees are not outstanding specimens in their own right and that their age and condition suggest that they appear to be nearing the end of their lives. The Council's Parks Officer is in agreement with the condition assessment and is of the opinion that pruning (pollarding) would not be successful. He therefore raises no objections to the proposed felling of the trees.

It is accepted that the felling of these trees will have an impact on the visual amenity of the area however, this can be ameliorated with appropriate replacement planting which can be conditioned if consent is granted.

7.10 Impact on Biodiversity

In the short term there may be an impact on biodiversity during the works to remove the trees and the period during which the replacements are reaching maturity. This can be ameliorated by the work being carried out during the winter when birds are not nesting, a condition can be imposed to ensure that the trees are replaced in the next planting season after felling. Further the proposed mix of long lived native species should, in the long term, provide a more diverse variety of habitat which in turn should be more supportive of biodiversity than the present single species situation.

7.11 Proposed replacement trees

The plan and planting scheme details below show that in this case the replacement planting is for a reduced number of trees: 14. However the proposed replacement trees are a mixture of longer lived native species suitable for hedgerow edge habitat as exists here. The species chosen are those recommended by the Parks Officer. The proposed replacement species have a lower more spread out shape and therefore require more space between them. It is officer's opinion, supported by the Parks officer that replacement trees of this type and density will be appropriate for the area and that these trees will grow to be more attractive and longer lived than the poplars they will replace. In time they should grow to contribute to the biodiversity of the site by providing a variety of tree types and therefore habitats for birds and insects in particular.

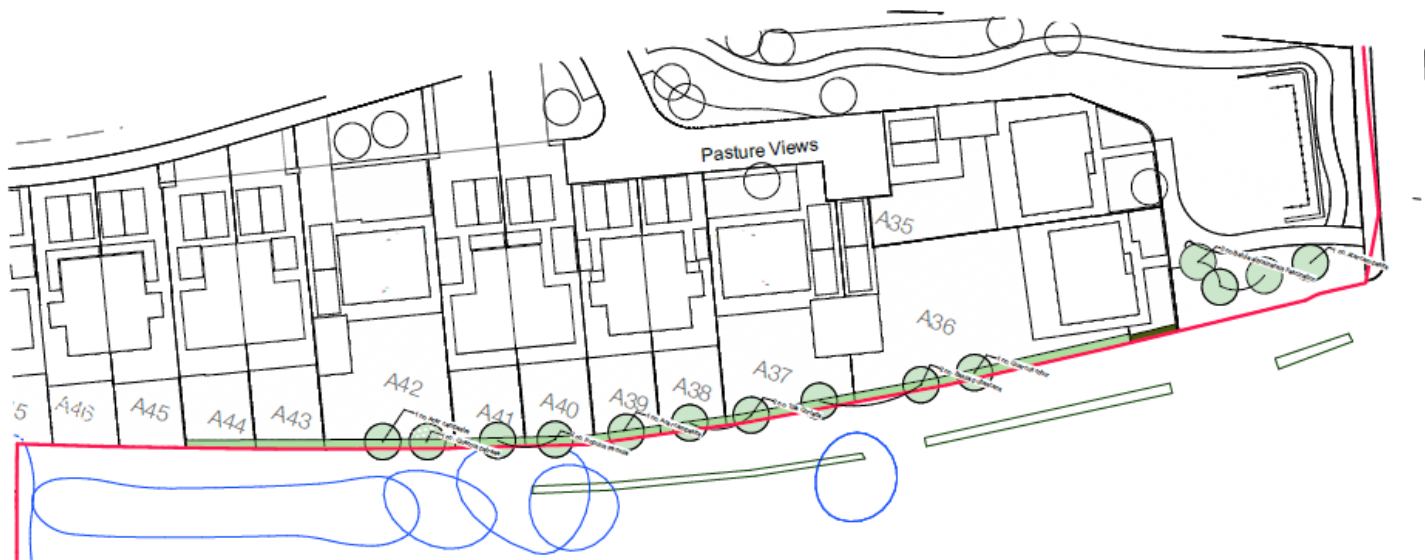


Figure 3 plan showing location of replacement trees (green circles)

PLANTING SCHEME DETAILS								
Client: Northwood - Location: Ankerbold Road								
Created by: Bond Bryan Architects - Landscape								
PLANTING SCHEDULE: Rev P01 - (22.07.20)								
Refer to dwg nos.: AKB-BBA-ZZ-ZZ-DR-L-1311 LANDSCAPE TREE REPLACEMENT PLANTING PLAN								
Name	Ctr m	No. /m ²	Girth/ Dia. cm	Height cm	Root zone	Container Size	Clear Stem	Quantity
Individually Planted Tree Species								
Field maple / <i>Acer campestre</i>			10-12	300-350	BR	Standard		3
Downy Birch / <i>Betula pubescens</i>			10-12	300-350	BR	Standard		2
Fascination			10-12	300-350	BR	Standard	200	3
Sessile oak / <i>Quercus petraea</i>			10-12	300-350	BR	Standard		1
Aspen / <i>Populus tremula</i>			10-12	300-350	BR	Standard		2
English Oak / <i>Quercus robur</i>			10-12	300-350	BR	Standard		1
Small Leaved Lime / <i>Tilia cordata</i>			10-12	300-400	BR	Standard		2

7.12 Age of replacement trees

The proposed replacement trees will be of a size and age which balances the best chance of survival to maturity against immediate impact on the site. The proposed replacement trees will be of a girth of 10-12cm and height of 3.0m-3.5m (4.0m in the case of the Small Leaved Lime)

- 7.13 In addition to the 14 replacement trees, the applicants propose management work to the boundary hedge which to increase its density and vitality. Whilst this is outside of the remit of the TPO this is a welcome addition to the replacement trees. In the case of an area TPO it is not possible to condition replacement trees outside of the area protected. The applicants have indicated that they intend to include a large amount of new tree planting throughout the site. These trees, along with the hedge management will be included in an application to vary the landscaping condition of the planning permission for the site which will be submitted if this TPO application is approved.

