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Monday, 8 January 2024

To All Councillors:

As a Member or Substitute of the **Planning Committee**, please treat this as your summons to attend a meeting on **Tuesday, 16 January 2024 at 6.00 pm** in the **Council Chamber, Town Hall, Matlock, DE4 3NN**

Yours sincerely,

Helen Mitchell  
Director of Corporate and Customer Services

This information is available free of charge in electronic, audio, Braille and large print versions, on request.

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## AGENDA

**SITE VISITS:** Attached to the agenda is a list of sites the Committee will visit on **Tuesday, 16 January 2024**. A presentation with photographs and diagrams will be available at the meeting for all applications including those visited by the Committee.

### 1. APOLOGIES FOR ABSENCE

Please advise the Democratic Services Team on 01629 761133 or email [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk) of any apologies for absence.

## **2. APPROVAL OF MINUTES OF PREVIOUS MEETING (Pages 9 - 18)**

12 December 2023

## **3. INTERESTS**

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council's Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member, her/his partner, extended family and close friends. Interests that become apparent at a later stage in the proceedings may be declared at that time.

## **4. PUBLIC PARTICIPATION**

To provide members of the public **who have given prior notice** (by no later than 12 Noon on the working day prior to the meeting) with the opportunity to express views, ask questions or submit petitions relating to planning applications under consideration. Representations will be invited immediately before the relevant item of business/planning application is discussed. Details of the Council's Scheme are reproduced overleaf. To register to speak on-line, please click here [Speak at Planning Committee](#). Alternatively email: [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk) or telephone 01629 761133.

## **5. APPLICATIONS FOR DETERMINATION**

Please note that for the following items, references to financial, legal and environmental considerations and equal opportunities and disability issues will be embodied within the text of the report, where applicable.

### **5.1. APPLICATION NO. 23/00990/FUL (Pages 19 - 34)**

Engineering works to facilitate additional parking (retrospective), erection of a boundary fence and car port at 5 Hackney Road, Hackney, Derbyshire.

### **5.2. APPLICATION NO. 23/00695/REM (Pages 35 - 62)**

Approval of Reserved Matters for the erection of up to 75no. dwellings (Outline planning permission 22/01044/OUT) at Land off Chesterfield Road and Quarry Lane, Matlock.

## **6. APPEALS PROGRESS REPORT (Pages 63 - 86)**

To consider a status report on appeals made to the Planning Inspectorate.

**Members of the Committee:** David Burton (Co-Chair), Peter O'Brien (Co-Chair), Sue Burfoot (Vice-Chair)

David Burton (Co-Chair), Peter O'Brien (Co-Chair), Robert Archer, John Bointon, Neil Buttle, Peter Dobbs, Nigel Norman Edwards-Walker, David Hughes, Stuart Lees, Laura Mellstrom, Dermot Murphy, Peter Slack, Mark Wakeman and Nick Whitehead

### **Nominated Substitute Members:**

Substitutes – Councillors Anthony Bates, Geoff Bond, Kelda Boothroyd, Marilyn Franks, Gareth Gee, Dawn Greatorex, Andy Nash, Roger Shelley and Nick Wilton

### **SITE VISITS**

Members are asked to convene outside Reception, at the front entrance of the Town Hall, Matlock at **3:30pm prompt** on **Tuesday, 16 January 2024**, before leaving at **3:35pm** to visit the sites as detailed in the included itinerary.

## **COMMITTEE SITE MEETING PROCEDURE**

The purpose of the site meeting is to enable the Committee Members to appraise the application site. The site visit is not a public meeting. No new drawings, letters of representation or other documents may be introduced at the site meeting. The procedure will be as follows:

1. A coach carrying Members of the Committee and a Planning Officer will arrive at the site as close as possible to the given time and Members will alight (weather permitting)
2. A representative of the Town/Parish Council and the applicant (or representative can attend.
3. The Chairman will ascertain who is present and address them to explain the purpose of the meeting and sequence of events.
4. The Planning Officer will give the reason for the site visit and point out site features.
5. Those present will be allowed to point out site features.
6. Those present will be allowed to give factual responses to questions from Members on site features.
7. The site meeting will be made with all those attending remaining together as a single group at all times.
8. The Chairman will terminate the meeting and Members will depart.
9. All persons attending are requested to refrain from smoking during site visits.

## **PUBLIC PARTICIPATION**

Members of the public may make a statement, petition or ask questions relating to planning applications or other agenda items in the non-exempt section of an agenda at meetings of the Planning Committee. The following procedure applies.

- a) Public Participation will be limited to one hour per meeting, with the discretion to extend exercised by the Committee Chairman (in consultation) in advance of the meeting. On line information points will make that clear in advance of registration to speak.
- b) Anyone wishing to make representations at a meeting must notify the Committee Section before Midday on the working day prior to the relevant meeting. At this time they will be asked to indicate to which item of business their representation relates, whether they are supporting or opposing the proposal and whether they are representing a town or parish council, a local resident or interested party.
- c) Those who indicate that they wish to make representations will be advised of the time that they need to arrive at the meeting venue so that the Committee Clerk can organise the representations and explain the procedure.
- d) Where more than 2 people are making similar representations, the Committee Administrator will seek to minimise duplication, for instance, by establishing if those present are willing to nominate a single spokesperson or otherwise co-operate in the presentation of their representations.
- e) Representations will only be allowed in respect of applications or items which are scheduled for debate at the relevant Committee meeting,
- f) Those making representations will be invited to do so in the following order, after the case officer has introduced any new information received following publication of the agenda and immediately before the relevant item of business is discussed. The following time limits will apply:

Town and Parish Councils	3 minutes
Objectors	3 minutes
Ward Members	5 minutes
Supporters	3 minutes
Agent or Applicant	5 minutes

At the Chairman's discretion, the time limits above may be reduced to keep within the limited one hour per meeting for Public Participation.

- g) After the presentation it will be for the Chairman to decide whether any points need further elaboration or whether any questions which have been raised need to be dealt with by Officers.
- h) The relevant Committee Chairman shall exercise discretion during the meeting to rule out immediately any comments by participants that are not directed to genuine planning considerations.

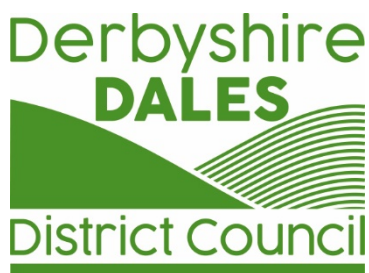
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**SITE VISITS**

<b>LEAVE OFFICE</b>		
23/00990/FUL	5 Hackney Road, Hackney, Derbyshire, DE4 2PW	15:45
<b>RETURN</b>		

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## Planning Committee

**Minutes of a Planning Committee meeting held at 6.00 pm on Tuesday, 12th December, 2023 in the Council Chamber, Town Hall, Matlock, DE4 3NN.**

**PRESENT** Councillor David Burton - In the Chair

Councillors: Peter O'Brien, Sue Burfoot, Robert Archer, John Bointon, Neil Buttle, Peter Dobbs, Nigel Norman Edwards-Walker, David Hughes, Laura Mellstrom, Dermot Murphy and Nick Whitehead

Members of the Public – 26

### **Note:**

*“Opinions expressed or statements made by individual persons during the public participation part of a Council or committee meeting are not the opinions or statements of Derbyshire Dales District Council. These comments are made by individuals who have exercised the provisions of the Council’s Constitution to address a specific meeting. The Council therefore accepts no liability for any defamatory remarks that are made during a meeting that are replicated on this document.”*

### **APOLOGIES**

Apologies for absence were received from Councillor(s): Stuart Lees, Peter Slack and Mark Wakeman

### **253/23 - APPROVAL OF MINUTES OF PREVIOUS MEETING**

It was moved by Councillor Neil Buttle, seconded by Councillor Peter Dobbs and

### **RESOLVED**

That the minutes of the meeting of the Planning Committee held on 14 November 2023 be approved as a correct record.

### **Voting**

**11 For**  
**00 Against**  
**01 Abstentions**

The Chair declared the motion **CARRIED**.

## **254/23 - INTERESTS**

**Item 5.9 - APPLICATION NO. 23/01092/FUL** – Ashbourne Methodist Church, Church Street, Ashbourne - Construction of link extension, extensions to new garden entrance, Gateway accommodation and Chapel House, demolition of lean-to extension to Chapel House and new community garden with ramped access.

And

**Item 5.10 - APPLICATION NO. 23/01093/LBALT** – Ashbourne Methodist Church, Church Street, Ashbourne - Construction of extensions, internal and external alterations to existing church, associated buildings and Chapel House including demolition, creation of community garden and associated works.

Councillor David Hughes declared a non-pecuniary interest in Items 5.9 and 5.10 due to being Chair of the Ashbourne Reborn Programme Board.

Councillor Peter Dobbs declared a non-pecuniary interest in Items 5.9 and 5.10 due to being a member of the Ashbourne Reborn Programme Board.

### **254/23a - APPLICATION NO. 22/01339/FUL**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr Darren Abbott (Applicant) spoke in support of the application. Mr Martin Bottomley (Local Resident), Mr Stephen Prince (Local Resident), and Mr David Tyers (Local Resident) spoke against the application.

Consultation responses were set out in section 5 of the report.

Correspondence received after publication of the agenda was distributed at the meeting. This comprised of further comments from Local Residents and further information received from the applicant's agent regarding the Noise Impact Assessment, the installation of the play area and further information from their drainage consultants on the drainage strategy proposed. Officers had responded with the following amendments to conditions:

*Condition 2 shall be amended to include reference to the Noise Impact Assessment for clarity and Condition 23 shall be amended in accordance with the above to allow the play area to be installed at an appropriate time in accordance with the build out programme.*

It was moved by Councillor Peter Dobbs, seconded by Councillor Robert Archer and

**RESOLVED** (unanimously)

That planning permission be refused for the following reasons:

1. The development would be served by an access off a narrow country lane, where vehicle speeds and visibility are such that movements to and from the site would be

detrimental to highway safety, and cumulatively with other recent development in the area have severe impacts on the transport network contrary to the requirements of Policy S4 and HC19 of the Adopted Derbyshire Dales Local Plan (2017).

2. The development fails to facilitate choice of travel and safe and easy viable access to the facilities within the town to encourage walking and cycling contrary to the aims of Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and Policy TRA1 of Ashbourne Neighbourhood Plan (2021).
3. Insufficient information has been submitted to demonstrate that surface and foul water flows from the development can be accommodated without adversely affecting the environment and increasing the risk of flooding elsewhere contrary to the aims of Policies S1 and PD8 of the Adopted Derbyshire Dales Local Plan (2017).
4. The proposed development delivers a blended housing mix that is skewed towards larger house types. Without clear and convincing justification, this does not meet the housing needs of the district contrary to the aims of policies S1 and HC11 of the Adopted Derbyshire Dales Local Plan (2017) and Policy HOU1 of Ashbourne Neighbourhood Plan (2021).
5. The layout of the development does not respond positively to the context, character and identity of this part of the town and constitutes poor design contrary to the aims of Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017), Policy DES1 of the Ashbourne Neighbourhood Plan (2021) and policy contained in the National Planning Policy Framework (2023).
6. The development fails to adequately compensate for natural grassland loss to deliver a Biodiversity Net Gain contrary to the requirements of Policy PD3 and policy contained in the National Planning Policy Framework (2023).
7. The pedestrian link at the western end of the site, terminates before it reaches any adopted path which means that it offers no access benefits and is therefore unwarranted. It also runs alongside an attenuation feature on adjacent land which is detrimental to public safety, contrary to the aims of Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

## Voting

**08 For**  
**01 Against**  
**03 Abstentions**

The Chair declared the motion **CARRIED**.

## **255/23 - APPLICATION NO. 23/00939/FUL**

The Senior Planning Officer gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr David Breakwell (Agent) spoke in support of the application.

Consultation responses were set out in section 5 of the report.

Councillor David Hughes proposed a motion to approve the application for planning permission, this was seconded by Councillor Peter O'Brien and put to the vote as follows:

**Voting**

**02 For**

**09 Against**

**01 Abstention**

The Chair declared the motion **LOST**.

It was then moved by Councillor Robert Archer, seconded by Councillor Peter Dobbs and

**RESOLVED**

That planning permission be refused for the reasons as set out within section 8 of the report.

**Voting**

**10 For**

**01 Against**

**01 Abstentions**

The Chair declared the motion **CARRIED**.

**256/23 - APPLICATION NO. 23/00940/LBALT**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr David Breakwell (Agent) spoke in support of the application.

Consultation responses were set out in section 5 of the report.

It was moved by Councillor Peter Dobbs, seconded by Councillor Nick Whitehead and

**RESOLVED**

That planning permission be refused for the reasons set out in section 8 of the report.

**Voting**

**9 For**

**2 Against**

**1 Abstentions**

The Chair declared the motion **CARRIED**.

### **257/23 - APPLICATION NO. 23/01033/FUL**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mrs Monteith (Atlow Parish Council) and Mr James Jarvis (Applicant) spoke in support of the application.

Consultation responses were set out in section 5 of the report.

It was moved by Councillor Peter O'Brien, seconded by Councillor Sue Burfoot and

**RESOLVED** (Unanimously)

That planning permission be approved subject to the following conditions:

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out other than in accordance with the following approved plans and documents, subject to the following conditions:
  - Drawing Nos. 4598 - 001, 004, 005, 006 and 007 received on 18th October 2023
  - Design and Access Statement received on 18th October 2023.
3. The accommodation hereby approved shall be used solely for the purposes of temporary holiday accommodation and shall not at any time be occupied as permanent residential accommodation. No person shall occupy the holiday accommodation for a continuous period of more than 28 days in any calendar year or more than a total of 8 weeks in a calendar year and it shall not be reoccupied by the same person/s within 28 days following the end of that period. A register of all occupiers of the holiday accommodation, detailing dates of occupation, names and usual addresses, shall be maintained by the owner(s) and a copy shall be provided to Local Authority upon written request.
4. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures shall thereafter be implemented in full.
5. Prior to first occupation of the holiday let hereby approved, details of the measures to help mitigate the effects of and adapt to climate change and timetable for delivery shall be submitted to and approved in writing by the Local Planning Authority. The measures shall thereafter be provided in accordance with the approved details.

The Chair declared the motion **CARRIED**.

**8.14 pm** – The Chair adjourned the meeting and Councillor Wakeman left the meeting.

**8.29 pm** – The meeting reconvened.

### **258/23 - DURATION OF MEETINGS (MOTION TO CONTINUE)**

At 8:30 pm, it was moved by Councillor David Burton, seconded by Councillor Robert Archer and

**RESOLVED** (Unanimously)

That in accordance with Rule of Procedure 13, the meeting continue to 10.00 pm to enable the business on the agenda to be concluded.

The Chair declared the motion **CARRIED**.

### **259/23 - APPLICATION NO. 23/01102/FUL**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr David Breakwell (Agent) spoke in support of the application. Cllr. Paul Siddall (Clifton Parish Council) commented on the application. Mr Anthony Jones (Local Resident), Ms Lucy Cook (Local Resident), Mr John Griffiths (Local Resident) and Mr Graham Elliott (Local Resident) spoke against the application.

Consultation responses were set out in section 5 of the report.

Correspondence received after publication of the agenda was distributed at the meeting. This comprised of further information from the applicant's agent relating to Biodiversity Net Gain and information from emails sent by local residents to the Local Highway Authority (LHA) questioning the visibility and the LHA's response.

It was moved by Councillor David Hughes, seconded by Councillor Robert Archer and

**RESOLVED** (unanimously)

That planning permission be refused for the reasons set out in section 8 of the report.

The Chair declared the motion **CARRIED**.

### **260/23 - APPLICATION NO. 23/01120/FUL**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr Richard Longville (Local Resident) spoke against the application.

Consultation responses were set out in section 5 of the report.

Correspondence received after publication of the agenda was distributed at the meeting. This comprised of a summary of late representations and clarification from Environmental Health of the nature of transmission and licensing, informing Members that Radio operators are licensed by Ofcom who are the regulators.

It was moved by Councillor Nick Whitehead, seconded by Councillor Dermot Murphy and

### **RESOLVED**

That planning permission be approved subject to the conditions set out in section 8 of the report.

### **Voting**

**08 For**

**01 Against**

**03 Abstentions**

The Chair declared the motion **CARRIED**.

### **261/23 - DURATION OF MEETINGS (MOTION TO CONTINUE)**

At 9:56 pm, it was moved by Councillor Sue Burfoot, seconded by Councillor Peter Dobbs and

**RESOLVED** (Unanimously)

That in accordance with Rule of Procedure 13, the meeting continue for 30 minutes to enable the business on the agenda to be concluded.

The Chair declared the motion **CARRIED**.

### **262/23 - APPLICATION NO. 23/00695/REM**

The Senior Planning Officer gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Ms Sarah Willis (Agent) spoke in support of the application. Councillor Joanne Linthwaite (Ward Member) and Mr Richard Walker (Local Resident) commented on the application.

Consultation responses were set out in section 5 of the report.

Correspondence received after publication of the agenda was distributed at the meeting. This comprised of comments received from Matlock Civic Association and concerns raised by Councillor David Hughes on the foul water drainage.

It was moved by Councillor David Hughes, seconded by Councillor Peter O'Brien and

## **RESOLVED**

That consideration of this application be deferred to a future meeting in order to allow for:

- re-evaluation of drainage proposals;
- confirmation to be sought from Severn Trent Water that they can facilitate the anticipated foul water drainage from the proposed development;
- confirmation to be sought that housing minimum space standards will be adhered to.

## **Voting**

**11 For**

**00 Against**

**01 Abstentions**

The Chair declared the motion **CARRIED**.

## **263/23 - APPLICATION NO. T/23/00216/TPO**

**10:17 pm Councillor David Burton left the meeting and Councillor Sue Burfoot took over as Chair.**

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

Consultation responses were set out in section 5 of the report.

