

## PLANNING COMMITTEE – 5 MARCH 2019

<b>Application No:</b>	<b>18/01891/FUL</b>	
<b>Proposal:</b>	<b>Erection of one affordable dwelling</b>	
<b>Location:</b>	<b>Land Adjacent Tu Pare, Low Street, Elston</b>	
<b>Applicant:</b>	<b>T.B. Horner And Sons - D Horner</b>	
<b>Registered:</b>	<b>10.10.2018</b>	<b>Target Date: 05.12.2018</b>
		<b>Agreed Extension of Time: 12.02.2019</b>

This application was deferred from 5<sup>th</sup> February 2019 Planning Committee so that Members could undertake a site visit. The application was initially referred to Committee by Cllr Walker on the basis of a lack of objection from the Parish Council (albeit no formal comments have been received) which is contrary to the professional Officer recommendation. The report that follows remains unchanged from the last published agenda, save for an update to the date of publication of the NPPF which does not change the recommendation.

### The Site

The application site forms a broadly rectangular plot with an associated vehicular access to the north of Low Street which forms one of the main vehicular routes through the village of Elston. The site is set to the rear of the residential curtilages of 1 and 2 Stoke Field Cottages and to the east of the residential curtilage of the dwelling known as Tu Pare.

The vehicular access to the site is within the designated Conservation Area (CA) but the site itself is outside of the CA with the southern boundary of the site abutting the northern CA boundary. The Grade II listed dwelling known as The Hollies shares part of the south and east boundaries of the site.

There is a tree subject to a Preservation Order close to the vehicular access to the site within the property known as Rosedene. The site is within Flood Zone 1 according to the Environment Agency mapping system and is not known as an area at risk of surface water flooding.

### Relevant Planning History

*Pre-application advice has been sought in 2017 for the erection of a 3 bed property on the site (albeit the site in the pre-application enquiry extended including land to the north now shown as being land within the applicants ownership rather than within the red line plan).*

**11/01587/FUL** - Erection of a new house and garage.

*Application refused under delegated powers by decision dated 21<sup>st</sup> February 2012 for the following two reasons:*

01

*The proposed development by reason of its position outside of the main built up part of Elston and the lack of a robust forwarded proven local need, represents unwarranted and sporadic housing within the open countryside, contrary to Spatial Policies 1, 2 and 3 of the NSDC Core Strategy 2011, policy NE1 of the NSDC Local Plan 1999 and the aims and objectives contained within PPS3: Housing and PPS7: Sustainable Development in Rural Areas.*

02

*The proposed dwelling by reason of its 'back land' position (behind Stoke Field Cottages), its combined footprint and scale (to include its dominant forward projecting wing) and the resultant front elevation detailing (i.e. lack of first floor windows) represents an overly large addition which fails to respect and is harmful to the established layout, character and appearance of development within the locality. As such the development would fail to sustain the significance of the conservation area contrary to Spatial Policy 3 and Core Policies 9 and 14 of the NSDC Core Strategy 2011, Policies C1 and H23 of the NSDC Local Plan 1999, Policies 2 and 27 of the EMRP 2009, PPS1: Delivering Sustainable Development, PPS5: Planning for the Historic Environment and PPS7: Sustainable Development in Rural Areas.*

**01/02268/FUL** - Erection of a two bedroomed bungalow.

*Application refused under delegated powers by decision dated 26<sup>th</sup> April 2002 for the following two reasons:*

01

*This proposal is subject to Policies H13, H21 and H23 of the Newark and Sherwood Local Plan. In the opinion of the Local Planning Authority, this proposal does not reflect the character of the locality and would not create an attractive living environment in terms of privacy and private open space. The proposal is, therefore, contrary to Policies H21 and H23 consequently Policy H13 of the Newark and Sherwood Local Plan.*

02

*The proposal is also subject to Policies C1 and C4 of the Newark and Sherwood Local Plan. In the opinion of the Local Planning Authority, the proposal would adversely affect the character and appearance of the conservation area through its siting and design and is, therefore, contrary to Policy C1. Policy C4 seeks to retain trees etc on which the character and appearance of the conservation area depends. It is considered that the relationship between the large Ash tree adjacent to the site and the proposed dwelling is an uncomfortable one. It is considered that the proposal would adversely affect the long-term health of this tree and it is, therefore, viewed that the proposal is contrary to Policy C4.*

### The Proposal

The proposal seeks full planning permission for the erection of a single storey two bed dwelling. Access is intended to be gained from Low Street adjacent to Stoke Fields Farm. The dwelling would have a maximum pitch height of approximately 4.9m and eaves height of approximately 2.3m. Materials proposed are red bricks with pantiles and timber framed joinery.