8.0 Summary and Conclusion

- 8.1 This application seeks permission for the removal of 41 Poplar trees protected by NEDDC TPO6 (A1). The trees in question are in poor condition and at the end of their natural lives. They do not contribute to the amenity of the area as they once did and will continue to deteriorate. The applicant proposes to replace the trees with 14 mixed native species which will grow to as size and shape which will fill the area protected. Replacement trees will remain protected under the TPO. The proposal provides an opportunity to replace trees which are in poor condition and at the end of their life with ones which should be longer lived, more attractive and which therefore have a more positive impact on the amenity of the area than those they are replacing. The proposal is therefore in keeping with Local Plan policy and the terms of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. It is recommended to approve for the felling of these trees with a condition requiring their replacement as proposed in the replanting plan.

9.0 Recommendation

- 9.1 GRANT Full Planning Permission subject to the following conditions

TPO completion of work

The work hereby granted consent shall be completed within two years from the date of this decision notice.

Reason – For clarity and the avoidance of doubt.

TPO Scheme for Replacement

The replacement tree(s) shall be planted in accordance with the approved scheme in the next planting season following the felling works.

Reason - In the interest of the appearance of the area and in accordance with Policy NE7 of the North East Derbyshire Local Plan.

Tree protection

The replacement trees shall be subject to the same protections afforded to existing trees as laid out in the landscaping details submitted to discharge condition 6 pursuant of 18/00056/FL. The means of protection shall be installed in accordance with the approved scheme before any other works commence on site and retained in position until all the building works hereby approved have been completed. The area within the fenced/protected area shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.

Reason - In the interest of the amenity of the area and in accordance with Policies NE7 of the North East Derbyshire Local Plan

9.2 Informatives

The applicant should note that in order to reduce the potential impact on nesting birds and to the benefit the health of the tree, the works should be carried out between October and February. It is an offence to kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs.

PLANNING COMMITTEE – 25 August 2020

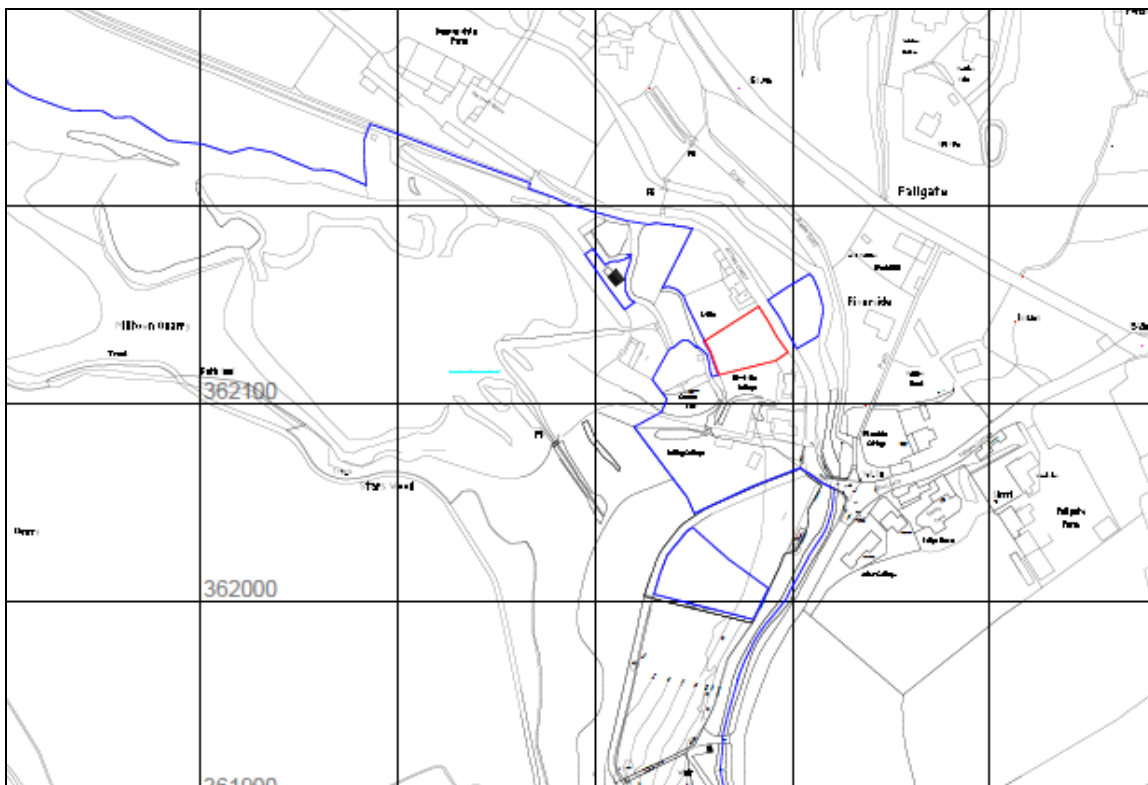
REFERENCE NUMBER: 20 / 00166 Application Expiry Date:
Application Type: Outline application (all matters reserved)

Proposal Description: Outline application (all matters reserved) for the erection of one detached dwelling (affecting setting of a listed building)
At: Land between Overton Lodge and Brookside Cottage, Fallgate, Milltown
For: Stenfold Resources Ltd

Third Party Reps: **Parish:** Ashover Parish Council
 Ward Name: Ashover

Author of Report: Emily Cartwright **Date of Report:** 10 August 2020

MAIN RECOMMENDATION: REFUSE



1.0 Reason for Report

- 1.1 Local ward member Councillor Armitage has formally requested that it be considered by members of planning committee because it is a pretty sensitive site and because we have already passed the rest of the sites. f

2.0 Proposal and Background

Site Description

- 2.1 The application site forms a plot of land which has been cleared to the south of Overton Lodge and the north side of Brookside Cottage. The site fronts onto Jetting Street to the east and the land slope up steeply to the west.
- 2.2 Jetting Street runs from Fallgate to the countryside to the north. A number of listed building lie in an elevated position on the hillside to the west, including Common Bank Cottage and Commonbank House. These properties are accessed via a steep track which leads from Jetting Street.
- 2.3 Jetting Street also doubles as a Public Right of Way (PRoW 60) and Bridleway (136). It is also the former route of the Stretton and Ashover Light Railways.
- 2.4 The River Amber lies to the eastern side of Jetting Street, with a footpath (PRoW 143) crossing the river further to the north of Fallgate. A small section of the eastern part of the application site sits within Flood Zone 2 and 3.
- 2.5 The site is located within open countryside which is designated as a Special Landscape Area. It also sited within Stars Wood and Milltown Quarry which a special designated Local Wildlife Site (NE300).

