



Appeal Decision

Site visit made on 23 July 2025

by A O'Neill BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2025

Appeal Ref: APP/F1040/W/25/3366469

Land adjacent to 253 Burton Road, Overseal, Swadlincote DE12 6JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Kelly Gaskin against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2024/1456.
 - The development proposed is the formation of a vehicular access and track.
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Decision

1. The appeal is allowed, and planning permission is granted for the formation of a vehicular access and track at Land adjacent to 253 Burton Road, Overseal, Swadlincote DE12 6JN in accordance with the terms of the application, Ref DMPA/2024/1456, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mrs Kelly Gaskin against South Derbyshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description in the banner heading above is taken from the decision notice. This differs from the application form, but more accurately describes the proposal.
4. During my site visit I saw some compacted hard materials in the location of the proposed track, adjacent to the highway. For the avoidance of doubt, I have determined the appeal based on the submitted plans.
5. The site is within the catchment area of the River Mease Special Area of Conservation (SAC). Whilst not cited as a reason for refusal by the Council, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA). This responsibility now falls to me within this appeal. With this in mind I have considered whether or not the proposal has the potential to affect the protected area within my reasoning. The parties have had the opportunity to provide comments in regard to this matter, and I have taken any comments that I have received into account in my decision.

Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the site and surrounding area.

Reasons

7. The appeal site comprises an L-shaped parcel of undeveloped grass land to the side of 253 Burton Road and to the rear of numbers 245-253 Burton Road. The site's boundaries are defined by the fences of the adjacent residential properties and a post and wire fence where it adjoins undeveloped land.
8. The site is located at a transition point between the ribbon of built development which fronts Burton Road to the south and undeveloped land to the north which has an open and verdant character. In its current form, the site contributes positively to this open and verdant character.
9. The Council's reason for refusal is that the proposed development would be a visually discordant feature in the rural landscape and unduly harmful to landscape character. However, these points are not further substantiated in the Council's Statement of Case.
10. I appreciate that the materials used to surface the track would alter the verdant character of the site and could appear discordant in the landscape. However, this would be mitigated by significant landscape planting including a hawthorn hedgerow and field maple trees along the site's boundary with the adjacent undeveloped land. Grassed areas would also be retained adjacent to the neighbouring residential properties. This can be controlled through the imposition of an appropriately worded planning condition.
11. Access tracks are not uncommon features in rural landscapes and the proposal would not, in my judgement, detract from the open character of the site. I therefore do not find that would be a visually discordant feature in this location. The proposal is sympathetic to the rural character of the landscape and, as such, it would not be harmful to the character or appearance of the area.
12. Reference is made to a previous proposal on the site for a new dwelling. This was dismissed at appeal for reasons including its unacceptable effect on the rural character and appearance of the area. However, the current proposal is not for a dwelling and so the two are not directly comparable. As such, this does not influence my consideration of this appeal proposal, which I have determined on its own merits.
13. Taking the above into account, I do not find the proposal would harm the character and appearance of the area. As such, I find no conflict with Policy BNE4 of the South Derbyshire Local Plan Part 1 (2016) (LP Part 1) or Policy BNE5 of the Local Plan Part 2 (2017) (LP Part 2). Together these policies require, amongst other things, that the character of South Derbyshire's landscape is protected and enhanced and that development does not unduly impact on landscape character, without satisfactory mitigation.

Other Matters

14. The need for the proposed access has been questioned given there is an existing vehicular access located between 219 and 221 Burton Road. The existing access is not wide enough for two vehicles to pass and it is not possible to widen it because it is located between built development. The proposal would provide a wider access track, allowing vehicles to pass. I note that Policy INF2 of the LP Part 1, which concerns the provision of vehicular accesses, does not require need to be

demonstrated. Furthermore, Policy BNE5 of the LP Part 1 allows for development outside of settlement boundaries where it is unavoidable or where it is essential to rural based activities, which includes agriculture. I understand that the entirety of the land within the appellant's holding is located outside the settlement boundary and, as such, the location of the development outside of the settlement boundary is unavoidable. The track would also provide a more suitable, alternative access to the appellant's existing agricultural operations.

