

Item **1.4**

Reg. No. **9/2015/0796/FM**

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Proposal: **THE ERECTION OF 4 DWELLINGS AT LAND ADJACENT**
 TO COPPICE FARM GREEN LANE OVERSEAL
 SWADLINCOTE

Ward: **SEALES**

Valid Date: **25/08/2015**

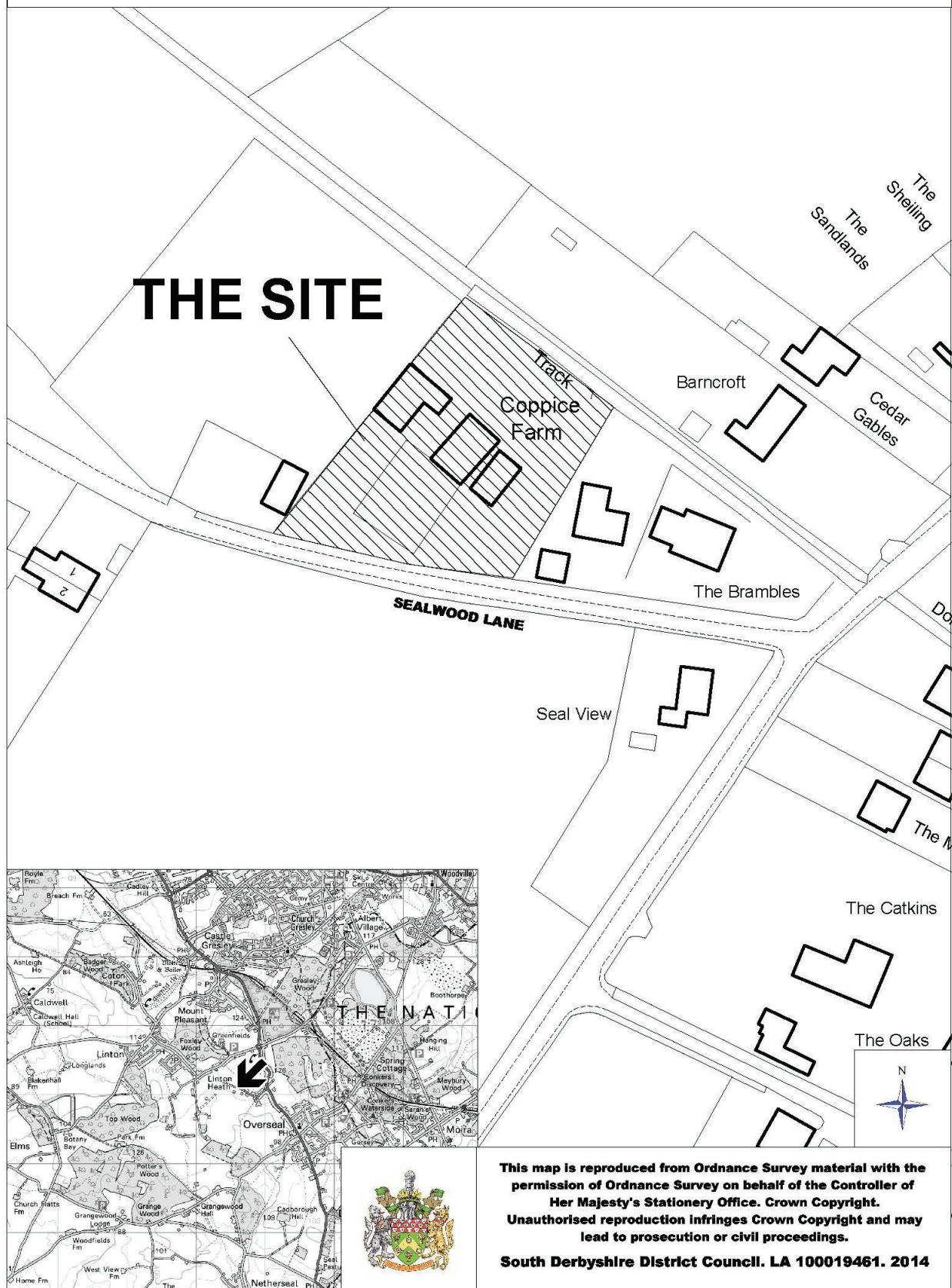
Reason for committee determination

The application has been brought to Committee because it would constitute development not in accord with the Development Plan and would affect the route of Public Footpath No.36.

Site Description

The site measures some 0.2275ha and is situated on the northern side of Sealwood Lane, which is linked to Burton Road (A444) via Green Lane. The site lies outside the defined confine boundary of Overseal and is within the River Mease SAC. It is located to the west of the former Coppice Farm, which has recently been redeveloped by the erection of a replacement two-storey dwelling and a new single storey dwelling. The existing properties on Green Lane and Sealwood Lane comprise a mix of single and two-storey houses. Planning permission for two dwellings has been granted on land between The Oaks and The Martins on Green Lane, one of which is now complete and occupied. The Oaks has also received planning permission for a replacement dwelling.

