



Appeal Decision

Hearing held on 29 April 2025

Site visits made on 29 April and 15 May 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2025

Appeal Ref: APP/F1040/W/25/3358723

97 Hartshorne Road, Woodville, Swadlincote, Derbyshire DE11 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Stonebond Properties (Solihull) Limited against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/1557.
 - The development proposed is the erection of 54 dwellings, public open space, landscaping, access, and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 54 dwellings, public open space, landscaping, access and associated works at 97 Hartshorne Road, Woodville, Swadlincote, Derbyshire DE11 7HY, in accordance with the terms of the application reference DMPA/2023/1557, subject to the conditions in the attached schedule.

Applications for costs

2. Prior to the Hearing, an application for costs was made by Stonebond Properties against South Derbyshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant submitted an ecological appeal statement and a landscape and visual hearing statement with the appeal, which the Council and interested parties have had the opportunity to comment on during the appeal process.
4. At the Hearing it was brought to my attention that the Council's letter notifying parties of the submission of the appeal contained a foreshortened deadline of 4 weeks for responses, instead of the required 5 weeks. The Council advised that the notifications were made electronically and when the associated links within the letter were followed, respondents were given the correct deadline. Only 1 interested party was notified via a posted letter and the Council took steps to visit Mr Mitchell, who responded in writing to the consultation and attended the Hearing. I am satisfied that no party has been prejudiced in participating in the appeal proceedings.
5. An engrossed planning obligation under s106 of the Town and Country Planning Act 1990 was submitted prior to the Hearing. This included provisions relating to

public open space, affordable housing and additionality units and financial contributions towards infrastructure. I have taken into account the s106 supplied.

6. I was unable to gain access to the appeal site on the day of the Hearing. An accompanied site visit with representatives for the appellant and the Council took place on 15 May 2025. I am satisfied that I have been able to understand the characteristics of the appeal site and its context as a result.

Main Issues

7. The main issues with regard to this appeal are;
- The effect of the proposed development upon the character and appearance of the area; and
 - Whether the proposed mitigation for the loss of biodiversity would be appropriate with regard to local and national planning policy.

Reasons

Character and Appearance

8. The appeal site comprises a large, detached Arts and Crafts style dwelling that interested parties indicate dates from circa 1937. It is set in spacious grounds with a number of ancillary outbuildings and large paddocks to the north. The site has an open, verdant quality arising from more formal garden areas close to the house, beyond which is grassland and small areas of woodland planting. The surrounding area generally comprises residential development of a wide variety of ages, styles and types of terraced, semi-detached and detached dwellings.
9. The parties agree that the appeal site is located within the settlement boundary of Swadlincote which includes Woodville, as defined by Policy SDT1 of the South Derbyshire Local Plan; Part 2 (LP Part 2) 2017. Development is permissible here where it will accord with the development plan.
10. Policy BNE1 of the South Derbyshire Local Plan; Part 1 (LP Part 1) 2016, requires amongst other things, for new development to be well-designed and respond to its context with regard to valued landscapes, townscape and heritage characteristics. Similarly, Policy BNE4 of the LP Part 1 requires the character, local distinctiveness and quality of South Derbyshire's landscape and soil scape to be protected and enhanced through the careful design and sensitive implementation of new development. Thus, these policies do not seek to prohibit new development nor restrict it, subject to considerations of design and completion.
11. The appeal site is substantially enveloped by existing housing, including recent developments built on land at Broomy Farm and Jubilee Park, as well as older housing located along Hartshorne Road. The enclosure of the appeal site to the north by the considerable amount of recent housing, means that the site is visually very much part of the settlement rather than open countryside. The Council clarified at the Hearing that it did not have concerns with regard to the impact of the proposal on the intrinsic character of the countryside, given the acceptance of the site's location within the settlement.
12. There is a distinction to be made between the impact on landscape, which should be treated as a resource, and the impact on visual amenity, which is the effect on

people observing the development in places where the development can be viewed. The principal parties agree that the appeal site does not form part of a valued landscape and my extensive site visit indicated that there were no attributes that would elevate it to anything more than modestly attractive mainly undeveloped land. My consideration is therefore focussed on the impact on the character and appearance of the area rather than the landscape.

13. Evidence presented by the Council and local residents suggests that despite the appeal site being largely unmanaged and inaccessible to the public, it provides a valued visual break and a 'green oasis' in an otherwise built-up area. In this respect it is considered as being part and parcel of the local character of the settlement. The Council also suggests that the appeal site is important in preventing the coalescence of residential areas. Its position appears to suggest that the entirety of the appeal site should be retained due to its contribution to the townscape.
14. However, the appeal site is not formally designated as an important green space or as an area of separation. It is unclear why housing developments within a settlement should not adjoin. Having said that, I do not endorse the appellant's view that any open, undeveloped verdant site which is not formally designated as a green space or important gap, does not have value to the character or appearance of an area. Such value is to be determined on a case-by-case basis.
15. Public visibility of the appeal site is localised and limited principally to close range views largely from Hartshorne Road, given the gently undulating topography of the land and presence of existing roadside development and landscaping. Although containing some modestly scaled buildings, the wider appeal site is largely devoid of development but containing some hedgerow and tree planting. A contribution is thus made to the localised pattern of verdant gaps in and around the settlement, including that opposite the appeal site, as well as sports pitches and school playing fields nearby. The appeal site therefore makes a positive contribution to the overall character and appearance of the area.
16. The introduction of 54 dwellings with associated gardens, car parking and access roads would inevitably lead to domestication and an increase in built form that would harmfully erode the spaciousness of the appeal site. I agree with the findings of the landscape and visual hearing statement which advises that some change would be perceived by receptors passing the site along Hartshorne Road, particularly where the new access would be located and trees are to be removed. It suggests that a minor adverse long-term effect would be exerted in this regard and this chimes with my observations.
17. Notwithstanding the above, I recognise that the design of the scheme does seek to minimise the adverse impact. This includes limiting the extent of frontage development along Hartshorne Road and providing public open space (POS) to one side of the access. This would widen out to a larger area within the site and would relate visually to the adjacent garden and Broomy Farm POS. In this regard, only a small part of the gap as seen from Hartshorne Road would be lost with the rest of the development set back from the road.
18. The remainder of the gap as perceived from Hartshorne Road relates to the extensive garden area of the adjacent dwelling of No 250 Hartshorne Road which would persist unaffected by the proposal. The layout of the site and presence of

landscaping along the road would soften the appearance and depth of the proposed development as viewed from Hartshorne Road, albeit to varying degrees depending on whether or not the trees are in leaf.

