

PLANNING COMMITTEE – 5 JUNE 2018

Application No:	17/00771/FUL	
Proposal:	Erection of 1 No detached dwelling with attached garage	
Location:	Land To The Rear Of 37 & 39 Halloughton Road, Southwell, NG25 0LP	
Applicant:	Mr Dan Orwin	
Registered:	25.04.2017	Target Date: 20.06.2017
		Extension of Time Agreed until 08.06.2018

This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Cllr. Laughton has referred it to Members due to the reverse in Highways advice.

Members may recall that the application was on the agenda of 5 December 2017 Planning Committee meeting with an Officer recommendation of refusal. The application was withdrawn from the agenda prior to the meeting at the request of the applicant in an attempt to address the expressed highway concerns. Additional text added since the published December agenda has been included through bold text.

Since the December agenda went to print there have been extensive discussions with numerous parties including the applicant, NCC as the Highways Authority and neighbouring parties. The report below has been updated to reflect these discussions and thus forms the most up-to-date position and recommendation of Officers.

Further delay to the decision ensued at request of the applicant on the proviso that amended plans would be submitted for consideration. No such plans have been received and the applicant confirmed on 27 April 2018 that the application should be determined as submitted.

The Site

The application site is a broadly rectangular plot accessed by Halloughton Road to the west. The site is land locked by neighbouring residential curtilages with the Potwell Dyke sharing the northern boundary of the site. The site is within the designated conservation area. There is a public footpath which runs along the access to the site from Halloughton Road before following the southern boundary of the site. The site is within Flood Zone 1 according to the Environment Agency maps and despite its proximity to the Potwell Dyke is shown to be at very low risk of surface water flooding.

As existing the site is a vacant plot of land between residential curtilages. The submitted Design and Access Statement (D&AS) suggests that the land previously formed the rear gardens to 37 and 39 Halloughton Road (within the applicant's ownership). Properties to the south along Halloughton Road are typically dormer bungalows whilst the immediately adjacent plots at 37 and 39 Halloughton Road are solely single storey. The dwelling to the east; 39a Halloughton Road is a dormer bungalow with its principle elevation orientated towards the site.

Relevant Planning History

Whilst there have been planning applications in relation to the recent residential development which surrounds the site, there is no planning history of direct relevance to the site itself.

The site characteristics have changed during the life of the application through the removal of a hedge and subsequent erection of a timber fence elevated on posts with chicken wire underneath along the boundary with the public footpath. This is subject to a separate enforcement investigation.

The Proposal

The application seeks full planning permission for a detached dormer bungalow with an attached garage. The dwelling would be orientated with its principle elevation southwards with the attached single storey garage set at a perpendicular arrangement orientated towards the shared access from Halloughton Road.

The maximum pitch height of the dwelling would be approximately 6.2m whilst the eaves would be set at approximately 2.6m.

The scheme has been amended during the life of the application owing to concerns raised by officers to the original proposal. The revised plans were received on the 14th June 2017 and were subject to a round of re-consultation and it is on this basis that the appraisal below is framed. The main changes in comparison to the original scheme are the omission of floor space at both ground and first floor to the rear elevation (resulting in the loss of a bedroom) – the L shape dwelling would have maximum dimension of 19.15m depth (including the attached garage) and 12m width. The revisions also include the removal of solar PV panels; and the reduction in height of a glazed entrance element on the principle elevation.

The site layout plan has also been amended on numerous occasions during the life of the application with the most recent iteration being Revision G dated 13th September 2017. This is owing to concerns in relation to the public footpath which shares the highways access (as discussed through the appraisal section below). The latest site location plan demonstrates a mountable pedestrian refuge along the southern side of the access.

The application has been accompanied by a Heritage Impact Statement; Method Statement for Tree Protection; Design and Access Statement and a Flood Risk Assessment.

The applicant has attempted to address the concerns of NCC Highways since the December 2017 Published agenda with correspondence including references to and extracts from the following:

- **The Road Traffic Act 1988**
 - **Section 34 Para. 2A**
- **Rights of Way Advice Note 12 (published 1 December 2004)**
- **Natural Environment and Rural Communities Act 2006**
 - **Part 6 para. 67 (5) (pages 27 and 28)**
- **Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways – A guide for local authorities enforcement agencies, rights of way users and practitioners – Version 5 – May 2008**

- Paras 55 and 56 (page 15)
- **The Building Regulations 2010 Fire Safety Approved Document B Volume 1 – Dwelling Houses**
- **Manual for Streets 2**
 - **3.2_ ‘Design Guidance and Professional Judgement’ (reference to Local Transport Note 1/08)**
- **Appeal Decision APP/X3025/W/17/3180777 dated 11 January 2018 (in relation to a housing development for outline permission for 6 dwellings in Mansfield District)**

Departure/Public Advertisement Procedure

Occupiers of thirteen 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. There have been additional rounds of consultation during the life of the application both in respect to the aforementioned amended plans but also subsequently in respect of the additional comments received from the Highways Authority (as listed in full below) and the revised block plan which now demonstrates the entirety of the routed designated public footpath.

Planning Policy Framework

The Development Plan

Southwell Neighbourhood Plan (made October 2016)

Policy SD1 - Delivering Sustainable Development

Policy E2 – Flood Resilient Design

Policy E3 - Green Infrastructure and Biodiversity

Policy E4 - Public Rights of Way and Wildlife Corridors

Policy E5 – Green Link

Policy DH1 – Sense of Place

Policy DH3 – Historic Environment

Policy TA1 – Cycle and Pedestrian Routes

Policy TA2 – Public Transport Connectivity

Policy TA3 – Highways Impact

Newark and Sherwood Core Strategy DPD (adopted March 2011)

Spatial Policy 1: Settlement Hierarchy

Spatial Policy 2: Spatial Distribution of Growth

Spatial Policy 7: Sustainable Transport

Core Policy 3: Housing Mix, Type and Density

Core Policy 9: Sustainable Design

Core Policy 14: Historic Environment

Allocations & Development Management DPD (adopted July 2013)

Policy So/HN/1 – Southwell Housing Need

Policy So/PV – Southwell Protected Views

Policy DM1 – Development within Settlements Central to Delivering the Spatial Strategy

Policy DM5 – Design

Policy DM9 – Protecting and Enhancing the Historic Environment
Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2012
- Planning Practice Guidance 2014

Consultations

Southwell Town Council – Original comments received 9 June 2017:

Unanimously to object to the application for the following reasons:

This proposal in an infill, backland development.

The committee supports the highways strong objection

Additional comments received 6 July 2017:

Southwell Town Council considered application 17/00771/FUL - Land To The Rear Of 37 & 39 Halloughton Road Southwell and agreed unanimously to support this proposal

Further comments received 22 September 2017:

Southwell Town Council discussed the amendment to planning application 17/00771/FUL on 20 September 2017.

Southwell Town Council support the amendment. Min no 17.1 FC

Further comments received 18 January 2018:

Southwell Town Council reconsidered application 17/00771/FUL (Land to the Rear of 37 & 39 Halloughton) following new information, after their previous decision and objected to this application by a majority decision for the following reasons:

The committee noted the objection from the NCC regarding the width of access, not being 5.25 metres wide.

- Due to the width of the access there are concerns regarding the safety of pedestrians using this access this application is backland development and with this area very susceptible to flooding there will be an increase risk from the additional run off unless it is dealt correctly

NCC Highways Authority – Original comments received 10 May 2017:

This proposal is for the construction of a single dwelling served by an existing vehicular access which currently serves 3 dwellings.

The site layout plan indicates that the existing driveway into the site has a width of 3.5m. In accordance with the current Highway Design Guide (6C's) the minimum access width for this number of dwellings is 4.25m for a minimum distance of 5m behind the highway boundary (in all cases add 1m if bounded by a wall, fence, hedge, line of trees etc. on both sides). Therefore, as the access is bounded on each side, the required width is in fact 5.25m. Whilst it is understood that

the access is currently in use by the residents of 3 dwellings, the driveway width is substandard and an increased use should not be encouraged. This proposal increases the likelihood of vehicular conflict as a vehicle waiting to enter the site would have to wait in the carriageway of Halloughton Road whilst another exits.

It should also be noted that a minimum width of 3.7m is required for suitable access by fire service vehicles, as recommended in DfT Manual for Streets, and that they should not have to reverse more than 20m.

As such, it is recommended that this application be refused for the following reason:

The access road leading to the site is substandard in that it is of inadequate width to allow two vehicles to pass and the intensification of use of such a road would result in an increase in the likelihood of unacceptable danger to users of the highway.

Additional comments received 12 June 2017:

The applicant/agent has provided additional information relating to possible improvements to the access. However, it is considered that the access would still be substandard and further intensification should be discouraged.

Additional comments received 11 July 2017:

The layout has been amended to include a pedestrian refuge approx. 20m along the private driveway. There is no footway along the driveway. This does not address the concern previously raised and as such my previous comments relating to the substandard access remain.

Additional comments received 23 August 2017:

The access currently serves 4 dwellings, not 3 as stated in my previous comments. There is a wide verge at the access point which assists with visibility. Following a further, more thorough, site visit, whilst the access width is less than normally required for this number of dwellings, considering the low number of additional vehicular movements associated with one further dwelling at this location, it may be considered unreasonable to recommend that this application be refused.