The application has evolved during the life of the application such that the proposed dwelling is now promoted as being an affordable unit. The description of development has been amended to reflect this in line with the additional statement received by email dated 14<sup>th</sup> January 2019. The application seeks permission for a discounted for sale unit. The application has been considered on the basis of the following plans:

- Site Location Plan – (10) 001 Rev. P00 dated 03.07.2018
- Proposed Site Plan – (10) 002 Rev. P00 dated 02.07.2018
- Proposed Layout and Elevations – (20) 001 Rev. P00 dated 17.07.2018

## Departure/Public Advertisement Procedure

Occupiers of five properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

## **Planning Policy Framework**

### **The Development Plan**

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 – Settlement Hierarchy  
Spatial Policy 3 – Rural Areas  
Spatial Policy 7 – Sustainable Transport  
Core Policy 3 – Housing Mix, Type and Density  
Core Policy 9 – Sustainable Design  
Core Policy 12 – Biodiversity and Green Infrastructure  
Core Policy 13 – Landscape Character  
Core Policy 14 – Historic Environment

#### **Allocations & Development Management DPD**

Policy DM5 – Design  
Policy DM7 – Biodiversity and Green Infrastructure  
Policy DM8 – Development in the Open Countryside  
Policy DM9 – Protecting and Enhancing the Historic Environment

### **Other Material Planning Considerations**

- National Planning Policy Framework 2018~~9~~
- Planning Practice Guidance
- Elston Housing Needs Survey

### **Consultations**

**Elston Parish Council** – No comments received.

**NSDC Conservation** – *Original comments received 1<sup>st</sup> November 2018:*

The application is for a single storey bungalow, adjacent to the boundary of Elston Conservation Area.

#### **Legal and policy considerations**

Section 72 of the Act requires the LPA to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA. In this context, the objective of preservation is to cause no harm, and is a matter of paramount concern in the planning process.

Policies CP14 and DM9 of the Council's LDF DPDs, amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance. The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 16 of the National Planning Policy Framework (NPPF).

Paragraph 194 of the NPPF, for example advises that the significance of designated heritage assets can be harmed or lost through alterations or development within their setting. Such harm or loss to significance required clear and convincing justification. The NPPF also makes it clear that protecting and enhancing the historic environment is sustainable development (paragraph 8).

#### Significance of heritage asset

The application site is an open plot of undeveloped land that is located to the rear of a pair of semidetached dwellings on Low Street. The plot also adjoins the plot to The Hollies, a Grade II listed farmhouse. The Hollies was first listed in March 1986 (LEN: 1045580).

The site is adjacent to the boundary to Elston Conservation Area. The conservation area was designated in 1992 due to its special architectural or historic interest. The 1885 OS Map reveals the distinctive character of the long, narrow plot boundaries to the rear of each property. This is still visible today, demonstrating the area's agricultural past. There has been minimal back land development in this area of the village. With dwellings along the street having a strong frontage with Low Street, even when the dwelling is set back.

#### Assessment of proposal

It is considered that the proposed dwelling will not have significant impact on the setting of nearby listed buildings.

However, it is considered that the proposed development will harm the character of the conservation area. Much of the significant character along Low Street is from the built layout and glimpses of the rural character beyond. Policy CP14 looks to protect 'important open spaces', which this undeveloped plot is considered to be. The development of this site will impact the relationship between the properties on Low Street and the surrounding rural landscape.

This proposal is very similar to one that was dismissed at appeal (01/02268/FUL). As outlined in the appeal decision it concludes the development of this site is very different to opposite dwelling Tu Pare. This property addresses Low Street, albeit set back from the street. However, the development of this application site, being behind an existing dwelling would not have a frontage to Low Street. In agreement with this, it is considered that back land development is not a development form that would preserve the character of the area and cannot be supported.