19. When viewed from within the dwellings adjoining the appeal site, a more significant change to the character and the appearance would be evident with open pasture replaced by buildings, hardstanding's and boundary treatments. I do however recognise that from these vantage points, it would be seen in the wider context of existing housing developments nearby.
20. The Council and interested parties have suggested that the dense built form of the proposed housing estate would be inappropriate, a view shared by interested parties in their oral and written representations. I have already described above how residential development is not unexpected in the surrounding area. Moreover, the submitted plans and my site visit observations including viewing the adjacent Broomy Farm development, indicate that the density and 2-storey scale of the proposed housing would not be uncharacteristic of existing built form nearby.
21. Although interested parties object to the loss of the existing dwelling it is not a statutory listed building, nor locally listed within the development plan. Other than its age, no compelling evidence has been supplied to indicate that the dwelling is worthy of consideration as a Non-Designated Heritage Asset, including that supplied by the Council. Neither have I been directed to any local or national planning policy that would seek to protect the provision of smallholdings within a settlement.
22. At the Hearing it was suggested by an interested party that there would be no objection to a more limited form of development on the appeal site. However, I am required to assess the appeal proposal before me.

Conclusion – Character and Appearance

23. The proposal would not have an adverse impact on the wider landscape setting of the settlement or result in the loss of any formal designated green space. Although the scheme has achieved an appropriate density consistent with neighbouring development, there would be harm to the immediate character and appearance of the area through the loss of a verdant, largely open parcel of land to a moderately sized housing estate and its associated infrastructure. This harm would be localised and limited due to the mitigating factors I have described above. Nonetheless, the proposed development would fail to accord with Policies BNE1 and BNE4 of the LP Part 2 insofar as they seek to safeguard local character and distinctiveness as set out above. There would also be conflict with paragraph 135(c) of the Framework where it refers to local character.

Biodiversity

24. At the Hearing the Council clarified that the main matter of dispute is the adequacy or otherwise of mitigation for the loss of biodiversity that would arise from the proposed development. There is no dispute regarding the contents of the appellant's submitted surveys, which are considered to be technically correct.
25. The appeal site is not designated as a statutory or non-statutory site for nature conservation. It contains predominantly either unmanaged species poor other neutral or modified grassland, in a fairly poor to moderate condition. The

development of the appeal site for housing would remove the majority of the grassland along with an area of domestically planted woodland (W1).

26. Section A of Policy BNE3 of the LP Part 1 seeks to support development that contributes to the protection, enhancement, management and restoration of biodiversity or geodiversity and delivers net gains in biodiversity where 1 of 5 criteria are met. At the Hearing the Council suggested that the appeal site forms part of a corridor as an ecological network. However, there is no substantive evidence before me that the appeal site has been formally identified, for example through the local plan process, as a wildlife corridor. Neither have I been presented with compelling evidence as to why I should consider it as such. I am not satisfied on the basis of the evidence presented that any of the circumstances set out in section A of Policy BNE3 apply here.
27. Even if I could consider the appeal site to form a wildlife corridor, I see no reason why such a function would not continue post-development through the retention of the watercourse and the provision of POS to the west of the appeal site. Although the extent of undeveloped land would reduce in size, as it would link to the tree-lined corridor to the south and the Broomy Farm POS to the north, there would be no obvious fragmentation of a biodiversity network.
28. Section B of Policy BNE3 deals with planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance. The use of the word 'including' means that the list provided is not exhaustive. The policy references hedgerows which the development would affect and I see no reason why the policy would not be applicable in this instance. Section B does not preclude development on sites with potential or actual ecological importance, providing that they are supported by appropriate surveys or assessments. It is clear, that where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant harm resulting from the development, and/or where the development can potentially be located on an alternative site that would cause less or no harm, planning permission will be refused.
29. Policy BNE7 of the LP Part 2 similarly requires development proposals that will have a detrimental effect on important trees, woodland or hedgerows to demonstrate how the impact on biodiversity has been minimised and wherever possible, a net biodiversity gain delivered through appropriate mitigation, compensation or offsetting.
30. Together Policies BNE3 and BNE7 are consistent with paragraph 193 of the Framework which advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
31. There is no evidence before me to suggest that the development could be located on an alternative site that would cause less harm. It therefore falls for me to consider whether the proposal would result in significant harm and whether the mitigation would address such harm.
32. None of the habitats across the appeal site were identified as being of significant ecological importance. The appellant's ecological appeal statement (EAS) is clear that the proposal would result in a net loss to biodiversity, the majority of which arises from the loss of the species poor other neutral grassland in the northern

area of the site. While the Council and interested parties have raised concerns about the loss of the grassland, no robust evidence has been put to me to indicate any likelihood of alternative future beneficial management of this habitat. The proposals would provide some new areas of species rich grassland within the public open space (POS) provision, albeit they would be limited in extent.