Therefore, in this instance, there are no highway objections to the construction of 1 dwelling subject to the following being imposed:

1. No part of the development hereby permitted shall be brought into use until the access to the site has been widened to 3.5m, and surfaced in a bound material in accordance with the approved plan. Reason: In the interests of highway safety.
2. No part of the development hereby permitted shall be brought into use until the parking/turning areas are provided in accordance with the approved plan. The parking/turning areas shall not be used for any purpose other than parking/turning of vehicles. Reason: In the interests of highway safety.

Further comments received 27 September 2017:

Further information

The Highway Authority is aware that it has made comments on this proposal on a number of occasions which have highlighted concerns with the overall inadequate width of the access when compared to suggested national and local standards. However the most recent observation following further investigation on site stated that 'in view of the low number of additional vehicular movements associated with one further dwelling at this location, it may be considered unreasonable to recommend that this application be refused'. The comment was made based on the information supplied by the applicant in their planning application which was presumed to be accurate.

It is noted that the application is once again being consulted on and information on a Right Of Way – Southwell Footpath Number 27 – has now been included as part of this Right of Way is within the red line boundary of the application. The Footpath is officially recorded on the County's Definitive Map of Rights of Way and further information recently obtained indicates that a public footpath was expressly reserved along the southern boundary of the access way over land within the ownership of No. 39, Halloughton Road. It is noted that there is no reference to this within the applicant's revised documentation.

Having now had an opportunity to obtain documents regarding the public footpath which were not held by the Highway Authority, the Authority is now able to provide a fuller response on any implications for the public pedestrian highway as part of the recent re-consultation which has given the Authority the opportunity to consider once again the highway aspects of the application. In addition the applicant has submitted further highway related information (18 August 2017 Ref AEM/F17084/180817) prepared by their transport consultant. This information outlines the views of the consultant on the adequacy of the width of the access and how fire fighting vehicles would be able to access the property via the existing access road.

In relation to the existing Right of Way – Southwell Footpath Number 27 - the Highway Authority has to consider all highway users when making comments and recommendations to the Local Planning Authority. The inclusion of this Footpath in the application red line is a significant material change in the nature of the application and will have an effect on all highway users. The Highway Authority acknowledges that since the development was originally laid out and the footpath set out along the access way, there has been considerable intensification of vehicular use following further development, to which it is now proposed to add. The Highway Authority, upon further consideration is of the view that the need to ensure safe access by pedestrians (who have a legal right to use the route unhindered) means that the existing width of the access (and indeed any width below 5.25m (as highlighted in its original comments objecting to the application)) is unsuitable to safely allow for any intensification of use by vehicular traffic generated by the additional development.

It has already been noted that there exists documentation which has been supplied to the Authority which does show a five foot wide strip of the access way as dedicated for the sole use of pedestrians. Whilst it is understood that there has existed an undesirable situation for many years where the width of the footpath may not always have been avoided by existing private vehicular users of the access way, especially with the increase in the physical width of vehicles since the 1960's, it is the view of the Authority in making its comments to the Local Planning Authority that this cumulative increase in risk cannot be excluded from its consideration of this matter. Therefore the view of the Highway Authority is that within the existing physical constraints that contain the

access way the applicant would be unable to provide any improvement that would allow for additional vehicular traffic beyond that which already exists without further detriment to pedestrian highway users.

The Highway Authority would also like to make comment on the information supplied by the applicant's transport consultant in their documentation dated 18 August 2017 Ref AEM/F17084/180817. The document outlines the consultant's view on the suitability of the access in terms of width and intensification of use.

From the Highway Authority's view, the access road does not meet current standards to allow for two vehicles to pass should they meet and, as has been highlighted earlier, the current physical boundary constraints on either side of it prevent any further widening. Whilst the consultant highlights an extract from the national Manual for Streets document stating that the "design of new streets or the improvement of existing ones should take into account the functions of the street, and the type, density and character of the development" and that this should be used in determining the appropriate width, it is also highlighted that the access road fails to meet the local design standards adopted by the Authority and contained within the 6Cs Highway Technical Design Guide. The consultant rightly states that 'Figure DG20 (Unadopted shared drive serving up to 25 dwellings) of the 6Cs Design Guide, states how developments of up to 5 dwellings would require a minimum driveway width of 4.25 metres for a minimum distance of 5 metres behind the highway boundary. As summarised in the comments raised by NCC dated 7 July 2017, Figure DG20 also states that if the driveway is bounded by a wall or fence on both sides, then 1 metre should be added.' The consultant then highlights that:-

'The topographical survey demonstrates that the effective width of the private driveway to the back of the highway boundary is 3.75 metres. At a point 5 metres behind the highway boundary, the width is 3.67 metres. Between the edge of the carriageway along Halloughton Road, and the commencement of the private driveway, there is a 4.2 metres wide footway/hardstanding. Given that the majority of cars in the UK are between 4.5 metres and 5 metres in length, this demonstrates that there is space to accommodate a vehicle pulling off Halloughton Road, and waiting to enter the private driveway should the need arise. This prevents traffic entering the driveway from obstructing through-traffic along Halloughton Road. Indeed during on site observations undertaken on 10 August 2017, it was noted that vehicles pulling off Halloughton Road can effectively be stored in this section of highway land prior to entering the private driveway.'

What this means is that should a vehicle pulling off Halloughton Road to proceed up the driveway and is prevented from doing so either by an egressing vehicle or pedestrians legitimately using the Right of Way it is suggested that they can pull off the existing carriageway and wait on the 4.2m wide footway/hard-surfaced vehicle access for the next door private driveway, which is there to allow vehicles to cross the footway, not for 'waiting' of any kind, by which it would cause an obstruction. Additionally, the footway is an area segregated for the use of pedestrians who by law have the priority of its use. Even if a vehicle were to wait in the location to which the consultant makes reference whilst it awaits a clear passage along the access road, it appears accepted by the consultant that part of it would still overhang the carriageway and also that it would eventually need to carry out some reversing manoeuvre onto the carriageway in order to be able to physically position itself to be able to actually enter the access road. The photograph below shows the footway/hardstanding area that the consultant is referring to.



It is clear that there is particularly restricted visibility for vehicles wishing to turn into the accessway from the south, and the Highway Authority considers this could lead to collisions arising from 'false starts' when a vehicle leaving via the accessway is encountered.

The consultant highlights that in relation to the intensification of use, the existing four developments generate in the region of 24 to 32 daily two-way movements and an additional property would 'only generate between 6 to 8 additional daily two-way movements.' In addition it is highlighted that there have been no recorded road traffic accidents between 2011 and 2015 in the vicinity of the site proving that the access works safely. It is also stated that many of the existing properties on Halloughton Road have driveways that only allow their users to reverse vehicles onto the carriageway which means drivers on Halloughton Road itself are used to watching out for emerging vehicles.

Whilst the addition of one further property off the access road may seem minimal it should be noted that using the applicant's consultant's own figures the use of the road will increase by 25% which is a significant intensification in use over present levels; levels with which the Authority already has some concerns given the increase in vehicle sizes since the original development, the greater number of private vehicles owned, and intensification of traffic flows generally. In respect of accidents and driver awareness the Highway Authority cannot argue with the facts ascertained by the consultant but considers that an increase in the use of an access will lead to an increased future risk. Whilst careful design and incorporation of features can offer mitigation that decreases this risk, it is the view of the Highway Authority that the applicant is unable to offer this due to the physical and legal constraints on the applicant's land. Furthermore, from what the consultant has outlined as the envisaged way that the access road will operate it is evident that there will be a potential increase in the manoeuvres of vehicles having to wait to turn into the access that will have a detrimental effect on other road users (both in terms of safety and the expeditious movement of traffic).

The Highway Authority also note that the applicant's consultant has also provided evidence in the form of a swept path analysis that fire fighting vehicles will be able to gain access to the development. The issue of such access is of course one that is covered by Building Regulations and to some degree is therefore a matter that rests with the relevant Building Control Body to ensure adherence to but in light of the information that the Authority has highlighted it may be considered that although access may theoretically be achievable the physical constraints of the site may mean that practical access could be hindered. It is therefore suggested that the views of the Chief Fire Officer be sought by the Local Planning Authority to provide an expert opinion on this matter.

In view of all the above the Highway Authority is of the view that the applicants proposals in highway terms are unacceptable and would therefore object to the proposals.

Email addressed directly to the agent dated 26 October 2017:

Thank you for further documentation related to your clients planning application which I and colleagues have examined to ascertain if there is any new information contained within them that the Highway Authority would need to consider further to that it has already seen.

I would draw your attention to the legalities surrounding the Right of Way Southwell Footpath Number 27. You will no doubt be aware that the Title Deeds to what was known as Plot Number 21 and 21A make reference to the use of specific parts of the access way which are on the deed documents themselves colour coded. Within the documents there is relevant detail of a defined part of that access way being reserved for the use of pedestrians using the Right of Way. From my understanding of the documentation that has been included in your email this matter is not addressed and indeed reference is made to providing a shared surface. In very basic terms the Authority is unaware of the rights of the footpath being extinguished through any legal process (unless you have relevant details and can share these) and the use of the Right of Way by vehicular traffic is an offence. Given this the Authority is of the view that any of the proposals made in relation to the improvement of the access are unachievable.