*The agent has submitted a rebuttal to the above concerns (discussed in further detail in the appraisal section below) to which the Conservation Officer has offered the following comments:*

Although the dwelling is sited outside of the conservation area boundary, the access and parking is within the conservation area. The dwelling is located very close to the boundary and therefore its impact on the setting of the heritage asset needs to be taken into consideration.

In regards to the 1884 OS map and the former building on this site, prior to Stoke Field Cottages, this is a single building that stretches perpendicular from Low Street. The application is proposing a separate building behind existing dwellings, very different to this former development form. This proposal results in a dwelling that does not have a relationship with Low Street, a significant characteristic in this part of the conservation area. In addition it will also erode the sense of openness and rural quality in particular from Stoke Field Cottages and impact views from other dwellings and views along Low Street.

The historic development line along Low Street may vary, with some set back from the road. However they generally have a relationship with Low Street and buildings are not stacked behind one another. Any buildings that do are typically ancillary. Dove cottage is set back from Low however has a strong relationship with Low Street, albeit flanked by buildings perpendicular to Low Street either side. It does not have a building directly in front of it.

In regards to the appeal decision Appeal Ref: APP/B3030/W/17/3180014, it is very different to this application site and proposal. Primarily the development is not located behind an existing dwelling within the conservation area and the 10 dwellings are designed to reflect a rural mews.

I hope this is helpful in understanding my comments.

**NSDC Archeological Advisor** - This development is proposed within the medieval settlement of Elston in an area where the mapping still identifies the former remains of crofts and tofts. The proposed development is unlikely to directly impact on any surviving sub surface archaeology, the medieval buildings were likely to be along the frontage rather than set back. However the placement of the house in the backland does further erode the surviving medieval field pattern which has significant negative impact.

*The agent has submitted a rebuttal to the above concerns (discussed in further detail in the appraisal section below) to which NSDC Archeological Advisor has offered the following comments:*

I have read through the comments made and would like to reiterate my original comments.

I appreciate that there may have been buildings on this site they would however have been associated with the main dwelling, and thus subservient to that main dwelling. A new building subdivides the plot by creating a new building and this does have a different impact to previous ancillary buildings that may have stood on this plot. I stand by my original comments that this development will further erode the very clear remnants of the surviving medieval field pattern and these proposals will have a negative impact.

**NCC Highways** - This application is for the erection of one dwelling, served by the existing access onto Low Street. Adequate parking is provided within the site. The proposal is not expected to have a significant impact on the public highway.

Therefore, for one additional dwelling, the Highway Authority would not wish to raise objection.

**NSDC Access and Equalities Officer** – Observations in relation to Building Regulations.

**NSDC Strategic Housing Officer** – Housing Need – Elston

In 2012 a Parish Housing Needs survey was undertaken identifying a need for 2 affordable dwellings. In 2017 a letter drop to residents resulting in an additional nine households in housing need. A scheme of ten rented and shared ownership dwellings are currently under construction.

### Discount for Sale

Whilst there was no evidence from the survey or letter drop that respondents required a discount for sale product, I have no objection to the development of a discount for sale dwelling in this location as I consider it will be of benefit to the community to have access to a wider range of affordable housing products. Discount for sale products usually have a minimum of 20% (NPPF 2018) and in this location given the high house prices and average income levels it is considered that a discount of 25% is acceptable. Affordable housing usually benefits from a local connection clause whether this be village or district wide. It is usual practice to detail the conditions in a S106 agreement in perpetuity.

**Four letters of representation has been received, summarised as follows:**

- The land is agricultural land and therefore may set a precedent for building on other agricultural land in the village
- One dwelling would lead to a lot more
- Neighbouring dwellings have not been consulted
- Most of the properties on this side of Low Street have very long back gardens which sets a potential for a precedent to be set
- Elston has seen a huge increase in development in the past two years
- Elston does not have the infrastructure for such a level of development
- Elston will lose its identity as a village even though it is a conservation area
- The drive is private and cannot cope with another dwelling

### Appraisal

#### Preliminary Matters

As is referenced by the site history section above, the applicant has sought pre-application advice on a scheme for one three bed dwelling. However, the site plan for the pre-application enquiry differs from the red line site location plan for the current application through the incorporation of land to the north and not the vehicular access to the south now included. The positioning of the proposed dwelling was also indicated as being slightly further northwards. The relevance of this is that the Officer response at pre-application stage was that the proposed dwelling would be located within the open countryside. The Planning Statement at paragraph 2.1 makes reference to the efforts in the current application to overcome pre-application concerns (including bringing the dwelling in line with the adjacent Tu Pare).

