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## Appeal Decision

Hearing held on 16 April 2024

Site visit made on 16 April 2024

**by Zoe Raygen DipURP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 May 2024**

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### **Appeal A: APP/A3010/W/23/3329630**

#### **Land East Of Retford Road , Haughton, Retford DN22 8DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr William Finney against the decision of Bassetlaw District Council.
  - The application Ref 23/00009/FUL, dated 23 December 2022, was refused by notice dated 17 March 2023.
  - The development proposed is change of use of land to travellers' caravan site consisting of 4 pitches each containing 1 No mobile home, 1 No dayroom; play area, car parking and the construction of a new access onto Retford Road.
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### **Appeal B: APP/A3010/W/24/3338976**

#### **Land East Of Retford Road , Haughton, Retford DN22 8DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr William Finney against the decision of Bassetlaw District Council.
  - The application Ref 23/01047/FUL, dated 23 August 2023, was refused by notice dated 16 October 2023.
  - The development proposed is change of use of land to travellers' caravan site consisting of 4 pitches each containing 1 No mobile home, 1 No dayroom; play area, car parking and the construction of a new access onto Retford Road.
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### **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Preliminary Matters**

3. Appeal A results from the Council's refusal of an application for the change of use of the appeal site to use for a traveller's caravan site with four pitches<sup>1</sup>. Following that refusal the appellant submitted a further planning application to the Council for a similar development but with a revised layout, incorporating an enhanced landscaping scheme<sup>2</sup>.
4. The appellant submitted the revised layout plan as an amendment to the scheme for Appeal A. The Council confirmed at the Hearing it had no objection to this. As this is a plan which has been considered by the Council and been

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<sup>1</sup> 23/00009/FUL

<sup>2</sup> 23/01047/FUL

through a consultation process then no one would be prejudiced by my consideration of it. In effect this means that the two appeals are for the same development. Therefore, at the Hearing it was agreed that the description of development and the addresses should be the same for both and that is reflected in the banner heading above. I have therefore referred to the proposal in the singular, notwithstanding that I am determining two appeals.

5. The Council confirmed at the Hearing that the information submitted by the appellant in their statement of case was sufficient to overcome its reason for refusal regarding the impact on biodiversity for both appeals. Having viewed the information, including a Preliminary Ecological Assessment and a Biodiversity Net Gain Assessment, I see no reason to disagree. Therefore, the proposal would meet the requirements of Policy DM9 of the Bassetlaw District Local Development Framework Core Strategy & Development Management Policies DPD 2011 (the Core Strategy) in this respect regarding the requirement to protect features of recognised importance and enhance habitats.
6. At the Hearing, the Council advised that it submitted the Bassetlaw Local Plan 2020-2038 (the emerging Local Plan) to the Secretary of State on 18 July 2022. Following an independent examination the Inspectors' report was received on 21 February 2024. The report confirms that, subject to main modifications, the emerging Local Plan is sound and can proceed to adoption. The Council intend on reporting it to Committee, with a view to adoption, at the end of May. The appellant has been aware of relevant emerging policies, and these were discussed at the Hearing.
7. In the Council's view, therefore, emerging policies can be given significant or substantial weight. The appellant agrees except with regard to policy ST32 relating to the provision of pitches for Gypsies and Travellers. I will return to this matter later in my decision.

## **Main Issues**

8. The main issues for both appeals are:
  - The effect of the proposal on the character and appearance of the area also having regard to the setting of a Scheduled Ancient Monument, the Haughton decoy and motte and bailey castle;
  - The effect of the proposal on highway safety; and
  - whether there are other considerations weighing in favour of the proposed development.

## **Reasons**

### *Gypsy and Traveller Policy context*

9. Policy DM6 of the Core Strategy is supportive of new sites for Gypsies and Travellers providing they meet a number of criteria, as well as it being demonstrated that there is a need for additional pitches in the area and there are no alternative sites available in the District. The Council confirmed at the Hearing that conflict is alleged with regard to the effect on highway safety, the scale and design of the site being appropriate to its surrounding location and the need for the pitches.