You will also be aware that the Highway Authority has highlighted that the suggested use of the existing footway/verge as a 'stopping point' for an in-turning vehicle to wait whilst a vehicle exits the access way is unacceptable yet this this a matter that is not dealt with by either of the supplied documents.

Given the physical nature and restraints of the existing access arrangements the Highway Authority is of the view that the proposals made so far in relation to this matter do not address the concerns that have been expressed. Whilst I note inclusion in the letter from Bancroft's of a quote from Paragraph 178 of the NPPF highlighting that 'local Planning Authorities should look for solutions rather than problems', apart from the fact that the Highway Authority is not the Local Planning Authority I would highlight that given the legal status of the Right of Way and the physical constraints of the existing access arrangements, both prevent any acceptable improvement to be made to support further development and unfortunately this is not a matter that either the Local Planning Authority or the Highway Authority can provide acceptable solutions for.

Unless there are further workable proposals that fully address and deal with all the above matters, at this point, I cannot see what progress can be gained from a meeting.

Having considered fully the supplied documentation the Highway Authority remains of its view that the proposals made are unacceptable in highway terms and will advise the Local Planning Authority accordingly.

Additional comments from NCC Legal Team received 20 December 2017:

Following a discussion yesterday with Clive Wood, Team Manager (Highway Development Control), I am asked to clarify this Authority's position in relation to S.34, Road Traffic Act 1988, in case it is helpful at this stage:-

I have reviewed the correspondence sent by Mr. Wood to the Local Planning Authority from which Mr. Orwin quotes in referring to S.34, and, while I acknowledge that correspondence seems to have been transmitted between some of the parties 'by return', it nevertheless appears clear to from the context of Mr. Wood's correspondence that he was referring to the *public's* vehicular use of Southwell Footpath No.31, and was pointing out that such public use (being otherwise without lawful authority) constituted a criminal. As for the statement within the letter dated 27 October, 2017 from Mr. Orwin's solicitor, Mr. Duncan MacLaren, referring to an expectation that this Authority would therefore 'prosecute the residents', this appears to refer to a fundamental misunderstanding of the relevance of lawful authority as per the discrete classes of a) public and b) private rights over land.

As I understand it from my instructions, my client department's primary concern revolves around the substantial intensification of private vehicular use (whether lawful or not) since 1960 (such use being further compounded, of course, by the increase in the average number of vehicles per household). Mr. Orwin now proposes to further intensify such use. This proposal has been considered by my client department who have concluded that such further intensification would take the vehicular use of the public footpath from the present situation (described to me as (putting it colloquially) 'far from ideal') into one of presenting 'unacceptable danger' to public users of the footpath. This is, of course, a view which both the County Council (both as Highway Authority and as Traffic Authority) is entitled to form, and to take appropriate action accordingly.

As such, at no point is this Authority suggesting that all vehicular use along Southwell Footpath No.27 is a criminal offence; rather, only that which is without lawful authority (as per the explicit wording within S.34). While we have not been instructed at this stage to consider whether the current private vehicular uses have a lawful basis, we would envisage that we may be asked to so advise should this matter become protracted. Similarly, this Authority, in appraising both current and proposed private and public traffic flows is cognisant that, where the subject land is subject to a public right of way, a landowner is not free to grant permission to others to use such land without limitation, and in this respect, private user of sufficient intensity can (amongst other things) constitute a public nuisance.

Accordingly, while it is not this Authority's intention to be unhelpful, this Authority finds itself required to consider the balance of various competing demands when determining whether any action is or may be required in order to ensure a reasonable level of safety for the public highway user. It is in the solemn performance of this exercise that it has raised its concerns with the Local Planning Authority.

I hope this resolves any outstanding queries the Local Planning Authority may have regarding the basis of the Authority's position in relation to S.34, Road Traffic Act 1988, but if any points should remain outstanding, this e-mail will hopefully be helpful in guiding discussion at the meeting proposed for Tuesday, 16 January, 2018.

Additional comments received 15/02/2018:

Further information

Since the Highway Authority's last correspondence on this matter it is noted that the applicant has submitted substantial additional information to the Local Planning Authority. Having examined this information the Highway Authority is of the continued view that the proposals made by the applicant are, from a highway view not acceptable.

The Highway Authority's consideration has highlighted that the existing access road to the proposed development does not meet current standards to allow for two vehicles to pass should they meet and the current physical boundary constraints on either side of it prevent any further widening. The full details of the Authority's view on the technicalities of this matter is contained in previously submitted correspondence related to this application and it is not proposed to duplicate that in this submission. All that the Authority would add to this is that the applicant has expressed the view that because the present access was deemed suitable in the past for additional development that this acceptance should continue for further / future development. The Highway Authority is not able to accede to this view and would highlight that the current access was designed in 1959/60 and was intended to provide private vehicular access (alongside public pedestrian access) to only two properties (at a time when not only were domestic vehicles generally physically smaller than today but also at a time when car ownership was unlikely to exceed more than one car per household). Moving on nearly 60 years the same physical access now already provides access to four properties, not just for vehicles that are physically larger in size but are also more numerous in nature given the increasing proportion of car ownership per householder and the increased level of daily usage of those vehicles. The view of the Highway Authority is that any further development beyond that already permitted is an over intensification of use that will constitute a public nuisance presenting additional issues related to the safety of highway users (in respect particularly of pedestrians as vulnerable highway users).

The Highway Authority is all too aware that vehicle characteristics and usage patterns have changed with time and infrastructure that was designed decades ago can struggle to cope with today's needs. However where there is a foreseeable increase in risk to the safety of highway users the Highway Authority has to take appropriate action either by amending the infrastructure to current standards to be able to deal with the changes or by imposing restrictions to reduce the use of the asset to a level where potential risks are appropriately minimised. In this case the layout of the infrastructure cannot be amended to meet with current standards or indeed an acceptable compromise and the Highway Authority remains of the view that the safety of all road users affected by the proposed additional development will be unreasonably and unacceptably diminished if any further increases in vehicular use of this narrow 1960s access are permitted.

Additionally, the Highway Authority notes that no further mitigation proposals have been proposed in response to the Highway Authority having formally highlighted the unsatisfactory nature of the applicant's highway consultant's proposals for vehicles waiting to turn into the

access way to wait on the verge/footway (an area which is segregated for the use of pedestrians). In relation to this, the Highway Authority notes that this is likely because no further acceptable mitigation is possible because of the existing topographical constraints to the present access. Similarly, any proposals for a shared surface do not address the fundamental issue that the access does not meet current standards and is incapable of being amended to do so.

The Local Planning Authority will be aware from the various additional submissions that the applicant has questioned the legal restrictions arising in relation to the public pedestrian Right of Way known as Southwell Footpath Number 27. The Highway Authority would highlight that it has sought specialist advice from its Legal Team and can confirm that, in the view of the Highway Authority, the additional information that the applicant has submitted in relation to the use of the Right of Way by vehicular traffic has no relevance to the legal standing that Southwell Footpath Number 27 has, the protection that this minor highway is afforded, and the responsibilities of the applicant (and others) towards it by virtue of being a public footpath. The Highway Authority is therefore still of the view it expressed in previous formal correspondence that there exists a protected strip of land along the right hand side of the existing access when looked at from Halloughton Road, which is exclusively for pedestrian use as a public footpath and which cannot legitimately be included in any proposals for further private vehicular access.

NSDC Conservation – Many thanks for consulting Conservation on the above proposal.

Legal and Policy Considerations

Section 72 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. The courts have said that these statutory requirements operate as a paramount consideration, 'the first consideration for a decision maker'.

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 12 of the National Planning Policy Framework (NPPF).

Paragraph 132 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 requires clear and convincing justification. The NPPF also makes it clear that protecting and enhancing the historic environment is sustainable development (paragraph 7).

Significance of Heritage Asset(s)

Southwell Conservation Area was first designated in 1970 and has been revised since with the most recent appraisal carried out in 2005. The application site is recognised as part of 'Westgate' in the CAA.

While the land to the rear of 37 39 Halloughton Road is situated within the Southwell Conservation Area (CA), Halloughton Road itself is located outside of the Conservation Area and the residential properties on this street are predominantly modern C20 dwellings.

However, the land to the rear of Halloughton Road is set back a considerable distance from the road, inside of the Conservation Area, along a winding untarmacked lane, which is flanked on either side by further modern C20 dwellings which are not considered appropriate for the character of a Conservation Area. The application site is also encircled by a series of low rise, bungalow and one and a half storey dwellings which are considered to detract from the setting of the conservation area.

Immediately to the north of the application site is a red brick and pantile dwelling with modern u-PVC windows and a continual band of solar panels on the south facing roof. Beyond this property there are a series of characterful former industrial historic buildings which are situated on a lower level, identified as an old tannery and tanyard bungalow. However they are not listed and are not identified on the Historic Environment Record, although they retain the potential to be recognised as buildings of local interest.