Proposal

- 2.6 Outline permission is sought for a detached house, with all matters reserved. An indicative layout plan is included.
- 2.7 The indicative layout shows one dwelling accessed off the west side of Jetting Street. Positioned centrally in the site frontage, with two parking spaces accessed at the southern end of the site.
- 2.8 The application is accompanied by a Planning Statement, Off- Site Biodiversity Enhancement Survey and Reptile Survey.

3.0 Relevant Planning History

- 3.1 03/00082/OL – Outline application (all matters reserved) for erection of single dwelling (REFUSED)
- 3.2 Beyond the site to the north-west there have been various planning permissions granted for new dwellings. These consist of a plot of land adjacent to the north west of Overton Lodge (18/00384/OL and 19/00910/RM) and a plot to the junction of Jetting Street and the land to Common Bank House (17/01359/OL).

4.0 Consultation Responses

- 4.1 The **Parish Council** and **Local Ward Member** raised no comments
- 4.2 County **Highways Authority** raise concerns relating to the emerging visibility sightlines for the parking area. Whilst noting the outline nature of the application, the agent provided a revised indicative site plan was submitted to address the visibility issues and to demonstrate how the site can be developed. The HA have acknowledge that whilst Jetting Street is not ideal, the reasons are more inconvenience issues rather that safety issues and therefore raise no objection subject to suitably worded conditions.
- 4.3 The **Councils Environmental Health Officer** raised comments regarding the location of the site adjacent to a former quarry use and there are elevated concentrations of lead in soils associated with the underlying geology in this area there is the potential for land contamination to be present. As no supporting information has been submitted with the application in relation to potential land contamination we are requesting the following pre-commencement conditions to ensure the site is suitable for its proposed use in accordance with paragraph 178 of the National Planning Policy Framework (NPPF) 2019.
- 4.4 **Derbyshire Wildlife Trust** (DWT) reviewed the submitted preliminary ecological assessment, off site biodiversity enhancement plan and subsequent reptile survey. The details provided were considered to undertake best practice and the plan provides an acceptable basis for securing biodiversity enhancements, as such DWT raise no objections subject to suitably worded conditions.
- 4.5 The **Environment Agency** (EA) withdrew their initial objection on the grounds that the flood zones are misaligned and given the fact that the site lies at a level significantly above the river it is not considered to be at risk from flooding.

4.6 The **Lead Local Flood Authority** (LLFA) raised concerns on the basis that the site falls within flood zones 2 and 3. As confirmed by EA the site does fall within flood zones 2 and 3 due to mapping errors. Following discussions with the LLFA it was agreed that due to the outline nature of the application drainage issues can be satisfactorily addressed via site investigation and drainage scheme conditions.

4.7 **Severn Trent Water** were consulted, however no comments have been received

5.0 Representations

5.1 The application was publicised by way of neighbour letters and the display of a site notice

5.2 Three letters of representation have been received from two residents. Two of the letters raise concerns relating to a parcel of land on the opposite side of Jetting Street, which is outside of the applicants ownership. The third letter fully supports the recommendations made within the Off-site Biodiversity Enhancement Scheme report.

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan (Adopted November 2005)

6.1 The following policies of the Local Plan are material to the determination of this application:

- GS1 Sustainable Development
- GS6 Open Countryside
- H3 Housing Development Outside SDL
- H12 Design and Layout of New Housing
- NE1 Landscape Character
- NE2 Special Landscape Area
- NE3 Protecting and Managing Features of Importance to Wild Flora and Fauna
- NE7 Protection of Trees and Hedgerows
- BE1 General Design Principles
- BE9 Development in the Vicinity of a Listed Building
- T2 Highway Access and the Impact of New Development
- T9 Car Parking
- T5 Walking and Cycling
- CSU4 Surface and Foul Water Drainage
- CSU6 Contamination Land

Emerging North East Derbyshire Local Plan (Under Examination)

- 6.2 The emerging Local Plan (eLP) was submitted for examination in May 2018, with public hearings taking place in November/December 2018 and March 2019. The Inspector issued her interim findings in letters dated 18 February and 21 March, 2019. Following local elections in May 2019, the Council paused the Plan, pending consideration of its options around housing numbers and Green Belt release. On 27 February, 2020 the Council announced the un-pausing of the Plan to allow it to proceed to the next stage of consultation on the Main Modifications. It is expected that this consultation will take place in the autumn with Plan adoption by the end of 2020.
- 6.3 The emerging Local Plan is therefore at an advanced stage and should be attributed appropriate weight in decision making.
- 6.4 The following emerging Local Plan policies are material to the determination of this application:
- SS1 Sustainable Development
 - SS9 Development in the Countryside
 - SDC2 Trees, Woodlands and Hedgerows
 - SDC3 Landscape Character
 - SDC6 Development Affecting Listed Buildings
 - SDC11 Flood Risk and Drainage
 - SDC12 High Quality Design and Place Making
 - SDC14 Land potentially affected by Contamination or Instability

Ashover Neighborhood Plan

- 6.5 The Ashover Neighborhood Plan (ANP) was adopted on 9 February 2018. The following policies should carry weight in any decision:
- AP2 Development Proposals Outside SDL's
 - AP11 Design
 - AP13 Landscape Character
 - AP15 Important Trees and Hedgerows
 - AP16 Dry Stone Walls
 - AP19 Dark Skies

National Planning Policy Framework (NPPF)

- 6.6 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application. The main sections are covered in the assessment below.

Other Material Planning Considerations

- 6.7 Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that Local Planning Authorities have special regard to the desirability of preserving Listed Buildings including their setting.
- 6.8 Successful Places Interim Planning Guidance, adopted December 2013.