The application site originally formed part of the former Coppice Farm and fronts onto Sealwood Lane. It is enclosed by mature hedgerows on three sides. It contains two brick and tin-sheeted buildings, two timber sheds and a metal shipping container, all of which are neglected and in various states of disrepair. The site is overgrown with dense bramble vegetation and contains evidence of a former commercial use (picture framing business), being littered with broken glass, timber and other debris. There is also



evidence of a concrete pad, which is also becoming buried under brambles and moss vegetation.

The site is open fronted and visible from Sealwood Lane and two adjoining public footpaths, No. 36 (the route of which passes along Sealwood Lane) and No. 6 (which passes along the northern boundary). There are extensive, open views across the surrounding countryside to the south.

Proposal

The application is a revised proposal of a previously refused scheme (9/2014/1095) which was refused by committee on the reason:

The design of the proposed development would be out of keeping, out of scale, and overbearing on the existing settlement, contrary to the Saved Local Plan Housing Policy and Chapter 7 of the NPPF

The revised application proposes the erection of four detached dwellings and associated parking and for the demolition/removal of the existing buildings/structures. The agent/applicants have taken members comments on board and reduced the scale of the properties significantly whilst increasing parking available on site. Two of the dwellings would face, and take access directly off, Sealwood Lane; these would be one and half storeys in height with rooms in the roofspace; the remaining two would be set back within the site and accessed via a private drive also leading off Sealwood Lane, these would be single storey. One of the existing buildings would be retained until completion of the development in order to provide a habitat for barn owls that live on the site. Three of the dwellings would have integral single garages with all properties providing between 3 and four parking spaces. The development would comprise three different house types, 2 of which would have four bedrooms and the other house type would accommodate three bedrooms. Each dwelling would incorporate traditional features, such as segmental arched window heads.

Applicants' supporting information

The following documents have been submitted in support of the application:

- Planning Statement
- Internal and External Bat Survey
- Reptile Evaluation Report
- Reptile Survey
- River Mease Impact Assessment

These documents can be summarised as follows:

Planning Statement

1. The statement draws on the previous decision which did not refuse the principal of development on the site and outlines the changes made to the scheme.
2. The development of four dwellings would benefit the local economy through the provision of employment opportunities for local builders and suppliers. Whilst

some may not view this as being significant it is argued that the development of smaller sites provides opportunities for smaller businesses which are not available to them on larger developments that are generally controlled by volume house builders.

3. New housing would contribute towards the Council's housing needs in the District.
4. The proposal would remove an unkempt and untidy site and would not harm the character or appearance of the countryside.
5. The proposal is sustainable development in accordance with the objections of the NPPF.

Bat Survey

This concludes by stating that none of the buildings have evidence of being used by bats; however there is evidence of them being used by two roosting barn owls as a permanent breeding site. As such no work should be carried out during the breeding season, which is from mid-March to mid-August. In addition, it is recommended that any clearance of site vegetation and demolition of buildings avoids the bird nesting season or that the site is thoroughly checked for breeding birds by a suitably qualified and experienced ecologist immediately prior to the commencement of any work on site. Temporary mitigation is recommended during the works.

Reptile Evaluation Report

There is a low but present risk of herptiles (reptiles or amphibians) being present on the site, although not of a level to justify further surveys prior to determination of the application. There will need to be adequate site precautions consisting, primarily, of an ecological supervision of the site strip focussing on areas with a higher likelihood to harbour herptiles. It is suggested that this could be adequately dealt with by condition.

Reptile Survey

This has been undertaken at the request of Derbyshire Wildlife Trust following its advice that the presence or otherwise of reptiles (as protected species) and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of the permission.

The Survey concludes by stating that the site contains a number of habitats and features (basking points and refugia) suitable for reptiles and there are records at some distance of common lizard and slow worm. However, during the survey no reptiles were recorded. Therefore, it is assumed that it is likely that reptiles are absent from this site or are at a very low population density. The Survey contains a list of recommendations should any species come to light during the course of development.

River Mease Impact Assessment

The Assessment recognises that the potential impacts of the development will depend on a range of factors, such as scale and nature of the proposal, the timing of works, the distance to the sensitive receptor and the impacts of intervening land use.

- The application site lies only just within the designated catchment-sensitive area and a minimum of 3km from the sensitive receptor, which is a considerable distance.
- There are considerable farming and other activities which are likely to affect the catchment in the intervening land between the development site and the sensitive receptor.
- The development is small-scale, low density on a site where there are existing buildings. The footprint of the proposed development would be of a similar scale to the buildings that would be demolished.

