

PLANNING COMMITTEE – 19 October 2021

REFERENCE NUMBER: 21 / 00914/FL Application Expiry Date: 30 September 2021
Application Type: Full Planning Permission

Proposal Description: Spreading of soil on agricultural land to raise land levels

At: Field To The North Of Grange Barn Milken Lane Far Hill Ashover

For: Messrs John and Roger Hollingworth

Third Party Reps: 2 **Parish:** Ashover
Ward Name: Ashover

Author of Report: Aspbury Planning – Denise Knipe **Date of Report:** 1 October 2021

MAIN RECOMMENDATION: GRANT subject to Conditions

Location Plan



1.0 Reason for Report

- 1.1 The application has been 'called in' by the Ward Member, Councillor Armitage due to concerns raised in relation to impact upon the landscape character and ecology. The Planning Committee is required to determine the application.

2.0 Proposal and Background

- 2.1 The full planning application seeks approval for engineering works involving the spreading of soil from one part of the agricultural holding where an extant planning permission exists (planning reference 17/00200/OL and 19/00868/RM) for residential development. The permissions have yet to be implemented.
- 2.2 The purpose of the application is to reduce the number of trips associated with the removal of soil from the development site, and to make the land levels at the application site less steep, and make the site more usable for farming.
- 2.3 The application is supported with sections of the land which show that the soil would be spread thinly within a depression in the land leading to raising of the dip to 97.06 AOD, grading out to the existing levels of 98.04 AOD and 100.01 AOD.
- 2.4 It is acknowledged that the moving of topsoil from one area of farmland to another on the same agricultural holding can be done without requiring planning permission, under Part 6 of the General Permitted Development Order (GPDO). This is subject to the prior notification of the Local Planning Authority. In this case, the moving of soil is to facilitate the implementation of the planning permissions and not solely related to agricultural development and therefore planning permission is required.
- 2.5 There have already been some engineering works involving leveling within this field approved under planning reference 19/01179/FL. This work has already been carried out and is not impacted by this latest proposal.

3.0 AMENDMENTS

None

4.0 Relevant Planning History

- 4.1 17/00200/OL Outline application (with all matters reserved) for the construction of 10 bungalows to wheelchair user standard M4 (3) with access

taken from Milken Lane (Major Development/Departure from Development Plan/Affecting setting of a Listed Building) (Conditionally Approved)

- 4.2 19/00868/RM Application for approval of reserved matters for access, appearance, landscaping, layout and scale pursuant to outline approval 17/00200/OL for construction of 10 bungalows to wheelchair user standard M4(3) (Major Development/Departure from Development Plan/Affecting setting of a Listed Building) (Amended Plan) (Conditionally Approved)
- 4.3 19/01179/FL Regularisation of Engineering Works consisting of the re-leveling of an agricultural field (Retrospective Application) (Conditionally Approved)

5.0 Consultation Responses

- 5.1 The **Parish Council** considers that this application should be notified to Derbyshire County Council, as the Minerals Authority, due to the movement of soil. Ashover Parish Council supports the Ward Member's request that this application is determined by the Planning Committee.
- 5.2 The application does not trigger a consultation with the Minerals Authority due to not being imported on or off the site.
- 5.3 The Local **Ward Member** raised concerns regarding the impact upon the landscape and ecology and requested that the application be dealt with by members of planning committee.
- 5.4 The **Environment Health Officer** (EHO) reviewed the information submitted and have no comments to make in respect of the proposal.
- 5.5 The **Environmental Agency** was consulted but has not provided comment on the application.
- 5.6 The **Lead Local Flood Authority** (LLFA) was consulted on the application and made not comments.
- 5.7 **Derbyshire Wildlife Trust** (DWT) was consulted on the application and responded stating that given the soil will originate from a donor site that is the subject of planning application 17/00200/OL. It is essential that the soil is not removed from the donor site until all the pre-commencement conditions have been discharged, particularly those relating to safeguarding protected species i.e. the production of a Construction Environmental Management Plan (CEMP: Biodiversity). To do so would risk causing an offence under current wildlife legislation.

5.8 It is also commented that the application has not been supported with any ecology surveys and given that there is known presence of badgers in the area a survey is advisable. It was suggested that this should be pre-determination in case any mitigation is required. Given the location of the soil spreading is contained within the dip in the landscape and does not impact upon the treed boundaries, it is considered acceptable to impose a condition in this instance.

5.9 There is a pond within 80 metres of the site and DWT consider that the arable land would not be suitable habitat for Great Crested Newts and advises that a survey would not be required. However, a condition has been recommended as a precautionary measure seeking a Method Statement for works which details best practice working methods to minimise potential impacts to GCN.

6.0 Representations

6.1 **Ward Member Councillor Armitage** requested that the application be considered by planning committee.