7.0 Planning Issues

Principle of Development

- 7.1 The proposed site is located outside of any defined Settlement Development Limit (SDL), falling within a countryside location, designated as a Special Landscape Area.
- 7.2 Local Plan Policy GS1 states that all development proposal will be located within the defined SDL's, unless the development is acceptable in the countryside, or overriding exceptional circumstances are demonstrated. The purpose of the SDL's is to restrain development in the countryside and to focus development upon sites within the SDL's and/or allocated sites to achieve a sustainable pattern of development. Unrestrained housing development is not considered acceptable development in the countryside. Policy GS6 states that new development will only be supported where it is in keeping with the character of the countryside and should not represent a prominent intrusion into the countryside.
- 7.3 Local Plan Policy H3 sets out the very limited circumstances in which proposals for housing may be permitted, such as the change of use of existing buildings, dwellings that are essential for the operation of an agricultural or other rural based use, replacement dwellings or affordable housing on rural exception sites. This proposal does not fall into any of these categories.
- 7.4 The saved Policies GS1, GS6 and H3 were formulated based on SDLs that were drawn up with the intention to address development needs up to 2011. The policies are more restrictive in their terms than the policies in the NPPF. As such, they are considered out of date in respect of how they limit housing development, and are therefore given significantly reduced weight.
- 7.5 The Council is now at an advanced stage in the production of a new Local Plan (eLP) which reflects national guidance in the NPPF and provides for the development needs of the district for the period 2014 – 2034. The Plan was submitted to the Secretary of State for examination at the end of May 2018. This document has been subject to extensive consultation and

- sets out clearly the Council's strategy for sustainable development and should be afforded weight in decision making. The emerging local plan retains the SDL's and the application site remains outside of the SDL for Ashover. Furthermore, the Ashover Neighbourhood Plan does not propose to extend the SDL around Fallgate, and the application site remains outside of any defined SDL.
- 7.6 The eLP policy SS9 and SDC3 seeks to safeguard the countryside from inappropriate development. It is noted that due to the position of the site located between two existing dwelling, it could be considered to be infill development. Policy SS8 of the eLP states that development will be restricted to limited infill development allocated by an adopted Neighborhood Plan. Fallgate is a level 4 settlement (very small village and hamlet with very limited sustainability). The Ashover Neighbourhood Plan does not include this site as an allocated infill site, and accordingly does not fall into this category.
- 7.7 The Ashover Parish Neighbourhood Plan (APNP) was made on 26th February 2018, and now carries full weight in the decision process. Policy AP2 is relevant to this development as the policy states that outside of the settlement limits of Ashover, Kelstedge and Littlemore it will be treated as open countryside. Policy AP2 seeks to protect the countryside and strictly control development, market housing is not one of the exceptions. The Neighbourhood Plan also contains a policy supporting windfall development (AP3) however it seeks to ensure that the development would be within the defined development limits of Ashover, Kelstedge and Littlemore. It is considered that the development proposal has no support from the Ashover Neighbourhood Plan.
- 7.8 The NPPF sets out that a general presumption in favour of sustainable development and that planning permission should be granted without delay where the development plan is absent, silent or relevant policies are out of date, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies within the NPPF when taken as a whole or specific policies in the Framework indicates development should be restricted. (paragraph 11).
- 7.9 The Council is in a position to demonstrate a 7 year housing supply and this position has generally been accepted by Planning Inspectors considering recent housing appeals. However, development proposal are to be assessed against the 3 dimensions of sustainable development (NPPF Paragraph 8) which relate to environmental, economic and social strands.

- 7.10 The construction of one dwelling would deliver short term benefits through the construction phase and some limited ongoing benefits as a result of the spending capabilities on one additional family to the area generally. However, one additional dwelling is not considered to make a significant contribution to the Council's housing land supply, and so should be afforded very limited weight in this case and it would offer little to enhancing or maintaining the vitality of Fallgate and Ashover due to its isolated location and distance to Ashover. Any occupant of a future dwelling would be more likely to visit more distant larger settlements.
- 7.11 The nearest bus stop is approximately 0.3 miles from the application site, close to the former Nettle Inn to the north east. This is however accessed via a narrow, predominantly unlit road, with only a short section benefiting from a footpath. Once reached, the bus service is very limited and it is highly likely that any new resident would drive to Ashover and further afield. The potential for travelling further afield by car to access employment, leisure and retail would be enhanced, particularly given the proximity and limited services in the immediate locality. Therefore, it is considered that the economic and social benefits arising from the proposed development would be limited.
- 7.12 In environmental terms, the steeply sloping application site has been cleared. As such, it is considered that the benefits relating to the construction of a new dwelling, would not outweigh the consequential environmental impacts resulting from reliance upon lengthy journeys made by private car for the majority of services and amenities.
- 7.13 In view of the above, the proposal is contrary to the aims and objectives if the development plan and the construction of a single dwelling in this location would not represent sustainable development, as such the principle of development is not acceptable in both Local and National Planning Policy terms.

Landscape Considerations

- 7.14 The application site represents greenfield land between two existing dwellings, which is designated as a Special Landscape Area. The surrounding area is rural in character, with traditional cottage style properties dotted along Jetting Street, with many open gaps helping to create this informal rural character.
- 7.15 The application site is made up of steeply sloping ground, which has been cleared apart from a handful of trees along the west and southern boundary.

- 7.16 The site immediately abuts and fronts onto Jetting Street. Views from the north would be screened by the neighbouring property, however the proposed dwelling would be visible when travelling along Jetting Street in a south to north direction. The proposed dwelling would be highly visible when approaching the site along Jetting Street. Whilst Jetting Street is relatively low trafficked by vehicles, the route is well used by ramblers and horse riders. Although the site is relatively well screened from far reaching views, it is considered that the localised impact of constructing a single detached dwelling in this location, close to a road and a public right of way would represent an obtrusive encroachment into the countryside, which would have a detrimental impact upon the character and appearance of the Special Landscape Area.
- 7.17 In view of the above, it is considered that the proposed development would materially detract from and be out of keeping with the special character of the area. Further to this, it would represent development that would fail to meet the environmental tests of sustainable development.

Impact on Setting of Listed Building

- 7.18 The statutory requirement of Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 makes it a statutory duty for local planning authorities to have special regard to the desirability of preserving listed buildings or their setting, with particular regard to the duty relating to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In considering whether to grant planning permission for development which affects a listed building or its setting, the Local Planning Authority (LPA) shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 7.19 Local Plan Policy BE9 states that development affecting the setting of a Listed building will only be permitted if it preserves or enhances its setting, and includes where appropriate the retention of trees and other landscaping features. Emerging Policy SDC9 also considers the impact of development on non-designated heritage assets.
- 7.20 The application site lies to the north west of the Grade II Listed Commonbank House, a mid C18 dwelling with C20 alterations constructed from limestone with gritstone dressing and a welsh slated roof. The nearest non designated heritage asset runs along Jetting Street to the north east and forms the line of the former Stretton and Ashover Light Railway.

- 7.21 Due to the changes in levels, it is unlikely that the proposed dwelling would read in the same context of the listed building. It is Officers opinion that the proposed dwelling would therefore preserve the setting of the nearby listed building and respect the character of nearby non-designated heritage assets.