33. Interested parties have suggested that there are veteran trees on the appeal site which are an irreplaceable habitat. The Framework defines a veteran tree as 'a tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value'. In the absence of compelling evidence otherwise, I have no reason to disagree with either of the main parties that there are no veteran trees on the appeal site.
34. In terms of the overall biodiversity value of the appeal site, appendix 5 of the appellant's EAS includes a Biodiversity Impact Assessment. This assesses the impacts of the proposal on the biodiversity net gain (BNG) value of the site utilising the Natural England Biodiversity Metric 4.0. It considers the ecological functionality of the site as a whole, pre and post development. Despite measures including the provision of tree planting and hedgerow enhancement, there would still be a net loss of habitat on-site. The deficit would be addressed by the appellant by delivering a package of off-site enhancements including the provision of additional units of better-quality grassland at Common Farm, Amber Valley, an off-site habitat bank. This would be as part of a more strategic approach to biodiversity. A total estimated provision of 10% BNG would be achieved, in excess of the $\geq 1\%$ required by local and national planning policy.
35. The loss of any habitat is regrettable. However, the proposal does seek to retain the key habitat features of the appeal site and those in most favourable condition, including the watercourse, the pond, a small network of hedgerows on the residential boundaries to the north and east as well as between the paddocks, and the area of woodland adjacent the Jubilee Brook (W2). The majority of these features are located to the west of the appeal site and would be incorporated into the POS provision for the development, enabling public access to local residents which is not currently possible.
36. The Council has suggested that more on-site mitigation for the loss of habitats should have been provided. However, the retention of large extents of grassland and the development of 52 houses within the appeal site are mutually exclusive and the Council has not evidenced how more on-site mitigation could have been provided. Whilst there is no doubt that there would be a loss of biodiversity, I am not persuaded that in this instance the loss of poor to moderate quality grassland that is species poor would amount to significant harm to biodiversity requiring exceptional circumstances to be demonstrated to allow off-site compensation.
37. Although the majority of enhancements would be off-site, the evidence before me indicates that the proposal has considered and is consistent with the mitigation hierarchy of avoid, mitigate or as a last resort compensate for, as set out in the Framework.
38. The Council has expressed apprehension regarding the amount of and appropriateness of off-site mitigation being provided 19 miles from the appeal site. These concerns were echoed by interested parties at the Hearing.

39. The Planning Practice Guidance (PPG) also advises that the increase in biodiversity value relative to the pre-development value of the on-site habitat can be achieved through on-site gains, registered off-site biodiversity gains or statutory biodiversity credits¹. Although I understand the concerns regarding the location of the off-site gains away from the appeal site, there is no indication that local planning policies require provision to be 'local' to the point of impact. Indeed, policies BNE3 and BNE7 do not specify a threshold of mitigation to be provided on-site, nor within a defined distance from the appeal site for off-site provision.
40. Irrespective, the appellant advises that the embedded calculation of the metric does apply risk multipliers for off-site compensation, depending on the location of the receptor². In simple terms, this means that the multipliers require more habitat credit to be created the further the compensation or receptor site is from the point of impact.
41. This planning application was submitted prior to the enactment of the Environment Act³ in relation to BNG. Whilst the Framework offers support for measurable net gains for biodiversity, there is no legal requirement for this proposal to provide a minimum of 10% BNG. The 10% BNG offered by this proposal would therefore be a benefit of the proposal. As there is no threshold distance within either the development plan or the Framework for the location of off-site mitigation relative to a site, I cannot conclude that such provision away from the appeal site would be problematic.
42. Interested parties have raised concerns that the development of the appeal site for housing would result in the loss of an area that supports wildlife such as deer, foxes, bees, birds and owls amongst other species. It is clear from the discussions at the Hearing that residents value opportunities to view such wildlife in proximity to their homes. The effect of the proposal on a range of wildlife including bats, badgers, reptiles and other mammals has been considered in the submitted ecological appraisal, the majority of which would not be adversely affected by the proposal.
43. The presence of a bat roost has been detected in one of the existing buildings which is to be demolished. This would necessitate the appellant obtaining a protected species licence from Natural England. However, I am satisfied on the evidence before me including the DWT consultation response that the proposed mitigation would be acceptable, such that there is no reason to suggest that a license would not be forthcoming. A planning condition would adequately control this matter.
44. Other mitigation measures include but are not limited to the retention and enhancement of hedgerows deemed to be a habitat of principal importance, the retention of woodland W2 and the pond and the sensitive clearance of vegetation in relation to nesting birds. POS will provide a connective link along the watercourse to existing POS within the Broomy Farm development which would enable the continued movement of species to and from the countryside beyond. Gardens will also be provided for each dwelling which would allow the opportunity for planting that would support pollinators, birds and other small mammals.

¹ As explained at Paragraph 001 Reference ID: 74-001-20240214.

² As advised at paragraphs 6.11 and 6.12 of the appellant's Ecological Appeal Statement.

³ On 12 February 2024.

45. Whilst it is appreciated that the appellant's ecological assessment provides a snapshot in time at the point at which the surveys were conducted, there is no indication that the assessment including the proposed mitigation is flawed. The Council does not dispute the validity of the technical evidence and there is no substantive evidence to persuade me that I should take a different view. The Derbyshire Wildlife Trust whilst raising some specific concerns regarding the proposals, has nonetheless confirmed that the Ecological Appraisal provides an acceptable assessment of the habitats and species present at the site⁴. As the appeal site is not formally designated for wildlife protection purposes and that it is largely surrounded by pre-existing development, I am satisfied that the proposed mitigation measures would acceptably deal with the risk of any potential harm to ecology including protected species and other wildlife. Planning conditions would further ensure the appropriate timing of works in relation to nesting birds and the provision of nest and bat boxes.
46. At the Hearing an interested party suggested that within the new local plan for the district, the Council is looking to protect more green wedges that would be purely for wildlife. Be that as it may, the appeal site is not designated for any particular purpose including that of wildlife protection and I have no evidence before me that any emerging plan is at a sufficiently advanced stage such that I could attach weight to it. The Council is clear in its officer report that the development plan against which I must assess the proposal comprises the South Derbyshire Local Plan Part's 1 and 2 only.