It can therefore be deduced that potential risks to the sensitive receptor are low and that suitable precautions undertaken during demolition, site clearance and construction phases can adequately mitigate the risk in addition to measures employed to mitigate any residual increase in risks, post-construction. The increase in sewer loading would be mitigated for via the Developer Contribution Scheme (DCS) which is the agreed method of the Local Planning Authority. Surface water runoff from the site would be channelled into a sustainable urban drainage scheme (SuDS) designed specifically for the development which would enable runoff to settle and have a level of attenuation prior to entering the storm water system.

Planning History

An application for residential development at Coppice Farm, which included the application site, was refused on 16th July 1953.

A second application for the erection of 26 dwellings at Coppice Farm was refused on 30th November 1959.

An application (9/2010/0324) was approved for the demolition of an existing property (Coppice Farmhouse) and its replacement with a detached, two-storey dwelling, detached double garage and the erection of a single storey dwelling, together with the creation of a new vehicular access to serve both properties was approved on 11th May 2010. Both dwellings have been constructed and are occupied.

An application for four detached dwellings (9/2014/1095) was refused in June 2015 for the reason provided above.

Responses to Consultations

The Peak and Northern Footpaths Society has no objections to the application provided that the full width of Sealwood Lane remains open and unobstructed at all times during and after the development. The applicants must be aware that it is an offence to drive a vehicle over a public footpath without lawful authority, so the new properties must have a vehicular right of access over the footpath.

The County Flood Risk Management Team has no comments and would refer the developers to the County teams standing advice.

Severn Trent Water has no objections to the proposal.

Derbyshire County Council Rights of Way Section confirms that the site abuts public footpaths 6 and 36; however there are no objections subject to the applicants being advised of their responsibilities with regard to the footpaths.

Natural England has no objections with regard to the River Mease SAC and SSSI subject to conditions in respect of the capacity at the local sewage treatment works and the submission of details relating to the proposed SuDS.

The Council's Environmental Protection Officer (contaminated land) considers that the development may be at risk from ground gas migration and accordingly recommends a ground gas condition.

The County Highway Authority (CHA) has reiterated comments made under the previous application as applications do not significantly differ in highway terms. Whilst numbers of traffic movements are not known, previous uses would have involved agricultural and commercial vehicles visiting the site, in addition to employees' and customers' vehicles on a daily basis. Visibility onto the lane is acceptable and, owing to its relatively short length, the proposal is unlikely to result in any significant danger or inconvenience to users. Whilst the proposal isn't ideal from a highway viewpoint, owing to Sealwood Lane being of limited width and having no footways, it is considered that a highway objection could not be sustained when visibility from the proposed access points is acceptable given the likely low speeds and the visibility from Green Lane onto Burton Road is acceptable. The CHA recommends the inclusion of three conditions on any consent, relating to formation of the new access, provision of parking and the retention of parking spaces, including garages, for the parking of vehicles in association with the residential occupation of the properties without the grant of planning permission.

Derbyshire Wildlife Trust (DWT) states comments do not differ from those provided previously for 9/2014/1095. It is satisfied with the survey work that has been undertaken with regard to bats. However, the survey identified that two of the buildings are used by breeding barn owl, which is a specially protected species under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) and local authorities have a duty to take such steps as they consider expedient to bring to the attention of the public the measures to conserve protected species. Building 1 is proposed for retention during construction works however building 2, which also supports barn owl, is to be removed/demolished. It is therefore important that alternative temporary provision is made for barn owl. Barn owl can nest throughout the year so DWT advises that a further survey is carried out immediately prior to the commencement of any work. With regard to the building proposed for retention during construction, DWT would prefer that the building be retained in perpetuity although this would be difficult to achieve if the building is retained and incorporated within the curtilage of one of the new dwellings. As an alternative one of the dwellings should incorporate a permanent accessible nest space. DWT also advises the attachment of conditions relating to barn owl nesting boxes, pre-development re-survey, retention and maintenance of one or more of the buildings and no removal of hedgerows between 1st March and 31st August inclusive unless a check has been made of vegetation for active birds' nests. DWT also notes there is evidence of nesting House Sparrow, a Species of Principal Importance, was also found in the buildings. It therefore recommends a further condition requiring the erection of two House Sparrow terraces within the development to be provided in accordance with an agreed scheme.

With regard to the Reptile Evaluation Report, DWT considers that the presence or otherwise of reptiles and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of any permission. DWT has provided further comments on the recently submitted Reptile Survey and these confirm that no further survey work or mitigation is required in respect of reptiles. The Trust commends the thorough nature of the survey work and the subsequent report is very comprehensive and of a high standard.

The County Archaeologist advises that the proposal would have no archaeological impact.

Responses to Publicity

Overseal Parish Council objects to the development as access to the site is along a very narrow country lane which is a no through road and has limited turning places. It is also a public footpath and access onto the A444 is very difficult. 8 parking spaces are shown but the planning statement refers to 16 vehicles, parking of visitors on the road would block it. The removal of hedgerows is not welcomed due to owls and wildlife on the site, it changes the whole landscape. Overall development is outside the village and in open countryside.