It was moved by Councillor Nick Whitehead, seconded by Councillor Peter O'Brien and

## **RESOLVED**

That planning permission be approved subject to the following conditions:

1. The work shall be carried out within two years of the date of this consent.
2. Within one months of the first felling of any tree, a replanting scheme (including timetable for delivery) shall be submitted to and approved in writing by the Local Planning Authority. The approved replanting scheme shall thereafter be carried out in accordance with the approved details.
3. A felling programme to minimise disturbance to the woodland shall be submitted to and approved in writing by the Local Planning Authority. The felling shall thereafter be carried out in accordance with the approved programmed.



## **Voting**

**10 For**

**00 Against**

**01 Abstentions**

The Chair declared the motion **CARRIED**.

### **264/23 - APPLICATION NO. 23/01092/FUL**

Councillor David Hughes and Councillor Peter Dobbs left the meeting due to previously declaring interests in this item.

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

In accordance with the procedure for public participation, Mr Tony Walker (Ashbourne Methodist Church) spoke in support of the application.

Consultation responses were set out in section 5 of the report.

It was moved by Councillor Nick Whitehead, seconded by Councillor Neil Buttle and

**RESOLVED** (unanimously)

That authority be delegated to the Development Manager or Principal Planning Officer, to grant planning permission subject to conditions set out in section 8.0 of this report, following confirmation from Derbyshire Wildlife Trust, the EA and the LLFA that they raise no objections with or without changes that do not materially alter the development being applied for and any additional conditions that they deem appropriate.

The Chair declared the motion **CARRIED**.

### **265/23 - APPLICATION NO. 23/01093/LBALT**

Councillor David Hughes and Councillor Peter Dobbs had registered a non-pecuniary interest and sat out for this application.

The Development Manager gave a presentation showing details of the application and photographs of the site and surroundings.

The Committee visited the site prior to the meeting to allow Members to appreciate the proposal in the context of its surroundings.

Consultation responses were set out in section 5 of the report.

It was moved by Councillor Nick Whitehead, seconded by Councillor Robert Archer and

**RESOLVED** (unanimously)

That authority be delegated to the Development Manager or Principal Planning Officer to grant listed building consent, following confirmation from Derbyshire Wildlife Trust in respect of the associated full application (code ref. 23/01092/FUL) that the works are acceptable with or without changes that do not require listed building consent, subject to the conditions as set out in section 8.0 of this report and any additional conditions recommended by the Trust that are relevant to this application.

The Chair declared the motion **CARRIED**.

### **266/23 - APPEALS PROGRESS REPORT**

It was moved by Councillor Sue Burfoot, seconded by Councillor Robert Archer and

**RESOLVED** (unanimously)

That the report be noted.

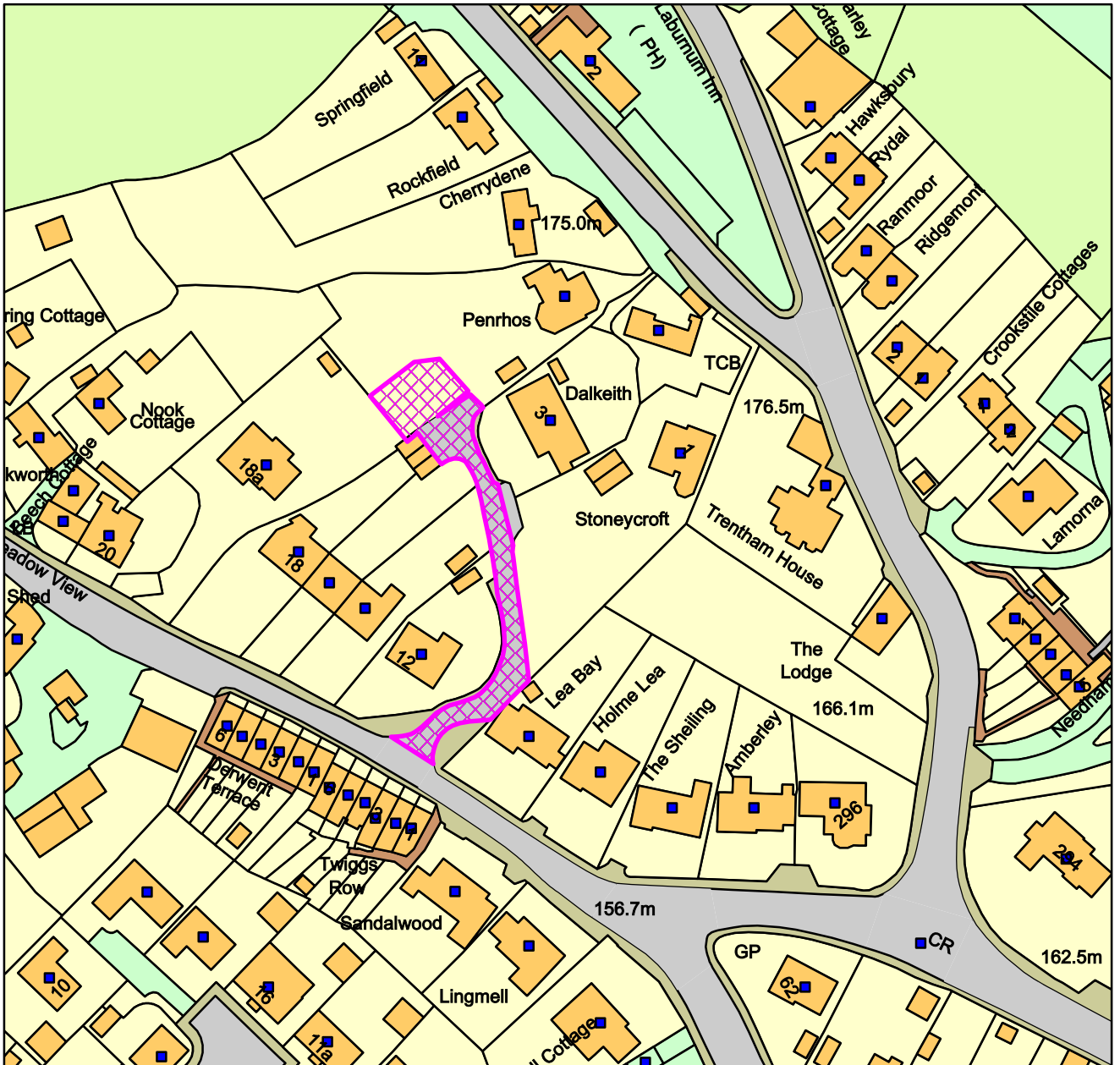
The Chair declared the motion **CARRIED**.

**Meeting Closed: 10.29 pm**

**Chair**

23/00990/FUL

5 Hackney Road, Hackney, Derbyshire



Derbyshire Dales DC

1:1,250

Date: 05/01/2024

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# Planning Committee 16<sup>th</sup> January 2024

<b>APPLICATION NUMBER</b>		23/00990/FUL	
<b>SITE ADDRESS:</b>		5 Hackney Road, Hackney, Derbyshire	
<b>DESCRIPTION OF DEVELOPMENT</b>		Engineering works to facilitate additional parking (retrospective), erection of a boundary fence and car port	
<b>CASE OFFICER</b>	Mr. G. A. Griffiths	<b>APPLICANT</b>	Mr Luke Stacey
<b>PARISH</b>	Darley Dale	<b>AGENT</b>	Planning and Design Practice Ltd.
<b>WARD MEMBERS</b>	Cllr. Burton Cllr. Franks Cllr. Shelley	<b>DETERMINATION TARGET</b>	17 <sup>th</sup> January 2024
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Requested by Ward Members	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	To view the development in its current form and its context to neighbouring property

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• Impact on the character and appearance of the area</li> <li>• Structural integrity of the retaining wall</li> <li>• Impact on Neighbours' Amenity</li> <li>• Impact on Trees</li> <li>• Impact on Highway Safety</li> </ul>

<b>RECOMMENDATION</b>
That planning permission be granted subject to conditions



## 1. THE SITE AND SURROUNDINGS

- 1.1 The site is part of the domestic curtilage to a detached house set between Old Hackney Lane and Hackney Road. The property is surrounded by residential properties and is within the Settlement boundary for Matlock.
- 1.2 The application site is off a shared vehicle access up to the property. This climbs the bank from Old Hackney Lane and passes the rear gardens of several dwellinghouses and garages/carports that have been set on retaining walls above the dwellings at 12 to 18 Old Hackney Lane. The entrance to the domestic curtilage is defined by covered gateway feature and the area beyond has established landscaping including a prominent Beech Tree.





## 2. DETAILS OF THE APPLICATION

- 2.1 Planning permission is sought for engineering works to facilitate additional parking (retrospective) and the erection of a boundary fence and a car port.
- 2.2 The wall retaining the parking area comprises gabion baskets. The gabion wall is formed with a single layer of 1.0 x 1.0 x 1.0m steel mesh baskets filled with crushed stone. The area in front has then been backfilled and surfaced with tarmac up to the top level of the gabions. The front of the gabion wall has been set approximately 0.5m back from the face of the stone boundary wall, which retains the original sloping ground to a height of approximately 1m.
- 2.3 The boundary fence is to be sited along the south western boundary and is to comprise 2m high Durapost fencing.
- 2.4 A car port is proposed on the area of hardstanding. It will be 2.27m in height to eaves and 3.59m to the top of the monopitch and 6m deep by 6.7m wide.

## 3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK

### 3.1 Adopted Derbyshire Dales Local Plan (2017)

S1	Sustainable Development Principles
S2	Settlement Hierarchy
S3	Development within Defined Settlement Boundaries
PD1	Design and Place Making
PD3	Biodiversity and the Natural Environment
PD6	Trees, Hedgerows and Woodlands
PD7	Climate Change
PD9	Pollution Control and Unstable Land
HC10	Extensions to Dwellings
HC21	Car Parking Standards

- 3.2 Derbyshire Dales District Council Climate Change Supplementary Planning Document (2021)
- 3.3 National Planning Policy Framework
- 3.4 National Planning Practice Guidance

## 4. RELEVANT PLANNING HISTORY 23

4.1 None.

## 5. CONSULTATION RESPONSES

### Town Council

- 5.1
- initially raised no objection but then changed view to an objection
  - the structure has been erected without due consideration to the root protection area (RPA) of a mature beach tree
  - structural engineer's letter indicates that the driveway is inadequate for loads over 2.5 tonnes and lists concerns over specific wheel placement of vehicles
  - no evidence of base construction or drainage
  - applicant has suggested that a fence be erected on the gabions but the gabions are not suitable for placing any structure on
  - with no fence this would produce light pollution from car headlights directly into the neighbour's upstairs bedrooms
  - recommend a site visit by District Planning and Building Control Officers.

### Local Highway Authority (Derbyshire County Council)

- 5.2 - no objections to the development from a traffic and highway point of view.

### Arboriculture and Landscape Officer (Derbyshire Dales District Council)

- 5.3
- the area affected by excavation, ground level change, installation of retaining structures and installation of new surfacing within the root protection area of retained trees is not clear and each of these operations is potentially harmful to trees
  - recommend that clear scale plans are required to be submitted pre-determination that provide this information and will then be able to make an informed assessment regarding the damage to the trees rooting systems that may have resulted from the works already undertaken
  - some of the potentially affected trees are large attractive specimens that contribute to the character and appearance of the locality and were graded in the submitted arboricultural report as BS 5837 (2012) category A (high) and B (medium) which should be regarded as constraints on development
  - once opportunity given to review the requested information, and conclude that the potential damage to the trees rooting systems was likely to be significant, then may recommend mitigation works to reinstate the ground, removal of retaining structures and removal of new surfacing to facilitate regrowth of roots with the aim of limiting harm to the health, resilience and stability of affected trees
  - alternatively, if it is concluded that the potential damage to the trees rooting systems was not likely to be significant, then would likely agree with the recommendations made within the submitted arboricultural report regarding temporary tree protection fencing and use of screw piles.

## 6. REPRESENTATIONS RECEIVED

- 6.1 A total of three letters of representation have been received from the neighbours at 18a Old Hackney Road. A summary of the representations is outlined below:
- as our boundary wall is not a retaining wall, what happens if the weight of the infill grit, gabions and cars is too much for it and it collapses?
  - has anyone done any testing and calculations to see that the wall is safe?
  - any collapse will be directly on to our garden, as our garden is below the level of this new space



- Erskine Hunt Consulting Engineers were not involved in the original construction of the car park and so have no detailed knowledge of the construction - have simply "inspected" the installation of the car park and have provided no calculations to demonstrate the safety of the car park
- the ground that the gabions are resting on was infilled prior to having the gabions perched upon it - Consulting Engineers have made no mention of the material that the gabions are standing on
- how structurally sound is the material that was put here so that the gabions could rest on a flat surface?
- the boundary wall was not a retaining wall prior to the installation of the car park, as the ground was much lower on the 5 Hackney Road side - it was simply a normal boundary wall, separating two gardens
- the statement that "The front of the gabion wall has been set approximately 0.5m back from the face of the stone wall" is not a true statement for the full length of the wall and a photograph shows the gabions are abutting the stone wall
- the statement advises that "The height and width of the gabion baskets are more than adequate for supporting the new parking area – this is on the basis that it will only be used for cars and light vans less than 2.5 tonne" - where are the calculations to support this statement and how can the Consulting Engineer know what will be parked here?
- since April have already had cement mixers, flatbed trucks, and other trucks, in addition to a family car parked here
- a pickup truck and Porsche are parked regularly and, whilst the unladen weight of each fall under the 2.5 tonne limit, no one can expect every vehicle to be unladen when parked - consider the gross vehicle weight for both vehicles exceeds the 2.5 tonne limit set by the Consulting Engineer
- other commercial vehicles have already parked on this carpark are likely to exceed the 2.5 tonne limit
- what does the 2.5 tonne limit refer to? Is it per vehicle or is it for all vehicles?
- planning application states that the area is for 2 cars, but there is plenty of space for three cars
- Consulting Engineer is being deliberately vague about the capacity of the structure and what weight it can hold. "An assessment of the stone wall is a more subjective task" is the understatement of the year - basically, they have no idea of the impact of the car park on the boundary wall
- "The exact construction is not known, nor are the underlying ground conditions" Why have they not done further investigations? They cannot investigate the underlying ground conditions from 5 Hackney Lane, because the owner has covered it up with the car park
- Consulting Engineers could have asked to visit us and taken soil samples from our side of the wall, and they could have had a good look at the stone wall construction from our side but they chose not to - this is sheer laziness on the part of the Consulting Engineer
- do not think that it is a traditional dry stone as it is very different from the other traditional walls in our garden
- a detailed inspection of the wall and the soil should have been carried out - they assume a "normal clay subsoil" - what does this mean?
- the Arboriculturist claims that "*the soil parent material is 'Colluvium' and the soil texture is 'Clayey Loam to Sandy Loam'*" - how can two specialists be so different and what is the impact of a different soil type to the structural stability of the new car park?
- Consulting Engineer states "*However to minimise the risk of any potential overloading we do recommend that vehicle weights are restricted to 2.5 tonne and the wheels do not encroach onto the top of the gabions i.e. they remain at least 1.0m back from the face of the gabions*" - have already seen the owners parking their wheels on top of the gabions, as they have placed no restrictions on the car park area
- how does the Consulting Engineer think that the above restrictions can be enforced
- will the car park area collapse onto our garden if the weight exceeds 2.5 tonnes?

- how did the Consulting Engineer come up with a figure of 2.5 tonnes given that they have not provided any calculations?
- what happens when it rains? There has been no assessment in any of the planning documents about where surface water drains from the car park - there are no design plans for the car park area, which show where drains have been placed and where they drain to
- planning documents says that it is asphalt, which is impermeable so where is all the surface water draining to?
- no topographic plan provided with the planning application which would show the slope of the land before the infill process - without the topographic plan, the Consulting Engineer has no way of calculating the volume of material that has been used for the infill
- have not taken soil samples and have no knowledge of how the soil below the car park will be affected by the weight of the carpark and the impact of water draining from the garden above the car park and affecting the foundations of the car park
- will they be putting up a fence to protect us from them overlooking and to prevent them from driving their car over into our garden? T
- the design and access statement states “Additionally, a 2.4m fence will be implemented at the southwestern edge of the site along the boundary with 18a Old Hackney Lane” - the fence is not shown on the elevation plan
- the fence is shown on the floor plan but only as a 2m high fence
- what sort of fence is it, what materials, what colour and will it be strong enough prevent a car from accidentally driving off the platform into our garden?
- accidents happen when people are manoeuvring cars in parking spaces, and there has been no mention of this safety aspect in any of the planning information
- how exactly is the fence going to be installed? - it is shown as being on the outer edge of the gabions
- the Consulting Engineers letter discusses the impact of the car port on the gabions but makes no mention of the fence so how will the fence be installed on the gabions without affecting their structural integrity and adding weight
- is the old beech tree in danger of dying because its roots have been disturbed and it will find it difficult to access water
- if it dies, will it topple on to our garden in high winds?
- the Arboricultural report provided by Thompson Consultancy is a waste of paper and an insult to our intelligence as the survey was done 4 months after the car park was installed
- the consultant states: *“4.1.2 As I’m not aware of the levels and surfacing type prior to commencement of the development, this Arboricultural Impact Assessment shall consider the site ‘as seen’ and the focus shall be on the remaining components required to complete the proposed development (i.e. erection of the car port). It does appear, however, that significant change has occurred within the vicinity of the existing trees. This has likely resulted in some level of disturbance within the rooting areas, and possibly also a degree of root damage.”*
- and again he states: *“ 4.7.2 As I’m not aware of the levels and surfacing type prior to commencement of the development, I am not in a position to make an assessment of the arboricultural impact of the groundworks which were undertaken prior to my engagement.”*
- the new car park is 38 sqm of hardstanding, excluding the area covered by the gabions - which the Consulting Engineer says should not be used for parking cars - this has been constructed entirely over the root protection area of the Beech Tree and, without a doubt, the Beech Tree roots will have been damaged as there was just vegetation in this 38 sqm prior to the installation of the car park
- if this assessment had been carried out prior to the installation of the car park, then it would not have been permitted, as there is no way of constructing the car park without affecting the roots of the Beech tree