10. Policy ST32 of the emerging Local Plan continues that support for new pitches for Gypsies and Travellers subject to criteria, together with site specific allocations, and covering similar issues to those in Policy DM6 where the Council allege conflict.

*Character and appearance/Heritage asset*

*Significance/character*

11. The Haughton decoy and motte and bailey castle is a Scheduled Ancient Monument (the SAM). The large, and well conserved, motte and bailey originates from the 11<sup>th</sup> or 12<sup>th</sup> century with a steep-sided conical motte or castle mound with a ditched bailey to the south. The decoy, which is still largely water filled, is a roughly square pond measuring about 200 metres per side and originates from the 17<sup>th</sup> century making it the earliest known in England.
12. Its significance, for the purposes of this appeal largely derives from the early evidence of a defensive structure in the landscape, together with the initial evolution of the duck decoy pond and its use in the countryside.
13. As a defensive feature in the landscape the motte and bailey have a wide setting, so that its purpose can be readily seen and understood. Originally this would have been mainly over partial wasteland. By the sixteenth century a parkland had established to the north of the motte and bailey associated with Haughton Hall, and it is considered that the duck decoy was formed as part of the parkland.
14. Even though the SAM is covered by woodland, it was agreed at the Hearing this did not affect its significance, which as a SAM the National Planning Policy Framework (the Framework) confirms is an asset of the highest significance. While covered in woodland it sits high in the landscape and its position aids its understanding as a defensive feature here, the duck decoy less so.
15. The wider original setting of the motte and bailey has been changed by modern development including the village of Walesby, pylons and utilities, the B6387 (Retford Road), agriculture and associated large farm structures and remnants of the mining industry which once drove the economy of the local area.
16. The appeal site is in the Sherwood Policy Zone Z7 entitled Ollerton Estate Farmland character area in the Bassetlaw Landscape Character Assessment 2009 (the LCA). This is described as an arable landscape with gently rounded topography and localised flatter landscapes. There are also strong wooded areas in geometrical shaped blocks, as well as hedges forming field boundaries. Farmland is the dominant component of the landscape.
17. Walesby is described in the LCA as a small, nucleated village with an historic core and recent suburban development. It has the appearance of a small. rural village in the countryside. As you are driving through it, the rural landscape is never far from view, with glimpses between the houses and open views along Retford Road. It is not urban in nature. Furthermore, the countryside space between Walesby and the SAM has a substantial space and distance.
18. I appreciate that there is an isolated row of houses on the western side of the road to the south of the SAM which are near the appeal site together with a large farm and sports field in the space between the SAM and Walesby.

However, such uses are commonly found in the countryside and contribute to its rural open character. Moreover, the houses are set back from the road, detached and in spacious plots, and so do not form an intrusive urban feature. There are also small stables and sheds on the eastern side of the road, but again these are not unusual in the countryside. There is little evidence of mining industry evident in the local landscape and pylons have not changed the prevailing rural character. There is a footway on the opposite side of the road to the appeal site which extends to the northern point of the row of houses. There is no built development or footway on the eastern side of the road from Walesby to the appeal site.

19. Therefore, while the setting of the SAM has been altered from the original 12<sup>th</sup> century landscape, it is not to the extent that the land to the south, including the appeal site, is an area of transition at an urban edge as alleged by the appellant contributing little to its significance. It is still largely rural in character and appearance allowing open and uninterrupted views towards the SAM. Consequently, I concur with the Inspector for the 2018 appeal on this site<sup>3</sup> that the views from the south towards the SAM are of considerable importance in understanding the location of the asset in the countryside.
20. I also took the opportunity to look at Bothamsall Castle, also a motte and bailey and a Scheduled Ancient Monument. This is less wooded and therefore more visible in the landscape. Although it is close to Bothamsall it has a largely rural setting over the surrounding agricultural fields and the river valley to the south. It is true it has a different setting to the Haughton SAM. However, that does not make the setting of the Haughton SAM as significantly eroded as the appellant claims or any less significant.
21. The appeal site is currently open and undeveloped forming pastureland in the wider agricultural landscape which is widely appreciated not only from the appeal site, but also from within Walesby. The view from New Hill on the edge of Walesby towards the SAM is wholly over open countryside including the appeal site. It sits firmly in the open countryside on the eastern side of the main road which extends up to the suburban edge of Walesby. I therefore consider it contributes positively to the significance of the SAM, allowing an appreciation of the defensive position of the motte and bailey and the rural landscape within which it and the decoy is sited, as well as the rural, open character and appearance of the area.