The only listed asset which may be considered in relation to the application site is the Holy Trinity Church, a Grade II Listed Building (Heritage England Ref: 1214569) located on Westgate and positioned North East in relation to the application site. The main body of the Church is screened from the application site by the dwelling known as The Old Tannery.

Assessment of Proposal

In its present format, in general terms, Conservation does not object to the proposal. The Conservation Area Character Appraisal comments: *'on the Westhorpe side of Holy Trinity, the pattern changes with a more dispersed layout and fewer buildings of any significant merit. Here there is a mix of C20 century development with no architectural unity or any regard for its historic context. Here more than anywhere else in the conservation area is the potential to improve the physical appearance of the environment.'*

Conservation recognises the opportunity to seek improvement to the local environment. The vacant site is appropriate for the location of a new dwelling, which at present looks incongruous in its surroundings. However Conservation wishes to advise that in its present form the building is considered to be somewhat overbearing in relation to surrounding properties and the proposed PV solar panels are inappropriate, situated at random intervals which would be discordant with the character of a conservation area. However, conservation considers that this does not amount to less than substantial harm as identified by Paragraph 134 of the NPPF.

A suitably designed new dwelling in this location would be considered to be an enhancement from the present vacant site. The application site is a vacant green field which has not been well maintained and is subject to a low level of detritus that detracts from the character of the conservation area.

The proposal features a distinctive glazed gable to the front of the property and dormer windows which broadly align with the surrounding properties. New planting and refurbished planting will also serve to reduce the impact of the new dwelling on the Conservation Area. The negative impact of the proposal to inappropriately place PV solar panels at random intervals and the somewhat overbearing scale of the new dwelling is considered to be mitigated by the opportunity to enhance the architectural cohesion of the area.

Finally the proposal does not impact on the setting of The Holy Trinity Church, with only the spire visible from application site and the scale of the property proposed is not considered to cause harm.

In this context, it is felt that the proposal will cause no harm to the setting of the Conservation Area. The proposal therefore accords with the objective of preservation set out under section 72, part II of the 1990 Listed Building and Conservation Areas Act, as well as complying with heritage policies and advice contained within the Council's LDF DPDs and section 12 of the NPPF.

Comments Received on the Revised Proposal 21 June 2017:

Conservation did not object to the original submission, although advised the Case Officer that the proposed PV solar panels were not suitable for the character of the conservation area. Conservation notes that the revised application does not seek permission for a larger building or increased footprint, and has removed the PV panels. This results in an enhanced level of architectural uniformity. As such, the proposal continues to be acceptable in accordance with NSDC's saved policies and Chapter 12 of the NPPF, and the additional comments above are unchanged as they are not affected by the submitted changes.

Comments Received 21 September 2017:

Conservation has considered the revised application and there are no identified changes that have altered the previous assessment from the comments provided 21 June 2017. As such, the proposal continues to be acceptable in accordance with NSDC's saved policies and Chapter 12 of the NPPF, and the additional comments below are unchanged as they are not affected by the submitted changes.

The Conservation Area Character Appraisal comments: *'on the Westhorpe side of Holy Trinity, the pattern changes with a more dispersed layout and fewer buildings of any significant merit. Here there is a mix of C20 century development with no architectural unity or any regard for its historic context. Here more than anywhere else in the conservation area is the potential to improve the physical appearance of the environment.'*

A suitably designed new dwelling in this location would be considered to be an enhancement from the present vacant site. The application site is a vacant green field which has not been well maintained and is subject to a low level of detritus that detracts from the character of the conservation area.

The proposal features a distinctive glazed gable to the front of the property and dormer windows which broadly align with the surrounding properties. New planting and refurbished planting will also serve to reduce the impact of the new dwelling on the Conservation Area.

Finally the proposal does not impact on the setting of The Holy Trinity Church, with only the spire visible from application site and the scale of the property proposed is not considered to cause harm.

In this context, it is felt that the proposal will cause no harm to the setting of the Conservation Area. The proposal therefore accords with the objective of preservation set out under section 72, part II of the 1990 Listed Building and Conservation Areas Act, as well as complying with heritage policies and advice contained within the Council's LDF DPDs and section 12 of the NPPF.

NCC Lead Local Flood Authority – No objections.

1. The development should not increase flood risk to existing properties or put the development at risk of flooding.
2. Any discharge of surface water from the site should look at infiltration – watercourse – sewer as the priority order for discharge location.
3. SUDS should be considered where feasible and consideration given to ownership and maintenance of any SUDS proposals for the lifetime of the development.
4. Any development that proposes to alter an ordinary watercourse in a manner that will have a detrimental effect on the flow of water (e.g. culverting / pipe crossing) must be discussed with the Flood Risk Management Team at Nottinghamshire County Council.
5. Due to the proximity of the development to The Potwell Dyke it is recommended that the development uses flood resilient construction techniques where possible.

Environment Agency – No comment.

Trent Valley Internal Drainage Board – The site is outside of the Trent Valley Internal Drainage Board district but within the Board's catchment.

There are no Board maintained watercourses in close proximity to the site.

The Board are aware of substantial flooding in Southwell in recent years which should be considered by your Authority and the Lead Local Flood Authority when determining the application.

Surface water run-off rates to receiving watercourses must not be increased as a result of the development.

The design, operation and future maintenance of site drainage systems must be agreed with the Lead Local Flood Authority and Local Planning Authority.

NCC Rights of Way – No comments received.

Ramblers Association - There seems no reason why access to the nearest right of way (Southwell Footpath 27) should be adversely affected by this development and we have no objection.

NSDC Access and Equalities Officer – Observations in relation to Building Regulations and additional comments stating the following:

Further to previous observations, it is recommended that any footpath restrictor or calming arrangement take into account the access needs and space requirements of all potential users to easily negotiate and manoeuvre.

Southwell Civic Society - No objections.

Fire Protection Officer - I have looked through the documents provided in the link and I cannot find the relevant comments from the building control officer in relation to the project with regard to compliance with Approved Document B or an alternate document. This is usually submitted with the plans at building consultation stage once the project has passed initial planning. The fire

service are statutory consultees at the building consultation stage, until the project is at this stage and the relevant comments are available we will be unable to appraise or make comment on the project.

Representations have been received from 14 local residents/interested parties, four of which demonstrating support for the application, the others raising concerns which are summarised below. It is worthy of note that the applicant has made numerous submissions during the life of the application in an attempt to address the concerns in relation to the public footpath. A number of the summarised comments below are therefore in response to the additional information submitted. Requests have been made from one neighbouring party to ensure comments received are placed as public facing on the application file.

Impact on Highways

- Access to the property is a narrow private drive
- Vehicles will not be able to pass each other on the access
- At least one passing place should be provided
- Residents will not be able to manouvre vehicles in the site
- The spaces in front of 37 and 39 further reduce the width of the drive
- There isn't enough car parking spaces especially if there is a home office
- There are numerous large vehicles on the site so there will be repercussions to extra traffic
- The drive is not sufficient for additional usage
- The drive would be less than 3.5m at any point and further widening would encroach on neighbouring properties
- NCC Highways have been persuaded to withdraw their objection – the access width and level of risk have not changed and there is no logical basis upon which NCC can change its position
- NCC should be protecting the public and not placing them at greater risk by supporting unsafe practices contrary to their own guidance
- Both the HA and the LPA should work together to mitigate and reduce the risk and not actively seek to increase it
- If it were a new access then the HA would advise against it
- NSDC and NCC have a responsibility to the rate payer and road user
- There is a commercial business using the access
- The access isn't wide enough for fire safety standards – in the context of the West Kensington event I find it unbelievable that any public body would support any new residential development which failed to meet basic standards
- Relaxation of Building Regulations is not within the jurisdiction or control of NCC or NSDC – responsibility rests with the relevant fire authority
- If NSDC grants the application then they have voluntarily increased road safety risks and ignored fire safety standards
- Traffic levels are higher than the developer believes
- A fire service assessment should be taken
- The problems with the access appear to have been shelved but not solved

Impact on Public Right of Way

- The driveway is shared with pedestrians who use the public footpath
- The use of the public footpath has increased since the Becketts field development

- The hoop rails on the footpath fall outside of the owners boundary
- The public footpath is being checked and maintained by Notts CC
- The length of the roadway/walkway from Halloughton Road should be a dedicated clear route for pedestrians
- If approved, NSDC and NCC should be responsible for any loss or damage caused to neighbouring properties and any accidents to pedestrians using the public footpath
- There is an increase in families using the public footpath from the Beckett development
- The drive between houses 35 and 41 is clearly marked as a public footpath on deeds
- The planning application as submitted does not show the entire public footpath and is therefore materially incorrect
- A recent public footpath sign at the junction between the drive and Halloughton Road has been removed
- A footpath is a footpath and not a highway
- The footfall along the footpath has significantly increased
- Children and dogs tend to wander along the footpath and would not stick to the designated walking area – vehicles could become stranded and block the road
- Road users still turn right from Westgate
- Land Registry records show the historic route of the footpath reserve rights for the benefit of the public
- The footpath was diverted in 1960 and no private vehicular access has ever existing over this land
- The width of the proposed access lawfully available for vehicular use is less than 2.0m with the balance of 1.5m reserved for the public access
- NCC has a statutory obligation to assert and protect public rights of way
- It is a road traffic offence to drive a vehicle over a public footpath – existing occupiers are therefore breaching the Road Traffic Act
- The use of private drives incorporating public footpaths in the past would not be allowed now and therefore should not be used as a precedent for this application – the current application has to be considered against current policies and standards