- according to the Arboriculturist, *“5.4.1 The Construction Exclusion Zone (CEZ) is an area that is sacrosanct and shall not be disturbed in any way during the construction phase of the proposed development. The barriers must not be moved or re-located without the prior approval of the LPA. No activity nor storage of materials is to take place within the CEZ. Existing vegetation and topsoil will be left undisturbed”* - our pictures and observations show no barriers were erected to protect the trees during excavations
- the construction of this site involved using a micro/mini digger and these can weigh anything from 2 tonnes upwards, depending on the make - this weight would have significantly compacted the excavated area, especially close to the root bole further compromising the long-term viability of the Beech tree
- the consultant states: *“4.4.2 Below ground tree constraints describe the rooting area of a tree which should be protected during, and post-development. This is represented by the Root Protection Area (RPA), which is the area around a tree in which no ground works may be undertaken without due care in relation to retained trees. Within the RPAs measures must be taken to avoid soil compaction, root severance, changes in levels or soil contamination which could compromise tree health, stability and/or longevity and remaining contribution to the site.”*
- have submitted a photograph taken during the construction that shows a mechanical digger moving soil around the Beech Tree with no evidence of the use of hand tools around the tree, as advocated by the arboriculturist
- have noticed that the Cherry Tree (T5) has been suffering badly since April and a photograph shows massive defoliation and decolourisation of existing foliage
- our own beech hedge that we planted a few years ago in front of the stone wall has also been suffering from decolourisation since April,
- The Arboriculturist mentions this in his report as *“Crown appears slightly sparse, with shot holing of some leaves, likely attributable to bacterial canker (Pseudomonas syringae), although not confirmed”*.
- while bacterial canker can be a severe disease it is often much more severe on trees growing on sites with poor internal soil drainage but the decolourisation of both the cherry tree and our beech hedge could also be due to leaching of chemicals from the materials used in the construction of the car park, and/or the reduction in water and nutrients flowing to the roots of these trees, as a result of the covering of the land with hard standing, and/or stress caused by all of the above
- for the Cherry Tree T5, the Arboriculturist is saying that there would need to be a 4m Crown lift over the car port - as half of the tree crown falls over our land, and therefore presumably will not be lifted, how will this impact on the stability of the tree, as it will be lopsided and will this destabilise the tree and cause it to fall into our garden?
- what happens when it rains? will this new surface be impermeable? where will it drain? into our garden?
- will they be putting up a fence to protect us from them overlooking or to prevent them from driving their car over into our garden?
- is the old beech tree in danger of dying because its roots have been disturbed and it will find it difficult to access water - if it does, will it topple onto our garden in high winds?
- concern over how long it is taking to resolve this retrospective planning application - first raised concerns about the car park on 27 April 2023
- took the owner until September to provide the initial retrospective planning application and then took until November to provide “additional information
- very concerned that this raised car park could simply collapse onto our garden because it has not been correctly constructed
- know that Officer has asked the owner for a structural engineers report to demonstrate its safety, but they will never be able to provide this
- has not been constructed safely, so no engineer will be able to retrospectively demonstrate it is safe - second letter from the engineer, dated 1/11/2023 clearly highlights this and states the “construction sequence” for the car park but makes no statement about whether it has been safely constructed

- will never be able to do this because they do not know anything about the surface that it was laid on, nor the weight of materials dumped on it
- gabions cannot be used to construct car parks - have done our own estimate of the amount of material that they have used and think that there is at least 91 tonnes of stone that has been used to create the raised car park that could simply collapse into garden
- raised a similar concern that the mature beech tree could fall into our garden because of the damage to its root structure - Council's own tree officer has already agreed that this could happen
- every day that a decision is delayed because you are waiting on the owner to provide additional evidence means that we run the risk of the car park or tree collapsing into our garden and ask that you immediately serve an order on the owner to remove the elevated car park, and to carry out the work recommended by the Council's tree officer to repair the damage to the tree roots
- ask that the planning authority requests that the owners immediately remove the new car park and restore the land to its original levels on the basis that the new car park is structurally unsound and has not been designed to hold the weight of vehicles already using it and, therefore, has the potential to collapse into our garden.

## 7. OFFICER APPRAISAL

7.1 Having regard to the relevant provisions of the development plan and the comments of consultees and made in the representations received the main issues for consideration are:

- Impact on the character and appearance of the area
- Structural integrity of the retaining wall
- Impact on Neighbours' Amenity
- Impact on Trees
- Impact on Highway Safety

### Impact on the Character and Appearance of the Area

7.2 The immediate area is characterised by development set atop retaining walls, with garages and a car port evident in close proximity to the application site. To this end, it is not considered that the gabion baskets, of 1m in height set above a former boundary wall is of significant harm to the character and appearance of the area. In addition, it is considered that the open car port will reflect on existing development and again cannot be considered of such visual harm to justify a recommendation of refusal.

### Structural Integrity of the Retaining Wall

7.3 As the erection of the retaining wall has been undertaken, Officers have questioned whether it is structurally sound. Erskine Hunt, the applicant's structural engineers, have advised the following:

*Further to your recent request we confirm having inspected the recently constructed gabion retaining wall along the south western boundary of your property. Additionally we have also considered the proposal to erect a car port in front of the gabion wall. A 1.0m high gabion wall has been constructed to provide a level parking and turning area at the rear of the property. We understand that originally the area was flat but at a lower level than the existing parking area, a traditional dry stone retaining wall accommodated the change in levels. A further existing traditional stone wall runs along the boundary with the adjacent property. The gabion wall is formed with a single layer of 1.0 x 1.0 x 1.0m steel mesh baskets filled with crushed stone. The area in front has then been backfilled and surfaced with tarmac up the top level of the gabions. The front of the gabion wall has*

been set approximately 0.5m back from the face of the boundary stone wall. The boundary stone wall retains the original ground to a height of approximately 1.0m. The exact construction of the wall is unknown but for the purposes of this assessment it has been assumed to be of dry stone construction similar to most boundary walls in the area.

The height and width of the gabion baskets are more than adequate for supporting the new parking area – this is on the basis that it will only be used for cars and light vans less than 2.5 tonne. The new gabion wall is in turn imposing a surcharge load onto the stone wall. An assessment of the boundary stone wall is a more subjective task. The exact construction is not known, nor are the underlying ground conditions, but based on the reasonable assumptions that it has built to normal dry stone wall proportions and founded on a normal clay subsoil, we consider it can adequately support the additional loading.

Furthermore an inspection of the boundary stone wall, albeit from the top only, does not show any obvious signs of movement having been caused by the new gabion wall such as bulging or leaning. The proposed car port/canopy is a simple structure comprising 4no. stanchions that support a lightweight canopy. Although the loads on the stanchions will be relatively light we recommend the two rear stanchions are built off foundations that are deep enough so as not to impose any lateral load on either the gabion retaining wall or the original stone wall. An additional consideration is the recommendation to use screw piles as foundations for the car port stanchions (ref. Arboricultural Report dated August 2023).

To comply with the above we recommend the use of screw piles – the rear piles should be positioned at the back of the gabions and set to a minimum depth of 1.0m below the surface of the new parking area. The piles should include a suitable base plate for fixing the stanchion. In conclusion we consider the arrangement of new gabion wall and the original boundary stone wall is adequate for supporting the parking area. However, to minimise the risk of any potential overloading recommend that vehicle weights are restricted to 2.5 tonne and the wheels do not encroach onto the top of the gabions i.e. they remain at least 1.0m back from the face of the gabions. On this last point, it would be prudent to place a line of timber sleepers or similar along the back of the gabions. The proposed car port will not affect the retaining walls provided the screw piles are set deep enough as described above.

7.4 The application was referred to the Derbyshire Building Control Partnership but it has been advised that the development falls outside of the remit for Building Regulations. To this end, Officers put further questions with regard to the stability and safety of the wall to the applicant's structural engineers. Erskine Hunt have answered the questions as follows:

1. Has any weight been placed on the structure? *I have not witnessed this.*
2. Has wall been assessed from neighbouring property? *No viewed from Mr Stacey's side.*
3. Has wall be constructed under advice of Erskine Hurt? *No, our involvement is retrospective.*
4. Would we have advised wall to be erected in such a manner had we been involved from outset? *No.*

Erskine Hunt have also stated:

*As discussed, to clarify the conclusion in our report dated 01 November 2023, in our opinion the wall is stable and adequate for supporting the parking area subject to the following provisos:*

1. *No vehicle wheels to encroach on top of the gabions.*
2. *Vehicles restricted to cars and light vans less than 2.5T.*

7.5 Given the additional comments from the structural engineer, the wall can support a uniformly distributed load 2.5kn/m<sup>2</sup>, which is the standard for parking spaces. The lateral load on the existing stone wall is also considered to be acceptable by Erskine Hunt. They have clarified that the maximum weight is per vehicle and that this limit has been taken from BS 6399\_Part 1 and is the recommended maximum weight for cars and light vans and appropriate for garages, driveways and ramps. This maximum vehicle weight is then used to give an equivalent uniformly distributed load 2.5kn/m<sup>2</sup> based on the typical area a parked car takes up. It is advised that this is the load that almost every multi-storey car park in the country would have been designed to. Erskine Hunt accept that many new electric cars exceed this weight, but advise that this is offset, to some degree, by their larger size.

7.6 However, Erskine Hunt state:

*We have considered this to be an appropriate limit when giving our opinion of the wall. I would not recommend an 'open' limit of the vehicle weight.*

To this end, it is considered that there is no sustainable reason for refusal of the planning application based on the structural integrity of the retaining wall. However, as advised by Erskine Hunt, it is considered reasonable to ensure that no parking is undertaken directly onto the gabion baskets. In this respect, it is considered reasonable that a means of preventing this, by setting the fence back to the rear edge of the gabion baskets, or another means of preventing access by vehicles onto the gabion baskets, such as railway sleepers, can be attached as a condition of any planning permission.

#### Impact on Neighbours' Amenity

7.7 Whilst there has been a building up of the land, and a car port is proposed above this, it is not considered that the overall structure will significantly impact on the light and outlook of the neighbouring properties. There may be a potential to overlook the neighbouring properties which are set on a lower level, but by setting the car parking space back from the gabion basket, and with an intervening fence, it is considered that any overlooking would be transitory at worst as people come and go from vehicles. It is appreciated that the neighbours would continue to hold concerns as to the integrity of the retaining wall but, given the advice of the structural engineer, the perceived problems with the integrity of the retaining structure are not deemed to be sufficient reason to recommend a refusal of planning permission on grounds of amenity.

#### Impact on Trees

7.8 There is a single individual tree within the 'red line' site boundary, which is a fine mature beech located to the southeast of the existing car parking area which makes a valuable contribution to the arboricultural amenity value of the site. The tree is predominantly surrounded by hard surfacing, with an area of bare ground/vegetation approximately 4m x 2m around the base of the main stem. The recently installed tarmac is within 500mm of main stem, and the stone gabions within 900mm. Several further trees are within potential influencing distance of the site, both within the 'blue line' ownership boundary and in the garden of an adjacent property. Species include cypress, cherry, hawthorn, maple and several shrub species.

7.9 In terms of overall impact, no trees have been identified for removal in order to facilitate the proposed development. The applicant's arboricultural consultant (Thompson Consultancy) advise that minor pruning works of two trees are required to provide adequate working room adjacent the proposed car port; it is advised that this would have negligible impact on tree amenity, health or longevity.

- 7.10 The applicant's consultant advises that he is not aware of the levels and surfacing type prior to commencement of the development, and is not able to make an assessment of the arboricultural impact of the groundworks which were undertaken prior to his engagement. He advises that two photographs taken during ground works indicate a short section of stone retaining wall immediately to the southwest of the tree prior to installation of the gabions and surfacing of this part of the site. It is advised that this has likely restricted root development in this area to some extent and that it appears that significant change has occurred within the vicinity of the trees.
- 7.11 Nevertheless, it is advised that the implementation of the proposed measures would adequately mitigate any further detrimental impacts associated with the erection of the car port, and there is no arboricultural reason as to why the remaining components of the proposed development cannot be completed in accordance with the methodology detailed in the heads of terms of the Arboricultural Method Statement.
- 7.12 The District Council's Arboriculture and Landscape Officer advises that, if a planning application had been received in advance of the works, he would have objected on the grounds that there was potential for harmful damage to the rooting system of the tree, which would be likely to impact its health and stability. It is also advised that, given the potential for the tree to impact neighbouring properties if it were to fail, the stability issue is particularly important. It is acknowledged that the ground works have already been completed (ground level reduction, new retaining walls and permanent surfacing installed) and that root damage is likely to have already occurred. It is advised that gradual regrowth of the roots may be possible by removing all materials installed during the works and re-instating the ground to the previous levels using good quality topsoil. It is also recommended that a reasonable reduction of the canopy to reduce wind drag. Minor pruning works are recommended by the applicant's arboriculturist, which will help reduce wind drag. They have advised that the measures set out in section 5.0 of their report will mitigate any further detrimental effects associated with the erection of the car port. This part retrospective development does not propose the removal of the tree, which is not protected. The limited relative public visibility of the beech tree is such that it would not have been appropriate to impose a Tree Preservation Order had the development not been undertaken and the Local Planning Authority would have not been able to exercise control of its removal had the applicant removed the tree prior to any development taking place. The integrity and health of the tree and associated liability will be a matter for the landowner to consider going forward.

#### Impact on Highway Safety

- 7.13 The Local Highway Authority has advised of no objection to the development in terms of highway safety.

#### Conclusion

- 7.14 The matter of whether the gabion wall is structurally sound is unclear and it appears that much of this depends on the structural integrity of the works undertaken to the land level at the rear of the stone boundary wall that now acts as a retaining structure. However, the applicant's structural engineer advises that restrictions can be put in place to limit any load bearing on the gabion baskets set up above this lower wall.
- 7.15 Whilst the approach to the development has been far from ideal, it is nevertheless considered that with safeguards in place to prevent direct parking on the gabion baskets, that there is no reason to suppose that the structure will fail.
- 7.16 The provision of the car port appears physically possible without compromising the retaining structure subject to this being undertaken in the manner detailed by the structure engineer. To this end, a condition can be attached that a method statement be prepared by the

structural engineer to ensure that the car port is constructed to an appropriate specification and that such a specification be submitted to the Local Planning Authority prior to works on the car port commencing.

7.17 Given the above, it is not considered that the overall development would be of harm to the character and appearance of the area, given that it is reflective of adjacent development, and it is not considered that the structure would significantly harm the amenity of neighbouring residents nor would there be any sustainable land stability or tree related reasons for refusal in planning terms. To this end, it is recommended that planning permission be granted subject to conditions on the materials of the car port structure being submitted for approval, the submission of a method statement for the erection of the car port, details of the boundary fence and conditions and an advisory note in respect of the area of hardstanding and associated retaining wall.

**8. RECOMMENDATION**

That planning permission be granted subject to the following conditions:

1. Details of the measures to prevent parking atop of the gabion baskets shall be submitted to and agreed in writing by the Local Planning Authority and provided in full prior to first use of the parking area. The approved measures shall thereafter be maintained in accordance with the approved details throughout the lifetime of the development.

Reason:

To ensure the stability of the retaining structure in accordance with the aims of Policy PD9 of the Adopted Derbyshire Dales Local Plan (2017).

2. The method of construction of the car port, which shall follow recommendations 7 and 8 of the Erskine Hunt letter dated 12<sup>th</sup> September 2023 or other suitable specification to not compromise the retaining wall and details of its structure materials, finish and proposed roof material shall be submitted to and approved in writing by the Local Planning Authority prior to its erection. The development shall thereafter be carried out in accordance with the approved details.

Reason:

To ensure a satisfactory appearance of the car port and the stability of the retaining structure in accordance with the aims of Policies PD1 and PD9 of the Adopted Derbyshire Dales Local Plan (2017).

3. The development shall be carried out strictly in accordance with the recommendations set out in section 5.0 of Stage 2.0 Arboricultural Report by Thompson Consultancy dated October 2023.

Reason:

To minimise the impacts associated with the erection of the car port on trees in accordance with the aims of Policy PD6 of the Adopted Derbyshire Dales Local Plan (2017).



## **NOTES TO APPLICANT:**

The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (England) Regulations 2012 as amended stipulate that a fee will henceforth be payable where a written request is received in accordance with Article 27 of the Development Management Procedure Order 2015 for the discharge of conditions attached to any planning permission. Where written confirmation is required that one or more conditions imposed on the same permission have been complied with, the fee chargeable by the Authority is £43.00 per householder request and £145.00 per request in any other case. The fee must be paid when the request is made and cannot be required retrospectively.

The Local Planning Authority have during the consideration of this application engaged in a positive and proactive dialogue with the applicant which has resulted in the submission of further information which overcame initial problems with the application relating to the stability of the retaining wall and the impact on trees.

The applicant's attention is drawn to the recommendations contained within the Erskine Hunt letter dated 12<sup>th</sup> September 2023 and follow up correspondence with regard to the weight limit of the raised platform.