15. Representations have been made by several interested parties, including concerns about the effect of noise and disturbance from vehicles using the access on neighbouring occupiers. During my site visit, I observed that Burton Road has frequent vehicle movements, generating noise that is audible along the length of the proposed track. I also note that there is no current restriction on farm vehicles operating on the site. While the use of the track may result in some additional noise, in the context of the existing ambient vehicle noise, I find that it would not significantly harm the living conditions of neighbouring occupiers.
16. I have had regard to the comments regarding highway safety. The proposal would not impact traffic generation on the local road network and there is no substantive evidence before me that it would affect the operation of the nearby roundabout. The County Highway Authority have confirmed the proposed access would, in their opinion, be satisfactory and have not identified any highway safety issues, subject to the imposition of certain conditions, which I deal with below. I am also mindful that paragraph 116 of the National Planning Policy Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Based on the information provided and my own observations, I do not find that the proposal would have an unacceptable impact on highway safety.
17. Concerns have also been expressed about the type of vehicles that could use the track. The appellant has confirmed that it will be used by the same type of vehicles that use the existing access, and I note the Council Officer's Report concluded that it would not be reasonable or necessary to impose conditions restricting the type of vehicles given the existing agricultural enterprise. Based on the information before me, I have no reason to reach an alternative conclusion on this matter.
18. The site is within the catchment area of the River Mease Special Area of Conservation (SAC). Surface water runoff is a contributor to the phosphate levels in the river. Appropriate Assessment is required to assess the impacts of the proposal on the SAC. The proposal would not result in an increase in overnight stays or an increase in foul drainage discharge from the site. As the track would be formed from permeable materials, there would be no material change in surface water runoff compared to existing. Therefore, the proposal would not have a likely significant effect on the integrity of the River Mease SAC, either alone or in combination with other plans or projects. As such, it is not reasonable or necessary to require any additional drainage measures.
19. The Council's statement refers to the proposal resulting in the coalescence of Linton and Overseal. However, this has not been further explained, and as the proposal does not involve any structures above ground, it is not clear how coalescence would result. As such, this matter does not influence my consideration of the appeal proposal.

20. There is no substantive evidence before me to indicate that allowing this proposal would lead to further development at the site. In any event, I have determined this appeal on its own merits.

Conditions

21. The Council has suggested a list of conditions, which I conclude on below. I have had regard to the advice provided in the Planning Practice Guidance and I have accordingly modified the wording or form of certain conditions without altering their fundamental aims.
22. In addition to the standard time condition, I have imposed a condition requiring that the development is carried out following the approved plans, for the avoidance of doubt and in the interests of certainty.
23. To enhance biodiversity and in order to secure the identified benefits, it is necessary to impose a condition requiring preparation of and accordance with a Habitat Management Monitoring Plan. This condition must be pre-commencement so that biodiversity can be appropriately managed during the whole of the development process. This condition has been agreed by the appellant.
24. Conditions requiring any gates to be set back from the highway and for the track to be surfaced over its initial length with a hard bound material are necessary in the interests of highway safety to avoid obstruction of, and tracking loose material onto, the running carriageway/footway.
25. To protect the character and appearance of the area, I have imposed a condition requiring the specification of decorative stone and gates prior to incorporation within the development.
26. I have not imposed a condition requested by the Council preventing external storage on the track. There is limited justification for this condition, and the use of the proposed track is clear from the application details. As such it is not reasonable or necessary and it would not meet the tests set out in the Framework.

Conclusion

27. For the reasons given above the appeal should be allowed.

A O'Neill

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the Location Plan (dated 12 December 2024) and Proposed Site Plan (MW/BG-01, amended version dated 10 March 2025), unless as otherwise required by condition attached to this permission.
- 3) Prior to commencement of the development, a Habitat Management and Monitoring Plan (HMMP) shall be submitted to and approved in writing by the Local Planning Authority. This shall identify the habitats to be retained, created and/or enhanced on the site to secure the biodiversity net gain as per the agreed biodiversity metric. The HMMP shall set out a monitoring schedule to ensure that the targets are met and remedial actions to take if not. All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the first use of the access track or the completion of the development, whichever is the sooner. The development shall be maintained and monitored in accordance with the approved HMMP.
- 4) The access track shall be surfaced with a bound material for a distance of at least 15 metres from the highway boundary and once provided, shall be so maintained in perpetuity.
- 5) Any entrance gates shall be set back a minimum of 15m from the highway boundary.
- 6) Prior to incorporation within the development, the specification of the decorative stones proposed to be used on the access track and design of the proposed gates shown on the Proposed Site Plan (MW/BG-01, amended version dated 10 March 2025) shall be submitted to and agreed in writing with the Local Planning Authority. The development shall be carried out in accordance with the approved details and maintained in perpetuity.

End of Conditions