Impact on Character

- Trees and shrubs have been removed along the access road parallel to the right of way
- The development would be squeezing in another property in a conservation context
- The conservation area protects views of the Holy Trinity Church and contributes positively to the locality – the new dwelling would detract from this
- The dwelling size is substantial and would result in overmassing and over intensive development for the site
- The dwelling is of little architectural merit and poor design
- It is important to preserve the greenery around the site for the setting of the Minster and Holy Trinity
- There has been a recent removal of vegetation
- The application represents a classic example of backland development – garden grabbing is a breach of planning policy
- The proposed property lacks any symmetry and is out of keeping with adjoining properties
- The property lies within a conservation area and its poor design detracts from the area

Impact on Amenity

- The new house will affect privacy in neighbouring gardens
- Car headlights will be intrusive to neighbours
- The property would overlook neighbouring properties
- The site plans are misleading in block plans for neighbouring properties are out of date and have since been extended – subsequent measurements are therefore incorrect
- The dwelling is surrounded on all boundaries by existing dwellings which overlook the site, the occupiers would have little privacy
- The extensive use of glass on the southern elevation will cause light pollution
- The revised plans still affect neighbouring privacy
- The plot is at a lower level therefore the upper windows will provide a viewing platform
- Car lights will be a nuisance
- The amended plans do not address matters of overmassing, lack of privacy and other objections raised
- The normal privacy test assumes a level site with a 1.8m high fence
- The measurements shown on the plan are incorrect – the distance from the southern boundary to the plot to the rear of the proposed new house is 11m
- The distance of 34m has been added to the plans in order to address obvious privacy issues but is incorrect
- The windows of the proposed development will overlook neighbouring gardens

Other Matters

- Recent development in the area means there is no additional justification for this development
- The new property could be used for business purposes
- The block drive wall, the garage and the mesh fence at no. 35 are built inside the property boundary
- Hard surfacing of the drive would lead to an increase in flood risk
- The additional consultation timing is a consequence of seasoned developers seeking to subvert the planning process
- There is some thought that the two existing bungalows could be next for development so this entrance and exit could be subject to an even greater use
- The revised consultation period is insufficient and the matter is being dealt with too quickly
- The Planning Committee should consider the matter and not just officers
- There is no commercial activity being run from no.39A as alleged – these should be retracted
- The process is favouring of dealing with the application the applicant at the expense of working with the community
- A delay was requested to speak to MP about concerns but denied
- The planning officer has allowed for materially misleading plans to be considered and therefore all prior consultations have been based upon incorrect information
- NSDC have denied access to the correct information
- The application is very poor and contains many discrepancies and material errors / omissions
- The Planning Officer has been evasive and unapproachable
- The policy of NSDC to refuse access to hard copy files other than by formal FOI request is contrary to the principles of open government in that the normal response time for public consultation is 21 days which is also the normal response time for a FOI request

- The applicant has had a fair chance to make his case for the development and a decision should now be made

The following summarised comments have been received from a single neighbouring property since the publication of the December 2017 Planning Committee agenda, for the avoidance of doubt this includes the details which were previously included in the late item report presented to Members in December 2017 and incorporate summarised points raised in a letter which was sent directly to Local Councilors on 29 November 2017 as well an email sent directly to Cllr Laughton on 19 December 2017:

Process

- The Town Council leader is good friends with the applicant
- The applicant was requested to be called in after officers stated it would be approved when highways reversed their position
- The decision of STC was taken on outdated information – it cannot be assured that STC would continue to support the application following receipt of the latest highways report
- No case officer site notes have been forthcoming through a FOI request
- The case officer has shown favour to the applicant and is unwilling to reconsider
- There are a number of inaccuracies and material factual errors in the published report

Amenity

- The application is a classic case of garden grabbing
- The neighbouring dwelling has been renovated so that the principle elevation now faces the CA and the application site – the overlooking assessment referring to rear elevations is therefore incorrect
- The neighbouring property sits higher as there will therefore be a clear view between
- The land slopes down to the Potwell Dyke
- There is a fall of 1.45m along the first part of the access road which is a significant slope which continues down to 39a
- The site slopes west to east and the finished floor level will be higher than that of 39a
- The finished floor level of the neighbouring property to the south will be 1.0m higher than the proposed property
- The case officer has passed opinion on the issue of privacy and overlooking but was unaware that the neighbouring property to the south sits up to 1.0m higher than proposed property giving a clearer and unobscured view
- Site level differentials have not been properly taken into account
- Given the slope at the northern boundary of the site to the Potwell Dyke, this area will not be viable rear amenity land
- The amenity measurements stated do not reflect the buffer of the Potwell Dyke and therefore the rear garden eastern depth would be around 5m only
- There is no front or side amenity space so the only garden is to the rear of the house which is quite likely to be less than 100m² and faces north
- In summer the garden would be permanently shaded
- To deal with the changes in land levels, the ridge heights on the original bungalows vary as do the finished site levels
- No. 61 and 63 will be lower than the proposed dwelling
- The useable plot area of the site is not of a similar size to neighbouring dwellings as suggested

Footprint of the proposed dwelling

- Good practice requires that measurements scaled from plans are checked on site as they can be inaccurate and potentially misleading
- The case officers methodology is prone to error
- If Members resolve to grant there should be conditions to ensure the footprint is fixed
- The footprint of the dwelling is more akin to a 3 or 4 bed property and is not a starter home or affordable
- The roof of the proposed dwelling will be visible from the highway and does not respect existing rooflines and will be incongruous and out of keeping

Highway / Footpath Issues

- The original 1960 estate planning conditions record the width of the footpath as not less than 4 feet and neighbouring 1960 deeds record the same footpath as being 5 feet
- The footpath is not a shared surface and the use of the ROW for vehicular traffic is an offence
- It is assumed that the bin men will not use the access road – there is no provision for a bin area at the mouth of the access
- Private rights cannot be acquired over public land which is an existing highway if the usage upon which the claim is based was unlawful at the time
- Part 6 of the Natural Environment of Rural Communities Act 2006 appears to eliminate any claims for vehicular use based upon usage unless formally recognized as at that date
- The new property would be a material intensification of private use of a public asset for private gain to the detriment of the public
- A video has been sent showing a van reversing back down the access past the application site – it is stated that this occurs on a number of occasions and raises questions over the risk to residents, particularly children

Fire Safety

- We do not feel that the case officer has adequately dealt with the issue of fire safety which “post Grenfell” should be paramount
- Any divergence from national standards should be approved by the Chief Fire Officer
- The fire regulations require a minimum width of 3.7m and a turning bay for a fire service vehicle at the property if it is more than 20m from the public highway
- The Fire Service department have confirmed that the fire safety test should have included issue of a formal report in order to be passed
- There has been a suggestion that in the event of emergency access would need to be gained over neighbouring land – presumptions cannot be made to support an application based upon the use of third party land
- The response of Mark Bullock dated 12 January shows that the applicants ascertain that the Fire Service raise no concerns is partially misleading and no such consultation has taken place
- The applicant has made no provision within the site for a turning head as required by Part B and Manual for Streets
- There are major physical constraints so that the application cannot meet minimum physical standards

Other Matters

- The northern boundary of the site with the Potwell Dyke is a wildlife green corridor and should be retained as a buffer for Potwell Dyke

- **The new Yew hedge would be in the buffer zone to the Potwell Dyke**
- **The applicant should show a revised location for the yew hedge in line with the existing fence and hedge boundary already in existence**
- **The site forms part of the rear garden and is not a field as described in the officers report**
- **The time spent on one planning application for one dwelling means the tax payer is paying the bill**
- **The site should not be described as a ‘vacant plot of land’ – this could set a precedent for other properties in the conservation area to allow gardens to become scruffy in order to qualify as building plots**
- **The view of the Holy Trinity church will be reduced and this has not been addressed**
- **The applicant has destroyed the hedge during nesting season leaving the site exposed and contradicting the Design and Access Statement**

Appraisal

Principle of Development

The NPPG acknowledges that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area, thus providing a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

Following public consultation and independent examination, at its council meeting on 10 October 2017 Newark and Sherwood District Council adopted the Southwell Neighbourhood Plan. The Neighbourhood Plan now forms part of the development plan for the district and its policies are a material consideration alongside other policies in the development plan and carry weight in the determination of planning applications in Southwell. In this instance the most relevant policies in the Neighbourhood Plan are listed above and are considered against the relevant aspects of the proposal in the assessment below.

The adopted Neighbourhood Plan for Southwell outlines an overall support for residential development within the town, through meeting the strategic requirements for growth whilst maximizing the benefits for the community (Objective 6). Spatial Policy 1 of the Core Strategy outlines the settlement hierarchy for the District identifying Southwell as a Service Centre. It is intended that Service Centres will act as a focus for service provision for a large local population and a rural hinterland. As such residential development within the site is acceptable in principle provided the proposal accords with the remainder of the development plan.