### *Impact*

22. The proposal would result in the provision of four mobile homes, touring caravans and day rooms together with car parking and associated domestic paraphernalia. This would change the character of the site in what is otherwise a largely unaltered rural landscape to the east of the B6387. As such, as it would be located close to the road it would be an obtrusive feature in the landscape that would have no meaningful visual relationship to, or integrate satisfactorily with, existing built development which is located some distance to the south on this side of the road.
23. The pitches would be located within a woodland setting to address the Council's landscape action for this character area in the LCA to restore arable land to mixed woodland, permanent pasture and heathland.

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<sup>3</sup> APP/A3010/W/15/3129847

24. I note the appellant's photographs regarding the length of time taken to create a woodland buffer of about 2 years elsewhere. Furthermore, I have had regard to the appellant's assessment of the scheme on visual amenity, which concludes that due to appropriate landscaping and mitigation measures screening the structures there would be no change to views from any of the assessed viewpoints except from viewpoint 2 looking northeast from Robin Hood Way at its junction with the B6387. Here, the appellant considers the view would be improved due to the introduction of a new pond and native bulb drifts.
25. However, while there are some tall trees within the example woodland buffer, most of it is undergrowth planting. I am not convinced therefore, that the same principles applied to the appeal site would either create a genuine woodland as envisaged by the Council in the LCA, or reflective of the areas of densely treed areas of woodland that I saw to be characteristic of the area. Consequently, although the structures would only be single storey and the trees would, in time, be higher, the evidence provided does not convince me that they would be provided in a way that would be successful in integrating what the proposal into the characteristic rural landscape. Even with the mitigation, it would not be representative of local character and the addition of a pond and bulb planting would not improve matters in the open countryside where I saw no other similar features. Therefore, the view from the Robin Hood Way and the B6387 as well as those from further afield would be materially harmed.
26. I appreciate that the Planning Policy for Traveller Sites (the PPTS) accepts that it may be appropriate to provide pitches in the open countryside. Furthermore, there would be change caused by the proposal and not all change is harmful. However, for the reasons above, I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore conflict with policies DM4, DM6 and DM9 of the Core Strategy, policies ST32 and ST37 of the emerging Local Plan and paragraph 180 of the Framework. Together these require that development complements and enhances the character of the natural environment, is appropriate to its surrounding location and is sensitive to the landscape setting as well as enhancing the distinctive qualities of the landscape character policy zone.
27. I note that the Council did not refer to conflict with Policy DM6 of the Core Strategy in its reason for refusal. However, it confirmed at the Hearing that it considered there was conflict, and it should have been referenced in the reason for refusal.
28. The proposal would also materially harmfully change the rural environment within which the SAM is appreciated and therefore its significance, which is of the highest order, would be harmed. I return to this matter in my conclusion.
29. Whether or not the appeal site is within the Haughton Hall park and garden, there is very little evidence of any parkland in this area which is now mostly agricultural/grazing land. While the park and garden can be considered as a non-designated heritage asset, I am satisfied that the development would not cause harm to its significance.

#### *Highway safety*

30. The appeal site is already served by an access which also provides access to the field to the south and those to the north. Consequently, its use is limited to

farm vehicles or cars with trailers in association with the horses kept on the various fields. The level of use is therefore low, but likely to involve long or slow moving vehicles.