7 letters of objection have been received in response to the proposal and can be summarised as:

- a. Fundamentally the same as previously refused
- b. Scale and massing would be out of keeping with the rural character of the area;
- c. Design of the dwellings is not appropriate to the rural edge of Overseal and therefore not in accordance with the NPPF and the Council's own design guidance;
- d. The development of the site with four dwellings has forced the developer to devise a layout that is alien to the area, involving two dwellings lying within a backland location relative to the frontage houses. This has resulted in the two dwellings fronting Sealwood Lane to be located in parts less than six metres from the carriageway edge. Gardens as a consequence are small and overlooked. The whole effect is a development that remains cramped and urban in nature which is wholly out of character with the locality
- e. Contrary to policy EV1 as development in the countryside
- f. It is the case that a recent appeal case in Linton (your ref: 9/2013/0689, appeal case APP/F1040/A/14/2214428 – and interestingly where this same Planning Consultant acted for the authority in defending these policies) has clarified the weight to be given to the existing local plan. In short the Inspector in that case was satisfied that policy EV1 imposed a “blanket ban” (his words) on development in the countryside and since there was not a demonstrable five year supply of housing the policy was inconsistent with the National Planning Policy Framework and therefore should be set aside. The Inspector did indicate however that the policy carried “*little weight*” (paragraph 40 refers): he did not say “*no weight*”.
- g. Housing fronting onto Green Lane and Sealwood Lane are all single plot depth with large front garden, whereas the proposed development would impose a density that does not reflect the context of the site.
- h. Not in accordance with para 49 of the NPPF and is not sustainable development

- i. The council is close to a 5 year land supply which the proposed will not make a significant contribution to
- j. It is noted and accepted that the authority does not currently have a five year supply of housing land and thus prima facie paragraph 49 applies it is necessary to consider this matter in the round and have regard in particular to the “direction of travel”. The position reported by the authority to the Linton Inquiry in September 2014 showed a supply of 2.98 years as of May 2014. On behalf of the Rule 6 party at that inquiry I pointed out that in the few months to August 2014 the Council’s own calculations had shown the figure had increased significantly to 3.88 years. Since that time a further 582 dwellings have been approved (Thorpe Down Road, Church Gresley – 306, Willington Road, Etwall – 100, Linton – 110 and Packhorse Road, Melbourne – 66). Applying that, admittedly in crude form, to the calculation shows a further increase to 4.28 years’ supply. The latest published position by the authority (June 2015) shows there to be a 4.48 years supply. There are also a number of major housing developments submitted and in the pipeline ahead of this proposal. These include a total of around 1,000 dwellings on Broomy Farm, Hartshorne and off William Nadin Way, Swadlincote
- k. Important to note that the NPPF talks about the presumption in favour of sustainable development as opposed to a “sustainable location for development”. In other words the development proposal itself must also include measures which demonstrably show that it is contributing in a positive manner to sustainability objectives.
- l. The Inspector has raised no concerns about the basic strategy of the replacement Local Plan and it is reasonable to conclude that in effect she is saying that but for some changes (which are significant but do not impact upon the consideration of this application) then the plan will be found to be “sound”.
- m. Increased use of a single track lane with no passing places resulting in increased potential for accidents, particularly small children walking to catch the school bus;
- n. Detrimental impact on wildlife, public footpaths and native ancient hedgerows;
- o. Green Lane and Sealwood Lane are already congested by traffic accessing various businesses in the vicinity;
- p. Development would lead to a 50% increase in number of properties on Sealwood Lane;
- q. The documentation states that 16 parking spaces would be provided but only 8 cars are shown parked on the development, according to the submitted block plan;
- r. depth of the parking spaces appears to be substandard resulting in the likelihood that cars will overhang the public highway
- s. Removal of hedges and vegetation will change the landscape completely;
- t. The application site does not lie within an area considered suitable for development.
- u. having considered sustainability in the round it can be seen that the proposal and the site would score poorly on any measure of sustainability given the limited employment opportunities within the village, the lack of any secondary school provision or the distance to a range of shopping facilities (it is not likely that occupiers would walk to the single shop referred to or if they did that they could carry their weekly shopping needs back home). It is equally the case that the development will not contribute positively in any social sense. There is a shortage of affordable housing across the district but what is proposed here is clearly the antithesis of that. The isolated grouping of the development, away from the existing pattern of development, would be “anti-social” and not inclusive.
- v. Overdevelopment of the site

- w. Development is permissible on the edge of the “*urban areas*” but only for exception sites. These considerations do not apply to this proposal. Overseal is seen as a “Key Service Village” but development is nonetheless to be limited to sites within the settlement. Under no reasonable definition can this site be regarded as being within the confines of the village
- x. No fall-back position exists as the buildings were not in agricultural use on or before the 20th March 2013.