6.2 The application was validated on **19.07.2021** and was due to expire on **12.09.2021**, however an extension of time was agreed until **22.10.2021** to allow the application to be decided at committee. A site visit was undertaken by the case officer on **09.09.2021** and a site notice was placed on the telegraph pole adjacent to The Black Swan public house car park which expired on **30.09.2021**.

6.3 **Three** objections have been received from two neighbouring residents which can be summarised as follows:

- There are pre-commencement conditions relating to the site where the soil is to be removed. These have yet to be discharged.
- There are inaccuracies within the Application Form. It is stated that there are no known contaminants on site. However, there are pre-commencement conditions requiring further assessments to be submitted – these are outstanding.
- It is stated that there are no protected species on site or designated site, important habitats etc which is incorrect as there are GCN and Badgers in the area.
- To grant this application would be granting authorisation to make a start on the development site without having to comply or to discharge any of the conditions.

6.4 The objectors are concerned that the granting of planning permission would negate the need to comply with conditions on the development site. This is incorrect. The conditions remain undischarged and should any commencement on the site be undertaken, moving of soil in this case, the development would be unauthorised.

7.0 Relevant Policy

7.1 The Development Plan comprises the 'saved' **North East Derbyshire Local Plan (2005)**, **Ashover Neighbourhood Plan (2017)**, and the emerging **Publication Draft Local Plan 2014-2034**.

7.2 In respect of the North East Derbyshire Local Plan the most relevant policies to this application are considered to be as follows:

GS1 Sustainable Development
GS6 Open Countryside
NE1 Landscape Character
NE2 Special Landscape Area

7.3 The Ashover Neighbourhood Plan 2016-2033 (Adopted November 2017) covers the application site and the following policies are a material consideration:

Policy AP2: Development Proposals outside the Limit of the Development
Policy AP13: Landscape Character

7.4 The new Local Plan 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. Consultation on Main Modifications was undertaken in 2020 ending on 31st January 2021. All comments/representations received have now been forwarded to the Inspector and it is expected that the plan will be adopted in autumn 2021.

7.5 In respect of the Draft Local Plan the most relevant policies to this application are considered to be as follows:

SS1 Sustainable Development
SS9 Development in the Countryside
SDC3 Landscape Character

7.6 **National Planning Policy Framework**

- 7.7 The overarching aims of the revised National Planning Policy Framework (NPPF) are also material in the assessment of this application. Of particular relevance to the proposal are:

Chapter 2 – Achieving Sustainable Development

Chapter 15 – Conserving and Enhancing the Natural Environment

8.0 Planning Issues

- 8.1 The planning issues relevant to the proposal are whether the proposal accords with the policies of the Development Plan, i.e. is it acceptable in principle, its impact on the character of the landscape, its potential impact on the amenity of existing residential property occupiers, and biodiversity.

- 8.2 Each matter is considered in detail below.

8.3 Principle of Development and Application of Policy

- 8.4 Local Plan Policies GS6 and NE2 cover the countryside and Special Landscape Area, where development will be supported where it does not detract from the surrounding landscape and the siting, scale, design, landscape treatment and the use of materials would be in keeping with the special character of area. Furthermore development will be permitted providing it would not have a detrimental effect on the visual amenity, character and function of the Special Landscape Area.

- 8.5 The Ashover Neighbourhood Plan (ANP) is a material consideration when determining planning applications. The ANP identified the importance of the landscape character of the area, and that each development will be required to demonstrate that it respects the distinctive landscape character of the area.

- 8.6 In view of the above, it is considered that development may be acceptable, subject to assessing the visual impact of the engineering works on the surrounding countryside, ecological impact, as well as that on residential amenity.

8.7 Impact on Character of Countryside and Special Landscape Area

- 8.8 The application site is located in open countryside which is designated as a Special Landscape Area (SLA). The SLA was identified in 1988 as part of the core documentation associated with the creation of the then Local Plan process. The site is also covered by the national Character Area 50 'Derbyshire Peak Fringe and Lower Derwent' (NCA50). Whilst the site forms part of a locally designated landscape it is not subject to any national landscape designation.

8.9 It is accepted that the engineering works will alter the contours of the landscape in parts, however, by reason of its nature and minimal physical change it is considered that the development would not cause any undue visual or landscape harm. This is partly due to the application site being contained in a small area of the field and not affecting the distinctive features that contribute towards and add value to the landscape of the area. The open character of the countryside and Special Landscape Area will be retained.

8.10 Impact on Neighbouring Residents and Land Uses

8.11 The nearest residential properties to the application site are Grange Barn and Grange Farm are located approximately 115m to the south. To the northeast of the site is an outdoor sports facility and hardstanding associated with Eastwood Grange, however it is screened from the application site by mature tree planting.

8.12 Due to the scale and nature of the engineering works, it is not considered that the development would be of any detriment to the amenity of neighbouring residents or land uses.