Privacy and Amenity Considerations

- 7.22 The proposal is seeking outline consent with all matters reserved. The indicative layout indicates that the dwelling would be a detached two storey dwelling centrally sited within the site, providing acceptable distances from either neighbouring property.
- 7.23 In view of the above, it is considered that a single dwelling could be satisfactorily accommodated within the site without giving rise to any loss of privacy and amenity to neighbouring residents. Officers, would however raise concern as to the steeply sloping nature of the site and the lack of practical outdoor amenity space that could be provided for a family dwelling.

Highway Safety Considerations

- 7.24 The dwelling would be located along Jetting Street, which is a roughly surfaced highway which doubles as a bridleway. It serves a number of existing properties to the south, west and north.
- 7.25 The indicative layout illustrates a single point of access onto Jetting Street with a hard standing area to the south of the dwelling, made up of space for the parking of two vehicles.
- 7.26 The County Highways Authority was consulted on the proposal and considered the development acceptable in highway terms providing highway safety conditions are included on any decision issued.
- 7.27 In view of the above, it is not considered that the proposed development would lead to a demonstrable harm to highway safety.

Ecology and Biodiversity Considerations

- 7.28 The application site is made up of steeply sloping ground which has been cleared apart from a handful of trees along the western and southern boundary. The application is accompanied by a Preliminary Ecological Appraisal (PEA), produced by Armstrong Ecology and Mountains Ltd dated April 2020 and a Reptile Survey dated May 2020.
- 7.29 The application site falls within Stars Wood and Milltown Quarry which a special designated Local Wildlife Site (NE300).

- 7.30 DWT considered the submitted documents and concluded that the surveys were undertaken according to best practice and no reptiles were found on site. The off-site biodiversity enhancement are considered acceptable for securing biodiversity enhancements and that their implementation will off-set impacts elsewhere. The recommendations made in the PEA for the retention of trees, hedgerow and walls are supported.
- 7.31 It is considered that a sympathetically designed scheme, together with a sensitive scheme of on-site lighting and the implementation of ecological and biodiversity mitigation could be adequately addressed through suitably worded conditions on any decision issued. Therefore, it is not considered that the scheme should be refused on ecology grounds in this instance.

Other Considerations

- 7.32 The majority of the application site is within Flood Zone 1, however part of the site falls within Flood Zones 2 and 3. The EA have confirmed that due to mapping errors and the fact that the site lies at a level significantly above the river, risk of flooding is minimal. The Local Planning Authority and LLFD have agreed on site investigation and drainage scheme conditions to be included on any decision.
- 7.33 Severn Trent Water Authority and the Councils Drainage Engineers raised no comments to the proposal. However, if permission is to be granted it is considered that conditions relating to foul and surface water drainage could be included in any decision notice.
- 7.34 The Council's Environmental Health Team was consulted and raised comments due to the location of the former quarry use of the site adjacent. Conditions should be attached to any decision requiring any land contamination being dealt with.
- 7.35 The application site lies within a Development Low Risk Area as defined by the Coal Authority.

8.0 Summary and Conclusion

- 8.1 Having taken into account all the material consideration, it is considered that the proposed development would not accord with the three strands of sustainable development and it is therefore an unsustainable form of development.
- 8.2 The proposed dwelling would represent an obtrusive encroachment into the countryside that would have a detrimental impact upon the character and appearance of the Special Landscape Area.

- 8.3 A single dwelling would not impact on the setting of the nearby listed building, and would respect the character of nearby non-designated heritage assets.
- 8.4 Whilst a single dwelling could be accommodated within the site without giving rise to a loss of privacy and amenity to neighbouring residents, it would be positioned within a steeply sloping site, and there creating little practical outdoor amenity space expected for a family dwelling.
- 8.5 In ecological and biodiversity terms the proposal could be developed so that there would be a net biodiversity gain, subject to the inclusion of a number of conditions.
- 8.6 It is considered that the proposed development would not have a detrimental impact upon highway safety. Matters relating to land contamination and drainage could be addressed by suitably worded conditions.
- 8.7 As such it is considered that the proposed development should be refused.

9.0 Recommendation

- 9.1 REFUSE Permission for the following reason:-

The application proposes the construction of a single dwelling in a countryside location away from any defined Settlement Development Limit. No special circumstances have been submitted which would justify the construction of a market dwelling in what is considered to be an unsustainable location in the countryside. It is considered that any proposed dwelling would detract from the character and appearance of the Special Landscape Area and would appear as an incongruous addition in the street scene. Therefore, to grant permission would be contrary to Local Plan Policies GS1, NE1 and NE2 of the North East Derbyshire Local Plan, Policies AP2 and AP13 of the Ashover Neighbourhood Plan and the National Planning Policy Framework when read as a whole.

North East Derbyshire District Council

Planning Committee

22 September 2020

Planning Appeals Lodged and Determined

Report No PM/08/20-21/AK of the Planning Manager – Development Management

This report is public

Purpose of the Report

- To inform the Committee of the appeals lodged and determined.

1 Report Details

1.1 Appeals Lodged

Mr and Mrs Simpson- Demolition of existing garages / storage building and rebuilding to provide a residential bungalow to be occupied by family members at Acorn House, Far Lane, Barlow (19/00564/FL)

Planning Officer - Aspbury Planning Susan.Wraith@ne-derbyshire.gov.uk

Mr P Leicester - Application for determination of a high hedges complaint relating to conifers at 30 Knighton Street, Hephthorne Lane, North Wingfield (19/00789/HHC)

Planning Officer – Aspbury Planning - Katie.Spelman@ne-derbyshire.gov.uk

Mr J Cash - Construction of detached two storey two bed dwelling (revised scheme of 18/00251/OL) at The Angel Inn, 127 Rotherham Road, Killamarsh (20/00182/FL)

Planning Officer – Colin Wilson - Colin.Wilson@ne-derbyshire.gov.uk

1.2 Appeals Allowed

No Appeals have been allowed.