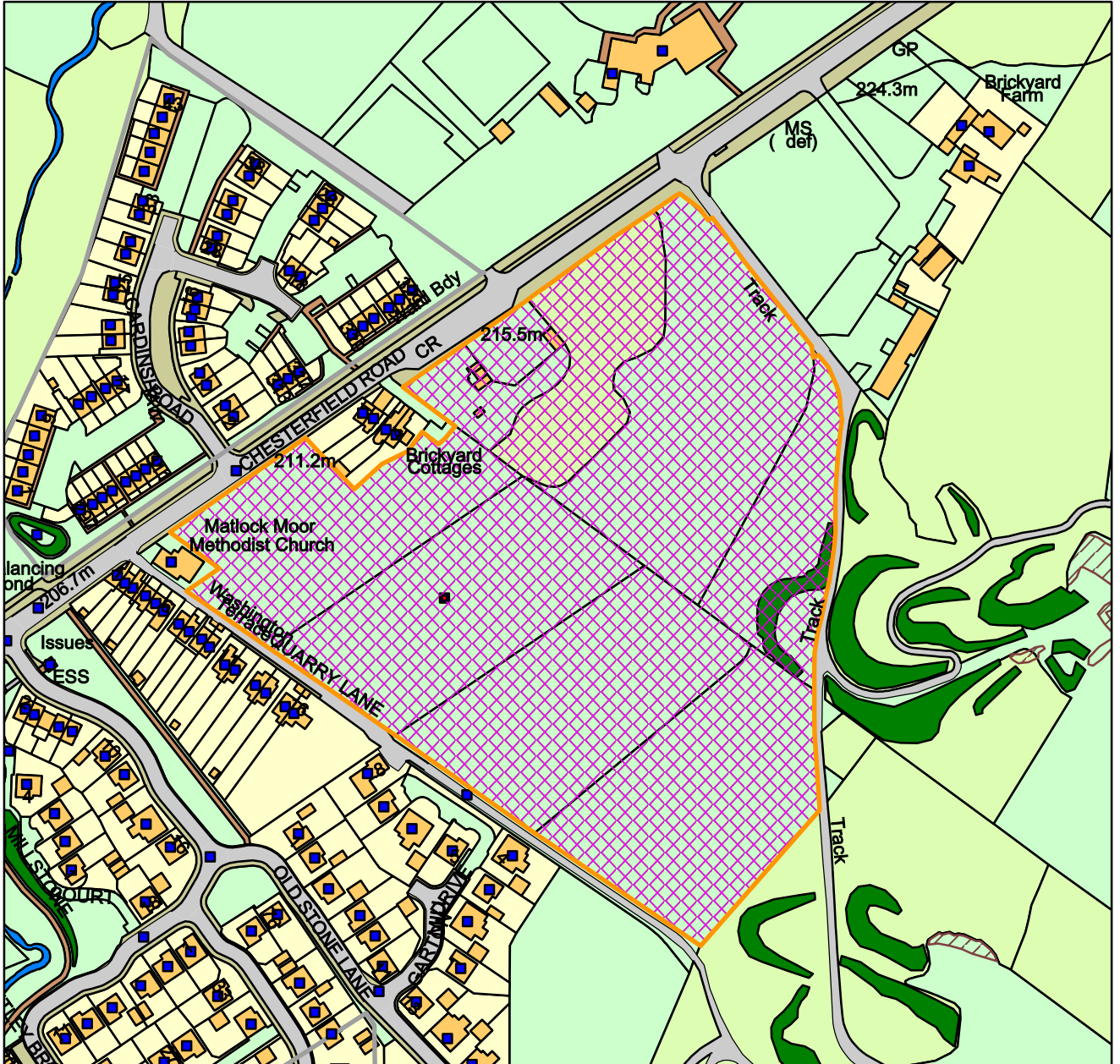
This decision notice relates to the following documents:

Stage Two Arboricultural Impact Assessment and Arboricultural Method Statement (Heads of Terms) (Thompson Consultancy) (October 2023), Erskine Hunt letter dated 12<sup>th</sup> September 2023 and follow up correspondence and supporting plans received by the Local Planning Authority on 14.09.2023.

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23/00695/REM

Land off Chesterfield Road and Quarry Lane, Matlock, Derbyshire



Derbyshire Dales DC

1:2,500

Date: 30/11/2023

100019785

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website :www.derbyshiredales.gov.uk

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<b>APPLICATION NUMBER</b>		23/00695/REM	
<b>SITE ADDRESS:</b>		Land off Chesterfield Road and Quarry Lane, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Approval of Reserved Matters for the erection of up to 75no. dwellings (Outline planning permission 22/01044/OUT)	
<b>CASE OFFICER</b>	Sarah Arbon	<b>APPLICANT</b>	Homes by Honey
<b>PARISH/TOWN</b>	Matlock	<b>AGENT</b>	Georgia Parker – Nineteen 47 Ltd
<b>WARD MEMBER(S)</b>	Cllr S Flitter Cllr D Hughes Cllr J Linthwaite	<b>DETERMINATION TARGET</b>	16 <sup>th</sup> October 2023 (EOT agreed 30 <sup>th</sup> November 2023)
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Major application	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	N/A Members undertook a site visit on the 11 <sup>th</sup> December.

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>– Principle of development</li> <li>– Impact on the character and appearance of the area</li> <li>– Impact on residential amenity</li> <li>– Highway matters</li> <li>– Drainage and flooding</li> <li>– Ecology and landscaping</li> </ul>

<b>RECOMMENDATION</b>
That the application be granted subject to conditions.

## 1.0 THE SITE AND SURROUNDINGS

- 1.1 The application site concerns 4.27 hectares of land located on the south eastern side Chesterfield Road (A623). Its south western boundary abuts Quarry Lane. Matlock Moor Methodist Church sits on the corner of Chesterfield Road and Quarry Lane abutting the south western corner of the site and 4 properties known as Brickyard Cottages are located in the middle of the site's frontage, side on to Chesterfield Road with long rear gardens to the south west. The north easterly field has some small stable structures in the field nearest the road. The remaining part of the field is screened by the wooded area within it that runs to the north eastern boundary. The site is opposite the Cardinshaw Road development with Matlock golf course to the north east.
- 1.2 The site consists of agricultural grazing land with fields demarcated by dry stone walls. Land levels rise steeply towards the woodland on the site's eastern edge of the former quarry. The north eastern boundary is adjacent to a single track that provides access to the outbuildings associated with Brickyard Farm where there is an access to the farm house further up Chesterfield Road. Brickyard Farm is located on higher land, 85m north west of the site boundary with an intervening field and outbuildings. Chesterfield Road is a main bus route between the sub-regional centre of Chesterfield and Matlock and bus stops are located adjacent to the site at both ends of the frontage with Chesterfield Road. There is a layby on Chesterfield Road just north east of the access to Brickyard Cottages which is used by the residents for parking.

## 2.0 DETAILS OF THE APPLICATION

- 2.1 The Site is the subject of the Outline Planning Permission, under ref. 22/01044/OUT, dated 17 March 2023. This grants permission for the erection of up to 75no. dwellings and associated development. This Application seeks the approval of the following reserved matters:
- Layout
  - Scale
  - Appearance; and
  - Landscaping.
- 2.2 Details to specifically address Conditions 5, 7 and 8 of the Outline Permission have been submitted. Condition 5 requires that an Arboricultural Impact Assessment be submitted with the reserved matters application, whilst Condition 7 requires details of the measures to be incorporated into dwellings to help mitigate the effects of, and adapt to, climate change to be provided. Condition 8 requires that reserved matters relating to landscaping shall accord with the Ecological Impact Assessment approved as part of the Outline Permission, so as to achieve no less than the predicted 10% net gain in biodiversity.
- 2.3 The breakdown of housing proposed would be as follows:-
- 52 market houses  
4 x 1 bed,  
11 x 2 bed,  
16 x 3 bed,  
18 x 4 bed  
3 x 5 beds
- 23 affordable houses  
8 x 1 bed,  
10 x 2 bed  
5 x 3 bed

- 2.4 The affordable housing proposed is a total of 23 out of 75 which equates to 30% and 5 (25%) of these are required to meet the criteria of First Homes.
- 2.5 Amended plans have been received which proposes dwellings in the north western corner of the, site adjacent to the Methodist Church which actively address and overlook the attenuation pond feature, creating a streetscene on this prominent part of the site open to Chesterfield Road. A row of properties is proposed adjacent to the site entrance that follow the alignment of the existing properties Brickyard Cottages to the south east to compliment these and form an entrance feature on Chesterfield Road. The existing woodland is retained in the north eastern part of the site forming a buffer with the countryside and retaining the mature trees adjacent to the road. Proposed dwellings adjacent to the existing terrace of properties have a side to side relationship with them that follows the streetscene pattern within the development. Properties all face the streets with corner turners used to provide front elevations on two streets. Landscaped areas provide buffers on the periphery and the higher land to the south east is to be maintained as open space with a path linking to the linear green space adjacent to the south western boundary with Quarry Lane. The location of dwellings complies with the parameters plan in the outline permission.
- 2.6 The proposed dwellings would be two storey with gable roofs, clad in stone with grey roof tiles, stone lintels and cills, flat roof front door canopies, gable features with either integral garages or detached garages. The window sizes add a contemporary appearance. The majority of properties have integrated PV solar panels on the front roof slopes.
- 2.7 The applicant has submitted the following documents with the application:
- Design and Access Statement
  - Arboricultural Impact Assessment
  - Ecological Impact Assessment
  - Sales Recommendations Report
  - Energy Statement
  - Drainage Note
- 2.8 Following the resolution at planning committee on the 12<sup>th</sup> December to defer consideration of the application to a future meeting in order to allow for:
- re-evaluation of drainage proposals;
  - confirmation to be sought from Severn Trent Water that they can facilitate the anticipated foul water drainage from the proposed development;
  - confirmation to be sought that housing minimum space standards will be adhered to.
- 2.9 The agents have supplied further information on the housing minimum standards on the 21<sup>st</sup> December 2023 and the following information on the 2<sup>nd</sup> January 2024.
- Technical note from drainage engineer. (*47935-ECE-XX-XX-RP-C-0003*).
  - An updated note from Auxesia Homes, the registered provider, in response to the latest round of comments. (*Auxesia Homes Letter Jan 24*).
  - A legal note addressed to the LPA, regarding RM applications, to be sent to members. (*Freeths Letter – Matlock HBH*).

Discussion on this additional information can be found in the relevant sections of the report.

### **3.0 PLANNING POLICY AND LEGISLATIVE FRAMEWORK**

#### **3.1. Adopted Derbyshire Dales Local Plan 2017**

S1 Sustainable Development Principles  
S2 Settlement Hierarchy  
S4 Development within the Countryside  
PD1 Design and Place Making  
PD2 Protecting the Historic Environment  
PD3 Biodiversity and the Natural Environment  
PD5 Landscape Character  
PD6 Trees, Hedgerows and Woodlands  
PD7 Climate Change  
PD8 Flood Risk Management and Water Quality  
PD9 Pollution Control and Unstable Land  
HC4 Affordable Housing Provision  
HC11 Housing Mix and Type  
HC14 Open Space, Sports and Recreation Facilities  
HC17 Promoting Sport, Leisure and Recreation  
HC19 Accessibility and Transport  
HC20 Managing Travel Demand  
HC21 Car Parking Standards.

#### **3.2. Other:**

The National Planning Policy Framework (NPPF) (2023)  
National Planning Practice Guide  
Developer Contributions SPD (2020)  
Climate Change SPD (2021)  
Landscape Character and Design SPD (2018)

### **4.0 RELEVANT PLANNING HISTORY:**

23/00867/VCOND - Variation of condition no.8 of application 22/01044/OUT to amend the biodiversity net gain requirement, granted 10<sup>th</sup> November 2023.

22/01044/OUT - Outline planning application for the erection of up to 75 no. dwellinghouses and associated development with approval being sought for access, granted 17 March 2023.

### **5.0 CONSULTATION RESPONSES**

#### **Matlock Town Council**

- 5.1 Note that the large attenuation basin is to be located at the side of Matlock Moor Methodist Church, to manage surface water from the developed site. Surface and ground water flows from the slopes above the site, highlighted by blue arrows on the plan below appear to flow around the attenuation basin and discharge towards the highway. However there does not appear to be any land drainage outfall dedicated to deal with these flows on this plan. This must be clarified. This is deeply concerning, as should any additional flows enter the combined sewer on Chesterfield it is highly likely to surcharge the 150mm network. The Council recognises that the additional foul and combined flows from this new development will flow down Lumsdale Road and onward into Lumsdale. Matlock Town Council seek clarification that any such increase will not impact upon the Websters Terrace Combined Sewer Overflow, which spilled into the Bentley Brook 41 times for a total of 211.74 hours in 2022. They are fully aware of the significant similar issues being encountered on the Treetops development located further down Chesterfield Road. It is also understood that there are still ongoing surface water issues impacting upon the Thornberries development, so it essential that this application is rigorously assessed by STW and the LLFA to ensure



that effective drainage conditions are imposed and NOT discharged before effective mitigation is in place.

Following this rainfall in July 2023, The Presentation Sisters Elderly Care Home, The Convent, and several buildings close by were significantly affected by the ingress of foul sewage. The basement of the Convent being 1 metre deep of foul sewage. There was also significant "backing up" of many properties in the area causing a serious health risk. A drain flooded St Joseph's school nursery playground with raw sewage so rapidly that several small children were caught in the mess whilst out at play. Incidents such as these never occurred prior to the building of recently completed new housing developments East of Chesterfield Road and no consideration was given to upgrading the old sewer network for this area prior to the development; the result of the failing foul sewage infrastructure with the additional pressure of the completed new housing development is all too evident, as are the serious health risks to existing residents.

The proposed building of a further 75 houses, adding foul sewage to this already failing system, will significantly add to the health risk and be detrimental to the quality of life for Matlock residents living further down Chesterfield Road East. Proposed housing developments should be halted until such time that a thorough investigation can be carried out into the causation of these major incidents of sewage ingress into properties lower down Chesterfield Road East, and remedial action has been taken to prevent further incidents arising.

#### Highways Authority

- 5.2 There are no objections to the proposed reserved matters application from a traffic and highway point of view subject to conditions that require the submission of a Construction Management Plan and a Residential Welcome Park.

#### Matlock Civic Association

- 5.3 Some of the main positive points from the application and "Planning Compliance Statement" can be summarised as follows:

Traditional built form and pitched roofs: substantial compliance with the layout plan at outline stage; acceptable percentage of affordable housing provision: a relatively balanced and wide range of housing mix and house type: pedestrian routes to and from Chesterfield Road and within the application site area: retention of substantial areas of woodland, and tree-lined streets with wide verges to include swales: re-use of stone from demolished walls on site: wide mix of quarter houses, terraces, semi-detached and detached properties: 1 parking space per 1 bed dwelling, 2 spaces per 2 and 3 bedroom properties and 3 parking spaces per each of the larger dwellings: 7KW charging point for each dwelling with a type 2 European socket for owner/occupier of each dwelling to plug in an electric car: noise attenuation measures for properties fronting Chesterfield Road.

It is considered, however, that some important amendments are required to comply with planning policy and make the overall proposal acceptable to Matlock Civic Association.

#### Matlock Moor Methodist Church and Brickyard Cottages

The agents' Planning Compliance Statement confirms the intention to provide car parking for these uses. However, the relevant areas (described by a relevant plan in the Section 106 Agreement) should not be labelled "Visitor Parking" on the crucial proposed layout plan, but should be marked specifically for the Church and Brickyard Cottages, as appropriate. To do otherwise would be contrary to the terms of the outline permission.

## Materials and Design

The provision of stone dwellings near the Chesterfield Rd frontage is welcomed and the cream brick (subject to officer inspection) is likely to be acceptable, but the “Payton Heath” bricks proposed appear to be a brown brick and too dark to be within the cream, beige, bluff range needed to complement and blend with the stone. Matching brick walls should be amended accordingly.

The use of darker, contrasting panels within elevations and in a relatively discordant manner should be omitted. If they are retained, they will detract from the sound and contemporary element of dark grey window frames.

The design does not follow the traditional approach of mullions and transoms being normally located through the centre of the window and will also create another discordant clash with the dark grey window frames.

The dark brick plinths below larger profile stone for elevations will also look strangely out of character. It is considered that a far better unifying element would be stone plinths throughout. The use of stone lintols and cills above and below window frames would also add substantially to the scheme as would stone quoins in selected locations.

The development at Pingle Rise off Asker Lane has far too much red brick but its positive feature of traditional lintols and cills at door and window openings is a commendable approach which would also benefit this scheme.

These measures on materials and design are needed to secure the agents intention on appearance in their paragraph 3.16 which include:

*“As set out in the Design and Access Statement, the materials of construction and the detailing of the fenestration of the dwellings have been proposed to reflect local character, with the front boundaries of properties in key locations will be defined by stone walls built of walling stone reclaimed from the Site”.*

The current proposals do not adequately reflect local character.

Solar panels on roofs facing, northeast, north, and northwest (e.g) views 6 and 7 from the 3D Visuals Pack) is questioned since little solar gain will be achieved. The appearance of the roofscape will be adversely affected by solar panels and the council is asked to consider whether they should also be limited to rear elevations which are not in public view.

## Pedestrian Access to Quarry Lane

The commendable provision of footpath links is only diminished by the absence of a link into Quarry Lane from a break in the southeast site boundary. This is a necessary addition to ensure easy pedestrian movement between dwellings on site and Quarry Lane.

A considerable amount of well-intentioned planning is evident in these proposals, but we very much hope that the suggested amendments can be introduced, since they are important enough to convert the current proposals to a scheme which will truly be sympathetic to the traditional styles and materials which gives Matlock its important sense of place, and, therefore compliant with Local Plan policy.

Their key concerns can be summarised as follows:

- The proposed substantial use of the red/brown “Payton Heath” brick is not within the
- cream, beige, buff range needed to complement and blend with the proposed use of
- stone. Matching garden walls should also ~~be~~ amended accordingly.

- The darker, contrasting panels within elevations in a relatively discordant manner
- should be omitted. Their retention would reduce the effectiveness of the sound and
- contemporary element of dark grey window frames.
- The conventional approach of mullions and transoms passing through the window
- centre points is not being followed. Windows with transoms in the lower corner of the
- window will create a discordant and prominent feature throughout the estate.
- Stone lintols and cills should be used above and below windows and above door
- openings. Stone quoins are also appropriate.

On 15th November 2023 a further letter was received.

"I have attached Matlock Civic Association's representations, following our monthly meeting on 13th November 2023, in response to the substantially amended detailed application. MCA fully appreciate the efforts of the council and the applicants to improve the proposal, but hope that due consideration will be given to the few remaining, but important, issues referred to in the attachment".

MCA particularly object to the substantial use of a half-transom in the bottom right - hand corner of a large proportion of windows in front elevations. The applicants have not complied with the Council's letter to them on 3rd October 2023 in which it is stated that "The contemporary windows and window proportions appear to be incongruous".