For the avoidance of doubt, the current submission for full planning permission has been assessed solely on its own merits taking into account all material planning considerations.

#### Principle of Development

The starting point for development management decision making is S.38(6) of the Planning and Compulsory Purchase Act 2004, which states that determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.

Notwithstanding the current process of Plan Review, at the current time the Adopted Development Plan for the District is the Core Strategy DPD (2011) and the Allocations and Development Management Policies DPD (2013). The Council is of the view that it has and can robustly demonstrate a 5 year housing land supply. This has been rehearsed many times before and as such I do not intend to rehearse this in full other than to say that the policies of the Development Plan are considered up to date for the purposes of decision making. This has been confirmed by an Inspector through recent appeal decisions dating from April 2018, including a decision recovered by the Secretary of State in respect of the 2<sup>nd</sup> Farnsfield Public Inquiry which was dismissed.

The adopted Core Strategy details the settlement hierarchy which will help deliver sustainable growth and development in the District. The intentions of this hierarchy are to direct new residential development to the Sub-regional Centre, Service Centres and Principal Villages, which are well served in terms of infrastructure and services. Spatial Policy 1 (Settlement Hierarchy) of the Council's Core Strategy sets out the settlements where the Council will focus growth throughout the District. Applications for new development beyond Principal Villages as specified within Spatial Policy 2 will be considered against the 5 criteria within Spatial Policy 3. These are Location, Scale, Need, Impact and Character.

It is notable that the site has been subject to previous refusals for residential development. However, the Development Plan has changed since these decisions. Moreover, the Plan continues to evolve through the published Amended Core Strategy and its associated evidence base documents. These were submitted for independent examination by the Inspectorate which took place on February 2<sup>nd</sup> 2018. Further details have since been submitted to queries (which include in the context of Spatial Policy 3) and the Council finished a period of consultation on the main modifications on 21<sup>st</sup> September 2018.

Paragraph 48 of the NPPF is clear that authorities may give weight to relevant policies in emerging plans according to:

*“a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*

*b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*

*c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”.*

At the present time, the Inspector is considering the responses to the main modifications stage prior to the issue of his report. In respect to criterion a) above the plan is considered to be at an advanced stage of preparation. The relevance of points b) and c) and as such the weight attached to certain elements of the emerging Spatial Policy will be discussed in the relevant sections below. For the avoidance of doubt however, the five criteria of the extant policy referred to above have been carried to the wording of the emerging policy and it is therefore necessary to assess each of these in turn below.

## Location

First and foremost under the wording of the extant policy it is necessary to determine whether the site falls within the main built up area of Elston or alternatively whether it should be considered as development outside of the main built up area and therefore assessed as being within the open countryside under the realms of Policy DM8.

As is inferred above, there is planning history, both in the form of previous refusals and pre-application advice, which confirm that the LPA have previously assessed proposed development at the site as being within the open countryside. However, it is a material planning consideration that the red line site location plan submitted to accompany the current application is different to that presented in the pre-application scenario and that Policy DM8 (Development in the Open Countryside) has been introduced after the latest formal planning refusal.

If one looks to history as a guide, the village envelope of Elston set out within the 1999 Local Plan, the site was outside the envelope as demonstrated on the excerpt from the plan below.



However, the proposed dwelling foot print has been re-aligned since pre-application stage such that it is now in line with the neighbouring dwelling to the west and does not extend further northwards towards the open countryside. There are also agricultural buildings to the east of the proposed siting of the dwelling which reinforce the built form of the immediate surroundings. I appreciate that these buildings would be typical of an open countryside setting but in this case their presence in such close proximity to the built form of neighbouring residential curtilages almost establishes them within the village character. Having visited the site it is not considered that the site itself exudes a character typical of the open countryside being visually read in close association with the nearby residential curtilages. Having said that, the land towards the north which tapers towards an agricultural field beyond, does represent more of an open countryside nature.

I am mindful that the wording of the locational criteria of SP3 is likely to be changed through the amended Core Strategy. The latest wording within the Main Modifications document states that 'new development should be in villages' (rather than within the main built up area) implying a more lenient approach. However, given that this policy is still subject to outstanding objections, I have attached the revised wording very limited weight.