A petition has also been received with 69 signatures objecting to development as the lane is outside of the village curtilage and deemed as rural/agricultural land and the plan is inappropriate and out of keeping with the area as exiting properties are in large plots set well off the lane with parking for residents and visitors. There is concern as the lane is deemed a footpath and there is no footway for pedestrians due to the narrow width of the lanes that have few or no passing or turning places. The parking and access provided would be unsighted directly onto a busy lane used by existing residents and businesses.

Development Plan Policies

The relevant Saved Local Plan Policies are:

Housing Policies H5, 8 and 11, Environment Policy EV1, 10 and 11, Transport Policy T6.

Emerging Local Plan Part One Policies include:

S1 - Sustainable Growth Strategy
 S2 - Presumption in Favour of Sustainable Development
 S4 - Housing Strategy
 S6 -
 H1 - Settlement Hierarchy
 SD1 - Amenity and Environmental Quality
 BNE1 - Design Excellence
 BNE3 - Biodiversity
 BNE4 - Landscape Character and Local Distinctiveness
 INF1 - Infrastructure and Developer Contributions
 INF2 - Sustainable Transport
 INF8 -

Supplementary Planning Guidance: Housing Design and Layout

National Guidance

National Planning Policy Framework (NPPF), relevant paragraphs include:

Paras 6-10 (Achieving sustainable development)
 Paras 11-14 (The presumption in favour of sustainable development)
 Para 17 (Core principles)
 Para 32-34 (Promoting sustainable transport)
 Chapter 6 (Delivering a wide choice of quality homes)
 Chapter 7 (Requiring good design)
 Para 72 (Promoting healthy communities)
 Para 109 and 118-123 (Natural environments)
 Para 186 (Decision-taking)
 Para 196 & 197 (Determining applications)

Para 203 – 206 (Conditions and obligations)

National Planning Practice Guidance (NPPG) ID:26 (Design), ID:21a (Conditions), ID:23b (Obligations), ID:3 (Housing land availability) and ID:50 (Rural Housing)

Planning Considerations

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

- The principle of the development
- The Council's five-year housing land supply and sustainability
- Design and Visual impact
- Highway matters
- Ecology
- River Mease SAC and S106 obligations
- Miscellaneous issues

Planning Assessment

Principle of the development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Paragraph 14 of the NPPF states “*at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking*”. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent silent or relevant policies are out of date granting permission unless:

- “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;*
or
- *Specific policies in the NPPF indicate the development should be restricted*”.

Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

The application is located on the northern side of Sealwood Lane, a single width track that leads to other residential properties and farms before petering out to become a footpath leading through to Linton Heath. The site, together with all the existing properties in the vicinity, is some considerable distance from the village confine boundary, as shown on Inset 22 of the adopted Local Plan. The adopted Local Plan contains numerous saved policies relating to new residential development and countryside development that are considered to be consistent with the NPPF although some recent appeal decisions have called into question the validity of some policies in certain circumstances. When assessing the current proposals against the adopted

Local Plan it is clear that they would be contrary to Housing Policies 5 and 8. It is evident that the site is not within the village confine, but rather it lies within countryside outside any settlement boundary.

Saved Housing Policy 5 only supports new housing development in the countryside provided that they can be accommodated within villages and they are in keeping with the scale and character of the settlement.

Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or unavoidable in the countryside.

Part A of Environment Policy 1 is similar to Housing Policy 8 except that it enables development which is unavoidable in the countryside whilst seeking to protect the intrinsic character and beauty of the countryside.

Notwithstanding the above policies, they should not be instrumental in reaching a decision on whether to approve or refuse consent as the housing policies could be considered to be out-dated when assessing development proposals on sites of this size when weighed against the need for housing in the district.

The Emerging Local Plan began its Examination in Public during November 2014 but was subsequently suspended pending further work being carried out with regard to the sustainability appraisal and the Housing Market Assessment (HMA). In the Plan, Policy H1 – Settlement Hierarchy – includes Overseal as a Key Service Village where development of a range of scales up to and including small strategic sites and affordable and cross subsidy exceptions sites of up to 25 dwellings will be promoted on appropriate sites and according to individual settlement circumstances. Clearly, this is what is proposed here. However, although some weight can be afforded to the Emerging Plan now that it has progressed beyond its consultation stages and has reached the Examination stage, it would not be advisable to attribute it significant weight until such time as the Plan has been found to be ‘sound’ following completion of the Examination and a five year supply of housing land has been demonstrated.

Given that the proposals do not accord with Saved Housing Policies 5 and 8 of the adopted Local Plan, it is evident that the principle of the development cannot be satisfied using these policies as a gauge. Notwithstanding this, Members will be aware that the decision is not as clear cut as the above policy considerations appear to suggest. Taking the advice in the NPPF into account, paragraph 14 emphasises that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. In other words, there is a need to identify the significant and demonstrable harm that would ensue from the development proposals in order to outweigh the NPPF policies and the need for housing.