A generally accepted rule of good practice in window design requires the visual "centre of gravity" to be in the centre of the window and this approach has been consistently followed in traditional development in the locality. Failure to make this change will negate the many positive amendments arising from collaboration between the council and applicants.

Proposed condition 6 will not cover this point because condition 1 specifically accepts the "Housetype Plans Pack" which includes the discordant window designs.

Proposed condition 5 partially covers our concern but sample panels should be sought to ensure that the specification of the reconstituted stone, including the colour, is acceptable.

#### Director of Housing (DDDC)

5.4 Plots 12 to 19: The 1 bed Quarter house type is 51m<sup>2</sup>. The Nationally Described Space Standards (NDSS) for a 1 bed 2 storey property is 58m<sup>2</sup> with 1.5m<sup>2</sup> of built in storage. The elevations do not show solar PV unlike the rest of the development. It would be advisable to reduce the number of 1 bed quarter homes from 8 to 6, with the 6 being provided at the NDSS standard. The aim should be to give people with the least choice, a home that at least meets the minimum floor area requirements.

Plots 11 and 22: The 2 bed are 70m<sup>2</sup>. The NDSS standard for a 2 bed 4 person house is 79m<sup>2</sup> with 2m<sup>2</sup> of built in storage.

Plots 9 and 10 and 21 are 79m<sup>2</sup> and meet NDSS.

Plots 8 and 20 are 79m<sup>2</sup> and meet the NDSS for 2 bed 4 person household.

Plots 23, 24 and 25 are 3 bed houses with a floor area of 77m<sup>2</sup>. The NDSS for a 3 bed 5 person house is 93m<sup>2</sup> with 2.5m<sup>2</sup> of built in storage.

Achieving the NDSS is an important consideration for potential Registered Providers who will be asked to tender for the affordable homes. It is highly likely that some of the affordable homes will be provided as shared ownership. Experience from previous schemes including those on the site opposite, indicates that shared ownership homes that do not meet NDSS can remain empty for many months, leading to conversion to affordable rent.

No further comments have been received on the amended layout and housetypes and these shall be included either within late representations or verbally at committee.

Environment Agency

- 5.5 They have no new comments to make at this reserved matters stage. They will make new comments at the discharge of conditions stage, when the conditions they recommended are being discharged.

Lead Local Flood Authority

- 5.6 The detailed drainage information can be reviewed at discharge of conditions. As there has been no change to the layout that will conflict with the proposed drainage layout from 22/01044/OUT, the LLFA has no comment on this application.

Severn Trent Water

- 5.7 Severn Trent can confirm that as per the original developer response issued 29<sup>th</sup> June 2022, That our 150mm combined sewer located in Chesterfield Road m/h 3501 or in a suitable location downstream of this chamber, has the capacity to accept the foul flows from the proposed development, with no adverse effect on our existing network.

Natural England

- 5.8 Natural England has no comments to make on this reserved matters application. Their standing advice should be consulted.

Derbyshire Wildlife Trust

- 5.9 They have reviewed the information submitted including the EclA report produced by RammSanderson Ecology (November 2022) and the Soft Landscaping Proposals produced by Boldby & Luck Landscape Architects (16.06.2023). They have also reviewed the Derbyshire Biological Records database which shows a record of common toad, badgers and bats nearby. The application site also lies adjacent to a non-statutory site called Lumsdale & Bentley Brook Quarry.

The site includes habitats including neutral grassland, wet woodland and two ponds. Potential for the presence of GCN has been ruled out by an assessment of pond presence/suitability and eDNA analysis. However, the potential for the presence of other amphibian species remains. Presence/absence surveys have also been completed for other protected species including bats and reptiles and none were found to be present at the time. However precautionary methods of site clearance are recommended as can never fully be ruled out if suitable habitat is present.

The development has provided sufficient information for the Council to be reasonably confident that a net gain for biodiversity can be achieved on-site and that any impacts on protected species can be avoided or mitigated provided that the following conditions are attached to any planning approval. We would therefore reiterate comments and recommendations as in our previous letter (Ref: DWTDAL915, October 2022) when the outline application was submitted.

Primary Care Estates NHS Derby and Derbyshire Integrated Care Board / Joined Up Care Derbyshire

- 5.10 A £67,500.00 towards Health Care contribution for the following surgeries is required:-

Imperial Road Surgery Matlock and Ashover Branch  
Ivy Grove Surgery Matlock

It should be noted that a sum of £67,680 was secured in the S106 for the outline towards provision and enhancement of capacity and infrastructure within the above existing local medical centres.

#### Chesterfield Hospital

- 5.11 A request for a contribution of £63,621 is requested.

#### Tree and Landscape Officer (DDDC)

- 5.12 An Arboricultural Impact Assessment report has been submitted which indicates that the majority of trees on and around the site are to be retained. It is considered that the proposed tree removals to facilitate the site layout are acceptable. While they comprise mostly medium quality individual trees and tree groups (BS 5837 Category B), which should be considered constraints on development, these removals include a small percentage of the total numbers of trees on site and their contribution would be replaced through the proposed planting scheme in the longer term. A Tree Protection Plan drawing should be required to be submitted for approval pre-determination. This should indicate proposed locations for temporary tree protection fencing. Details should also be provided for timing of erection/removal of the fencing, a specification for the fencing and for signage to be attached to it. A detailed site-specific Arboricultural Method Statement should be required to be submitted for approval. It is considered that the submitted landscaping scheme is satisfactory.

#### Environmental Health (DDDC)

- 5.13 The submitted reports have been reviewed and as per their comments for the outline application, there are no objections providing that the recommendations within the reports are implemented and verified.

#### Noise Impact Assessment:

Should the site design/layout be changed or altered in any way then the noise assessment should be reviewed.

#### Geotechnical report:

Should the site design/layout be changed or altered in any way then the assessment and recommendations should be reviewed to reflect this.

Where soil/made ground is to be removed from garden/ soft landscaping areas, I would expect the area to be capped with 600mm of clean topsoil. I would also expect to see validation as to where the soil is to be re-used or disposed of.

With regards to Radon protection measures, it is recommended that advice is sought through Building Regulations and the Building Research Establishment for the exact requirements. And as noted in the geotechnical report, in certain areas a radon membrane may require upgrading to full gas protection. Once the applicants have determined the level of protection required this can be submitted to the LPA for approval.

It is recommended that construction hours be restricted by condition.

#### Force Designing Out Crime Officer

- 5.14 As with the outline application from 2022, there are no objections to the principle of development at the site. The layout broadly follows the indicative outline scheme and is acceptable. Housing treatment for key plots is mostly good with some exceptions.

The Chesterfield Road fronting plots of 1-4, 12-19, and additionally plot 7 have no side treatment overlooking the site gateway, associated car parking, Stone Lane and open space/footpath links. Internal layouts make any remedy problematic and without a much better side outlook here generally it is not considered that this element of the scheme

should be seen as acceptable from a community safety perspective. In other areas, the Jarrah house at plot 60 should have a side ground floor window added to the 'relax' area for a view of the shared drive entrance, plots 61 and 62 might be switched for a better outlook of the peripheral open space, and the Tupelo house at plot 62 might be switched for a true corner type for the same reason.

There are a handful of areas of shared parking and footpath links which potentially will not derive any benefit from an adopted lighting scheme. These are the parking allocation for plots 1-4/visitors, 8-17, 20-22/visitors, 37-40 and 72-75/visitors, and the two footpath links from Chesterfield Road to the turning heads at Stone Lane and opposite plot 70.

On this assumption the areas should be provided with a scheme of solar powered column mounted lighting. The garden access gate for plot 74 should be moved forward to a point just behind the gates for plots 72 and 73. The communal garden gates serving plots 21/24 and 9/10 need to be specified with a locking schedule which is key lockable from both faces, for practical use to maintain a secure boundary.

It should be noted that these comments relate to the original submission with no further comments made on the amended layout and house types and having checked the comments against the new plans the specific details in the main no longer apply.

#### Leisure (DDDC)

5.15 In terms of contribution, this should be:

- Parks and Gardens = £10,957.50
- Children's Play = £12,757.50
- Allotments = £4,432.50

Total - £28,147.50

It should be noted that an allotments contribution of £4,432.50 was secured in the S016 of the outline and on-site provision of public open space is proposed in excess of the Council's requirements in the SPD.

#### Derbyshire Fire & Rescue Service.

5.16 There are no objections to the proposed erection of 75 dwellings at the land off Chesterfield Road and Quarry Lane, Matlock, subject to the following:-

- Access for emergency service vehicles during the construction of the 75 dwellings, should be provided in accordance with Approved Document B (Vols 1 and 2) Section B5.
- Site details should be provided to Derbyshire Fire & Rescue Service with contact details and expected timeframes for the build.
- A Building Regulation Consultation should be submitted for the new build dwellings at the earliest opportunity.

#### Cllr D Hughes

5.17 It is noted that the developer has yet to propose a design for runoff mitigation. Therefore, there is nothing for the LFA to assess.

In the light of further information that has come to light since outline planning permission was granted, in particular the work that Cllrs Steve Wain and Jo Linthwaite have undertaken, there needs to be a detailed appraisal of the sewage management and water runoff measures by the flood authority to ensure that current problems are not exacerbated.

A detailed design of the mitigation measures associated with the management of water on the site and runoff is required. There is no mention in the design and access statement and no drawing. Also, a draft of the S.104 agreement between the applicant and STW is required.

Finally, the planning committee will need to understand what impact this development will have on the flooding issues below Lillybank, Hurst Farm, Bentley Brook and other locations that may be affected by increased run off into the drainage system, and the impact on the sewage system, particularly for those properties that are regularly flooded with sewage now. It is suggested that the LFA undertakes that appraisal and reports to the LPA. In making these requests, I have not expressed any opinion about the scheme itself and indeed cannot yet form an opinion given the apparent lack of important information in the application. The information requested will enable me to undertake my role on the planning committee where I must have access to all relevant information before voting.

You may not have noted that the foul water from this development will flow into a foul water drain that has spilled into Bentley Brook 41 times for a total of 211.74 hours in 2022 at the Websters Terrace Combined Sewer Overflow,

I am concerned that just as in other locations, this may have health implications particularly as Bentley Brook flows through a park and then into the Derwent which is used for recreation downstream.

Would you be able to comment?

Cllr Burfoot

- 5.18 30% affordable should be on site and conditioned and it should be a tenure blind scheme and dispersed throughout the development. There should be no red brick proposed on the site. LLFA should review the proposals to manage surface water and sewerage disposal with the highest level of scrutiny and diligence. Flooding in Matlock is at crisis point and this development must not increase the risk.

## **6.0 REPRESENTATIONS RECEIVED**

- 6.1 Seven letters of representation have been received and the concerns are summarised below:-
- a) Following yet another serious incident for Matlock during Storm Babet it is quite clear that a hold should be put on all large developments in Matlock, especially those at the top of the valley which are causing a lot of damage to properties from surface water flooding and sewage discharges.
  - b) Wherever the recent large numbers of new homes have been built Matlock is suffering from repeated sewage discharges including Castle View Primary School, Presentation Convent, homes on Hurst Farm, Twiggs on Bakewell Road and outside the Premier Inn,.
  - c) It is very concerning that this development will be linked into the sewers on Chesterfield Road, gravity fed, which currently has a pinch point identified at the Presentation Convent. Bentley Brook was under review as recent developments are feeding surface water down into a system that is already overcapacity.
  - d) Access onto the narrow section of Chesterfield Road that already has to cope with vehicular access to and from the Golf Course, homes on Cardinshaw Road, Thornberries development and Quarry Lane will create more risk of accidents to motorists and pedestrians.
  - e) The road is too narrow to provide a crossing for safety and the visibility from some of the roads are very poor.
  - f) Highfields School is very near to this site and the school is very concerned regarding the safety of school children.
  - g) Loss of another greenfield space and harm to wildlife when they are still brownfield sites in and around Matlock that could and should be developed.
  - h) Local knowledge is that within recent years the floors of two brick kilns have been visible within the site and the Written Scheme of Investigation should include location, investigation and excavation of any brick kiln with any surviving structure considered for conversion.

- i) Matlock Moor Methodist Church are pleased that the provision of 6 parking spaces for the use of the Church is confirmed, however, they are concerned that the spaces are indicated as visitor parking and this should be changed.
- j) There is a concern that the extension measures to manage surface and ground water may impact on the foundations of the Church which has stood soundly for 120 years (built in 1903).
- k) Opposite no 8 Quarry lane there is a tree which provides screening to several properties on Quarry lane and is the roosting /nesting site of a flock of sparrows, several finches and tits plus a wagtail and should be retained, it will only need a slight deviation of the proposed pathway to the Chapel.
- l) The stone wall on the boundary with Quarry Lane should be made good and no pedestrian access onto the lane be provided as it is private with no right of way.
- m) The woods at the top of Quarry Lane are likely to be used by the future residents and a gate should allow access to avoid increased usage of the Lane.
- n) Clarification that the swale along the boundary with Quarry Lane would drain into the SUDS and then where this would drain to is required.
- o) The dwelling proposed for Plot 20 would be higher than properties on Quarry Lane and would cause overlooking.
- p) A change to the parking layout would mean Plot 20 could be moved further away from existing properties on Quarry Lane.
- q) The erection of a large sign advertising new homes on the site prior to any decision being made gives the impression that the development is a foregone conclusion.
- r) Loss of one of the last fields in Matlock to development.

## 7.0 OFFICER APPRAISAL

7.1 The following material planning issues are relevant to this application:

- Principle of development
- Impact on the character and appearance of the area
- Impact on residential amenity
- Highway Matters
- Drainage and Flooding
- Ecology and Landscaping

### Principle of development

7.2 The principle of development was established on this site in the granting of outline planning permission for 75 dwellings on the site and the layout plan accords with the developable area shown on the approved parameter plan no.005 D in condition 3 of the outline.

7.3 Access was approved at outline with visibility splays of 2.4m x 120m to be provided in both directions. Six car parking spaces for Matlock Methodist Church and six spaces for the residents of Brickyard Cottages have been secured in the S106 of the outline and amended plans annotate these spaces to the south east of the SUDS feature and to the north east of the existing terrace.

7.4 The development proposal includes two pedestrian links from the site onto Chesterfield Road, at the western and northern corners of the site. The northern pedestrian link includes a new footway along the southwest side of the Chesterfield Road carriageway, connecting to the existing bus stop to the north of the site. The Transport Statement states that the bus stops in the vicinity of the site would be improved/upgraded to provide shelters with seating and lighting, timetable displays and raised bus boarder kerbing. At the vehicular access point, footways will be provided on both sides of the carriageway and extended along Chesterfield Road; a dropped kerb pedestrian crossing with tactile paving is also proposed



just to the southwest of the access. These measures are secured by Condition 16 of the Outline and as part of a Section 278 agreement with the Highway Authority.

- 7.5 Details to specifically address Conditions 5, 7 and 8 of the Outline Permission have been submitted. Condition 5 requires that an Arboricultural Impact Assessment be submitted with the reserved matters application, whilst Condition 7 requires details of the measures to be incorporated into dwellings to help mitigate the effects of, and adapt to, climate change to be provided. Condition 8 requires that reserved matters relating to landscaping shall accord with the Ecological Impact Assessment approved as part of the Outline Permission, so as to achieve no less than the predicted 10% net gain in biodiversity as approved as part of the recent variation of condition 8 application (23/00867/VCOND).

#### Impact on the Character and Appearance of the Area

- 7.6 With the principle of the residential development established by the outline consent only the reserved matters below can be considered:
- a) the scale of the development;
  - b) the layout of the development;
  - c) the external appearance of the development;
  - e) the landscaping of the site.
- 7.7 The following consideration is given to the scale, layout and appearance of the development which form three of the reserved matters. The principal policies for consideration are Policies S1 S4, PD1 and PD7 of the Adopted Local Plan (2017).
- 7.8 Policy S1 advises that all development should seek to make a positive contribution towards the achievement of sustainable development and, in doing so, seek to secure development which are of high quality, locally distinctive and inclusive design and layout and which provides a high standard of amenity for all existing and future occupants of buildings. Policy S3 requires that the proposed development is of a scale, density, layout and design that is compatible with the character, appearance and amenity of the part of the settlement in which it would be located. Policy PD1 advises that there is a requirement that the new development creates well designed, socially integrated, high quality places and should respond to the challenge of climate change whilst also contributing to local distinctiveness and sense of place. This policy requires all developments to be of high quality design that respects the character, identity and context of the Derbyshire Dales townscapes and landscapes. New development must be designed to offer flexibility for future needs and uses taking into account demographic and other changes; and ensuring development contributes positively to an area's character, history and identity in terms of scale, height, density, layout, appearance, materials, and the relationship to adjacent buildings and landscape features.
- 7.9 The proposed layout should be considered in relation to the site's context and land level differences within the site. The site is fairly flat with land rising steeply adjacent to the eastern boundary with the woodland beyond and the developable area determined in the outline focused the development on the lower fields only. The lowest point of the site is within the north western corner where the SUDS feature is proposed. The most prominent areas of the site have been amended to provide streetscenes in context with the open space they overlook and in scale and orientation with Brickyard Cottages together with forming a strong entrance to the site that respects the character of the area. The extensive area of woodland to be retained in the north eastern part of the site helps to assimilate the development with the open land beyond and provide a transition. Within the site there are three distinct areas with stone walls enclosing front gardens on the central road, street trees adjacent to the woodland area of open space and a swale within a section of linear open space serving to introduce a feature and widen the street. Dwellings address the street with the majority of the parking to the side and trees within the highway verges. Larger detached dwellings at lower density address the open space to the south east with the private drives immediately

adjacent to avoid a hard edge and provide a buffer. Corner turner properties are proposed on prominent corners to ensure that both streetscene offer a main elevation and where side gardens turn the corner stone walls curve around and walls enclose the rear gardens.