31. It is agreed between the parties that the existing access has substandard visibility splays and I saw that to be the case when leaving the site, with that to the south being particularly restricted. A new access to the appeal site is proposed further north.
32. The B6387 from which the new access would be taken is a rural road with the national speed limit of 60mph. However, this reduces to 40mph at the existing access to the appeal site. Consequently, the speed survey undertaken by the appellant shows that the speed of the traffic would be decelerating from 56.3 mph at 280m north of the site to 43.8mph to the south of the site and accelerating from 46.3mph to 56.3mph in the opposite direction using the 85<sup>th</sup> percentile figure.
33. The main parties adopt different guidance to calculate the required visibility splay. Although both parties agree that the starting point is Manual for Streets (MfS), the Council has adopted the Stopping Site Distances (SSDs) from Design Manual for Roads and Bridges (DMRB) as the traffic speeds on the road are above 37mph. As a result, it requires a visibility splay of 2.4 x 180m to the north and 2.4 x 129m to the south<sup>4</sup>.
34. The appellant would be able to provide 2.4m x 215m visibility splay to the north. This would require works to the hedge to ensure the visibility splay was achieved and maintained. However, the evidence supplied by the appellant shows this, as well as the hedge to the south, is all in the highway boundary. I have no reason to doubt therefore this can be achieved.
35. To the south though, Figure 2 of the appellant's plans shows that measured to the nearside edge of the carriageway, as required by the Council, a visibility splay of only 69.7m could be achieved using the 2.4m X distance. Distances above that that using MfS, or especially DMRB, would be towards the centre line of the carriageway and beyond.
36. The Council considers the primary function of the B6387 is the distribution of traffic including providing access to the A1 and it is a high speed rural road. Therefore, DMRB SSD's should be used, especially as the speed of traffic is above 37mph. However, while I accept that the speed figures provided by the appellant are above 37mph, due to external influences, traffic is unlikely to be travelling at a constant high speed in this location. As well as the change of speed limit, there are other junctions and accesses on the road as well as the potential for parked cars on the carriageway in association with the existing houses. Therefore, I am not convinced that the figures from DMRB are appropriate at this location, especially given that traffic to the south would be travelling at 46.3 mph near to the appeal site, which is not significantly above 37mph. Moreover, paragraph 7.5.8 of MfS states that with an 85th percentile speed over 37mph it **may** be appropriate to use longer SSDs as set out in DMRB (my emphasis), meaning it may not be appropriate in all circumstances and local conditions should prevail.

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<sup>4</sup> There was no representative from the Highway Authority at the Hearing, but the Council representative agreed as far as he was able.



37. There is no physical separation on the B6387 to prevent vehicles from entering the nearside lane and therefore, according to the Council, the visibility splay should be measured to the nearside in both directions. The Council's required visibility to the south, based on DMRB SSDs, could only be achieved towards the far edge of the carriageway. Given the relative narrowness of the carriageway and the presence of residential properties to the south where cars may be parked on the road then I do consider the visibility splay should be to the near edge or at least on the appeal site side of the centre carriageway line due to the possibility of vehicles overtaking or passing parked cars outside of the existing houses. However, Figure 2 shows this can be achieved to MfS requirement of 91.674m for large vehicle stopping at just beyond the nearside of the carriageway so any vehicles overtaking, or passing parked cars, would still be visible within the required distance.
38. A similar proposal was dismissed at appeal in 2015<sup>5</sup>. From the appeal decision it seems at that time the Inspector was unclear from the evidence before them of exactly what the proposal in terms of the access was. It states that a junction would probably need to be built slightly out into the road on the eastern side to achieve appropriate sightlines. However, there is no discussion of what those sightlines were. Furthermore, the Council confirmed at the Hearing that the access was in a different position to that proposed now.
39. I am also satisfied that the access as proposed, using MfS requirements, would facilitate a safe pedestrian route. I appreciate pedestrians would need to cross the main road to reach the footway on the opposite side of the road, but I saw that the traffic was not so busy for there to be no safe opportunity to do this.
40. Based on the evidence before me, and the discussion at the hearing, I am content that acceptable visibility splays can be provided in both directions. For the reasons above therefore I conclude that there would be no harm to highway safety and the proposal would accord with policies DM4 and DM6 of the Core Strategy, Policy ST32 of the emerging Local Plan in this respect and paragraph 115 of the Framework. These require that there is safe vehicular access to the highway and that there is safe pedestrian movement.