The buildings were originally used as part of the agricultural operations relating to Coppice Farm to the east. This is their authorised use as there is no evidence that planning permission was ever sought or gained for their use in association with any commercial activity. The definition of previously developed land, according to Annex 2 of the NPPF, is *“land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings”*

Applying this definition to the application site it is likely that the historic use of the site and buildings for storage and business use was unauthorised and therefore it is doubtful whether an argument that the site is a brownfield (previously developed) site could be sustained.

However, notwithstanding the previous use of the site and the buildings, it is evident in this case, that the site displays a partially built-up rather than open character. The site has been vacant for a considerable period of time with no reasonable expectation that it is likely to be used either in association with an agricultural use or for commercial purposes. The site does not make an identifiable positive contribution to the character of the countryside. In these particular circumstances the re-development of the site for housing would relate reasonably well to the existing housing in the immediate vicinity, both on Sealwood Lane and Green Lane, although it is acknowledged that the majority of the more recent developments here have been allowed under the infill policy (Housing Policy 6 of the adopted Local Plan) which allows for the infilling of a small gap for normally not more than two dwellings.

Clearly, therefore, the decision is not clear cut and the arguments, both for and against, are finely balanced. Added to this are other important material considerations that are fundamental to consideration of the application.

The Council's five-year housing land supply and sustainability

In terms of housing supply, paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. In addition, there is a burden on the local authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer, to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot currently demonstrate a five year supply of housing.

As already stated above, paragraph 14 of the NPPF states that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits. It has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be *substantial* in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The Council currently is unable to demonstrate that it has a five year housing land supply. Paragraph 49 of the NPPF is specific on this subject. It states: "*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites*". It follows, therefore, that, as the Council is unable to

demonstrate a five year housing supply, Members should be approving the current proposal, provided that they consider the scheme to be sustainable.

The main part of Overseal is within walking distance of the application site and the village is well-served by a range of local services and facilities, including a church, shops, public house, takeaways etc. The village is also served by public transport and footpath links to the surrounding countryside and wider area. It is evident that the application site is sustainable and would meet the sustainability objectives of the NPPF with regard to rural housing and the importance of supporting sustainable rural communities.

Regard must be had to paragraph 14 of the NPPF in that (if the presumption in favour of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit, not just marginally but rather '*significantly*' and '*demonstrably*'.

Design and Visual impact

The site has little visual quality and makes a very limited contribution to the open and rural character of the countryside. It is acknowledged that the existing buildings on the site are of single storey height and that the proposed development would be a mix of single and one half storey properties. Consequently, there is likely to be some minimal visual impact on the surrounding area. However it should be borne in mind that the replacement dwelling to the east (Coppice Farm) is of two storeys and of modern design. The height of the proposed dwellings would be comparable with surrounding buildings, even allowing for a slight difference in ground levels.

When viewed in this context, therefore, the proposed development would appear as a continuation of the Coppice Farm development and surrounding buildings. The design and scale of the proposed dwellings would also compare favourably with Coppice Farm and incorporate similar design features, such as arched window/door heads. Overall, it is considered that the proposed development would not have a significant or harmful impact on the character or appearance of the area and consequently the objectives of the NPPF would not be compromised, the reduction in height and changes to design are considered to overcome the reasons for refusal.

Highway matters

The County Highway Authority (CHA) has assessed the proposals against the level of traffic that could be generated from the site, both from its authorised use (agricultural) and its unauthorised use (commercial/storage). Whilst Sealwood Lane is of single width it is possible to pass other traffic with care as the verges and existing field entrances are sufficiently generous in places to allow vehicles to pass. The CHA recognises that the current situation on the lane is not ideal. However, the Authority is not convinced the proposal is of sufficient scale to warrant a recommendation for refusal. It should be remembered that Sealwood Lane is not a through road and the level of traffic using the lane is quite low. The impact of the proposal on highway safety would not be sufficiently detrimental to warrant refusal.

Car parking within the site would be provided at a ratio of four to five spaces per dwelling, which is more than meets the guidelines in the 6Cs Design Guide. The site could accommodate up to 16 vehicles which is more than sufficient enough to

accommodate resident and visitor parking, therefore it is unlikely that visitors would park on the verge of the lane.

Ecology

Derbyshire Wildlife Trust has expressed concern that the two existing buildings that provide roosting habitat for barn owl would be removed as part of the development, albeit one would be retained while the development was under construction. DWT has expressed a wish that at least one of the buildings be retained in perpetuity. Barn owl is a 'IUCN Red List' protected species which is given special protection under the Wildlife and Countryside Act 1981 (as amended). Section 25(1) of the Act imposes a duty on local authorities to take such steps as they consider expedient to bring to the attention of the public the provisions of Part 1 of the Act, which includes measures to conserve protected species.