Overall, Officers are persuaded that the site can be considered as being within the village thus justifying assessment against Spatial Policy 3 as opposed to Policy DM8.

The locational criteria of SP3 also require an assessment of local services and access to more strategic areas of the District including the Newark Urban Area, Service Centres or Principle Villages. Elston has a number of services including a Primary School; Village Hall; Village Shop and Church. The level of services is considered commensurate to the size of the village such that the occupier of the proposed dwelling would be able to access these services for their day to day needs. Notwithstanding this, Elston is close to the wider services available within the Newark Urban Area which is served by bus routes to the village.

On the basis of the above discussion, the proposal is considered to meet the locational criteria of SP3.

### *Scale*

Whilst the guidance note referred to above confirms that the scale criterion relates to both the amount of development and its physical characteristics, the latter is more appropriately assessed through the character criteria below. In terms of the numerical addition of dwellings, it is considered that Elston is of such a size that it could comfortably accommodate an additional one dwelling without representing a disproportionate increase in the village size.

### *Need*

The extant wording of SP3 requires development proposals to meet a proven local need for the village. Referring again to paragraph 48 of the NPPF (in terms of weighting to be attached to emerging policies) the need element of Spatial Policy 3 has been subject to objections throughout the plan review process. The latest position of the LPA, in taking into account the initial advice of the Inspector following the examination hearing, is outlined by the main modifications consultation document. As drafted, the wording of the need element is as follows (with strike through etc. representing previous iterations):

- *“Need - Employment and tourism which ~~requires a rural/village location~~ are sustainable and meet the requirements of the relevant Core Policies. New or replacement facilities to support the local community. Development which supports local agriculture and farm diversification. New housing where it helps to ~~meet identified proven local need~~ support community facilities and local services. Neighbourhood Plans may set detailed policies reflecting local housing need, elsewhere housing schemes of 3 dwellings or more should meet the mix and type requirements of Core Policy 3 ~~and reflects local need in terms of both tenure and house types;”~~*

As is evidenced by the above wording, the latest stance of the planning authority is that the requirement for proposals to deliver a ‘identified proven local need’ is no longer necessary. Despite the wording of the extant policy, Officers are of the view that it is appropriate to attach some limited weight to the emerging policy given the advanced stage of the Plan Review and that the revised wording of the need element of Spatial Policy 3 better aligns with the stance of the National Framework in that the support for local services is also inferred by paragraph 78 of the Framework which confirms that, *“housing should be located where it will enhance or maintain the vitality of rural communities.”*

As is confirmed by the description of the proposal above, the applicant has changed the application during the life of the application to confirm that they now wish to seek permission for a discounted market sale dwelling meeting the definition of an affordable housing product as set out in Annex 2 – Glossary of the NPPF as updated in July 2018. There has been some debate with Strategic Housing Officers as to the level of discount below market value with the applicant originally suggesting that 20% below local market value would be appropriate. The agent has since accepted the suggested 25% and confirmed in writing an acceptance that if approved, the application would need to be accompanied by an associated legal agreement to ensure that the property remains discounted for future eligible households.

The Planning Statement makes reference to (and indeed Members may recall) an appeal in the village whereby the Inspector attached weight to the findings of the Elston Parish Housing Needs Survey 2016. This application (reference 16/01881/FULM) for 10 dwellings on Land off Elston Lane was allowed with the Inspector attaching *'substantial weight to the affordable housing provision proposed and the social and economic benefits that would be delivered as a result.'* In reaching this judgement the Inspector acknowledged the need for 13 dwellings based on recent housing surveys.

The amendment during the life of the application to an affordable unit is made on the basis that there is still an unmet need in respect to the housing needs survey (i.e. that showed a need for 13 dwellings but the appeal scheme would only deliver 10). The applicant therefore contends that the unit proposed through the current application would meet the local needs for small affordable homes in the village. However, in the case of the affordable product proposed in the application (discounted market sale); it is not quite a simple fit to meeting an identified need. The outstanding need is for a shared ownership product or an affordable rent product, both of which would be managed by a Registered Provider. What is proposed by this application is a slightly different product. That said, a discounted open market sale product does indeed meet the definition of an affordable product as confirmed by the glossary of the NPPF 2018:

***"Affordable housing:*** *housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:"...*

***"c) Discounted market sales housing:*** *is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households."*

On this basis the type of affordable unit proposed is not disputed in principle and, whilst not meeting a specifically identified proven local need, it would of course provide an affordable benefit to the community which must be afforded positive weight in the overall balance undertaken below. I am specifically mindful that, according to the 2016 survey results, there is an outstanding housing need in the village. It may be the case that if up to date surveys were undertaken, those in need from a shared ownership or affordable rent product may equally benefit from a discounted market sales product. For the avoidance of doubt, if the application were to be approved on the basis of attaching matters of housing need determinative weight, then the product proposed could reasonably be secured by an associated legal agreement to secure both the discount value and a local connection clause.