1.3 **Appeals Dismissed**

The following appeal has been dismissed:-

Mr Bowler – Conversion of garage with first floor extension over at Bonne Vienne, Staveley Road, Duckmanton (20/00073/FLH)

Means of Determination – Delegated

Planning Officer's Recommendation – Refuse

Planning Officer – Aspbury Planning – Kenneth.Huckle@ne-derbyshire.gov.uk

Mr and Mrs Corker– Application for American barn style stables and manege (revised scheme of 19/00325/FL) at Cowley Hall Farm, Cowley Lane, Holmesfield (19/01197/FL)

Means of Determination – Delegated

Planning Officer's Recommendation – Refuse

Planning Officer – Aspbury Planning – Susan.Wraith@ne-derbyshire.gov.uk

Mr Tyrone Henighan– Construction of ground and first floor extension to side and rear to provide new dwelling at 44 Church Lane, Calow (19/00878/FL)

Means of Determination – Delegated

Planning Officer's Recommendation – Refuse

Planning Officer – Aspbury Planning – Susan.Wraith@ne-derbyshire.gov.uk

Mr Clay – Approval of Reserved Matters (access, layout, scale, appearance and landscaping) for 3 dwellings pursuant to outline planning permission 15/01225/OL (Affecting a public right of way) at The Bungalow, Park Farm, Park Avenue, Holmesfield (19/00451/RM)

Means of Determination – Delegated

Planning Officer's Recommendation – Refuse

Planning Officer – Aspbury Planning – Susan.Wraith@ne-derbyshire.gov.uk

An appeal for costs was partially allowed.

1.4 Appeals Withdrawn

No appeals have been withdrawn

2 Conclusions and Reasons for Recommendation

2.1 N/a.

3 Consultation and Equality Impact

3.1 N/a.

4 Alternative Options and Reasons for Rejection

4.1 N/a.

5 Implications

5.1 Finance and Risk Implications

N/a.

5.2 Legal Implications including Data Protection

N/a.

5.3 Human Resources Implications

N/a.

6 Recommendations

6.1 N/a.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: BDC: <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> NEDDC: <i>Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Affected	All
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Katie Spelman	217172

North East Derbyshire District Council

Planning Committee

22nd September 2020

Planning Enforcement Plan

Report No PM/09/20-21/AK of the Assistant Director of Planning

This report is public.

Purpose of the Report

- To present the Planning Enforcement Plan to Planning Committee for approval.

1 Report Details

- 1.1 The text of the Planning Enforcement Plan (attached) sets out for the public what they can expect should they advise the Council of a suspected breach of planning control.
- 1.2 It outlines the national context to planning enforcement and stresses the importance that the Council gives to controlling and acting against unauthorised development. It then sets out how we will approach investigations, prioritisation of cases, gives a general outline to what can and cannot be investigated and the range of actions that could result.
- 1.3 It also sets out a framework for monitoring performance and workloads of the Planning Enforcement service area.
- 1.4 Planning Committee is responsible for Planning Enforcement. Cabinet has considered the Planning Enforcement Plan and recommends to Planning Committee that it approves and adopts it.

2 Conclusions and Reasons for Recommendation

- 2.1 The Plan sets out the national and local context for planning enforcement and what a member of the public can reasonably expect should they bring to our attention a suspected breach of planning control. Approval and publication of the Plan will give the public a better understanding of the often contentious area of the council's work and provide to all interested parties a service standard to expect and to work to.

3 Consultation and Equality Impact

- 3.1 No public consultation has been carried out nor is any consultation mandatory for such a Plan. The Plan is applicable across the whole district. Customer feedback will be evaluated as and when received and amendments given due consideration.

4 Alternative Options and Reasons for Rejection

- 4.1 It is not a legal requirement to have a Planning Enforcement Plan. However, not having one does not help the public or the many others who often have just periodic interest in enforcement cases to understand the context that the system works to and thereby manage their expectations.

5 Implications

5.1 Finance and Risk Implications

Approving this Plan does not have any direct financial implications. There is a risk in not being able to deliver the expectations that come from the plan if the service area is not sufficiently resourced. Recruitment of replacement and new Enforcement staff is current.

5.2 Legal Implications including Data Protection

There are legal and data protection implications relating to the operation of Planning Enforcement. These are referred to in the Plan. There are no legal or data protection implications in approving and publishing the Plan itself.

5.3 Human Resources Implications

There are no direct human resource implications in approving and publishing the Planning Enforcement Plan. Delivering the expectations of the Plan do raise HR implications. These are dealt with in a separate report presented to Cabinet.

6 Recommendations

- 6.1 That the Planning Enforcement Plan be approved and adopted.
- 6.2 That the Council Communications Team completes its production of a resident accessible version of the Plan and to then support a public communication campaign once agreed.
- 6.3 That any subsequent amendments required to the Plan that may be necessary as a result of customer feedback, legislative or regulatory changes before it is

formally reviewed in 2024 be agreed with the Chair of Planning Committee and the Planning Portfolio Holder.

7 Decision Information

Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	Not applicable
Links to Council Plan priorities or Policy Framework	Providing an effective planning service. Protect the character of our district

8 Document Information

Appendix No	Title
1	Planning Enforcement Plan 2020
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Richard Purcell - Assistant Director of Planning	7436

Introduction

If you have advised the Council that there is building work or a change of use that you suspect needs planning permission you will want to know what we will do to investigate it. This is a statement on our planning enforcement processes. It sets out the level of service you can expect.

National Context for Planning Enforcement

This Enforcement Plan is prepared under the requirements of the Town and Country Planning Act 1990, the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance note (NPPG).

A breach of planning control is the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

Development is defined as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

It is not a criminal offence to carry out development without planning permission. It is an offence not to comply with an Enforcement Notice. There are many different ways that the Council can tackle unauthorised development and other breaches of planning control. The National Planning Policy Framework states that enforcement action is discretionary and the Council should act in a proportionate way when responding to suspected breaches of planning control

This means a Council cannot justify taking formal enforcement action against minor breaches of planning control. In other cases a Council may take formal enforcement action to resolve evidenced breaches. Councils may seek a retrospective planning application to resolve a breach of planning control instead of taking action whilst in others they might determine not to take any further action.

The Ministry of Housing, Communities and Local Government Guidance on Enforcement and post-permission matters – Responding to suspected breaches of planning control, provides additional guidance on the powers available to councils nationally. It can be viewed here –

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

NEDDC Overview on Planning Enforcement

The Council recognises that effective planning enforcement is very important for many reasons.

- It tackles breaches of planning control that have an unacceptable adverse impact on the character and appearance of our district, or have an unacceptable adverse impact on the living conditions of our residents

- It maintains the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval, and,
- It maintains public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations are complied with.