Conclusion - Biodiversity

47. Based on the evidence before me, I am satisfied that the proposal has sought to minimise the impact on the most notable habitats within the appeal site and that BNG would be secured through a combination of on and off-site provision.
48. I find that the proposed development subject to conditional controls, would not significantly harm biodiversity and that the proposed mitigation for the loss of biodiversity would be appropriate with regard to local and national planning policy. The proposed development would therefore accord with Policies BNE3 and BNE7 which seek to protect and enhance biodiversity as set out above. The proposal would also accord with paragraphs 180 and 186 of the Framework which recognise the importance of the natural environment and minimising impacts on and providing net gains for biodiversity.

Other Matters

49. Careful consideration has been given to representations made about the proposal that have not been referred to in the Council's reason for refusal.
50. Concerns have been raised by interested parties in relation to highway matters, including how the visibility splay onto Hartshorne Road can be achieved, the ability of the local road network to cope with the amount of traffic that would be generated and parking concerns.
51. The highway impact of the proposal was assessed during the planning application process through the submission of a Transport Assessment (TA). The Framework at paragraph 115 states that development should only be prevented or refused on

⁴ As contained in the DWT letter dated 24 July 2024 as provided within appendix 3 of the appellant's EAS.

highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact would be severe.

52. The TA analyses existing traffic flows on Hartshorne Road from automatic traffic counter data, considers accident records and provides forecasts for the level of traffic generation for the proposed development. Whilst the vehicular movements of the future occupiers of the development would add to local traffic, the TA advises that there would not be a material impact on the safe operation of the highway network. This includes consideration of the location of the access road into the development close to the junction with The Cutting. The new access onto Hartshorne Road will be required to comply with highway authority standards including the need for any retention of land and the achievement of appropriate visibility splays as shown in the TA.
53. I am satisfied that there is detailed technical evidence before me to demonstrate that there would not be an unacceptable impact on highway safety, nor a severe residual impact arising from the proposed development. No specific quantifiable evidence has been presented to indicate that I should take a different view. In light of this and in the absence of any objection from the Highway Authority and National Highways, there is compelling evidence that the impact of the proposed development would be acceptable in highway terms.
54. The appeal site is located within the Swadlincote Urban Area which sits at the top tier of the settlement hierarchy for the district as established within Policy H1 of LP Part 1. Thus, the location is considered accessible for housing development due to the availability of services and facilities locally, as well as a choice of transport by means other than the private car. A planning condition would secure the provision of a welcome pack to further encourage and promote sustainable forms of access for the future occupiers of the development. Thus, the future occupiers of the proposed development would not be entirely car dependant. Even if car journeys would be necessary to meet day-to-day needs, they are likely to be predominantly short trips.
55. An interested party raised a concern during the Hearing about the lack of garages within the development. I have not been directed to any specific policy or guidance that would require the provision of garages and it is important that a range of house types contribute to the local housing stock. Nevertheless, the scheme provides for on-plot car parking for each dwelling and a footpath would provide a pedestrian link through to the Broomy Farm development facilitating connectivity. There is no compelling evidence before me that the scheme does not make suitable provision for car parking such that it would have a detrimental effect on highway safety or the character and appearance of the area.
56. The Council is clear in its evidence that the overall layout of the housing scheme would be acceptable when considered in relation to the Supplementary Planning Guidance which includes the South Derbyshire Design Guide (2017)⁵. Amongst other things, this sets out the minimum distances required between existing dwellings and new housing to enable a reasonable level of privacy and outlook for both existing and future occupants.
57. The plans indicate that the proposed dwellings would be suitably arranged with sufficient separation space so as not to cause significant harm to the living

⁵ As set out in the residential amenity section of the Council's officer report.

conditions of the occupiers of existing dwellings by reason of loss of light or privacy. Whilst understanding the concerns of residents, a degree of mutual overlooking between residential properties would not be unexpected within an urban area. It is clear that the views from a number of adjoining dwellings would change but there is no indication from the evidence before me that the proposed dwellings would appear overbearing, particularly given that they would in a number of cases, be sited at a lower land level and be of a modest scale and height. The loss of a view is not a material planning consideration that I can take into account in the determination of the appeal.

58. There is no suggestion that the paddocks which form part of the appeal site are of a high-grade agricultural land classification or that there are policies within the LP Parts 1 or 2 that would require the protection of such land.
59. My attention has been drawn to drainage and flooding concerns arising from the proposal with views expressed at the Hearing that flooding locally has worsened in recent years. Although understanding the concerns raised, it is not for the proposed development to provide a solution to existing problems elsewhere off-site.
60. Sited in flood zone 1, the appeal site is in an area defined by the Environment Agency as being at the lowest risk of flooding. The existing ditch course and culvert that currently runs through the site will remain within the proposed development. Although subject to detailed design, a preliminary drainage strategy has been prepared which includes the provision of oversized pipes and cellular storage crates as part of surface water attenuation measures. Foul drainage is to be directed to the existing public foul water sewer.
61. It seems to me from the appellant's Flood Risk Assessment and Drainage Strategy that the provision of a new drainage system would improve the management of surface water run-off, over and above the current situation. Subject to the imposition of appropriate surface water drainage conditions, there is no reason to suggest that the proposal would lead to an increase in flood risk to properties. No substantive evidence has been provided to indicate I should reach a different view.
62. The appellant's Coal Mining Risk Assessment report identifies that coal mining legacy potentially poses a risk to the proposed development and that further investigations are required. The Council and the Coal Mining Authority, the statutory consultee on such matters are content that planning conditions could be imposed to ensure that suitable investigations and remediation/mitigation measures have been implemented prior to the commencement of any development. With no evidence to suggest otherwise, I am content that this is an appropriate course of action and that such conditions would meet the 6 tests⁶.