### *Material Considerations*

#### *Need/supply*

41. The Council rely on the emerging Local Plan, which it considers demonstrates that it has a 5 year supply of pitches through Policy ST32. This states that the permanent accommodation needs of the District's Gypsy and Traveller community will be met through the provision for 49 permanent pitches by 2037-2038 with approximately 27 permanent pitches to be delivered by 2028-2029 through a combination of the safeguarding of existing sites, the regularisation of unauthorised development, the intensification of sites, the conversion of transit pitches to permanent ones and the granting of planning permission for new pitches subject to various criteria.
42. The Inspectors' Report refers to the Council's Gypsy and Traveller Accommodation Needs Assessment 2019 (GTANA) and subsequent updates in December 2021 and July 2022 which finds that a total of 52 pitches would be required to meet the needs of those meeting the ethnic definition of Gypsies

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<sup>5</sup> APP/A3010/W/15/3129847

and Travellers over the period 2019/20 to 2037/38. The Council has granted planning permission for 3 pitches, leaving the requirement of 49 over the plan period. The Inspectors assessing the emerging Local Plan were therefore satisfied that the GTANA provides a robust evidence base and accords with national policy as updated.

43. No reference is made in the Inspectors' Report though to the Dunham Road appeal decision dated 1 August 2023<sup>6</sup>. The Council was unable at the Hearing to advise me whether the Inspectors had the benefit of this evidence when they considered the emerging Local Plan evidence.
44. In that decision the Inspector found, based on the evidence before them, including a 2015 GTAA which was the most recent evidence of existing pitch provision, that *"the District's supply of pitches for Gypsies and Travellers is not as good as the Council thought, and it may be significantly worse."* This was primarily due to a site at Stubbings Lane which the Council considered was able to provide 28 pitches, but the evidence was inconclusive at that time and indeed the appellant considered it to be vacant. Neither was it clear that the site was restricted to occupation for Gypsies and Travellers, therefore the Inspector discounted it from the supply creating an increased need. Consequently, they found that the Council was unable to demonstrate a 5 year supply of pitches for Gypsies and Travellers. The Inspector also had access to the GTANA and subsequent updates. The 2015 GTAA is not referenced by the Inspectors examining the emerging Local Plan.
45. Similar evidence is before me now and the Council was equally unable to confirm the details of the Stubbings Lane site. Neither could the Council provide any update on progress made on the proposed site allocations in the emerging Local Plan. On this basis, the appellant considers that the lack of supply and the consequent need for pitches attracts significant weight and the weight to be given to policy ST32 of the emerging local plan is very limited.
46. The appellant is currently living in bricks and mortar housing together with his son and daughter for whom two of the pitches are for. The third is also for offspring who require a pitch of their own. The fourth is for a Gypsy and Traveller family currently travelling. The GTANA derives much of its need from Gypsy and Travellers currently living in bricks and mortar and from household formation as is much of the case here.
47. Policy DM6 of the Core Strategy is the current policy that Gypsy and Traveller pitches are considered against and this is a criterion based policy. Although there have been no allocations for pitches for some time, this will shortly be rectified through the emerging Local Plan, and pitches could have been granted if they met the relevant criteria in Policy DM6. I therefore concur with the Dunham Road Inspector that there has not been a policy failure.

#### *Alternative Sites*

48. It was agreed at the Hearing that there are no other suitable and available pitches available for the proposed occupiers.

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<sup>6</sup> APP/A3010/C/21/3273252 (the Dunham Road appeal)



### *Personal circumstances*

49. As described above three of the proposed occupiers are living with parents and wish to have a pitch of their own. The other family is currently travelling and has two children. Neither are registered at local schools but wish to do so. In the event that the proposed occupiers are unable to live on the site they would need to continue in their current living or traveling arrangements. Having their own home would be a better option and prevent doubling up in existing accommodation and living on the road. Furthermore, having a settled base would benefit all, especially the children, allowing them access to education and health care as well as security.