- 7.10 The ridge heights of the two storey dwellings range between 8 – 8.6m high with eaves heights between 4.7 – 5.3m. The sections provided of relationships with existing properties show these heights to be in keeping with the scale of existing properties and the floor levels are similar. Finished floor levels for all the dwellings and spot levels of the landscaping and hardsurfacing areas has not been provided and this shall be a condition of any permission. Overall, the sections indicate that finished floor levels and ridge heights are relative to adjacent levels, therefore the proposal is considered to be in keeping with the scale of properties in the surrounding area.
- 7.11 The appearance of the dwellings has changed in the recent amended plans through discussions with officers and represents an acceptable design with the use of stone on all elevations. Traditional features have been introduced such as stone cills and lintels and chimneys and the windows openings whilst large are uniform. Eleven different housetypes are proposed with traditional detailing with the windows sizes giving a more contemporary appearance. The additional 3D visuals provide streetscenes that indicate that the different housetypes relate well and would create a development of a high quality design that is both in context with its surroundings together with providing its own sense of place.
- 7.12 Policy PD7 advises that the District Council will promote a development strategy that seeks to mitigate global warming and requires new development to be designed to contribute to achieving national targets to reduce greenhouse gas emissions by reducing energy consumption and providing resilience to increased temperatures and promoting the use of sustainable design and construction techniques to secure energy efficiency through building design. These Policies align with the most recent Government guidance contained in the National Design Guidance published in October 2021. Energy efficiency should be secured through building design in accordance with Policy PD7: Climate Change and the Council's SPD on Climate Change adopted in July 2021. The submitted Energy Statement includes a baseline energy consumption calculation for each housetype and methods such as thermal bridging, efficient heating and lighting systems, water consumption at the Document G levels and all dwellings would have PV panels to achieve compliance for reductions in emissions and energy demand. This accords with Policy PD7 and details of the PV panels will need to be controlled by condition.
- 7.13 Conditions 12 and 13 of the outline permission relate to a requirement that the layout and landscaping of the reserved matters accords with the recommendation of the Noise Impact Assessment and Geotechnical Desk Study reports. In respect of noise, the majority of properties the noise level criterion is achieved without any mitigation apart from standard double glazing, however, recommendations 6.5 and 6.6 relate to dwellings adjacent to Chesterfield Road with recommendations for improved double glazing and acoustic ventilators. This can be secured by a condition.
- 7.14 The recommendations of the Geotechnical Desk Studies include the following:-

Intrusive investigation works would likely comprise:

- Trial pits and / or window sample boreholes to provide systematic coverage of the area for redevelopment and target any identified potential sources of contamination / historic mining activities.
- Subsequent geo-chemical testing of soils and any potential waters encountered.
- Gas and groundwater monitoring on 12 No. occasions over 6-months.
- Geotechnical assessment of ground conditions (including CBRs) to assist with any future development design.
- Infiltration testing in accordance with BRE365 guidance to facilitate drainage options appraisal.

- Consideration of any slope stability issues that may be present on-site / close proximity.

These shall be secured by condition.

### Impact on Residents' Amenity

- 7.15 Policy PD1 requires development achieves a satisfactory relationship to adjacent development in relation to visual intrusion, overlooking, shadowing and overbearing impacts. The site has a terrace of four existing properties known as Brickyard Cottages that have a side alignment with Chesterfield Road. Plots 5, 6 and 7 are two storey properties that would be side on to these existing properties at a distance of 7.7m from the existing single storey extension to the side of No.4 Brickyard Cottages and the gable of Plot 5 which has a small landing window on the first floor. The sections provided show the finished floor areas of plots 5 to 7 would be 1.2m higher than the existing cottages. The existing properties all have 22m narrow rear gardens. To the south east of the rear garden of No.4 a block of four 1 bed maisonettes are proposed at a distance of 20-21 metres. On the basis of the distance between properties, land levels and orientation these relationships are considered acceptable.
- 7.16 Distances between existing dwellings on Quarry Lane and Old Stone Lane and the proposed properties would be 21 metres and above with intervening linear open space. Brickyard Farm to the north east is on higher land over 100m from the site boundary with intervening outbuildings obscuring views. Having assessed the relationships with existing properties the proposal represents a scheme that would not have significant adverse impacts on the residential of neighbouring properties in accordance with the requirements of Policy PD1.

### Highway Matters

- 7.17 The Local Highway Authority have no objections to the proposed reserved matters application from a traffic and highway point of view subject to conditions that require the submission of a Construction Management Plan and a Residential Welcome Park. Condition 18 of the Outline secures the submission of a Construction Method Statement so a further condition on this permission is not required, however, the need for a Residential Welcome Park can be included as a condition. Therefore on the basis that access was approved at outline and parking and manoeuvring within the site is adequate; the proposed layout is considered to accord with Policy HC19.

### Flooding and Drainage

- 7.18 The Lead Local Flood Authority (LLFA) state that detailed drainage information shall be reviewed when the discharge of conditions application is submitted. They confirm that as there has been no change to the layout that will conflict with the proposed drainage layout from 22/01044/OUT they have no specific comments on this application. The principle of the drainage as detailed in the Sustainable Drainage Statement, Flood Risk Assessment and letter from BWB dated 9<sup>th</sup> November 2022 was established in the grant of outline approval with the drainage conditions that relate to foul and surface water below:-

4. *No development shall commence on any dwellinghouse construction until a scheme for the disposal of foul water discharge from the development and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and details and permanently retained thereafter.*

21. *No development hereby approved shall take place until a scheme for the mitigation of*

*land drainage, to intercept surface water run-off/land drainage flows from outside of the developable area, has been submitted to and approved in writing by the Local Planning Authority.*

22. *No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
    - a. *BWB consulting. (Aug 2022). Sustainable Drainage Statement. CRM-BWB-ZZXX-RP-CD-0001\_SDS.*
    - b. *BWB consulting. (Aug 2022). Flood Risk Assessment. CRM-BWB-ZZ-XX-RPYE-0002-FRA.*  
*"Including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team"*
    - c. *And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.**
- 
23. *No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:
  - I. *into the ground (infiltration);*
  - II. *to a surface water body;*
  - III. *to a surface water sewer, highway drain, or another drainage system;*
  - IV. *to a combined sewer.**
- 
24. *Prior to commencement of the development, the applicant shall submit for approval to the Local Planning Authority details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the Local Planning Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.*
- 
25. *The attenuation pond should not be brought into use until such a time as it is fully designed and constructed in line with CIRIA SuDS manual C753 and an associated management and maintenance plan, also in line with CIRIA SuDS Manual C753 is submitted to and approved in writing by the Local Planning Authority.*
- 
26. *Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).*

7.19 This application relates to layout, scale, external appearance and landscaping only as the outline permission made assessments on the principle in terms of drainage, however the agents have provided a technical note on drainage since deferral of the application at the 12<sup>th</sup> December 2023 planning committee.

- 7.20 *The agents have provided* a pre-development response has been received from Severn Trent Water on 3rd November 2023 (Ref: 1099219) which states the following points in relation to foul water drainage:
- It is proposed that the site will connect foul gravity flows into the 150 mm combined water network at Chesterfield Road between manholes SK31613501 and SK31612401.
  - The anticipated foul flows for 76 dwellings (1.2 l/s @ 2DWF) from the proposed development should have no adverse hydraulic impact on the system and can be accommodated into the network.
  - On this basis, a connection at a new or existing foul network would be acceptable, subject to formal 106 approval.
- 7.21 The agent's Drainage Consultant states that given the Severn Trent Water correspondence confirming capacity within the local combined sewerage network, proposals are for foul water to discharge via gravity to the 150 mm public combined sewer in Chesterfield Road between manholes SK31613501 and SK31612401. Whilst there has been sewer flooding noted in Matlock, the incidents have been located closer to the town centre and affect a different sewerage branch to the one being used for the proposed development.
- 7.22 The agent's have instructed the legal firm Freeths LLP to provide advice which reiterates officer's advice given in sections 7.18 and 7.19 above and is summarised as:-
- An application for approval of a "reserved matter" "must be within the ambit of the outline planning permission and must be in accordance with the conditions annexed to the outline planning permission.1
  - ( as per the case 1. *Heron Limited v Manchester City Council* [1978] 1 WLR 937 CA per Lord Denning MR at p944c-d and Orr LJ at p946g; *R v Hammersmith and Fulham London Borough Council ex p Greater London Council* (1985) 51 P&CR 120 CA per Glidewell LJ at p127 and p132).
  - Drainage is not capable of being a reserved matter as it is a closed list that cannot be expanded on (as per *The Town and Country Planning (Development Management Procedure) (England) Order 2015* (as amended) (DMPO)).
  - Drainage was approved as per the Planning Permission, and it is unlawful to seek to derogate from that which has already been granted as per in the case *R. v Newbury DC Ex p. Stevens and Partridge* (1992)<sup>3</sup>, the court ruled that approvals under reserved matters and conditions must not derogate from that which has already been granted.
  - Further details of drainage can be considered on receipt of a discharge of condition application (although not to the extent that it derogates from the grant of the drainage scheme already approved under the Planning Permission).

### Ecology and Landscaping

- 7.23 Condition 9 at outline required that any approval of reserved matters application relating to landscaping and layout shall accord with the Preliminary Arboricultural Impact Assessment for the retention and enhancement of existing boundary trees and vegetation to provide a suitable landscape mitigation. The Arboricultural Impact Assessment submitted proposes the removal of seven trees and 30m<sup>2</sup> of Group 26 to provide a footpath link. Incursion within the RPA of two groups of trees (G20, G26) for the entrance road and internal access highway is required. The proposed public access footpath off Chesterfield road is located within the RPAs of retained group G21. These areas of the RPA will require a no-dig approach with permeable surfacing implemented to the manufacturer's specifications. Portions of the RPA of T4 will be incurred upon by the footprint of a proposed dwelling on

Plot 58 and as a precaution any works to excavate foundations in the RPA will be undertaken manually, utilising hand tools only, to ensure that any identified significant tree roots can be managed accordingly. Overall, the majority of trees are to be retained with suitable measures for their protection during construction secured by condition and in compensation for the loss of trees the landscaping scheme proposes the planting of 173 trees.

- 7.24 The Tree and Landscape Officer has reviewed the landscaping scheme and considers it acceptable. Tree lined streets are proposed together with improvement of the existing wooded area and trees within the public open spaces on the periphery. The scheme has to secure a 10% BNG and its management is secured through the discharge of the outline condition 20 (Landscape and Biodiversity Enhancement and Management Plan (LBEMP)).
- 7.25 In terms of ecology, the outline application included Condition 8 which stated that an Ecological Impact Assessment shall achieve no less than the predicted 12.79% net gain across the site within future reserved matter schemes. This Reserved Matters application includes an overall net change in biodiversity habitats across the whole site as +10.79%. It was therefore necessary for a variation to condition 8 of the Outline permission be submitted and approved to enable the amended BNG to be provided. Derbyshire Wildlife Trust reviewed the information submitted including the Biodiversity Net Gain Assessment (BWB, July 2023) which stated that a net gain of +2.87 habitat units (+10.79 %) and +1.21 hedgerow units (+1042.27%) was predicted using the DEFRA metric. Although this is a slight reduction in HU than was predicted at outline planning stage, it is still compliant with national and local policy on biodiversity net gain. The Trust concluded that proposed site layout appears fairly sympathetic, retaining the majority of the wet woodland, perimeter trees and the onsite pond, and creating areas of species-rich grassland and swales and on this basis accepted the reduction in BNG and the variation of condition 8 was approved on the 10<sup>th</sup> November 2023 under delegated powers. Both a Construction Environmental Management Plan (CEMP: Biodiversity) and Landscape and Biodiversity Enhancement and Management Plan (LBEMP) were secured at outline in conditions 19 and 20 that require discharge prior to commencement of development on site.

#### Housing Mix and Affordable Housing Provision

- 7.26 Condition 10 of the outline permission stated that any approval of reserved matters application shall provide for the following overall mix of housing: 1 bed - 15%, 2- bed - 40%, 3-bed - 40% and 4+ bed - 5% unless it can be demonstrated that the character of the area, evidence of local housing need or turnover of properties would justify an alternative mix.
- 7.27 The actual blended mix (including affordable dwellings) proposed is 1 bed – 16%, 2 – bed – 28%, 3-bed – 28% and 4+ bed – 28%. As this does not accord with the prescribed mix in condition 10 a Sales Recommendations Report has been submitted. This report reviewed properties on the market, sales and the mix of new developments in the area and concluded that there was more demand for properties 3 bed and above.

The Derbyshire Dales Housing Needs Assessment (September 2021)' produced by Icen on behalf of the District Council as part of the Local Plan review, takes into account current housing stock and expected demographic trends, including the expectation that some older households will downsize if the right properties are available. The report points towards a need for different sizes of homes in the market and affordable sectors and demonstrates that generally a mix of smaller dwellings are still needed within the District. Icen recommend that the table below should be used to inform negotiations regarding the mix of housing to be delivered on individual development sites. Regard should be had to the nature of the site and character of the area, and to up to date evidence of need as well as the existing mix and turnover of properties at the local level.

- 7.28 The mix of market housing proposed is as follows: -

4 x 1 bed = 8%  
11 x 2 bed = 21%  
16 x 3 bed = 31%  
21 x 4+ bed = 40%  
Total = 52 dwellings

7.29 Whilst the mix does not comply with the mix of market housing prescribed in Policy HC11 of the current development plan, the site is on the edge of the settlement and transitions into open countryside so any development would need to have regard to this and be less dense with larger dwellings adjacent to the boundaries with the countryside and buffers of landscaping provided. Having regard to this, the latest housing needs assessment work and the marketing information provided, the proposed mix of market housing is considered acceptable.

7.30 The mix of affordable houses is as follows:-

8 x 1 bed = 35%  
10 x 2 bed = 43%  
5 x 3 bed = 22%  
Total = 23 dwellings

7.31 The affordable housing provision was stimulated within the S106 for the outline and as such provision would have to accord Affordable Housing Mix as follows:-

- a) 14 Rental Units comprising of 2 x 1 bed 2 persons flats, 4 x 1bed 2 persons houses, 2 x 2 bed 4 persons houses, 2 x 3 bed 5 persons houses and 4 x 2 bed 3 persons bungalows
- b) 4 Shared equity units comprising 2 x 2 bed 4 persons houses and 2 x 3 bed 5 person houses
- c) 5 First Homes being a mix of 2 bed and 3 bed houses.

The wording of the S106 does allow this mix to be varied subject to agreement with the Council. The Director of Housing comments on the affordable housing mix will be reported within late representations or verbally at committee. The blended percentages of affordable and market dwellings on site will help to contribute to balanced and inclusive communities and create flexibility in the housing market, whilst responding positively to the character of the site and its surroundings and market trends for the area.

7.32 Since the 12<sup>th</sup> December 2023 deferral, the agent has submitted the following on housing mix and NDSS standards:

The "n2097 Matlock - House Type Pack" submitted to the LPA on the 27th October 2023 states that both the Avocado End and Avocado Mid housetypes have an area of 70m<sup>2</sup>. The NDSS states that a 2-storey, 2-bedroom dwelling for 3 people should be a minimum of 70m<sup>2</sup>. The Avocado house type is therefore, NDSS compliant.

This reduces the number of affordable housetypes that do not meet NDSS to 5 out of 23.

The strategic housing officer expresses concerns that dwellings that do not meet the NDSS would be difficult to sell to a registered provider. Two letters, the last dated the 2<sup>nd</sup> January 2024 from Auxesia Homes have confirmed that the space standards and mix of affordable properties are appropriate and acceptable to them. As a registered provider they have made a commitment to take the properties and believe the scheme presented is a high quality scheme, an exciting product and one that their future tenants and owner occupiers would welcome. They are supportive of the mix and from a management perspective they would need the 1 bed properties closely located and this is an industry standard to aid maintenance and reduce disruption to residents.

Additionally, it must be reiterated that Derbyshire Dales District Council has not formally adopted the requirement of NDSS or outlined specific space standards within local plan policies.

In response to the comment regarding Affordable Housing Mix, Policy HC11 of the Local Plan recommends the following AH Mix: 40% 1-bed, 35% 2-bed, 20% 3-bed and 5% 4-bed. Our proposed AH mix is as follows: 34.78% 1-bed, 43.48% 2-bed and 21.74% 3-bed. We believe that the proposed AH mix suitably balances the policy requirement and viability for the developer to provide high quality AH to the district. This breakdown also confirms that the proportion of 1-bedroom properties is in fact not excessive when viewed in accordance with Policy HC11 which allows flexibility in any event based on need.

### Conclusion

7.33 The proposal is considered to be compatible with the edge of Matlock having regard to the scale, layout and appearance of the dwellings. The design and materials proposed would integrate and blend with this part of the settlement and no significant adverse impacts on residential amenity or landscape would ensue. The development would respect the character, identity and context of this part of the settlement and all technical matters have been addressed. Taking the above into consideration the development is considered to satisfy the relevant provisions of the development plan and national guidance and a recommendation of approval is put forward on this basis.

7.34 Contributions towards open space and health that are reasonably related in scale and kind to the development proposed have been secured in respect of the associated outline permission. The additional contributions requested are not CIL regulations compliant and cannot be secured on the back of this application which seeks the approval of the reserved matters, namely the scale, layout and external appearance of the development and landscaping.

## **8.0 RECOMMENDATION**

That planning permission be granted subject to the following conditions.

1. This consent relates solely to the application plan no's 006C, 007C, 008D, 009C, 300A, 700C, Landscape plans GL2151 01B and 02B, Housetype plans pack dated 27<sup>th</sup> October 2023 and 23105-RLL-23-XX-DR-C-100, 101, 102-1 and 102-2.

Reason:

For the avoidance of doubt.

2. Prior to the commencement of any works to construct the foundations of the dwelling hereby approved, full details of the finished floor levels, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason:

In the interests of visual and residential amenity and impacts on the landscape in accordance with Policies PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017).



3. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837 (2012), including a tree protection plan(s) and a site specific arboricultural method statement shall be submitted to and approved in writing by the Local Planning Authority.
4. Specific issues to be dealt with in the Tree Protection Plan and Arboricultural Method Statement, include:
  - a) Location and installation methods of services/utilities/drainage.
  - b) Methods of demolition within the root protection area (RPA as defined in BS5837 (2012)) of the retained trees.
  - c) Details for timing of erection/removal of the fencing, a specification for the fencing and for signage to be attached to it.
  - d) A specification for tree protection fencing to safeguard trees during all phases of the development and a plan indicating the alignment of the protective fencing relative to retained trees.
  - e) A specification for ground protection where it is not possible to exclude all activity from RPAs.
  - f) Details of arboricultural inspection and supervision by a suitably qualified tree specialist.
  - g) Timing and method to be used for reporting of arboricultural inspection and supervision to the LPA and site manager.
  - h) Details of methods to improve the rooting environment for retained and proposed trees.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason:

Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality, in accordance with Policy PD6 of the Adopted Derbyshire Dales Local Plan (2017).

5. Notwithstanding the submitted materials plan, details of all materials to be used in the construction of the external surfaces of the proposed development shall be submitted to and approved in writing by the Local Planning Authority before any work to any external surface is carried out. The development shall thereafter be constructed in accordance with the approved details.

Reason:

To ensure a satisfactory external appearance of the development in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

6. Details of all new external windows and doors shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The submitted details shall incorporate the recommendations of the Noise Impact Assessment and include materials, finish, depth of reveal, elevations at a scale of not less than 1:10 and horizontal/vertical frame sections (including sections through glazing bars) at not less than 1:2. The development shall be carried out in accordance with the approved details.

Reason:

To protect the external appearance of the building and preserve the character of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

7. Details of the verges shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and so retained.

Reason:

To protect the external character and appearance of the building and to preserve the character of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

8. Details of the proposed solar panels (including size, manufacturer and model number) have been submitted to and approved in writing by the Local Planning Authority prior to installation. The works shall be carried out in accordance with the approved details.

Reason:

In the interests of preserving the character and appearance of the buildings and area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

9. Drawings showing the detailing and external materials of the front door canopies shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and so retained.

Reason:

To protect the external character and appearance of the building and to preserve the character of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

10. Prior to erection, details of the ground level, design, external appearance and decorative finish of all railings, fences, gates, walls, bollards and other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall be carried out in accordance with the approved details prior to the development being first brought into use.

Reason:

In the interests of visual amenity and the character and appearance of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

11. All gutters, downpipes and other external plumbing shall be a black painted finish and so retained thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To protect the external character and appearance of the building and to preserve the character of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

12. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and

stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

Reason:

To ensure a satisfactory standard of landscaping and in the interests of enhancing biodiversity in accordance with the aims of Policies S1, S3, PD3 and PD5 of the Adopted Derbyshire Dales Local Plan (2017).

13. The development hereby approved shall not be occupied until the applicant has submitted to and had approval in writing from the Local Planning Authority a residential welcome pack promoting sustainable forms of access to the development. The pack shall be provided to each resident at the point of the first occupation of the dwelling.

Reason: To reduce vehicle movements and promote sustainable access.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no buildings, structures, extensions, fences, gates, walls or other means of enclosure shall be erected within the curtilage of the dwelling on plot 5 without the prior written approval of the Local Planning Authority upon an application submitted to it.

Reason:

To safeguard the visual and residential amenities of the in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

15. Notwithstanding the submitted details included on the landscape plans, details of the children's play areas shall be submitted and approved in writing prior to the land formation in the areas shown on plans Landscape plans GL2151 01B and 02B with no dwelling occupied until the children's play areas have been provided in accordance with the approved details (unless agreement is given to an alternative timeframe in writing) and maintained in accordance with details first approved in association with condition 20 of the associated outline permission.

Reason:

To ensure that the play area is provided in a timely manner in the interests of the amenity of future residents in accordance with Adopted Derbyshire Dales Local Plan 2017 Policies PD1 and HC17.

16. A scheme of hard landscaping shall be submitted to and approved in writing by the Local Planning Authority within 56 days of the commencement of development. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any dwellings or in accordance with a programme to be agreed in writing with the Local Planning Authority.

Reason:

To safeguard the visual amenities of the area in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

17. No plant, machinery, deliveries to site or earth movements before 08:30 or after 18:00 Monday to Friday or before 08.30 or after 13.30 on Saturdays and not at all on Sundays and Public Holidays.

Reason:

To protect the amenities of the surrounding residents in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017).

18. The development hereby above shall be carried out in accordance with the recommendations of the Geo-Environmental Desk Study Report and Geo-Environmental Assessment with a remediation scheme prepared which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason:

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with PD9 of the Adopted Derbyshire Dales Local Plan (2017).

19. Prior to first occupation of any dwelling, details of the legal and funding mechanism for the maintenance and management of all landscaped areas (excluding privately owned gardens), including the play equipment, highways / footways and attenuation features shall be submitted to and approved in writing by the Local Planning Authority. The management and maintenance of these areas shall then be carried out in accordance with the approved details.

Reason:

To ensure an appropriate standard of landscaping and maintenance of the road and footpath infrastructure in accordance with the aims of Policies, S3, PD5 and HC19 of the Adopted Derbyshire Dales Local Plan (2017).

## **9.0 NOTES TO APPLICANT:**

The Planning Authority prior to the submission of the application, and during its consideration, engaged in a positive and proactive dialogue with the applicant which resulted in the submission of a scheme that overcame initial concerns relating to the design and layout.

The Town and Country Planning (Fees for Applications and Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (SI 2012/2920) stipulate that a fee will henceforth be payable where a written request is received in accordance with Article 30 of the Town and Country Planning (Development Management Procedure) Order 2010. Where written confirmation is required that one or more Conditions imposed on the same permission have been complied with, the fee chargeable by the Authority is £97 per request. The fee must be paid when the request is made and cannot be required retrospectively. Further advice in regard to these provisions is contained in DCLG Circular 04/2008.

This permission relates solely to the application plans and documents:-

Plan no's 006C, 007C, 008D, 009C, 300A, 700C, Landscape plans GL2151 01B and 02B  
Housetype plans pack dated 27<sup>th</sup> October 2023 and 23105-RLL-23-XX-DR-C-100, 101, 102-1 and 102-2

Arboricultural Impact Assessment  
Tree Constraints Plan  
Tree Assessment Plan  
Ecological Impact Assessment  
Drainage Note  
Severn Trent Water Pre-Development Enquiry  
Noise Impact Assessment  
Geo-Environmental Desk Study Report  
Geo-Environmental Assessment  
Auxesia Homes Letter  
Sales Recommendation Report  
Energy Statement  
Planning Compliance Statement  
Technical note from drainage engineer. (47935-ECE-XX-XX-RP-C-0003).  
*Auxesia Homes Letter Jan 24*  
*Freeths Letter – Matlock HBH*

The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's standards and terms for the phasing of the development. You are advised that you must enter into a highway agreement under Section 38 of the Highways Act 1980.

The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980. Contact the Highway Authority's Implementation Team at [development.implementation@derbyshire.gov.uk](mailto:development.implementation@derbyshire.gov.uk) You will be required to pay fees to cover the Councils cost's in undertaking the following actions:

- Drafting the Agreement
- Set up costs
- Approving the highway details
- Inspecting the highway works

You should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority.

The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

## **CMP**

It is expected that contractors are registered with the Considerate Constructors scheme and CONTROLLED comply with the code of conduct in full, but particularly reference is made to "respecting the community" this says:

Constructors should give utmost consideration to their impact on neighbours and the public

- Informing, respecting and showing courtesy to those affected by the work;
- Minimising the impact of deliveries, parking and work on the public highway;
- Contributing to and supporting the local community and economy; and
- Working to create a positive and enduring impression and promoting the Code.

The CMP should clearly identify how the principal contractor will engage with the local community; this should be tailored to local circumstances. Contractors should also confirm how they will manage any local concerns and complaints and provide an agreed Service

Level Agreement for responding to said issues.

Contractors should ensure that courtesy boards are provided, and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties. This does not offer any relief to obligations under existing Legislation.

**NOT CONFIDENTIAL** - For public release

PLANNING COMMITTEE – 16 January 2024

**PLANNING APPEAL – PROGRESS REPORT**

Report of the Corporate Director

REFERENCE	SITE/DESCRIPTION	TYPE	DECISION/COMMENT
Southern			
17/00752/FUL	The Manor House, Church Street, Brassington	WR	Appeal being processed
ENF/2021/00044	Darley Moor Motor Cycle Road Racing Club Ltd, Darley Moor Sports Centre, Darley Moor, Ashbourne	WR	Appeal dismissed – Copy of Appeal Decision attached
22/01159/CLPUD	Meadow View, The Row, Main Street, Hollington	WR	Appeal split decision – Copy of Appeal Decision attached
ENF/22/00119	Tythe Barn Close, Hob Lane, Kirk Ireton	WR	Appeal being processed
22/00212/FUL	38-40 St John Street, Ashbourne	WR	Appeal being processed
22/00213/LBALT	38-40 St John Street, Ashbourne	WR	Appeal being processed
22/00731/LBALT	Bradley Hall, Yew Tree Lane, Bradley	WR	Appeal being processed
ENF/22/00142	Land at Magfield Farm/Land to the east of Timber Farm, Hlland Village	WR	Appeal being processed
22/01390/FUL	The Old Toll House (Tollgate House), Derby Road, Ashbourne	WR	Appeal allowed – Copy of Appeal Decision attached
23/00472/FUL	Land To North East, Brailsford Water Mill, Mill Lane, Brailsford	WR	Appeal being processed
ENF/23/00129	The Mill, Atlow Mill, Hognaston, Ashbourne	WR	Appeal withdrawn
23/00450/LBALT	45 St John Street, Ashbourne	WR	Appeal being processed

Central			
22/00772/OUT	Land opposite The Homestead, Whitworth Road, Darley Dale	WR	Appeal being processed
ENF/21/00127	The Racecourse Ashleyhay, Wirksworth, Matlock	WR	Appeal dismissed – Copy of appeal decision attached
ENF/23/00037	Land south of Yeats Lane, Cromford	WR	Appeal being processed
T/22/00155/TPO	65 Lime Tree Road, Matlock	HEAR	Appeal being processed
ENF/23/00032	Spitewinter Farm Oakerthorpe Road, Bolehill, Wirksworth	WR	Appeal being processed
23/00149/FUL	Land at rear of 7 Malpas Road, Matlock	WR	Appeal being processed
ENF/23/00159	North Park Farm, Whitworth Road, Darley	WR	Appeal being processed
22/01111/VCOND	Sunnybank, Whitelea Lane, Tansley	HEAR	Appeal being processed

WR - Written Representations  
 IH - Informal Hearing  
 PI – Public Inquiry  
 LI - Local Inquiry  
 HH - Householder

**OFFICER RECOMMENDATION:**

That the report be noted.





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# Appeal Decision

Site visit made on 3 October 2023

**by Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 08 December 2023**

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**Appeal Ref: APP/P1045/C/22/3313538**

**Land at Darley Moor Motor Cycle Road Racing Club, The Darley Moor Sports Centre, Darley Moor, Ashbourne, Derbyshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Eddie Nelson (Darley Moor MCRRC) against an enforcement notice issued by Derbyshire Dales District Council.
  - The notice, numbered ENF/21/00044, was issued on 18 November 2022.
  - The breach of planning control as alleged in the notice is Without planning permission the engineering operations comprising the formation of a Bund.
  - The requirements of the notice are to permanently remove the bund (shown in the area hatched blue on the attached plan) from the area shown edged red on the attached plan.
  - The period for compliance with the requirement is 8 weeks.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- 

## Decision

1. It is directed that the enforcement notice is varied by (a) the addition of the words *'and return the land to its previous levels and contours prior to the unauthorised development taking place'* to the end of Section 5.1 a) and (b) the deletion of 8 weeks and the substitution of 6 months as the time for compliance.
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Reasons

### **Ground (b)**

3. The appellant makes reference to a smaller, pre-existing, bund that was previously present in the same location as the bund subject to the notice. This has in effect been added to in the process of creating the appeal bund. The appeal under ground (b) is made on the basis that the formation of a bund has not in fact occurred, but that instead there has been an extension to the pre-existing bund. However, the new bund is substantially larger than what existed previously in terms of its overall size and scale. Given the substantial increase in scale, and as a matter of fact and degree, I am satisfied that in this instance the development can reasonably be described as the 'formation of a bund'. Therefore, the notice correctly describes the breach of planning control that has taken place. As such, the appeal on ground (b) fails.

***Ground (a)/the deemed application for planning permission***

4. The main issue is the effect of the development on the character and appearance of the area.
5. The bund is of a substantial height, length and depth and appears as an engineered man-made feature within the landscape. As the topography of the surrounding area is relatively flat, the bund interrupts views across the landscape that would previously have been possible. This includes views from a number of public rights of way which pass near to it, including a footpath which intersects the bund itself. Whilst there are other similar bunds associated with the racetrack, the presence of these does not negate the clear harm that has resulted from the erection of the new bund itself. Although there was the aforementioned pre-existing bund present in this location, that bund was substantially lower in height and general size. Based on the evidence before me, it was not as visually imposing and not comparable in terms of its impact on the surrounding area or on views taken across the landscape. The development has for these reasons resulted in significant harm to the character and appearance of the area.
6. It is stated by the appellant that the purpose of the bund is to provide noise attenuation. However due to its positioning in relation to the motor cycle racetrack and the nearest dwellings, it does not serve to attenuate noise emanating from the activities that take place on the racetrack. Instead, it is said to seek to reduce noise occurring from the use of the nearby grass track which is also used for motor racing purposes. The grass track is however not on land owned by or under the control of the appellant, nor is it operated by them. It appears to operate only infrequently and there is no suggestion from either the Council or interested parties that its use has historically caused significant noise issues. It would further appear that the grass track is operated under permitted development rights and could move position, as it is suggested by interested parties has been the case in the past.
7. The Noise Assessment (NA) submitted by the appellant suggests a reduction of around 13db could occur as a result of the bund being in place. However, noise level measurements have not been taken at a time when the grass track was in use, and therefore the NA is of limited assistance in providing any kind of definitive indication of what noise reduction might be achieved. But, in any event, this is in the context of there being no evidence of any identified noise generation emanating from the grass track racing of a significance that might warrant attenuation. There is also the apparent possibility that the grass track could move elsewhere which may impact upon the effectiveness of the bund. Therefore, the submissions made provide very limited justification for the bund on noise attenuation grounds.
8. Landscaping the bund would result in some visual improvement to it and also offer biodiversity enhancement, but it would not overcome the harmful impact arising from its overall height and bulk. Any disruption that would result from its removal in terms of heavy goods vehicle movements, footpath closures or damage to the perimeter of the racing circuit does not justify the retention of a development that causes the level of harm I have found. The appellant considers that the surrounding area does not fall within the threshold of being a valued landscape for the purpose of paragraph 174 of the National Planning

Policy Framework (the Framework). But even if it does not, this does not mean that the retention of what is a harmful development should be permitted.

9. For these reasons I conclude that the bund has caused significant harm to the character and appearance of the area. Consequently, it has failed to accord with policies S1, S4, PD1 and PD5 of the Derbyshire Dales Local Plan 2017, where they collectively seek to protect character and appearance, and with the development plan taken as a whole. There is also a conflict with the aims of the Landscape Character and Design Supplementary Planning Document 2018 and the Framework in the same respects. This harm and the resultant conflict with the development plan is not outweighed by the other considerations put forward by the appellant in support of the development. The appeal on ground (a) therefore does not succeed.

### **Ground (f)**

10. Section 173(4) of the Town and Country Planning Act 1990 (as amended) (The Act) sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice seeks to remedy the breach of planning control in accordance with s173(4)(a). Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive.
11. The ground (f) appeal is made in two parts. The first part is made because the appellant considers that the requirement of the notice to remove the bund in its entirety instead of requiring it to be removed to the level of the pre-existing bund is excessive. This part of the ground (f) appeal succeeds, as in order to remedy the breach of planning control that has occurred, it is only necessary to reduce the bund to the size which pre-existed. To level the ground completely would exceed what is necessary to remedy the breach, and consequently go beyond the purpose of the notice. Having sought the views of the parties on this matter, I am satisfied that the requirement of the notice can be varied in this respect without causing injustice to any party.
12. The second part of the ground (f) appeal is made on the basis that the requirement to remove the bund from the area shown in red (the entire motor cycle road racing club site) is excessive, and that a lesser requirement would suffice. The lesser requirement put forward is that the material from the bund would instead be spread over the site shown within the red line. Only limited details have however been provided in this respect and I share the concerns of the Council regarding the absence of any details as to what type of material is contained within the bunds. Whilst the appellant states that it is topsoil and stone, they have provided nothing to demonstrate that this is the case and photographic evidence provided by an interested party suggests that there may actually be other material present within the bund.
13. The uncertainty in this respect means that it is not clear what type of material would be retained on the site if the requirement was amended as requested by the appellant and if or how it could be used. As such, it would not be appropriate to change the requirement in the manner they have requested. The notice is therefore not excessive in its requirement in that regard and this part of the appeal made under ground (f) fails.