Planning Obligations

63. Planning obligations may only be sought where they each meet 3 tests, those being that they are necessary to make the development acceptable in planning terms; they are directly related to the development and they are fairly and reasonably related in scale and kind to the development⁷.

⁶ The 6 tests of conditions as set out in paragraph 57 of the Framework and paragraph: 003 Reference ID: 21a-003-20190723 of the PPG.

⁷ As set out in paragraph 58 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

64. The obligations in the s106 agreement bind the appellant and landowners to covenants with South Derbyshire District Council and Derbyshire County Council. The agreement includes mechanisms to secure the delivery of affordable housing and additionality units. This means that 16 affordable dwellings would be provided. The remaining additionality units which are not affordable dwellings would nonetheless be operated and managed by a Housing Association Partner and occupied as affordable housing in the event this was pursued.
65. The appellant has quoted from the Council's Strategic Housing Market Assessment (SHMA) which has identified that the scale of affordable housing need equates to around 39% of the overall housing requirement. Schemes delivering the H21 policy requirement (LP Part 1) of 30% affordable homes would therefore result in a shortfall in affordable housing provision. This has resulted in the SHMA suggesting that the Council considers increasing overall housing delivery to provide more affordable homes and/or that it amends the affordable housing policy at the local plan review⁸. The evidence before me indicates that the Council has a substantial under-delivery of affordable housing. I am satisfied that the provision of additionality units would contribute to addressing affordable housing need.
66. Interested parties have raised concerns regarding the impact of the proposal on local services including doctors, dentists and schools. The financial contributions secured in these respects would be wide ranging including funding for improving GP capacity and active and wellbeing facilities in the Swadlincote urban area, improvements to built facilities within Swadlincote, library stock provision and the provision of additional educational facilities at Granville Academy. I am satisfied that the obligations would be specific and related to provision for expanding capacity generated from increased demand arising from the proposal.
67. Obligations would also be made in respect of a financial contribution towards tree and woodland planting in the National Forest and the provision of on-site POS and financial contribution to off-site POS enhancement locally.
68. The above obligations are not in dispute by the parties. Having regard to the evidence presented to me⁹, I am satisfied that the obligations are necessary and they accord with the tests that are set out in paragraph 58 of the Framework and the Community Infrastructure Levy Regulations (as amended, 2019), where they apply to each of the obligations. They also provide for the proposal to be compliant with the development plan in these respects. As a result, I have taken them into account in my decision.

Planning Balance

69. I am required to determine the proposal in accordance with the development plan, unless material considerations indicate otherwise. The development of the appeal site would result in the loss of an area of largely open grassland that contributes to the character and appearance of the area. However, the harm would be limited by the specific design of the proposal including the provision of POS within the development and it would be localised given the lack of wider visibility. I have found conflict with Policies BNE1 and BNE4 of the LP Part 1. However, the weight attributed to the conflict with this policy is limited.

⁸ As set out in paragraphs 6.43-6.52 of the appellant's Hearing Statement.

⁹ This includes but is not limited to the SDDL, the Council's Planning Obligations – A Guide for Developers and Applicants Supplementary Planning Document (2024) and the Council's email to the Planning Inspectorate and dated 15 April 2024.

70. Set against the harm identified are the benefits associated with the proposal. The Council contends that it can demonstrate a healthy 5-year housing land supply which has not been challenged by the appellant. The appellant advises that the site is deliverable and would come forward shortly after any grant of planning permission. The appeal scheme would contribute to meeting the Government's objective of significantly boosting the supply of homes, a matter which attracts moderate weight.
71. The scheme would provide 16 affordable dwellings in line with the requirements of Policy H21 of the LP Part 1. The scheme also has the potential to offer additional units in a variety of sizes and types on the remainder of the proposed dwellings. The appellant's evidence has set out that there has been a significant undersupply of affordable housing in the district that has not been contested. The affordable homes would make a positive contribution to addressing the identified shortfall in the local area. This attracts significant weight.
72. The proposal would benefit the economy through construction jobs and expenditure by future occupants in local shops and services. There would also be social benefits through the provision of a mix of new housing types and environmental benefits, including those relating to the provision of POS accessible by existing and future residents and BNG. This is a benefit of the scheme given that it was submitted before the mandatory requirement for such took effect. Thus, the economic, social and environmental benefits arising from the provision of 54 new dwellings in an accessible urban location carry significant positive weight.
73. I have found that there would not be undue harm to biodiversity. However, this would weigh neutrally in the planning balance.
74. Collectively the benefits listed above are of such magnitude that they individually and cumulatively outweigh the limited harm to the character and appearance of the area and associated policy conflict. Therefore, I conclude that the appeal should be allowed subject to the s106 agreement and conditions.

Conditions

75. The suggested conditions contained within the Statement of Common Ground and discussed at the Hearing have been considered and the wording varied where necessary, to ensure precision and compliance with the PPG and paragraph 56 of the Framework.
76. Along with the standard time limit and to list the plans in the interests of certainty, conditions are imposed to require adherence to the proposed materials or agreed variations, the implementation of the landscaping masterplan and the carrying out of planting and replacement planting in the interests of consistency of appearance.
77. Conditions to ensure the completion of the site access works, the layout and retention of car parking spaces for their intended use and the provision of a residential welcome pack are reasonable and relevant to the development permitted in the interests of promoting sustainable access and to ensure highway safety.
78. The provision of a scheme to prevent additional surface water run-off from the site during construction and the provision of a detailed design and management and a

maintenance plan for surface water drainage are required to ensure that the development would not increase flood risk temporarily or permanently.