### *Planning and Heritage Balance*

50. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. I have placed no single aspect above the best interests of the children whose family intends to live on the site.
51. I have found that the proposal would be harmful to the setting and significance of the Haughton decoy and motte and bailey castle as well as the character and appearance of the area. In accordance with paragraph 208 of the Framework the harm caused to the SAM would be less than substantial and therefore this harm should be weighed against the public benefits of the proposal.
52. In terms of public benefits, there would be economic benefits from the purchase of materials to facilitate the development. Even if I were to accept the position of the appellant and accept that significant weight is afforded to the need for more Gypsy and Traveller sites to cater for the current demand together the public benefits would not outweigh the less than substantial harm to the significance of the SAM, to which I give considerable importance and weight. The proposal would therefore conflict with policies DM4 and DM8 of the Core Strategy, policies ST32, ST42 and ST43 of the emerging local plan and paragraph 206 of the Framework. Together these require that the historic environment and the setting of heritage assets be protected and enhanced.
53. I note that the appellant has submitted two appeal decisions<sup>7</sup> where the Inspector concluded that the public benefits, which included the provision of pitches in the absence of a five year supply would outweigh the harm to the heritage assets. However, the weight to be given to harms and benefits, together with the balancing exercise is for the individual decision maker. These decisions involve other heritage assets and their relationships to a different appeal site to that before me now. Therefore, they have not been sufficient for me to reach a similar conclusion.

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<sup>7</sup> APP/Q3305/W/18/3194428 & APP/F0114/W/15/3136780

54. I have also found the proposal would conflict with policies relating to the protection of the character and appearance of the area and overall policies relating to the provision of pitches for Gypsies and Travellers. It would therefore conflict with the development plan as a whole.
55. Balanced against this is the lack of suitable, available, affordable and acceptable alternative accommodation for the prospective occupiers at this time and the personal circumstances of the appellant's family, and particularly the best interests of the children to which I give substantial weight. However, even if I was to accept the position of the appellant and accept that significant weight is afforded to the need for more Gypsy and Traveller sites to cater for the current demand, cumulatively the weight given to the other considerations above would not outweigh the conflict with the development plan.
56. I have also considered whether a temporary grant of planning permission would be appropriate for these appeals. The Planning Policy Guidance advises that temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. However, there is nothing before me to suggest that planning circumstances would change in any particular way for the foreseeable future. Consequently a temporary permission is not justified in this instance.
57. The intended future occupiers do not live on the appeal site and dismissal of the appeal is likely to lead to circumstances where they continue to continue in their current accommodation or are faced with a life on the road. This would be an interference with their rights to a family life and to establish a home to facilitate a gypsy way of life but given the clear public interest in protecting the SAM and the character and appearance of the area ensuring that new development meets the provisions of the development plan, I am satisfied that the dismissal of the appeal is necessary and proportionate.

## **Conclusion**

58. For the reasons above I conclude that the appeals are dismissed.

*Zoe Raygen*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANTS:

|                  |                               |
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| Dr Angus Murdoch | Agent                         |
| Nichola Burley   | Heritage Vision Ltd           |
| Hurlstone        | The Hurlstone Partnership Ltd |
| Mr Crandon       | TDA Ltd                       |

### FOR THE LOCAL PLANNING AUTHORITY:

|               |                         |
|---------------|-------------------------|
| Jaime Elliott | Senior Planning Officer |
|---------------|-------------------------|

### INTERESTED PERSONS:

|                         |                                      |
|-------------------------|--------------------------------------|
| Mr Brown                | Resident                             |
| Mrs Banks               | Resident                             |
| Mr Banks                | Resident                             |
| Mr Spratley             | Resident                             |
| Councillor Tim Wildgust | Newark and Sherwood District Council |