
Delegated report Officer: Teresa Turner

Application ref. DMPA/2025/1214

The variation of condition no. 2 of permission ref. DMPA/2025/0683 (relating to plans and submitted documents) for The creation of a new dropped kerb and works to driveway at 67 Burton Road, Cotton-in-the-Elms, Swadlincote, DE12 8HL

Valid date:	17/09/2025
Consults expired:	22/10/2025
EIA development?	No
Section 106 agreement?	Not required

This decision is delegated to officers under the terms of the current Scheme of Delegation.

Relevant planning history

DMPA/2015/0683 - The creation of a new dropped kerb and works to driveway – Planning permission granted on 19th August 2025 subject to conditions:

Condition 2 (subject of this application)

The development hereby permitted shall be carried out in accordance with the Application Form received 26th May 2025, Materials details, Block Plan received 3rd June 2025, Location plan received 4th June 2025, Proposed driveway plan, and proposed site and block plan (dwg 971-01 Rev B) received 29 July 2025, unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt.

Condition 3 (for information only)

The proposed hardstand/parking area hereby approved shall not be brought into use until the means of access for vehicles, as shown on the approved drawings, has been constructed under a Section 184 License.

Reason: In the interests of highway safety.

Responses to consultations and publicity

Provisions relating to statutory consultation and publicity do not apply for Section 73 applications. However, Local Planning Authorities have discretion to consider whether the scale or nature of the change warrants consultation, in this case it was felt expedient to consult the Local Highways Authority given their involvement in reaching an acceptable outcome that was compliant with policy and highway safety on the previous application DMPA/2025/0683.

The Local Highway Authority (LHA) objects to the proposal to vary condition 2 of planning permission DMPA/2025/0683. It is noted that the variation proposes two parking spaces within the curtilage of the property as opposed to the one previously approved, but it appears that there is no increase in the width of the dropped kerb crossing. This results in vehicles having to cross the tapered kerbs when accessing and exiting the parking spaces.

Taking this into account it is considered that the width of the dropped kerb crossing would have to be at least the whole width of the proposed parking hardstand. However, if this is provided, together with the required taper kerbs there would be insufficient space to enable a vehicle to satisfactorily park in the layby to the right of the access to the detriment of the amenity of adjacent residents.

Neighbour objection received covering the following points:

- The scale of the car to lay-by is wrong as advised in previous comments [for DMPA/2025/0683?].

- Cars are parked close to the kerb not in the middle as shown on the submitted plans.
- The lay-by is 2.65 m wide but the drawing show it as over 3m.
- A car parked next to the dropped kerb would invite a Penalty Charge Notice by law and that's taking parking away.
- There is room to move the drop kerb to the middle so as to accommodate other parked cars.
- Previous comments [for DMPA/2025/0683?] were not taken into consideration.
- The car scale and lay-by scale is wrong.
- Parking in the lay-by would be lost.
- All the parameters of the scaled drawing are incorrect to the car scale.
- It would be advisable to visit the site to take pictures and measurements.

Relevant policy, guidance and/or legislation

Section 73 of the Town and Country Planning Act 1990 relates to determination of applications to develop land without compliance to conditions that were attached to a previous planning permission, subject to the revised/new conditions meeting the requirements of paragraph 57 of the NPPF.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications shall be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1, adopted in June 2016, and the South Derbyshire Local Plan Part 2, adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) Planning Practice Guidance (PPG), together with the South Derbyshire Design Guide Supplementary Planning Document (SPD).

Emerging Local Plan

On 10 March 2025 the South Derbyshire Local Plan Part 1 Review was published for its period of formal representations under Regulation 19 (of the Local Plan Regulations) prior to submission to the Secretary of State (The Publication Version). This is the version of the Local Plan that the Council intends to submit for examination, and it is a material consideration in the determination of planning applications.

The weight to be attached to emerging local plans is set out in paragraph 49 of the NPPF.

With regard to paragraph 49a) the plan is at an early stage of preparation having not reached examination. In terms of 49b) there remain unresolved objections to the plan from its Regulation 18 consultation and the period for comments concluded on 25 April and these comments are being reviewed in advance of a report to Environmental and Development Services committee on 6th November 2025. Although the plan is in general conformity with the NPPF (paragraph 49c) it has been published to benefit from the transition arrangements set out in paragraph 234 of the NPPF, meaning the Local Plan will be examined under the 2023 version of the NPPF. For all these reasons the weight to be attached to policies in the publication version of the Local Plan is low.

Where there is any conflict between policies in the publication version of the Local Plan and existing adopted Local Plan policies the decision should be taken in line with the adopted Local Plan policies.

Paragraphs 50 and 51 of the NPPF are also relevant which clarify that refusals of permission in line with emerging policies will seldom be justified before a plan has been submitted for examination. The plan is intended to be submitted for examination in Autumn 2025.

The relevant Development Plan Policies are:

- 2016 Local Plan Part 1 (LP1): Policy S2 (Presumption in Favour of Sustainable Development), Policy SD1 (Amenity & Environmental Quality), Policy SD4 (Contaminated Land and Mining Legacy Issues), Policy BNE1 (Design Excellence), Policy INF2 (Sustainable Transport), Policy INF8 (National Forest).
- 2017 Local Plan Part 2 (LP2): Policy SDT1 - Settlement Boundaries and Development, Policy H27 (Residential extensions and other householder development).

The relevant local guidance:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of the variation or removal of conditions;
- Impact on the streetscene;
- Impact on neighbour amenity; and
- Highway safety/parking.