It is recognised, however, that a balance needs to be achieved between the interests of development and conservation. Discussions have been ongoing during the course of the application between DWT, the applicant and the Local Planning Authority in order to secure an acceptable way forward that would safeguard the protected species whilst at the same time, allow for a favourable recommendation for the proposals. Originally, DWT requested that the building proposed for retention during construction works was retained in perpetuity. The applicant believes this would prove to be impracticable for a number of reasons:

1. The relationship of the building to the proposed development would create issues of maintenance and access and, other than providing a roosting structure, the building would have no viable use or function.
2. It is not clear who would be responsible for the upkeep of the building in the long term and what measures would be required to ensure the building did not fall into further disrepair.
3. The permanent presence of the building would reduce considerably the amount of amenity space allocated for Plot 3, which would mean that the scheme would likely not be viable in its current form.

The applicant has offered to provide a barn owl box close to the site but DWT considers this is neither sufficient nor in accordance with guidance provided in *Barn Owls and Rural Planning Applications* produced by the Barn Owl Trust and Natural England. The erection of a barn owl box in the area should only be viewed as temporary provision and while the applicant takes the view that the building would have no viable use or function, DWT argues that the use or function of the retained building would be to maintain a barn owl roost/nest site. If the applicant is unwilling to retain the existing building as a permanent barn owl roost/nest, one of the new dwellings should be designed to incorporate a permanent accessible nest space for barn owl. Further discussions with the applicant have resulted in an agreement to provide the latter facility and DWT now accepts that there is a way forward. This could be required by a suitably worded condition.

With regard to reptiles the most recent Reptile Survey has been assessed by DWT and they now confirm that no further survey work or mitigation is required.

DWT is also satisfied that, given the description of the buildings on the site and extent of the internal and external inspections, sufficient survey work has been undertaken to

determine that roosting bats are unlikely to be present on the site and, as such, no impact on bats is anticipated as a result of the proposals.

River Mease SAC and S106 obligations

As stated elsewhere in this report, the site is within the River Mease SAC and therefore the application has been screened in accordance with The Habitats Directive as required by EU Regulations. The screening has concluded that as there is not likely to be any significant impact on the River Mease SAC and, given the comments received from Natural England, there is no requirement to undertake an appropriate assessment for the development.

A development of the size proposed in this application would not meet the criteria for financial contributions towards recreation, health, education etc. However, the site's relationship to the River Mease SAC means that there will be a requirement for a contribution towards water quality management in accordance with the River Mease Developer Contributions Scheme. Based on the site details in terms of the number of dwellings and number of bedrooms created within the development, a contribution of £1,416 will be required. The applicant is aware of this and has agreed to pay the contribution as part of a Unilateral Undertaking obligation.

With regard to the provision of barn owl boxes, it is proposed that some of these would be located within an adjacent field that is not included in the red outline. Consequently, the Unilateral Undertaking would need to include an obligation to require the provision of the barn owl nesting/roosting boxes in accordance with a scheme to be agreed by the Local Planning Authority and DWT. One of the proposed dwellings would incorporate barn owl roosting facilities, details of which should be required by condition.

Miscellaneous issues

The issues/objections raised by the neighbouring residents have largely been addressed as part of the planning assessment above. The main issues remaining are addressed as follows:

- Increased potential for accidents – the site has been used for agriculture and commercial purposes previously, both of which could have involved the use of heavy machinery or vans/lorries. The traffic and type of vehicles generated by a residential use is likely to be lighter and create less of an impact than both the previous uses.
- The majority of the existing hedgerows would be retained and enhanced and the routes of the public footpaths would not be affected. The applicant's attention would be drawn to the presence of the footpaths and reminded of his duty to keep the routes clear at all times.
- Emergency vehicles currently have access to the other properties further along Sealwood Lane to the west. The site is closer to Green Lane and Burton Road than those properties and therefore this would not be an issue.
- The site is quite extensive, measuring some 2,275 square metres (0.2275ha) and its re-development by the erection of 4 dwellings is not considered to constitute over-development.

Overall Conclusion

The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues. The County Highway Authority is satisfied that the development could be made acceptable in highway safety terms with imposition of conditions. Similarly, the wildlife within the site could be protected by mitigation and monitoring work. The scale, design and layout of this scheme are considered to be appropriate for the site and its location and address the reason for refusal of the previous application

Therefore, the decision falls to be determined on more fundamental issues of principle. Whilst the development appears to be contrary to Saved Housing Policies 5 and 8 and Environment Policy 1, this is outweighed by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to 'significantly boost the supply of housing'). In this context involving a development that would be sustainable and given that the Council is unable to demonstrate a five year housing land supply, it is recommended that the application is approved, subject to the applicant entering into a legal agreement (Section 106 or Unilateral Undertaking) to cover the above obligations and subject to the conditions specified below.