It is relevant to acknowledge that at the present time, the LPA is well advanced in the process of a plan review **following the Independent Examination which took place on February 1st and 2nd 2018**. For the avoidance of doubt the Council does currently have a 5 year housing land supply against the only OAN available and produced independently by consultants and colleague Authorities. I do not consider it necessary to rehearse the full position in respect of this matter given the support for additional housing in Southwell in principle. Whilst the NPPF identifies that there is a presumption in favour of sustainable development, this does not automatically equate to the development being granted as other material considerations need to be taken into account.

Policy So/HN/1 seeks to ensure that the majority of new housing on windfall sites within Southwell will be one or two bedroom units in line with the identified housing need. The current application has been revised such that it now proposed a two bedroom dwelling in line with the policy.

Impact on Character and the Conservation Area

The site is accessed from a shared driveway and is a land locked plot surrounded by neighbouring residential curtilages. As a consequence it is considered appropriate to describe the proposal as backland development. Policy DM5 states that proposals creating backland development will only be approved where they would be in keeping with the general character and density of existing development in the area. I am mindful that the backland character of the area has already been established by the other dwellings which use the access; 35a; 37; 39 and 39a Halloughton Road. On this basis it would be difficult to present a case that the proposed dwelling would materially alter this established character. Spatially there is no risk that this proposal would set a precedent for further development given that the precedent has essentially already been set and the proposed dwelling would in plan form occupy the last available 'plot'. I am mindful that the plot size is broadly in line with those established to the south of the site along Halloughton Road. **It has been suggested that this is inaccurate when the site specific circumstances and 'usable area' are taken into account. For clarity, officers remain of the view that in plan form, the plot size is commensurate to others in the vicinity. The point is made in terms of the impact that development would have on the urban grain of the area.**

The original design of the dwelling included the use of three roof dormer windows as well as a two storey projection on the rear elevation. A large two storey height glazed gable was also proposed on the principle elevation. Whilst the roof dormers (which have been retained on the amended scheme) reflect the design of the immediately adjacent dwelling to the east; 39a Halloughton Road, concern was raised in respect to the original proposal that the additional projections and large glazing elements introduced a greater prominence than the existing dwelling at 39a. As such it was considered that the substantial scale of the originally proposed dwelling was out of context with the existing surrounding development, notably the existing semi-detached bungalows to the west. The imposition of the scale of the dwelling was further exasperated by the differing elements of the roof scape in particular the rear projection which had a pitch height which matched the main dwelling. Concern was also raised by conservation colleagues as listed in full in the consultation section above.

The applicant has taken the opportunity to address the concerns raised during the life of the application through the submission of amended plans. The changes to the proposal have been identified through the description to the proposal above but to clarify they include a reduction in the overall footprint of the proposed dwelling and the removal of the two storey rear projection. As a consequence the proposed dwelling represents a much more simplistic form which is considered to better reflect the scale of the surrounding area; notably the modern dwelling immediately to the east of the site. It is fully acknowledged that the proposed dwelling would still represent a greater imposition on character than that established by the semi-detached bungalows to the west but this in itself is not considered to be so detrimental as to warrant refusal in its own right. **Comments received during the consultation have suggested that the roof of the proposed dwelling would be visible from the highway which would be incongruous and out of keeping. It is not considered that visibility in itself automatically amounts to character harm. The setback position of the dwelling (owing to its backland nature) would have the consequence of**

reducing the prominence of the proposed dwelling to a degree which officers do not consider to amount to a visual harm which would warrant resistance of the proposal.

Taking the above into account given the sites location within the Conservation Area an assessment is also made with regards to impact of the proposal on the Conservation Area. Section 72 requires the LPA to pay special attention to the desirability of preserving or enhancing the character and appearance of the CA. Section 12 of the NPPF recognises the importance of considering the impact of new development on the significance of designated heritage assets. Paragraph 7 of this document also makes it clear that protecting and enhancing the historic environment is sustainable development. Any proposed development must also comply with the principles of Policy DM9 and Core Policy 14. Criteria within these policies require proposals to take into account the distinctive character and appearance of the Conservation Area. Furthermore, the Southwell Neighbourhood Plan (SNP) seeks for sustainable development that has regard for the town's unique character, historic environment and landscape setting.

The improvements to the scheme have also been noted by colleagues in conservation. It is considered that a suitably designed new dwelling in this location would be considered to be an enhancement from the currently vacant site which detracts from the character of the conservation area and would have the potential to physically improve the appearance of the area. Furthermore it is not considered that the development would result in harm to the setting of the Grade II Listed Holy Trinity Church to the north east of the site.

I am therefore satisfied that siting, scale and design of the proposal would not be considered to result in any harm to setting of the Conservation Area nor the setting of the Grade II Listed Church.

The revised scheme is considered to be compliant with the requirement of Policy CP14 of the Core Strategy and Policy DM9 of the DPD in terms of preserving the historic environment and Policy DM5 of the DPD in terms of reflecting local distinctiveness as well as policy DH3 of the SNP.

Impact on Trees

Comments have been received during the consultation period that there have been recent works on the site which have removed conifer trees. The site is within the designated conservation area and thus any works to trees would require the consent of the LPA. Whilst any tree removal without consent is clearly not something the LPA would advocate, it must be stated that it is likely that if a notification for removal of conifers had have been forthcoming, it would have been approved given the context of the site and the low amenity value that conifers typically offer.

As is referenced above there is an ongoing enforcement matter at the site whereby a previous hedgerow along the boundary with the public footpath has been removed and replaced with an unauthorized fence. This is subject to separate enforcement investigations to which Members will be updated on through the late items schedule.

The application has been accompanied by a Method Statement for Tree Protection which is welcomed. This document outlines the methods of protection for trees to be retained around the boundaries of the site. The D&AS confirms that the development will necessitate the removal of small ornamental trees in the centre of the site but having viewed these on site I do not consider that this would be of detriment to the character of the wider designated conservation area.

Impact on Amenity

An assessment of amenity, as confirmed by Policy DM5, relates both to an assessment in relation to existing neighbouring residents but also to the proposed occupiers. To deal firstly with the latter, the proposed dwelling has been presented with a rear garden of a maximum length of approximately 20m. However, due to the constraints of the site adjacent to the Potwell Dyke this length is by no means consistent. Nevertheless I am satisfied that the proposed occupiers would have adequate amenity space which, with the assistance of carefully planned boundary treatments would retain a degree of privacy.

The available amenity provision for the proposed occupiers has been raised as specific cause of concern through the consultation process as summarised above. The constraints of the site are fully appreciated and indeed identified through the description of the site in reference to the proximity to the Potwell Dyke. Equally the submitted Topographical Survey has been reviewed by Officers and it is agreed that the land levels slope steeply towards the Dyke. On this basis it is fully accepted that the entire area of the application site (i.e. right up to the Dyke) would not be available for use as an 'active garden.' Nevertheless the constraints of the site (including its orientation) would be readily known to any proposed occupiers. Whilst perhaps desirable, it would simply not be possible for all new residential development to secure south facing gardens which enjoy sunlight throughout the majority of the day. Whilst the points raised by neighbouring parties in terms orientation and topographical changes within the site are noted, these are not considered to amount to a robust reason on which to refuse the application in terms of proposed amenity provision for occupiers.

I am mindful that the proposed occupiers would be surrounded by dwellings, the majority of which would have their rear elevations orientated towards the site. The dwelling has been orientated such that the rear elevation would be the furthest distance from neighbouring built form (annotated as being 42m on the revised submitted block plan). Given the largely single storey nature of surrounding built form the occupiers will be able to achieve an adequate standard of private amenity provision.

Moving then to assess the impact on the existing neighbours, it is considered that the most sensitive to the proposed development would be those to the east and west noting that these represent the narrowest separation distances. I appreciate that the semi-detached bungalows to the west are within the ownership of the applicant but this does not diminish the need for a thorough assessment of likely amenity impacts given that their ownership may change in the future. The block plan annotates separation distances of approximately 12m and 13m to the east and west respectively. It is my view that these distances are on the borderline of acceptability. However, I am mindful that the impact of the development in amenity terms has been improved in relation to the amended plans in that the removal of the rear projection would reduce the overall bulk of the dwelling. Moreover, the revised plans have incorporated a slight revision to the roof design such that the roof has been slightly hipped at the top. Despite the close spatial relationship, overall I am satisfied that the revised proposal would not amount to an overbearing impact to the existing surrounding properties.

I note that concern was raised during the life of the application in respect of inaccurate plans which did not plot neighbouring extensions. This has been addressed throughout the life of the application through the amended block plan. This block plan shows an approximate distance of 28m between the rear elevation of 59 Halloughton Road and the single storey garage of the

proposed dwelling and approximately 34m between the principle elevation and the neighbouring rear elevation. Comment has been received through the consultation process that these distances are incorrect but having scaled from the plans I consider the distances referenced to be accurate. I appreciate that the outlook of the neighbouring dwellings will change fundamentally from the existing situation but I do not consider that, in the context of the distances achieved, there will be such a great impact in terms of overlooking that would warrant a resistance of the proposal in its own right. This judgement is reached on the basis of viewing the site from both externally and internally from the neighbouring dwelling to the south of site **and thus gaining a full appreciation of the changes in land levels both within the site and in the immediate site surroundings**. I am also mindful that the reduction in the height of the glazed entrance will improve the perception of overlooking from the neighbours perspective.