On the basis of the above discussion, the proposal as revised is considered to meet the requirements of SP3 in respect to the need criterion.

### *Impact*

This element of the policy refers to ensuring that new development does not generate excessive car borne traffic or unduly impact on local infrastructure including drainage and sewerage etc. Officers are confident that a single dwelling is unlikely to detrimentally impact upon local infrastructure.

### *Character including in the Heritage Context*

SP3 states that, *'new development should not have a detrimental impact on the character of the location or its landscape setting.'*

The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Policy CP14 of the Core Strategy requires continued preservation and enhancement of heritage assets. Local planning authorities need to have special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas and the setting of Listed Buildings.

Policy DM5 refers to the rich local distinctiveness of the District's character of built form requiring new development proposals to reflect their local surroundings. Policy DM5 also confirms that, where local distinctiveness derives from the presence of heritage assets, as in the case in the context of this proposal, development will also need to satisfy Policy DM9. The policy requires that development must promote local distinctiveness and protect heritage assets (including their setting).

Chapter 12 of the NPPF 2018 provides guidance in respect of achieving well-designed places confirming at paragraph 124 that, *'the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.'*

Section 72(1) also requires the LPA to pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas.

The duties in s.66 and s.72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit. When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight.

This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognise that a finding of harm to a listed building, or harm to the setting of a listed building, or to a conservation area gives rise to a strong presumption against planning permission being

granted. The presumption is a statutory one. The presumption is not irrefutable; it can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other, if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering. This is a matter that has been considered in a number of recent court cases (in particular: Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council (2014); The Forge Field Society v Sevenoaks District Council (2014); and Mordue (2016).

The majority of the application site, and indeed the built form of the dwelling proposed, is outside of the designated CA. However, the southern boundary of the site abuts the CA and there therefore remains the potential that the proposal could affect the CA setting. There are also listed buildings in close proximity to the site which require consideration in terms of the impact on their setting. This has been considered by internal conservation expertise with the Conservation Officer's comments listed in full in the consultee section above. Nevertheless, the assessment of the proposal is considered worthy of repetition in the context of the appraisal discussion:

*It is considered that the proposed dwelling will not have significant impact on the setting of nearby listed buildings.*

*However, it is considered that the proposed development will harm the character of the conservation area. Much of the significant character along Low Street is from the built layout and glimpses of the rural character beyond. Policy CP14 looks to protect 'important open spaces', which this undeveloped plot is considered to be. The development of this site will impact the relationship between the properties on Low Street and the surrounding rural landscape.*

*This proposal is very similar to one that was dismissed at appeal (01/02268/FUL). As outlined in the appeal decision it concludes the development of this site is very different to opposite dwelling Tu Pare. This property addresses Low Street, albeit set back from the street. However, the development of this application site, being behind an existing dwelling would not have a frontage to Low Street. In agreement with this, it is considered that back land development is not a development form that would preserve the character of the area and cannot be supported.*

Moreover, concern has also been raised by the Council's Archeological Advisor that the backland positioning of the proposed dwelling would erode the surviving medieval field pattern (comments listed in full in the consultation section above). Although the applicant has raised the issue that there may have been previous buildings on the site this is considered to be materially different to the current proposal in that previous buildings would have been associated and therefore subservient to, the main dwelling.

The site is set to the rear of the existing well established building frontage along Low Street, on the northern edge of the village. As referenced most of the site is not within the Elston Conservation Area but abuts the boundary of the designated area with Tu Pare to the west and all buildings along the frontage of Low Street falling within the area. Buildings to the east and west of the site predominantly front onto Low Street, however it is accepted that a number of buildings are set back, notably Tu Pare immediately to the west. This property was granted consent originally in 1979 and then again in 1988. No details are given within the 1988 application as to the reasoning for the location of the dwelling; however it is noted that to the front (south) are a number of large trees which contribute positively to the street scene which is likely to have influenced the siting of the dwelling. Nevertheless, I would concur with the comments of the Conservation Officer that the dwelling known as Tu Pare continues to address Low Street albeit through a set back positioning.