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

Recommendation

- A. That the Committee delegates authority to the Planning Services Manager to conclude the signing of a Unilateral Undertaking in pursuit of the contribution as set out in the planning assessment above;
- B. Subject to A, **GRANT** permission subject to the following conditions:

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

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

- 2. Before development involving the construction of any dwelling commences precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

- 3. Before development involving the construction of any dwelling commences a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, shall be submitted to and approved in writing by the Local Planning Authority.

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

4. All planting, seeding or turfing comprised in the approved details of landscaping submitted as part of Condition 3 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), before development involving the construction of any dwelling commences plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Before development involving the construction of any dwelling commences, details of the finished floor levels of the dwellings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed levels.

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

7. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision of nesting facilities for barn owls to be incorporated within one of the dwellings hereby approved. The works shall be carried out in accordance with the approved details and the facilities shall be provided before the dwelling is first occupied and shall be retained as such thereafter.

Reason: In the interests of the preservation of protected species.

8. A barn owl nesting/roosting box shall be provided on site in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority prior to the commencement of any works on site, including demolition of any of the buildings. The box shall be erected at least 30 days prior to works commencing, shall not be subjected to disturbance during demolition and construction works and shall remain in place in perpetuity.

Reason: The submission of the details at an early stage would allow the Local Planning Authority to control and mitigate the impact of the development on the protected species i.e. barn owls.

9. Immediately prior to the commencement of any demolition on the site a further survey shall be carried out to ascertain whether there are any barn owls nesting within the buildings. If barn owls are found to nesting then no demolition works

shall take place until such time as the nesting period has ended and the young have left the nest.

Reason: Barn owls nest all year round and an up-to-date survey would ascertain whether the demolition of the building is appropriate at that time, In the interests of the preservation of protected species.

10. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision and location of two House Sparrow terraces within the development and the works shall be carried out in accordance with the approved details. The approved House Sparrow terraces shall be provided prior to first occupation of the development hereby approved.

Reason: In the interests of the preservation of a species of Principal Importance.

11. Before development involving the construction of any dwelling commences a suitable scheme for the prevention of ground gas ingress shall be submitted to and approved in writing by the Local Planning Authority . Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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

12. Before development involving the construction of any dwelling commences details of a scheme for the disposal of surface water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall be include a detailed SuDS and soakaway plan to ensure the River Mease water quality conservation targets can be met. The approved scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that the integrity of the River Mease Special Area of Conservation is not compromised.

13. Before development involving the construction of any dwelling commences the new vehicular and pedestrian accesses shall be formed to Sealwood Lane in accordance with the application drawing No. 14/CFO/12f and provided with visibility sightlines extending from a point 2 metres from the carriageway edge, measured along the centreline of the access to the extremities of the site frontage abutting the highway in each direction. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

14. No dwelling shall be occupied until space has been laid out within the site in accordance with drawing No. 14/CFO/12f for cars to be parked.

Reason: In the interests of highway safety.

15. The car parking spaces to be provided within the site shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) the garage/car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the properties without the grant of a further specific planning permission from the Local Planning Authority in that regard.

Reason: In the interests of highway safety to ensure sufficient parking remains available to serve the development.

16. The development hereby permitted shall be carried out in accordance with plan/drawing 15/CFO/LP, 15/CFO/01e, 15/CFO/02h, 15/CFO/03h, 15/CFO/06f, 15/CFO/07h, 15/CFO/08h and 15/CFO/10h received 25th August 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

17. The building indicated as being retained on drawing No. 15/CFO/10h shall not be demolished until such time as the development has been completed and the replacement barn owl nesting/roosting opportunities have been provided within the dwelling subject to the requirements of Condition No 7 above.

Reason: To ensure that replacement barn owl nesting/roosting facilities are available at the earliest opportunity, in the interests of the preservation of protected species.

Informatives:

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact the Derbyshire Wildlife Trust, East Mill, Bridge Foot, Belper, Derbyshire DE56 1XH, telephone 01773 881188.

The routes of Public Footpaths 6 and 36 must remain open, unobstructed and on their legal alignment at all times. There should be no disturbance to the surface of the routes without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the routes at all times. A temporary closure of the routes may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section at Derbyshire County Council, Shand House, Dale Road South, Matlock, Derbyshire DE4 3RY, telephone 01629 539781. If a structure is to be erected adjacent

to the rights of way, it should be installed within the site boundary so that the widths of the rights of way are not encroached upon.

The applicant's attention is drawn to the advisory letter from the Environment Agency dated 29th December 2014 with regard to pollution prevention measures.

The applicant is advised to confirm that the local sewage treatment works (Overseal STW) can handle the additional foul water capacity likely to be generated by the proposed development.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 533190 for further information.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues to improve the quality of the proposal and by determining the application as quickly as possible following receipt of additional information. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

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