The revised proposal represents betterment in amenity terms such that officers no longer consider there are grounds to resist the proposal on the basis of detrimental amenity impacts.

Impact on Highways and Public Rights of Way

As is implied by both the consultee section and summarised neighbour comments above, matters of highway safety and the impacts of the proposal on the designated public Right of Way which affects the site have been heavily debated throughout the life of the application. This has included numerous exchanges of correspondence between the applicant (and agent acting on behalf of); NCC as the Highways Authority; and neighbouring parties.

The proposal outlines that the new dwelling would be accessed from an existing access from Halloughton Road. This access already serves 4 dwellings. However, what has transpired to be more notable is that this access road also constitutes a public Right of Way. The legalities of this issue have been highly contested between the aforementioned parties with the following articulated in the highways comments received 27 September 2017:

In relation to the existing Right of Way – Southwell Footpath Number 27 - the Highway Authority has to consider all highway users when making comments and recommendations to the Local Planning Authority. The inclusion of this Footpath in the application red line is a significant material change in the nature of the application and will have an effect on all highway users. The Highway Authority acknowledges that since the development was originally laid out and the footpath set out along the access way, there has been considerable intensification of vehicular use following further development, to which it is now proposed to add. The Highway Authority, upon further consideration is of the view that the need to ensure safe access by pedestrians (who have a legal right to use the route unhindered) means that the existing width of the access (and indeed any width below 5.25m (as highlighted in its original comments objecting to the application)) is unsuitable to safely allow for any intensification of use by vehicular traffic generated by the additional development.

It has already been noted that there exists documentation which has been supplied to the Authority which does show a five foot wide strip of the access way as dedicated for the sole use of pedestrians. Whilst it is understood that there has existed an undesirable situation for many years where the width of the footpath may not always have been avoided by existing private vehicular users of the access way, especially with the increase in the physical width of vehicles since the 1960's, it is the view of the Authority in making its comments to the Local Planning Authority that this cumulative increase in risk cannot be excluded from its consideration of this matter. Therefore

the view of the Highway Authority is that within the existing physical constraints that contain the access way the applicant would be unable to provide any improvement that would allow for additional vehicular traffic beyond that which already exists without further detriment to pedestrian highway users.

Despite provision of numerous legal deeds and documentation, the Highways Authority has confirmed that they are unaware that the rights of the footpath have been extinguished through any legal process and thus the use of the Right of Way by vehicular traffic is an offence. It is fully acknowledged and appreciated that the access already serves four dwellings for vehicular access. Review of planning records confirms that the latest approval for new residential dwellings was in the 1990s. It is not for the current application to comment on the material circumstances which allowed the previous applications noting that each application must be considered on its own merits. In this respect officers concur with NCC as the Highways Authority that to allow an intensification of the access would be highly inappropriate and contrary to Spatial Policy 7 and the relevant aspects of Policy DM5 which require for the provision of a safe and inclusive access.

The applicant has provided examples of elsewhere in Southwell where vehicular accesses are shared by pedestrian Rights of Way including cases where the access is used for up to 5 dwellings (application referenced specifically 95/51554/FUL in relation to 26-28 Halloughton Road). Officers do not consider that this sets a precedence which would allow the current application to proceed. Essentially the conflict between the proposed intensification of the existing access and the users of the public Right of Way is a material consideration which must be afforded substantial weight at the current time of determination. Anecdotal evidence provided through the consultation process confirms that recent development in the vicinity has already increased the pedestrian usage of the Right of Way to which this application affects. I consider this matter to be materially related to the current application whereas an application from the 1990s would have limited relevance to the site specifics in this case. The inclusion of a pedestrian refuge on the latest site location plan (**and indeed already implemented on site at the most recent site visit**) is noted but this is not considered to mitigate the identified harm to pedestrian safety which would arise from allowing an increased vehicular use of the access.

In addition to the above conflict in respect to the designated Right of Way, the proposed access also presents a constraint in respect to its width. The existing width of the access would provide no opportunity for two cars to pass for some 50m from the entrance at Halloughton Road. The original comments of NCC Highways raised this as a concern to which the applicant has sought to address including through the submission of further supporting evidence namely a letter dated 18th August 2017 prepared by their transport consultant and more recently through photographic evidence demonstrating a fire engine utilising the access. The comments of the Highways Authority dated 27th September 2017 deal explicitly with the former document:

From the Highway Authority's view, the access road does not meet current standards to allow for two vehicles to pass should they meet and, as has been highlighted earlier, the current physical boundary constraints on either side of it prevent any further widening.

Despite thorough consideration of the consultants presented case which includes details of anticipated traffic movements arising from the development (estimated at between 6 to 8 additional daily two-way movements), and highlights a lack of recorded road traffic incidents in the vicinity of the site, the Highways Authority remain dissatisfied with the level of justification provided:

Whilst the addition of one further property off the access road may seem minimal it should be noted that using the applicant's consultant's own figures the use of the road will increase by 25% which is a significant intensification in use over present levels; levels with which the Authority already has some concerns given the increase in vehicle sizes since the original development, the greater number of private vehicles owned, and intensification of traffic flows generally. In respect of accidents and driver awareness the Highway Authority cannot argue with the facts ascertained by the consultant but considers that an increase in the use of an access will lead to an increased future risk. Whilst careful design and incorporation of features can offer mitigation that decreases this risk, it is the view of the Highway Authority that the applicant is unable to offer this due to the physical and legal constraints on the applicant's land. Furthermore, from what the consultant has outlined as the envisaged way that the access road will operate it is evident that there will be a potential increase in the manoeuvres of vehicles having to wait to turn into the access that will have a detrimental effect on other road users (both in terms of safety and the expeditious movement of traffic).

It should be noted by Members that the views of NCC Highways have not remained consistent throughout the life of the application (noting that an original objection was removed by comments received 23 August 2017). However, officers concur entirely with the latest position presented which has taken account of all material considerations and information brought to light during the course of the application. The applicant has made numerous endeavors and attempts to address the concerns raised and has gone on to imply that if the application were to be refused, an appeal would be lodged. In this respect, confirmation has been received from NCC Highways that they would be willing to support the LPA at any forthcoming appeal.

Since the time of the December Planning Committee, the applicant has continually attempted to address the concerns of NCC Highways as referenced above. Officers have taken the opportunity to meet with NCC Highways and their legal representatives to gain clarity on the issues raised which has resulted in the submission of the latest consultation response received on 15 February 2018.

The key point to gain from the comments is that NCC Highways retain their position that the proposals are unacceptable from a highways perspective despite the case presented by the applicant since the December Committee meeting. Indeed in some respects elements of correspondence provided by the applicant are not deemed relevant to the current application in any case. For example, reference to the Natural Environment and Rural Communities Act 2006 refers to the extinguishment of public rights of access which did not exist at this site. This is addressed through the latest comments of the Highway Authority:

'The Highway Authority would highlight that it has sought specialist advice from its Legal Team and can confirm that, in the view of the Highway Authority, the additional information that the applicant has submitted in relation to the use of the Right of Way by vehicular traffic has no relevance to the legal standing that Southwell Footpath Number 27 has, the protection that this minor highway is afforded, and the responsibilities of the applicant (and others) towards it by virtue of being a public footpath. The Highway Authority is therefore still of the view it expressed in previous formal correspondence that there exists a protected strip of land along the right hand side of the existing access when looked at from Halloughton Road, which is exclusively for pedestrian use as a public footpath and which cannot legitimately be included in any proposals for further private vehicular access.'

The conveyancing details for the original 2 no. semidetached bungalows which already utilise the access demonstrate a reserved width for pedestrian access of 5 foot but also allow vehicular access for private vehicles in association with the properties. The point raised by the latest comments of NCC Highways is notable in this respect:

'The Highway Authority is not able to accede to this view and would highlight that the current access was designed in 1959/60 and was intended to provide private vehicular access (alongside public pedestrian access) to only two properties (at a time when not only were domestic vehicles generally physically smaller than today but also at a time when car ownership was unlikely to exceed more than one car per household). Moving on nearly 60 years the same physical access now already provides access to four properties, not just for vehicles that are physically larger in size but are also more numerous in nature given the increasing proportion of car ownership per householder and the increased level of daily usage of those vehicles.'

Despite previous approvals since the access was originally designed (including at appeal), there becomes a point when additional residential development tips the balance to a level of usage and intensification which warrants a resistance on highway safety grounds. In this respect I would concur with the stance of NCC Highways that:

'where there is a foreseeable increase in risk to the safety of highway users the Highway Authority has to take appropriate action either by amending the infrastructure to current standards to be able to deal with the changes or by imposing restrictions to reduce the use of the asset to a level where potential risks are appropriately minimised.'

Given the constraints of the site access which would not allow for appropriate widening, the only option in respect of this application is the latter case of restricting an intensified usage which would occur through the proposed development. Ultimately there becomes a tipping point whereby additional development would not be acceptable in highway safety terms and officers consider that this application represents such a point to a degree which warrants refusal on highway safety grounds.