Reporting a suspected breach to NEDDC

To report a suspected breach of planning control please contact us through one of the following contact points –

Email – enforcement@ne-derbyshire.gov.uk

Phone – 01246 217163

Post – Planning Department, NEDDC, Mill Lane 2013, Wingerworth, Derbyshire, S42 6NG

Please provide as much information as you can about the concerns you have including the location, the nature of the suspected breach, when you first noticed it, the harm it is creating and include any photographs of the site if you can. We also need your contact details so we can keep you informed at key stages of our investigation and discuss any additional information.

Personal data

We will only share your address and contact details with the Officers dealing with the case. If the case does not raise planning issues and should be dealt with by another department in the Council, we will share the details of the case with relevant Officers in that department. However, we will not share personal contact details with any external third parties without that person's consent.

We will not publish your personal contact details. We treat these in confidence because we recognise that many people will not have the confidence to report a suspected breach of planning control if their identity were to be made public.

For these reasons, the Council would not normally provide this information if we receive a request for it under the Freedom of Information Act or the Environmental Information Regulations. However, we may have to share your personal details with the police or the courts if, in very exceptional circumstances, the suspected breach of planning control amounted to a criminal offence subject to prosecution.

Matters outside the scope of NEDDC planning enforcement

Often we will be sent notice of a suspected breach that cannot be investigated by the Planning Enforcement Team. Regular examples include –

- Approved development – you can check this on the council website using the search page at <https://planapps-online.ne-derbyshire.gov.uk/online-applications/>

- Boundary or land ownership disputes – you might want to seek advice from your solicitor
- Damage to private property - you might want to seek advice from your solicitor
- Dangerous structures – this should be reported to Derbyshire Building Control Partnership who can be contacted on 0333 880 2000 or by email to info@dbcp.co.uk
- Fly tipping, light pollution, vermin, noise or odour nuisance – these should be reported to the Council's Environmental Health Department by telephoning 01246 231111 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk
- Any matters on Highway Land – these matters should be reported to the Highways Department at Derbyshire County Council by telephoning 01629 580000.
- Quarry or waste disposal sites – these should be raised with Derbyshire County Council on 01629 580000.

Investigation Priorities

To manage cases reported to us efficiently we have set the following case type priorities and aim to make initial investigations within timescales that reflect this.

High priority cases are cases where the harm being done is irreversible. These will be investigated within 24 hours of them being reported to us. Examples of high priority cases are unauthorised works to Listed Buildings and to protected trees and hedgerows.

Medium priority cases are those where there is clear harm to planning interests but that harm can be reversed if necessary. Investigation of these cases will be initiated within one week of them being reported to us. Examples of such cases include unauthorised development that conflicts with planning policy or significantly impacts on local amenity or public safety.

Lower priority cases will be those that cause lesser degrees of harm to a neighbourhood. Investigations of such cases will be initiated within two weeks of them being reported to us. Examples of such cases could include unauthorised changes of use, householder development or advertisements.

Initial Investigation

Investigation will be initiated with a desk based review of the allegation, checking our own records of authorised uses and development about the site. A site visit will be made to better understand the nature of the allegation and any other evidence gathered as appropriate. Once we have an understanding of the allegation and the next steps, we will contact you to check that we have correctly understood your concerns and to explain what we can do next.

Planning Interests

In the following paragraphs the term planning interests is used. These are the matters against which planning applications and enforcement cases are assessed. The list of planning interests is long, as too is the list of matters that are not planning interests and cannot be taken into account. Planning interests include (but not limited to) matters such as highway safety; appearance and character of an area; residential amenity; ecology and environment; Green Belt and the countryside; heritage issues.

Initial action

We will assess whether the breach of planning control creates a harm to planning interests. If there is we will attempt to persuade an owner or occupier of land to remedy the harmful effects. We will not allow discussions to unnecessarily delay formal action if required.

Minor or technical breaches of planning control

Enforcement action must always be proportionate with the breach of planning control to which it relates. Formal action will not be taken against minor or technical breaches of planning control that causes no harm to planning interests.

Granting unconditional planning permission for unauthorised development

Where development requiring permission has been, or is being, carried out without consent, an assessment will be made to establish if it is likely that unconditional planning permission would be granted. If planning permission is likely to be granted, we may invite the submission of an application for retrospective permission.

Where there is no specific planning objection to the development, further enforcement action will not, normally, be appropriate. The Council will advise an owner or occupier of land that difficulties may arise in the subsequent sale or disposal of that land if no planning permission has been granted.

Granting conditional planning permission for unauthorised development

Where development has been carried out without planning permission, and there is some planning harm that could be mitigated by imposing planning conditions, we may ask for a retrospective application to be submitted. The purpose of this would be to provide us with the opportunity to grant permission with the mitigating conditions attached. If no application is submitted, we may serve an Enforcement Notice to effect the granting of a conditional planning permission.

Unauthorised Changes of Use

Certain changes of use are allowed to take place without the need for planning permission. We must consider the changes against the latest versions of the Use Classes Order. These Orders identify what uses can change to other uses without the need for Planning Permission. Where a change of use has occurred but permission has not been granted, the harm caused by that change will be assessed and appropriate action taken.

Some businesses may be operated from home when the activities remain residential in character. However, if the impact of any home-business causes harm to planning interests, the owner will first be encouraged to re-locate to appropriate premises.

If a suitable site can be identified, a time limit may be agreed for relocation. An Enforcement Notice with a compliance period for relocation may be necessary. If a satisfactory solution or mitigation cannot be found and formal enforcement action is the only way to remove the harm, the appropriate action will be taken.

Unauthorised development is obviously causing harm and mitigation is unachievable.

Where we consider that a breach of planning control has taken place, is causing clear harm to planning interests and it is also clear that no mitigation measures are achievable to acceptably reduce that harm, no application will be invited and the land owner shall be asked to stop the activity or development. Failure to do so and clear evidence of the continued harm will lead to us serving an Enforcement Notice and any other measures as may be appropriate. Although we may not invite an application, if one is made we must give it due consideration and fair determination.

Variance from approved plans

Where development is carried out, but is not strictly in accord with the approved plans, an assessment will be carried out on the harm created by the variation.

Where the changes are minor and raise no changes in planning interests a non-material amendment application will be invited to regularise the difference. Whilst we do not condone unauthorised works being carried out, we do recognise that, in many instances, minor variations do not cause harm.

Where the change introduces new planning issues that need to be properly assessed a variation application will be invited. If no application is forthcoming an assessment of those planning issues will be carried out as best as possible and a decision taken on whether formal action is necessary.