The siting of the proposed dwelling would result in the presence of a dwelling to the rear of Stoke Field Cottages, a pair of two storey cream rendered dwellings. The proposal would as such result in backland development. Policy DM5 of the DPD states that *'proposals creating backland development will only be approved where they are in-keeping with the general character and density of existing development in the area and would not set a precedent for similar forms of development, the cumulative effect of which would be to harm, the established character and appearance of the area.'*

It is noted that concern was raised by the inspector in the 2003 appeal to the potential for the proposed backland development to impact on the character and appearance of the conservation area and could result in further harm through the precedent it could set for additional development to come forward. This view is shared by the Conservation Officer in the context of the current application and I would have similar concerns that the proposed development would fail to preserve the character of the adjacent Conservation Area subsequently harming the character of the Conservation Area. As such, the proposal would fail to accord with policies DM5 & DM9 of the DPD as well as the relevant paragraphs of the NPPF.

Paragraph 196 of the NPPF (2018) states that:

*'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'*

The public benefits of the proposal would undoubtedly include the contribution towards the Districts Housing Supply and the aforementioned affordable housing product which would benefit the community. The weighting of this in respect to the identified heritage harm will be undertaken in the overall balance and conclusion below.

The above concerns were raised with the agent during the life of the application in the interests of transparency to the likely recommendation of the application. A rebuttal to the comments was received by email dated 13<sup>th</sup> November 2018 but as is detailed by the additional comments of the Conservation Officer listed in full above, this would not alter the heritage harm identified. I would concur entirely with the justification provided by the Conservation Officer. Specifically in relation to the appeal decision referenced, I agree that this should not be afforded weight in the current application as it relates to an entirely different form of development (an application for 10 dwellings).

In addition to the rebuttal received, Officers have more recently (January 22<sup>nd</sup> 2019) met on site to discuss the perceived heritage harm (noting that the heritage consultant for the applicant identifies no harm to the special interest or setting of the Elston Conservation Area). During the meeting, the agent pointed out another recent development site at Chapel Farm in an attempt to demonstrate that backland development in the conservation area has been previously approved. However having reviewed the planning file for this development (14/01868/FUL) I find that this assessment was materially different in that it related to the demolition of modern barns and outbuildings to a degree which was deemed beneficial to the conservation area.

To clarify, the responses and meetings during the life of the application have not altered the Conservation Officers assessment of less than substantial harm to which I would agree. The application has clearly amounted to differing professional views, which as Members will be aware is a scenario not uncommon in the planning process.

### Impact on Highways

Spatial Policy 7 of the Core Strategy seeks to ensure that vehicular traffic generated does not create parking or traffic problems. Policy DM5 of the DPD requires the provision of safe access to new development and appropriate parking provision and seeks to ensure no detrimental impact upon highway safety. The proposed dwelling would be accessed via the existing vehicular access from Low Street. The Planning Statement confirms that the *'track currently serves a bungalow (Tu Pare), parking to Stoke Fields Cottages, Stoke Fields Farm and four live/work units converted from barns associated with the Farm.'*

The proposal has been assessed by Nottinghamshire Country Council as the Highways Authority and no objection has been raised. I have identified no reason to disagree with the advice of the Highways Authority and therefore the proposal is compliant with Spatial Policy 7 and the relevant elements of Policy DM5.

### Impact on Amenity

Policy DM5 of the DPD states that development proposals should ensure no unacceptable reduction in amenity including overbearing impacts and loss of privacy upon neighbouring development.

Given the aforementioned backland nature of the development the proposed dwelling would introduce new amenity relationships with existing properties. The closest of these spatially would be the host dwelling to the west known as Tu Pare. The proposed site plan annotates the distance between the side gables of the properties as being 9.5m. The existing gravel track would intervene this distance. Both the host and the proposed dwelling do not include any windows on the side gables so this is therefore considered to be an appropriate amenity relationship. The site boundary of Tu Pare is well established with fencing and hedging such that their private amenity space would be protected from direct overlooking through use of the proposed garden.