79. Conditions relating to contaminated land and land stability are reasonable and necessary to ensure the safety of the future occupiers of the proposed development. Similarly, conditions limiting the hours of construction works and deliveries, the need for the provision of a construction method statement, the provision of a scheme for the play area, the removal of permitted development rights for alterations, outbuildings and the fixing of first floor side windows are all deemed necessary in the interests of protecting the living conditions of future occupiers of the development.
80. Conditions concerning the provision of a construction environmental management plan, swift boxes, a species enhancement plan, a lighting strategy and a landscape and biodiversity enhancement and management plan for the provision of on and off-site BNG, as well as the prevention of the removal of vegetation during the bird breeding season are necessary and reasonable in the interests of safeguarding species and ensuring biodiversity enhancement.

Conclusion

81. For the reasons given above and having regard to all other matters raised the appeal is allowed.

M Clowes

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kirk Goodman	Director of Ecology, FPCR
Satnam Choongh	Counsel, No 5 Chambers
Michael Robson	Cerda Planning
James Morton	Aspect Landscape Planning

FOR THE LOCAL PLANNING AUTHORITY

Bob Woollard	Planning and Design Group
Steffan Saunders	Head of Planning and Strategic Housing
Alex Matthews	Senior Planning Officer

INTERESTED PARTIES

Laura Pearce-Brindley	Local Resident
Lana Elland Proud	Local Resident
Alistair Hardwick	Local Resident
Geoffrey Mitchell	Local Resident
Amy Wheelton	Local Resident/Seales Ward Councillor

***** Schedule of Conditions *****

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following drawings;

Site Location Plan - Ref: 01322-03-001 Rev. 1

Proposed Site Layout - Ref: 01322-03-002 Rev. 8

Boundary Treatment Plan - Ref: 01322-03-003 Rev. 5

Materials Distribution Plan - Ref: 01322-03-004 Rev. 5

Highways & Parking Plan - Ref: 01322-03-005 Rev. 5

Indicative Hard & Soft Landscape - Ref: 01322-03-006 Rev. 5

Bin Storage & Collection Plan - Ref: 01322-03-007 Rev. 5

Illustrative Streetscenes - Ref: 01322-03-010 Rev. 3

Existing Block Plan - Ref: 01322-03-011 Rev. 1

Demolitions Plan - Ref: 01322-03-013 Rev. 1

Typical Parking Details - Ref: 01322-03-D-1 Rev. 1

House Type A1.1 Plans & Elevations - Ref: 01322-03-HT-A1.1 Rev. 1

House Type A2.9 Plans & Elevations - Ref: 01322-03-HT-A2.9 Rev. 1

House Type A2.8.1 Plans & Elevations - Ref: 01322-03-HT-A2.8.1 Rev. 1

House Type A3.9 Plans & Elevations - Ref: 01322-03-HT-A3.9 Rev. 1

House Type A3.9v1 Plans & Elevations - Ref: 01322-03-HT-A3.9v1 Rev. 1

House Type P3.14 Plans & Elevations - Ref: 01322-03-HT-P3.14 Rev. 1

House Type A4.4 Plans & Elevations - Ref: 01322-03-HT-A4.4 Rev. 1

Visibility Splays Plan - Ref: 23083-2 Rev. B

Proposed Drainage Strategy - Ref: 23083-3 Rev. F

Vehicle Tracking Plan - Ref: 23083-6 Rev. B

Detailed POS Planting Plan - Ref: 11916-FPCR-XX-XXDR-L-0001 Rev. P08

Detailed on-plot Planting Plan 1 of 2 - Ref: 11916-FPCR-XX-XXDR-L-0002 Rev. P07

Detailed on-plot Planting Plan 2 of 2 - Ref: 11916-FPCR-XX-XXDR-L-0003 Rev. P07

Playspace Layout - Ref: NSPD3169 Rev. A

Construction Management & Site Waste Plan - Ref: 11882-CM&SWMP Rev. 2

3. All external materials used in the development shall match those detailed within the approved plans and documentation and shall be retained thereafter. Any alternative details shall be first submitted to and approved in writing by the Local Planning Authority, whereafter the approved alternative details shall be incorporated into the development and thereafter maintained for the lifetime of the development.
4. The construction of the dwellings hereby approved shall not commence until the approved site access works shown on Drawing No. 25304-02 Rev B have been constructed and completed and thereafter maintained for the lifetime of the development.
5. Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plans and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use.
6. The development hereby approved shall not be occupied until a residential welcome pack promoting sustainable forms of access to the development has been submitted to and approved in writing by the Local Planning Authority. The approved pack shall be provided to each resident at the point of the first occupation of the dwelling.
7. During the period of construction of the development, no works including deliveries shall take place outside the following times: 07:30am to 17:00pm hours Monday to Friday, and 07:30am to 13:00pm hours on Saturdays, and not at any time on Sundays, Bank and Public holidays (other than emergency works).
8. A remediation scheme detailing how land remediation will be undertaken in accordance with the recommendations of the Ground Investigation report produced by ASL Ltd dated November 2023, shall be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the

development. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.

a). If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the Local Planning Authority.

b). A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology, shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

9. No development shall commence on site including any site clearance/preparation works, until a Construction Method Statement has been submitted to the Local Planning Authority for approval in writing. Details shall provide the following, which shall be adhered to throughout the construction period:

- The parking of vehicles of site operatives and visitors
- Loading and unloading of plant and materials
- Storage of oils, fuels, chemicals, plant and materials used in constructing the development
- The erection and maintenance of security hoarding, including any decorative displays and facilities for public viewing
- Wheel-wash washing facilities and road-cleaning arrangements
- Measures to control the emission of dust and dirt during construction
- A scheme for recycling/disposing of waste resulting from site preparation and construction works
- Measures for the protection of the natural environment
- Measures to control noise including hours of work on site, including deliveries and removal of materials
- Full details of any piling technique to be employed, if relevant
- Location of temporary buildings and associated generators, compounds, structures and enclosures, and
- Routing of construction traffic.