Non-compliance with planning conditions

Where planning permission has been granted for development, subject to conditions, and those conditions have not been complied with, consideration will be given to an Enforcement Notice or a Breach of Condition Notice.

Monitoring building activity and compliance with conditions

Effective controls are necessary to make sure development is carried out in accordance with approved plans. Often non-compliance with conditions is drawn to our attention by people who live close to sites. When resources permit officers will routinely visit major application sites to monitor conditions. Normally any variance will be rectified after discussion with the developer. In all cases the extent of the harm to planning interests as a result of the variance will be the determinant of what action would be proportionate and appropriate.

Derelict or unsightly land or buildings

The condition of some buildings and land can cause harm to the appearance or residential amenity of an area. Consideration will be given to serving an untidy land notice. This will specify measures to remedy the condition of the land and the period for compliance.

Time Limitations

One criterion for determining whether formal action can be taken is whether the unauthorised harmful development or use remains within time to take action. For most developments this is four years from the date of completion. For most changes of use this is ten years from the use starting. However, if the change of use relates to a use for a house, the time limit for taking action is four years from its practical completion. Often when this matter is in question, applications for Certificates of Lawfulness are necessary. In assessing such applications we must review the legal evidence supporting the length of time and not the planning issues or adverse effects the development or use might be having.

Appeals

Some forms of formal notice like Enforcement Notices give rights of appeal to the recipient. Such appeals are heard by independent Planning Inspectors. Others, such as Breach of Condition Notices do not give rights of appeal. Appeals to Magistrates Courts are available against untidy land notices. You will be advised if a case you have drawn to our attention and leads to a formal notice that is the subject of an appeal.

Different types of formal action

There is a range of ways of tackling breaches of planning control. In each, the case officers and a senior planner will determine which of the options is both the most effective way of dealing with the breach and the most proportionate for securing a resolution. The Council's Solicitors are also involved in making these decisions in the more complex cases or where the implications of the action can have more significant consequences.

The following are some of the formal actions that could be taken. It must be understood that not all of these would be appropriate for all cases and that it is only a small minority of cases investigated that lead to one of these notices being appropriate.

Enforcement Notice

An Enforcement Notice will set out what the breach of planning regulation is, why we believe it necessary that a notice is served, the action needed to remedy the breach and a timescale for doing so. There is a right of appeal against an Enforcement Notice. The recipients have 28 days to appeal before the Notice will come into effect. Lodging an appeal defers the Notice coming into effect until the appeal has been decided.

Stop Notice

A Stop Notice can be served with an Enforcement Notice to prohibit any or all of the activities which comprise the alleged breaches continuing ahead of the deadline for compliance in that enforcement notice. A Stop Notice will specify an effective date and this must normally be no less than three days. The harm identified by the activity continuing must be specified. Where the associated Enforcement Notice is quashed, varied or withdrawn or the Stop Notice is withdrawn we may be liable for compensation in certain circumstances. Therefore we will not use Stop Notices unless there is exceptional demonstrable harm resulting from the activity identified and the cost and benefits have been assessed.

Temporary Stop Notice

A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately. A Temporary Stop Notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

The Council does not need to have served an enforcement notice before it issues a temporary stop notice. We may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety or to prevent serious or irreversible harm to the environment.

A temporary stop notice expires after 28 days. It allows us to assess and discuss with the recipient of the Notice what action is required within this period to deal with the breach and overcome the objections to it in an environmentally and legally acceptable way. The stopped activity can continue after 28 days unless an Enforcement Notice and Stop Notice is served.

Breach of Condition Notice

A Breach of Conditions Notice requires its recipient to comply with the terms of a planning condition. The Notice specify steps to comply and a compliance period. They are mainly intended as an alternative to an enforcement notice for remedying a breach of condition – but it may also be served in addition to an Enforcement Notice, perhaps as an alternative to a stop notice, where we consider it expedient to stop the breach quickly and before any appeal against the Enforcement Notice is determined.

Although there is no right of appeal to the Secretary of State, the validity of the Breach of Condition Notice or propriety of serving it can be challenged in the High Court.

Injunction

We can apply to the High Court or County Court for an injunction whether or not we have used any of their other powers to enforce planning control. However, starting proceedings for an injunction is one of the most serious types of enforcement action that the Council can take. If a person fails to comply with an injunction they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made.

We would generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over a long period and/or other enforcement options have been, or would be, ineffective. The Court will expect us to fully explain our reasons on this issue in our application for Injunctive proceedings.

Prosecution

Although most breaches of planning control are not criminal acts a small number may constitute a criminal offence in their own right. These include unauthorised works to protected trees, removal of important hedgerows and unauthorised works to listed buildings. Non-compliance with Enforcement Notices can also lead to prosecution. Planning Officers and Planning Enforcement Officers will work with the Council's Solicitors to decide when prosecution is appropriate and how to proceed to take the case to the relevant Court.

Monitoring

Ward Councilors will normally be informed before officers take formal action in respects of any suspected breach of planning control in their ward area where the case is sensitive or contentious.

On a quarterly basis, District Councillors will also receive a list of suspected breaches of planning control that have been reported to the Council or that have been identified by officers over the last three months so they have the opportunity to discuss these cases or check progress with officers if necessary. A half yearly report will also be produced, giving reference to performance standards associated with the varying case priority levels

The nature of planning enforcement means that it is not possible to target a timescale in which to close cases. Some cases can prove more difficult to investigate than others for a range of different reasons. Cases which at the start seem to raise single issues, turn out to have many issues and complexities. Furthermore, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal.

Monitoring must therefore relate to the service standards that are to a greater extent specific, measurable and achievable. These are -

- The percentage of high priority cases that are visited within 24 hours of us being first notified of the suspected breach.
- The percentage of medium priority cases that are visited within one week of us being first notified of the suspected breach
- The percentage of medium priority cases that are visited within two weeks of us being first notified of the suspected breach

We will monitor our performance against these standards and publish the results on a half-yearly basis. These results will be assessed to see whether this Plan is working or needs to be reviewed. Achieving a culture of compliance across the district with a reduction in cases to investigate would be a significant measure success.

The Local Enforcement Plan will be reviewed every four years and when there are any substantial changes to relevant legislation, national policy or guidance.

More information can be found in the

<https://www.gov.uk/guidance/ensuring-effective-enforcement>