The applicant has presented an appeal case in the District of Mansfield where an appeal was allowed for 6 dwellings in Forest Town. Having reviewed this case neither NSDC Officers or NCC Highways Officers find this scheme to be comparable to the current proposal to a degree which it could be afforded weight in the determination. The access points to the site are considered to be entirely different.

Officers attach significant weight to the objection of the Highways Authority and concur that the intensification of the vehicular access would create conflict in respect of both pedestrian safety to users of the designated Right of Way but also vehicular traffic movements along the access. This would conflict with Spatial Policy 7 and Policy DM5 as well as the intentions of the NPPF.

Impact on Flood Risk

Policy E2 of the SNP states that development proposals requiring a flood risk assessment must be designed to avoid increasing the risk of flooding both on and off site. The proposed development is located in Flood Zone 1 in accordance with Environment Agency mapping, in addition the site is not considered to be at high risk of surface water flooding and as such no flood risk assessment is required in support of the proposal. No objections have been raised by either the Environment Agency or NCC Lead Local Flood Authority and I have identified no reason why surface water management would create an issue to either the proposed occupiers or neighbouring residents.

The submitted site location plan demonstrates a Yew hedge would be planted to the northern boundary of site adjacent to the Potwell Dyke. I appreciate that Policy E2 of the SNP refers to the design of buffer strips of 8m between the bank of watercourses adjacent to sites. Whilst not technically applicable to the current application given that a FRA is not formally required matters of flooding remain a material planning consideration (and indeed a significant cause for concern in Southwell) and thus officers have again reviewed the application in the context of the proposed hedge. Trent Valley as the internal drainage board (TVIDB) have been consulted on the proposals. As the comments above reference, it has been confirmed that the Potwell Dyke does not fall within their maintenance. Officers have made enquiries with the TVIDB to ascertain the remit of maintenance. It is confirmed that the Potwell Dyke is in riparian ownership and therefore maintenance is subject to private arrangements. In line with the aspirations of SNP in respect to matters of flooding, officers concur that it may be desirable to reduce the level of vegetation along the bank. However, given that the application is recommended for refusal it is not considered appropriate to hold the determination for further negotiations on this basis. If Members were minded to approve the application contrary to officer recommendation, then they could attach a condition in respect of landscaping which could seek revised details notwithstanding those demonstrated on the submitted block plan.

Other Matters

Concern has been raised that the originally submitted block plan did not demonstrate the entirety of the public footpath which extends along the access road to the public highway. Officers are satisfied that the constraints of the site are clearly identified and the relevant parties have been consulted. However, for the avoidance of doubt and to conform strictly with the content of the Council's validation requirements, a revised site block plan was requested during the life of the application. This has been submitted clearly demonstrating the full extent of the public footpath and an additional round of consultation instructed on this basis.

It is stated that the access is not only being used for residential use but also for commercial operations. Reference is made to an application to regularise this. It is noted that there was an application recently approved for the retrospective creation of a home office at a neighbouring dwelling (through an additional dormer window and staircase) (reference 17/01226/FUL) but I do not consider this to amount to a commercial enterprise being operated from the property.

Reference has been made throughout highway discussions to the inadequacy of the access to allow for emergency services access. The applicant has provided a swept path analysis to demonstrate that fire fighting vehicles will be able to gain access to the development and has gone further to request a safety test from the Fire Brigade which has accumulated in photographic evidence showing that a fire engine could gain access and turn within the site. Whilst the confirmation of this is welcomed, the matter would in any case be covered by Building Regulations. **It is noted that this remains a matter of dispute through the consultation process with the suggestion that a formal report would be available if the Fire Service Department were satisfied with the arrangements. Despite request, this has not been forthcoming by the applicant.**

Comments have been received from the Fire Protection Officer on the basis of the current status of the application (a site without planning permission). It has been confirmed that the appropriate time for their involvement would be at the building consultation stage with regard to compliance with Approved Document B or an alternative document. I have taken the

opportunity to review the detail contained within Approved Document B specifically the chapter in relation to 'B5 Access and facilities for the Fire and Rescue Service – The Requirement'. The applicant has submitted a 'Fire Appliance Swept Path Analysis' plan (above the usual validation requirements) as well as photographs appearing to show a fire engine accessing the site. Without appropriate expertise, officers are not in a position to confirm whether or not these details would meet the requirements of Approved Document B. However, given that this would be a matter for post planning approval (and notwithstanding the officer recommendation of refusal) it is not considered appropriate nor proportionate for an application for one dwelling to delay the determination of the proposal on this basis.

I appreciate that neighbouring properties may feel aggrieved by the length of time that officers have been assessing the application and the number of consultations undertaken in respect to revised details. As Members will be aware, there is a requirement for the LPA to work positively and proactively with applicants. Whilst the recommendation remains one of refusal, some of the original concerns of officers have been addressed throughout the life of the application.

In respect to the provision of bin collection, photographic evidence has been submitted by a neighbouring property showing bins are left on Halloughton Road for collection. Officers do not consider that one additional dwelling would have a significant impact in this respect but concur that if anything this would weigh negatively in the overall impacts on the access potentially leading to further disruption to the highways network. The Waste Team have been consulted on the current application but no comments have been received at the time of agenda print.

Overall Balance and Conclusion

The proposal relates to a two bedroom dwelling within the settlement of Southwell which would meet an identified need whilst making a contribution to the Districts housing supply. However, notwithstanding the acceptance of the proposal in principle, the site constraints create difficulties in the delivery of residential development. The applicant has worked with officers throughout the life of the application and amended the scheme to address original concerns in respect to character and amenity impacts.

As is referenced above, there have been lengthy discussions during the life of the application in respect to the implications of the proposed vehicular access noting both the width constraints but also the presence of a designated Right of Way. I fully appreciate that the applicant may feel aggrieved by the latest stance of the Highways Authority given that they had previously suggested that the proposal could be considered acceptable in highways safety terms. However, I also fully endorse the approach of the Highways Authority in respect of ensuring that all material considerations are taken into account at the time of determination. Despite attempted assurances from the applicant, including examples of existing cases where vehicular accesses are shared with public Rights of Way, the matter remains that the current proposal would create a conflict in usage. The legal designation of the Right of Way must hold significant material weight in the determination of the application and to allow for an increased usage of vehicular traffic (estimated at an increase of around 25%) would be wholly inappropriate in respect to an increased risk on pedestrian safety. The designation as a Right of Way must afford the potential users with an appropriate opportunity for safe and efficient usage and despite the inclusion along the access of a pedestrian refuge point; the current application fails to demonstrate this. Moreover, the constraints of the access width present their own difficulties in that there is insufficient space for two vehicles to pass one another. This could lead to vehicles causing an obstruction within the

public highway thereby further impeding highways safety in the immediate site surroundings. The combined effects of the proposed access demonstrate significant conflict with Spatial Policy 7 and the relevant aspects of Policy DM5.

The benefits of the scheme in terms of the housing delivery of a two bed unit and indeed potential slight improvements to the existing access which would serve existing residents are noted. Furthermore the design and layout of the scheme is considered satisfactory with regards to heritage matters, visual amenity and residential amenity and the proposal is not considered to raise any adverse impacts in respect of flood risk matters. Nevertheless these matters are not considered to outweigh the aforementioned harm created by the proposal in respect of highways safety and adverse implications to the usage of the public Right of Way which crosses the site. The recommendation of officers is therefore one of refusal as outlined below.

RECOMMENDATION

That full planning permission is refused for the following reason:

Reasons

01

The proposal relates to the erection of a single detached dwelling with a proposed vehicular access utilising an existing access from Halloughton Road. The access currently serves four dwellings but is also designated as a public Right of Way– Southwell Footpath Number 27. The Footpath is officially recorded on the County's Definitive Map of Rights of Way and further information recently obtained indicates that a public footpath was expressly reserved along the southern boundary of the access way over land within the ownership of No. 39, Halloughton Road. There is a need to ensure safe access by pedestrians (who have a legal right to use the route unhindered). In line with comments of Nottinghamshire County Council as the Highways Authority, officers consider that the current proposal would intensify the existing vehicular use of the access to a degree which would amount to an unacceptable level of harm to pedestrian safety of the users of the Right of Way.

In addition to the above identified harm, the access road does not meet current standards to allow for two vehicles to pass. The current physical boundary constraints prevent the potential to mitigate this impact through adequate widening to the required width of 5.25m. This presents the potential for vehicular obstruction to the public highway as vehicles are waiting to access and egress the site.

Despite best endeavors from the applicant to overcome the aforementioned harm, the Highways Authority and consequently officers of the Local Planning Authority are of the view that the proposal is unacceptable in highway terms causing demonstrable harm to both pedestrians and the efficient movement of the highways network. This is contrary to Spatial Policy 7 and the relevant aspects of Policy DM5 as well as the intentions of the NPPF which form a material consideration to the decision. No other material considerations have been identified which would sufficiently outweigh this harm.

Notes to Applicant

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/

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason for refusal. However the District Planning Authority has worked positively and proactively with the applicant to make some revisions to the proposal. Whilst not all problems arising can be overcome, several potential reasons for refusal have been negated.

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.

Matt Lamb
Business Manager - Growth & Regeneration

Committee Plan - 17/00771/FUL