10. No development shall commence until; a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity; and b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full to ensure that the site is made safe and stable for the development proposed. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

11. Prior to the occupation of the first dwelling a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the

methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

12. Prior to the commencement of the development hereby permitted, a scheme for the disposal of foul and surface waters shall be submitted to and approved in writing by the Local Planning Authority. This shall include details to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 56 Reference ID: 7-056-20220825 of the planning practice guidance. The development shall be completed in accordance with the approved details prior to its first occupation.
13. No works above slab level shall take place until play area details for the development, and details for the management and maintenance of the play area, are submitted to and approved in writing by the Local Planning Authority. The approved play areas details shall be implemented in full on site prior to the occupation of the first dwelling and thereafter maintained for the lifetime of the development.
14. Prior to the first occupation of each dwelling, an internal nest brick (i.e. 1 brick per dwelling) designed for Swifts as a universal biodiversity enhancement for urban bird species shall be installed. The location and specification of the x54 nest bricks shall be clearly marked on a plan of the development and photographic evidence of installation submitted to and approved in writing by the Local Planning Authority.
15. All planting, seeding, and turfing comprised in the plans hereby approved shall be carried out in the first planting and seeding seasons following the occupation of the first dwelling or the completion of the development, whichever is the sooner. Any plants which within a period of five years, ten years in the case of trees, from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period.
16. Before the occupation of the first dwelling hereby approved, a landscape management plan relating to the on-site landscaping in public areas shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping shall thereafter be maintained in accordance with the approved details for the lifetime of the development.
17. No removal of vegetation that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to and approved by the Local Planning Authority prior to any removal of vegetation.

18. All proposed first floor windows to the side elevations of the dwellings hereby approved shall be fitted with obscure glass and shall be of a non-opening design up to a minimum height of 1.7 metres above the internal finished floor level. Such windows shall not be replaced or altered without the prior written permission of the Local Planning Authority.
19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), (or any order revoking or reenacting the Order with or without modification) no development contained within Classes A, AA, B, C, D and E of Schedule 2, Part 1, (including that no extensions or alterations, no extra storey, no additions or alterations to any roof, no windows, dormers or other openings being created, no enclosures or other structures required for purposes incidental to the enjoyment of the dwellinghouses being erected or installed within the domestic curtilage) shall be carried out at any of the dwellings hereby approved.
20. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
 - a) Travis Baker Ltd. (12/04/2024). Flood Risk Assessment and Drainage Strategy. Ref: 23083.
 - b) Travis Baker Ltd. (07/11/2023). Proposed Drainage Strategy. Ref: 23083.
 - (c) DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team, has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage shall be maintained in accordance with the approved details for the lifetime of the development.
21. Prior to the commencement of the development, the applicant shall submit for written approval by the Local Planning Authority details indicating how additional surface water run-off from the site will be avoided during the construction phase shall be submitted to and approved in writing by the Local Planning Authority. Collection, balancing and/or settlement systems may be required for these flows. The approved system shall be constructed and completed and thereafter maintained throughout the construction phase.
22. No demolition or other works affecting Building 1 shall take place until an appropriate bat licence has been obtained. Confirmation of this shall be submitted to and approved in writing by the Local Planning Authority. Upon receipt of a licence from Natural England, works shall proceed strictly in accordance with the approved mitigation, which should be based on the proposed measures outlined in Bat Survey Report Rev A (FPCR, April 2024) and amended as necessary based on any correspondence with Natural England. Such approved mitigation will be implemented in full in accordance with a timetable of works included within the licence and followed thereafter. A copy of the results of any monitoring works will be submitted to the Local Planning Authority for written approval.

23. No development shall take place (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of 'biodiversity protection zones'.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on species and habitats during construction.
- d) Details of offset gullies and drop kerbs in the road network to safeguard amphibians.
- e) The location and timing of sensitive works to avoid harm to biodiversity features.
- f) The times during construction when specialist ecologists need to be present on site to oversee works.
- g) Responsible persons and lines of communication.
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- i) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

24. A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) for on-site biodiversity net gain shall be submitted to, and be approved in writing by, the Local Planning Authority prior to the commencement of the development. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development and should align with the Biodiversity Net Gain Strategy. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:-

- a) Description and location of features to be retained, created, enhanced and managed
- b) A map clearly showing where different habitats are located within the site
- c) Aims and objectives of management
- d) Appropriate management methods and practices to achieve aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
- g) Details of the body or organization responsible for implementation of the plan.
- h) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 10, 15, 20 and 30 years.
- i) Monitoring reports to be sent to the Council at each of the intervals above.
- j) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
- k) Requirement for a statement of compliance upon completion of planting and enhancement works. The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The approved plan will be implemented in accordance with the approved details.

25. A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) for off-site biodiversity net gain shall be submitted to, and be approved in writing by, the Local Planning Authority prior to the commencement of the development. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species at the off-site location post development and should align with the Biodiversity Net Gain Strategy. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:
- a) Description and location of features to be retained, created, enhanced and managed.
 - b) A map clearly showing where different habitats are located within the site.
 - c) Aims and objectives of management.
 - d) Appropriate management methods and practices to achieve aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
 - g) Details of the body or organization responsible for implementation of the plan.
 - h) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 5, 10, 15, 20 and 30 years.
 - i) Monitoring reports to be sent to the Council at each of the intervals above.
 - j) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
 - k) Requirement for a statement of compliance upon completion of planting and enhancement works. The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The approved plan will be implemented in accordance with the approved details.