Planning assessment

Application site and the principle of the variation or removal of conditions

The application property is a 2-storey mid-terraced house located within the settlement boundary of Cotton in the Elms, which is defined as a local service village under the settlement hierarchy set out within Policy H1 of the Local Plan.

The property is constructed of red brick, with some rendered elements, and concrete pantiles and is set back from the highway edge which is beyond a designated parking lay-by. The property is raised above the highway level with a gravelled front garden held back by a retaining wall that aligns with the footpath edge. The adjoining properties to either side of the application property are of a similar design with raised front gardens behind retaining brick walls that align the footpath edge.

An application can be made under Section 73 of the Town and Country Planning Act 1990 to vary or remove conditions. One of the uses of such an application is to seek a minor material amendment, which the current proposal would be deemed to be. Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended.

There is no statutory limit on the degree of change permissible to conditions under S73, but the change must only relate to conditions and not to the operative part of the permission.

The application seeks to amend the approved plans of planning permission DMPA/2025/0683 to allow for the parking of 2 cars on the frontage as opposed to the one that has been previously approved. The amended plan shows a widening of the previously approved opening in the existing frontage wall from 3m to 5.49m, albeit the written measurements do not appear to correspond accurately to the indicated scale of the plan. The proposed car parking spaces annotated on the submitted plan are shown as 2.4m wide by 4.8m deep as opposed to the previous single space of 2.5m x 5m. The proposal also includes the installation of a dropped kerb which would be the same width as before (5.49m) and in the same position as previously approved.

Whilst the changes to the scheme would be material, the original description of development and the red line boundary would remain the same. The proposed amendment would not result in a significantly different development than originally approved and S73 would therefore be considered an appropriate planning route. The principle of the development as established by the extant planning permission DMPA/205/0683 is therefore unquestioned.

Impact on the streetscene

The proposed works to the front garden to provide an inclined hard permeable surface for parking would be considered acceptable as before although it should be noted that the previously shown ACO drain connected to stormwater drainage or soakaway to prevent discharge of surface water onto the highway is missing from the currently amended plan (drawing no. 971-02).

Planning permission was required for the [previously approved] dropped kerb as Burton Road is a classified road. A number of properties within the vicinity of the application site already have dropped kerbs and as such the proposal would not look out of place within the street scene. It should be noted that the opening up of the front boundary wall would not require planning permission by virtue of Class A (gates, fences, walls etc.) of Part 2 (Minor Operations) and Class C (demolition of gates, fences, walls etc.) of Part 14 (Heritage and demolition) of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The application property and its attached neighbours either side have the benefit of a public lay-by along the width of their frontages enabling the parking of cars off the main highway. The provision of a dropped kerb would allow for off-road parking for the property and could potentially free up parking for other users within the public lay-by given that Burton Road is one of the main roads through the village and on-street parking is much sought after, albeit that could cause a nuisance for the property owner.

As before, the proposed development would be considered acceptable in terms of its visual impact on the existing streetscene and would accord with policies SD1 and BNE1 of LP1, and H27 of the LP2 along with the Council's SPD and the NPPF.

Impact upon neighbouring amenity

It was established with the previous application (DMPA/2025/0683) that the amended plans submitted during the course of that application still showed that there would be two parking spaces in the layby for the other two properties to use. The proposed dropped kerb would be the same length and in the same position as the previously approved scheme and as such there would be no increased detrimental impact on the parking situation as previously established.

It was previously assessed that the properties across the road from the application site afforded sufficient separation distances and due to the demand for on street parking, the additional [single] off-street parking space was considered to be a benefit to all users of the road. It was considered that the proposal would not cause any undue impact on the properties on amenity grounds and the current application affords the same view. The nearest neighbours to the rear, as before, would not be affected by the current proposal to amend the approved plans.

As previously assessed, the proposal would be deemed to accord with policies SD1 and BNE1 of LP1, and H27 of the LP2 along with the Council's SPD and the NPPF.

Highway Safety and Parking

The LHA has objected to the proposal as it appears that there would be no increase in the width of the dropped kerb crossing. This would result in vehicles having to cross the tapered kerbs when accessing and exiting the proposed parking spaces. This access is onto a busy classified road. The LHA raise concerns as the dropped kerb would need to be the whole length of the proposed parking hardstand, and with the addition of the tapered kerbs either side of the dropped kerb to allow 2 vehicles to access the driveway in a safe manner with no detriment to highway safety. This is not what is proposed here. Consequently the access would be unsafe.

In addition to have the dropped kerb extended would result in there being insufficient space for other users to satisfactorily park in the lay-by to the right hand side of the new dropped kerb access.

The proposal would therefore be detrimental to the amenity of the adjacent neighbours and would not be in conformity with the requirements of Policy INF2 in terms of parking provision and highway safety.

Conclusion

Where a developer makes a S73 application the Local Planning Authority is only able to consider the question of the conditions attached to the planning permission and not the principle. In this respect (a) if the LPA decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly; or (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The LHA has objected to the dropped kerb arrangement denoted on the submitted plan to vary condition 2, due to highway safety reasons with vehicles having to access and exit the property onto a busy classified road by going up and down a tapered pavement. As such it is considered that the proposal would be contrary to Policy INF2 and BNE1 of the Local Plan Part 1 and the application to vary the plans associated with condition 2 should be refused.

Recommendation

Refuse

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation made:	07/11/2025
Report agreed:	18/11/2025
Authorised officer:	Sarah Beeby