8.13 Land Contamination Considerations

8.14 Concerns have been raised relating to possible land contamination from the imported topsoil. The Councils Environmental Health Officer (EHO) was consulted on the application and have not raised any concerns. The soil is to be imported from land that is associated with the farming use. This is usually permissible under Agricultural Permitted Development but in this case, it is to be moved to facilitate the residential permission, and negates the need to remove soils off site, which would involve several HGV movements. There are several conditions imposed on the outline and reserved matters application which require formal discharge. Conditions relating to contamination, requiring further information to be submitted before a commencement on site can take place, are yet to be satisfied.

8.15 In view of EHO not raising objections to the application, and that granting of this consent does not override the conditions on the earlier permissions, it is Officers views that the re-levelling works involving soils elsewhere on the holding are acceptable.

8.16 Ecology and Biodiversity Considerations

8.17 Further representations make reference to the impact the proposal would have on the known ecology in the area. Again, it is stated that pre-commencement conditions imposed on the site where the soil is to be moved from, relating to ecology are yet to be discharged.

- 8.18 Local Plan Policy NE6 seek to ensure that that development would not adversely affect biodiversity and seeks compensation or mitigation. Policy NE7 advises that the direct or indirect detrimental effect on established or ancient woodland, important hedgerows or trees that make a significant contribution to the character or amenity of the area should be avoided.
- 8.19 Derbyshire Wildlife Trust (DWT) have provided comment on the proposal and have suggested conditions to safeguard protected species. As a way of background information, a Preliminary Ecological Appraisal was submitted during the course of the outline application (17/00200/OL) for 10 dwellings, where it was concluded that there were no badger setts within the site from where the soil was taken.
- 8.20 There is no evidence before Officers to suggest that there are badger setts on the current application site. Nevertheless, badgers and the setts (burrows) they live in are protected under separate legislation. A condition can be imposed requiring a 'Walk-Over survey' for badgers should permission be granted. This is considered a suitable way forward given there has been a passage of time since the earlier survey was conducted.
- 8.21 The proposal does not impact upon any of the boundary trees and hedgerows and it is considered that the proposal would not have a detrimental impact upon the biodiversity of the site and accords with policies NE6 and NE7.
- 8.22 **Flooding and Drainage Considerations**
- 8.23 The site is within a Flood Zone 1, which has a low probability of flooding (land assessed as having a less than 1 in 1,000 annual probability of river flooding).
- 8.24 The Environment Agency was consulted on the application, they have commented on the application. .
- 8.25 The Lead Local Flood Authority was also consulted; they have also not commented.
- 8.26 It is noted that there were no objections from either governing body when considering a similar proposal in the same field (19/01179/FL) and there is no reason to conclude that the proposal presents a flood risk.
- 8.27 **Summary**
- 8.28 Overall, it is considered that the proposed engineering works consisting of re-levelling the agricultural field, using soils from elsewhere within the site;

albeit to facilitate residential development, represents acceptable development as the visual amenity and character of the open countryside and Special Landscape Area is to be retained and protected. The proposal complies with the requirements of the relevant Policies of the North East Derbyshire Local Plan and the National Planning Policy Framework.

8.29 The development can only proceed once all the pre-commencement conditions are discharged pertaining to the area where the soils are to be removed, otherwise the moving of the soil would render the extant planning permissions unlawful.

8.30 **Conclusion**

8.31 For the reasons above it is considered that the proposed development should be approved.

9.0 **Recommendation**

9.1 GRANT Full Planning Permission subject to the following conditions

Conditions

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

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2. The development hereby approved shall be carried out in accordance with the plans received unless otherwise subsequently agreed through a formal submission under the Non material Amendment procedures and unless otherwise required by any condition contained in this decision notice.

Reason- For clarity and the avoidance of doubt.

3. Before development starts, a badger survey report shall be submitted to and approved in writing by the Local Planning Authority. This report shall include details of any necessary mitigation measures and a timetable for implementation of any mitigation measures. Thereafter the mitigation measures shall be carried out strictly in accordance with the timetable in the approved report and retained as such thereafter. Unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect neighbours from noise nuisance and in accordance with Policies NE6 of the North East Derbyshire Local Plan.

4. Due to the low risk of great crested newts being present within the application area, a Method Statement for the proposed works shall be produced and submitted to the LPA for approval, prior to commencement of works on site. This shall include reasonable avoidance measures such as seasonal timings and strategic clearance of suitable habitat, including any potential refugia. It shall also include instructions in the unlikely event that great crested newts are encountered. The approved Method Statement shall be implemented in full and a short statement of compliance submitted to the LPA upon completion of clearance works.

Reason: To protect neighbours from noise nuisance and in accordance with Policies NE6 of the North East Derbyshire Local Plan.