26. No construction works above slab level shall take place until a Species Enhancement Plan has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to occupation of any dwelling hereby permitted and thereafter maintained for the lifetime of the development. The Plan shall clearly show positions, specifications and numbers of features, which will include (but are not limited to) the following:
- universal nest boxes at ratio of 1 per dwelling in line with British Standard 42021:2022.
 - other bird nest boxes to be installed on trees x5.
 - integrated bat boxes in 10% of dwellings.
 - insect bricks in 30% dwellings and / or towers in public open space.
 - fencing gaps 130 mm x 130 mm to maintain connectivity for hedgehogs in all gardens.
27. Prior to the installation of external lighting fixtures, a detailed lighting strategy to safeguard bats and other nocturnal wildlife shall have first been submitted to and approved in writing by the Local Planning Authority. This should provide details of the chosen luminaires, their locations and any mitigating features such as

dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). The approved lighting strategy shall be implemented in full and thereafter maintained for the lifetime of the development.

Richborough



Costs Decision

Hearing held on 29 April 2025

Site visits made on 29 April and 15 May 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th September 2025

Costs application in relation to Appeal Ref: APP/F1040/W/25/3358723

97 Hartshorne Road, Woodville, Swadlincote, Derbyshire DE11 7HY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Stonebond Properties (Solihull) Limited for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 54 dwellings, public open space, landscaping, access, and associated works.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submission for Stonebond Properties (Solihull) Limited

2. An application for costs was made in writing prior to the Hearing. The basis of the applicant's costs claim is that the Council's decision was based on vague and unsubstantiated assertions resulting in the delay of development that should have been permitted. It is suggested that in respect of the biodiversity reason for refusal contained within the Council's decision notice, that the alleged harm could have been addressed through the imposition of appropriate conditions. At the Hearing the applicant suggested that the reasons for refusal were subjective and without objective analysis.

The Response by South Derbyshire District Council

3. The Council's rebuttal was submitted in writing in advance of the Hearing. It suggests that the Planning Committee was entitled to weigh technical evidence and site-specific representations to reach its decision and that it has provided a full and coherent statement of case setting out its planning judgement. It contends that its reasons for refusal are clear, reasoned and reasonable.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The planning application was recommended for approval by the planning officer but it was subsequently refused by the planning committee at its meeting on 20 August 2024. A planning committee is not duty bound to follow the recommendation of its officers but it must substantiate its position and avoid vague, generalised or

inaccurate assertions which are unsupported by any objective analysis. It has been put to me that the Council considered the evidence in the round including technical evidence, observations made during a site visit and interested party representations. However, whilst I have been supplied with the minutes of the committee meeting, they are very limited and do not provide significant detail as to how the decision was arrived at.

6. The Council's decision notice provides a single reason for refusal relating to 2 substantive matters, namely the effect on the character and appearance of the area and biodiversity. The reason for refusal references the local planning policies that the proposal was considered to contravene. The Council's statement of case explains the reason for refusal in more detail. Although this is a relatively concise document that does not in itself imply that the committee's decision has not been substantiated.
7. Whether or not the appeal site is located within the highest tier of the Council's settlement hierarchy with proven accessibility credentials, it does not override the need to consider the effect on the character and appearance of the area. Following the applicant's viewpoint that the reason cannot be divorced from the principle of development would suggest that if the principle is acceptable due to its type and location, the specific design, layout and appearance of the scheme is irrelevant. That is clearly not the case in the South Derbyshire development plan. I am satisfied that the effect of a development on the character and appearance of the area is a matter of planning judgement that applies regardless of the location of the appeal site. I have drawn my own conclusions on this matter having reference to the evidence of the main parties as well as local residents.
8. Whilst I have not concluded that the harm arising would be substantial as suggested by the Council, in my decision I have found that the proposed development would have a harmful effect on the character and appearance of the area. I am satisfied that the Council's evidence was sufficient to justify its position in relation to this matter.
9. Turning to matters of biodiversity, the Council is very clear that it does not dispute the contents of the applicant's ecological appraisal and surveys and that it considers them to be technically correct. It seems to me from the evidence presented that even if significant harm to biodiversity was identified by the Council, Policy BNE3 of the South Derbyshire Local Plan; Part 2, would not preclude the development from proceeding, providing that it was offset by sufficient mitigation/compensation measures. The policy does not identify where such measures should be located. Whilst national guidance seeks to prioritise mitigation on-site, it does not preclude off-site mitigation.
10. There were no formal objections to the proposal from statutory or other consultees in respect of biodiversity and the Council has not supplied any technical or other compelling evidence to demonstrate why it considered insufficient mitigation had been proposed on-site. Nor did it explain what it would have considered appropriate on-site mitigation. The applicant's ecological appeal statement has clearly set out the approach to mitigation based on the identified value and condition of the various habitats within the appeal site and the Council has not suggested that the approach is flawed. No substantive evidence has been put forward to counter the expert opinion in the applicant's ecological reports or to demonstrate how on-site mitigation has not been maximised in accordance with the mitigation hierarchy.

11. Furthermore, I am concerned that the Council suggests that off-site BNG should be provided locally to where an impact is exerted. This is different to the requirement for on-site mitigation to be prioritised. There is no provision within Policy BNE3 for off-site mitigation to be provided within a threshold distance. It is similarly the case in national policy and guidance. In my decision I have found that the proposal would comply with the local plan in respect of the provision of biodiversity mitigation. I find the Council has made vague and inaccurate assertions with regard to this matter which are unsupported by any objective analysis.
12. An appeal may not have been avoided in its entirety given the matters pertaining to character and appearance, but the applicant has nonetheless incurred costs in defending its position with regard to the biodiversity implications of the proposal.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a partial award of costs is justified in relation to matters regarding biodiversity mitigation.

Costs Order [where awarding costs]

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Stonebond Properties (Solihull) Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending issues regarding biodiversity mitigation only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Clowes

INSPECTOR