The other properties which would be potentially affected by the development include the pair of Cottages fronting Low Street known as Stoke Field Cottages. The distance annotated to these properties (their two storey rear elevations noting the presence of small single storey rear additions) is approximately 31m. Noting this distance, and the single storey nature of the proposed dwelling I do not consider that the development would introduce an overbearing impact. Nevertheless the rear of their residential curtilages is relatively open in nature marked only by a post and rail fence. It appears that the space to the rear of the dwellings is also used for vehicular parking. There would undoubtedly be visibility between the existing properties and the principle elevation of the proposed dwelling which is intended to feature a bedroom window; a bathroom window; the front door; and a secondary window to the kitchen / dining area. The proposed car parking is intended to be positioned in front of the principle window. The proposed site plan shows that the southern boundary of the site would retain a relatively open boundary with the post and rail fence to a height of 1.3m. Whilst this would not necessarily prevent outlook from the principle elevation windows towards the rear of Stoke Field Cottages, there is additional planting indicated which would aide in intervening the built form reducing the perception of the neighbouring dwellings being overlooked. In the context of the above discussion as to what the land immediately rear of the existing dwellings appears to be used for, Officers do not consider that the increased overlooking from the proposed dwelling would amount to a detrimental amenity harm which would warrant resistance against Policy DM5.

It has been carefully considered as to whether it would be appropriate to seek an amended boundary treatment (perhaps a higher close boarded fence) although this has not been pursued given that it would not be appropriate in the context of the heritage assets which abut the site.

Whilst the properties positioned to the north east of the site (approximately 350m away) would pass the dwelling in using the shared access, this is not in itself considered harmful in amenity terms.

Subject to conditions securing the landscaping details as implied if development were to be otherwise accepted, the proposal is considered to be compliant with the relevant amenity elements of Policy DM5.

### Other Matters

It has been brought to the attention of Officers that neighbouring properties to the north east of the site, (around 350m away as the crow flies) have not been directly notified by letter. For the avoidance of doubt, a site notice was placed close to the access road to the site and therefore Officers are satisfied that the correct consultation procedures have been met.

### Overall Balance and Conclusion

Despite previous refusals on the site, Officers consider the site to be within the main built up area of Elston warranting assessment against Spatial Policy 3. The benefits of the proposal in terms of contributing to the Districts Housing Supply with an affordable housing unit secured by legal agreement have been attached positive weight as too has the opportunity for the proposal to support local services. However, the proposed siting of the dwelling, at a back land location with no frontage to Low Street would not preserve the character of the area to a degree where the setting of the adjacent designated Conservation Area would be harmed. Policy CP14 looks to protect 'important open spaces', which this undeveloped plot is considered to be. The development of this site will impact the relationship between the properties on Low Street and the surrounding rural landscape. Moreover, the proposal would erode the surviving medieval field pattern. The aforementioned benefits are not considered to outweigh this harm and therefore the proposal is recommended for refusal as detailed below.

### **RECOMMENDATION**

**That planning permission is refused for the following reason:**

#### Reason

01

The application relates to a proposed single storey dwelling to the north of Stoke Field Cottages. The proposal is considered to represent back land development which would have no frontage to Low Street. The result of the proposal would be that the relationships between the properties on Low Street and the surrounding rural landscape would be detrimentally affected to a degree which would amount to less than substantial harm to the setting of the designated Conservation Area which the site is partially within. The proposal would also erode the surviving medieval field pattern of the area.

Whilst amounting to less than substantial harm, in line with paragraph 196 of the NPPF, this harm is not considered to be outweighed by the public benefits of the proposal, namely in respect of the contributing marginally towards the affordable housing stock within the District and supporting local services. The proposal is therefore contrary to the NPPF which forms a material consideration as well as the local Development Plan namely, Spatial Policy SP3 (Rural Areas); Core Policy 9 (Sustainable Design); Core Policy 14 (Historic Environment); Policy DM9 (Protecting and Enhancing the Historic Environment); and Policy DM5 (Design).

### Informatives

01

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason for refusal. Whilst the applicant has engaged with the District Planning Authority at pre-application stage our advice has been consistent from the outset. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

### Background Papers

Application case file.

For further information, please contact Laura Gardner on ext 5907.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Director – Growth & Regeneration**



Committee Plan - 18/01891/FUL