### **Ground (g)**

14. The appellant states that they have been advised by a local waste disposal contractor that it is not reasonably possible to remove the bund from the site within eight weeks. Winter weather conditions are likely to affect both the appeal site and the permitted sites required to accept the material to be exported, which are often temporarily closed during the wetter months. It may also be necessary to erect a weighbridge and wheelwash, which may require planning permission in their own right. The contractor advises that six to ten months would be the minimum period to successfully complete the requirements of the notice.
15. The Council considers there to be no reason that the appellant cannot make the necessary arrangements for the material to be removed within the time period specified on the notice. Nevertheless, they do state that they would expect the removal of the material to be capable of being reasonably commenced within two months of an appeal decision upholding the enforcement notice and to be completed within six months.
16. Even considering the matter relating to winter weather conditions, a period of six months is set out by the appellant to be achievable to meet the requirements of the notice. This period would strike a reasonable balance between allowing time for the works to be carried out and removing the harm that has been caused by the breach of planning control that has occurred. The appeal on ground (g) therefore succeeds and I shall vary the notice accordingly.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal should succeed partially on ground (f) and on ground (g) only. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Graham Wraight*

INSPECTOR



## Appeal Decision

Site visit made on 3 October 2023

**by Graham Wraight BA(Hons) MSc MRTPI**

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

**Decision date: 15 December 2023**

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**Appeal Ref: APP/P1045/X/23/3318274**

**Meadow View, The Row, Main Street, Hollington, Derbyshire DE6 3HA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr D Keeling against the decision of Derbyshire Dales District Council.
  - The application ref 22/01159/CLPUD, dated 10 October 2022, was refused by notice dated 2 December 2022.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is new access track and associated hard surfaced parking area.
- 

### Decision

1. The appeal is allowed in respect of the hard surfaced parking area and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful. The appeal is dismissed in respect of the new access track.

### Preliminary Matter

2. The description of development given on the application form refers only to a hard standing, however the decision notice, application statement, appeal form and planning appeal statement all refer to the proposed development as being a new access track and associated hard surfaced parking space. It is therefore evident that the Council and appellant are in agreement that the proposal relates to both the hardstanding and the access. I have therefore used that description in the banner header above.

### Main Issue

3. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. This turns on:
  - Whether the proposed access track would have been lawful due to the provisions of Article 3(1) and Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO) and;
  - Whether the proposed hard surfaced parking area would have been lawful due to the provisions of Article 3(1) and Schedule 2, Part 1, Class F of the GDPO.

## Reasons

### *The proposed access track*

4. Schedule 2, Part 2, Class B of the GDPO permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in the schedule (other than by Class A of part 2). The appellant considers that the development which they propose to undertake is permitted by Schedule 2, Part 2, Class B.
5. However, despite the reference to Class B, the appellant does not set out the specific works proposed to form the access. An access could take many forms, from a highly engineered development to a simple track, yet nothing has been provided other than a plan which shows the route that the access would take, and which refers to it as an access track. On the basis of the information submitted, I do not know what operational development, if any, is proposed. The Planning Practice Guidance states that with respect to a lawful development certificate application the applicant is responsible for providing sufficient information to support an application and that in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
6. Moreover, the Council contends that the proposal represents the material change of use of land. The minimal information provided by the appellant does not provide clarity on this point, but I note that the application form refers to a change of use from agriculture to a use incidental to the enjoyment of the dwellinghouse. Yet Class B is concerned with operational development and does not make any provision for such a change of use. Indeed, Schedule 2 Part 2 is entitled 'Minor Operations'. Whilst the appellant makes reference to Section 55 of The Town and Country Planning Act 1990 (The Act), this clearly separates out operational development from development involving the making of any material change in the use of any buildings or other land. The laying out of a means of access is defined by Section 336 of The Act as being operational development. This reinforces my view that Class B is concerned with operational development rather than changes of use.
7. Taking these considerations as a whole, I conclude that it has not been demonstrated, on the balance of probability, that the development proposed would have been lawful due to the provisions of Schedule 2, Part 2, Class B of the GDPO
8. I have had regard to the previous appeal decision<sup>1</sup> on an unrelated site that was submitted by the appellant with this appeal. However, that decision does not expressly consider whether a change of use of land is permitted under Schedule 2 Part 2, Class B of the GDPO. Accordingly, that decision, and the extracts from the Planning Resource website which also do not expressly address the main issue in this appeal, do not alter my view on this matter. In any event, irrespective of those cases, I do not have details of any operational development that may be permitted by Class B.

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<sup>1</sup> APP/T3725/X/16/3156418



*Other matters raised in the refusal relating to the proposed access track*

9. The appellant's aim in providing the hard surfaced area under Schedule 2, Class 1, Part F of the GDPO is to be able to park a car within the curtilage of their property. There is no other vehicular access provision currently available for them to reach any part of their dwelling and there would be a clear benefit in providing such. The proposed means of access would allow them to reach the proposed hard surfaced area by vehicle. Therefore, in response to the Council's suggestion that the new means of access would not be 'required' in connection with development permitted by a class elsewhere in the GDPO, I am satisfied that it would be required.
10. The reason for refusal states that the development would be the formation of a private way connecting the existing track to the north of The Old Post Office to the proposed hard surfaced parking area. The Council's Statement of Case further notes that this track is not a public footpath. It is uncertain from this wording as to whether or not the Council considers that the existing access to the north of The Old Post Office falls within the definition of a highway for the purpose of Schedule 2, Part 2, Class B and they have not set out a reasoned case in that regard. However, as that matter is not determinative on the outcome of the appeal and as the Council's position is not clear, I have not considered it further.

*Proposed Schedule 2, Part 1, Class F development*

11. The Council considers that what is proposed represents one development consisting of the new access track and the hard surfaced parking area and that this would be a single operation which is not permitted by any part of the GDPO. However, they seem to me to be distinguishable elements of the overall proposal, the claim of lawfulness relates to separate parts of the GDPO and I see no reason not to consider them independently.
12. Although the appellant has not provided details as to what specific surface would be provided to the parking area, the description of it as 'hard surfaced' provides reasonable certainty as to the nature of the operational development proposed. There is nothing before me to suggest that it would represent a change of use of land either, being situated on an area laid out as garden, and that is not a point of dispute offered forward by the Council.
13. Accordingly, the hard surfaced parking area would be permitted development under Schedule 2, Part 1, Class F of the GDPO. The Council's decision not to issue a partial lawful development certificate for that element was not well-founded. I shall therefore issue a lawful development certificate for this element of the proposal.

**Other Matter**

14. The appellant states that the purpose of the development is not solely to provide a hard surface parking area for the dwellinghouse, but to improve the highway safety of the road for their own benefit and other users. This consideration cannot however have any bearing on my assessment of the main issue in this case, and on whether the proposal would be lawful or not.

## **Conclusion**

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed new access track was well-founded and that the appeal should not succeed in that respect. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended in relation to the new access track.
16. As I have set out, the Council's refusal to grant a certificate of lawful use or development for the hard surfaced parking area was not well-founded and the appeal should succeed in that respect. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended in relation to the hard surfaced parking area.

*Graham Wraight*

INSPECTOR



# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 10 October 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have complied with the provisions of Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 on 10 October 2022.

Signed

*Graham Wraight*  
Inspector

Date: 15 December 2023  
Reference: APP/P1045/X/23/3318274

## **First Schedule**

Hard surfaced parking area

## **Second Schedule**

Land at Meadow View, The Row, Main Street, Hollington, Derbyshire DE6 3HA

IMPORTANT NOTES – SEE OVER

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

# Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 December 2023

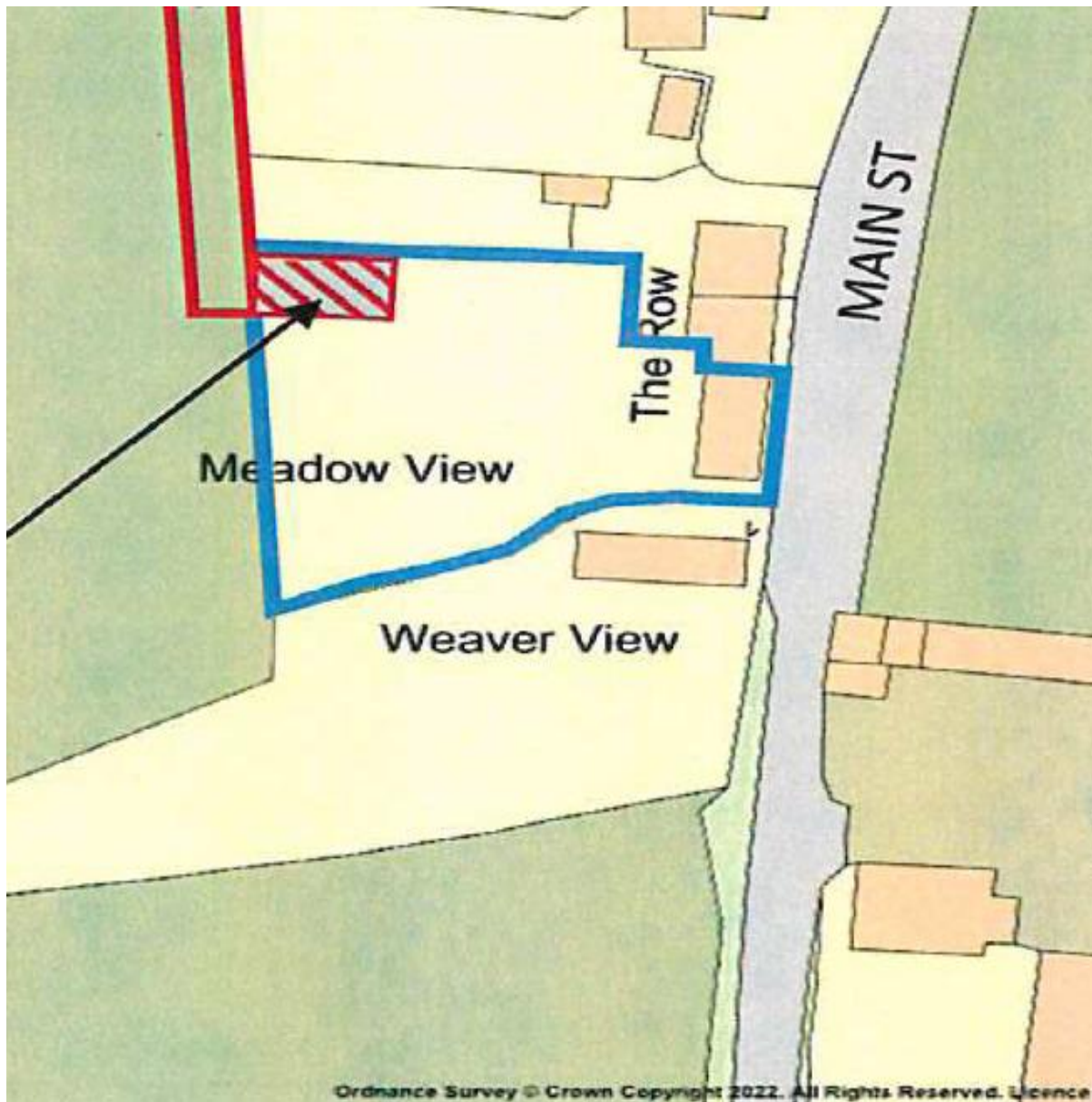
by **Graham Wraight BA(Hons) MSc MRTPI**

**Land at: Meadow View, The Row, Main Street, Hollington, Derbyshire DE6 3HA**

**Reference: APP/P1045/X/23/3318274**

Scale: Not to Scale

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## Appeal Decision

Site visit made on 14 November 2023

**by Elaine Moulton BA (Hons) BPI MRTPI**

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

**Decision date: 14 December 2023**

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### **Appeal Ref: APP/P1045/W/23/3318079**

#### **Tollgate House, Derby Road, Ashbourne DE6 1BE**

- 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 J Cliff against the decision of Derbyshire Dales District Council.
  - The application Ref 22/01390/FUL, dated 19 December 2022, was refused by notice dated 8 February 2023.
  - The development proposed is erection of a single dwelling and improvements to site access.
- 

#### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of a single dwelling and improvements to site access at Tollgate House, Derby Road, Ashbourne DE6 1BE in accordance with the terms of the application, Ref 22/01390/FUL, dated 19 December 2022, subject to the conditions set out in the attached Schedule.

#### **Preliminary Matter**

2. The appeal property has been referred to the Old Tollhouse, the Old Toll House and Tollgate House in various appeal documents. In the interests of consistency and clarity I have referred to the appeal property as Tollgate House throughout my decision letter.

#### **Main Issue**

3. The main issue is whether the development would preserve the setting of the Grade II listed building, Tollgate House.

#### **Reasons**

4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires decision makers, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural interest which it possesses. The National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
5. The statutory list description identifies Tollgate House as a tollhouse on the later part of the Derby Turnpike Road. It is a T shaped, Victorian Tudor building constructed of red brick, and slate roof with bands of fish scale tiles. It is

gabled with fretted bargeboards and finials, Tudor style windows, and a former signboard, now blank, at the upper floor level of a forward projecting gable facing Derby Road.

6. The special interest and significance of the listed building is derived from its evidential and historic value as a surviving remnant of the Turnpike system. It is also derived from the aesthetic value of the surviving Victorian façade which ensures that the strong historical relationship to the road remains intact.
7. As illustrated by the historic maps provided, Tollgate House was originally set on a narrow parcel of land within a rural location. The setting of the listed building has, however, changed over time, through the enlargement of its curtilage in 1969 by the addition of land to the rear. The extensive development that has been carried out within the immediate surroundings has also significantly changed the wider context of the listed building.
8. Whilst the additional land serves to separate the listed building from the new development constructed at the rear, any semblance of the isolation and former rural setting of the listed building has been lost. Considering this, and notwithstanding that the appeal site formed part of the curtilage when the building was listed in 1974, I find that the appeal site does not contribute to the understanding and interpretation of the past use of the heritage asset as a tollhouse. Thus, it makes a neutral contribution to its significance.
9. The proposed single storey dwelling would be positioned partially behind the listed building. At 1.5 storeys and at a lower ground level, its overall height would be lower than the tallest part of Tollgate House. Whilst the proposed dwelling would be seen within views of Tollgate House from Derby Road, its appearance would be softened by the boundary hedge, existing trees and proposed additional tree planting. Such landscaping features and the position of the proposed dwelling, together with its modest scale, simple design and appropriate external facing materials, would ensure that the listed building would remain visually dominant within the plot from Derby Road. Consequently, the proposed dwelling would not compete with the listed building and would not materially affect how it is understood or its historical relationship with Derby Road.
10. The proposed dwelling would face towards Old Derby Road and would be accessed from it using a driveway to the rear of, and away from, the listed building. It would adjoin and be seen as part of the modern estate located close to the rear boundary of the appeal site. In this context the proposed building would not appear as an anomalous or alien addition to the setting of Tollgate House.
11. Overall, I find that the proposed development will not harm the understanding and experience of the listed building. Accordingly, the effect of the development on the setting of Tollgate House, and to its significance would be negligible.
12. In view of the above, I find that the proposal would preserve the setting of Tollgate House, a Grade II listed building. Therefore, the proposal accords with Policies S1, S4, PD1 and PD2 of the Derbyshire Dales Local Plan and Policy AH1 of the Ashbourne Neighbourhood Plan. Such policies, amongst other things, seek to protect the historic environment and ensure that development responds positively to the area's history. In addition, it would satisfy the requirements of

Section 66(1) of the Act and the 'conserving and enhancing the historic environment' section of the Framework.

### **Conditions**

13. The Council and appellant have suggested several conditions which I have considered against the Framework and Planning Practice Guidance. As a result, I have made some minor amendments to wording in the interests of clarity and consistency.
14. In addition to the standard time limit condition, limiting the lifespan of the planning permission, I have also, in the interests of certainty and best practice, attached conditions specifying that the development is carried out in accordance with approved plans.
15. For highway safety reasons, I have imposed a condition relating to construction operations on site, to ensure the provision of suitable space within the site for storage, deliveries and parking.
16. Conditions requiring agreement to the hard and soft landscaping and external materials are necessary to preserve the setting of the listed building. For the same reason, I have also included a condition requiring that the development is carried out in accordance with the Arboricultural Impact Assessment to ensure tree protection measures are implemented.
17. A condition which ensures climate change measures are incorporated into the development is required in line with development plan policy and the government's objective of mitigating and adapting to climate change. Also, in the interests of nature conservation, a condition securing biodiversity enhancement measures is required. For the same reason it is necessary to include a condition to control vegetation clearance during the nesting season.
18. The removal of permitted development rights should only be used in exceptional circumstances. In this instance, however, the justification to protect the setting of the listed building comprises an exceptional circumstance which supports the removal of certain permitted development rights regarding external alterations, extensions and development within the curtilage of the dwelling.

### **Conclusion**

19. For the reasons given above I conclude that the appeal should be allowed.

*Elaine Moulton*

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 not be carried out except in complete accordance with the details shown on the following plans: 3124 – 101A Revision A Site Location Plan; 3124 – 103B Revision B Site Plan As Proposed; 3124 – 104 site sections as existing and proposed; 3124 – 105B Revision B Floor plans and elevations as proposed; 3124 – 107 Visuals of the proposal; and 3124 – 108 Visuals of the proposal in Context.
- 3) Before any other operations are commenced (excluding demolition/site clearance), space shall be laid out and constructed within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, in accordance with detailed designs to be submitted in advance to the local planning authority for written approval, and thereafter maintained throughout the contract period in accordance with the approved designs, free from any impediment to its designated use.
- 4) Notwithstanding the details on the approved plans, prior to the commencement of any building works above foundation level, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority, the details of which shall include:
  - a) all plant species, planting sizes, planting densities, the number of each species to be planted, and plant protection measures;
  - b) grass seed mixes and sowing rates;
  - c) finished site levels and contours;
  - d) gates, walls, fences and other means of enclosure; and
  - e) hard surfacing materials.
- 5) All soft landscaping comprised in the approved landscaping details shall be carried out in the first planting and seeding season following the first occupation of the dwelling or the completion of the development, whichever is sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the first occupation of any part of the development or in accordance with a programme first agreed in writing with the local planning authority.
- 6) Samples of all materials to be used in the construction of the external surfaces of the proposed development shall be submitted to and approved in writing by the local planning authority before the commencement of building works above foundation level. The development shall thereafter be constructed in accordance with the approved materials.



- 7) Prior to the commencement of building works above foundation level, details of measures to mitigate the effects of and adapt to climate change at the site and an associated timetable for delivery of the measures shall be submitted to and approved in writing by the local planning authority. The measures shall thereafter be carried out in accordance with the approved details.
- 8) Prior to the commencement of building works above foundation level, a Biodiversity Enhancement Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall show positions, specifications and the numbers of the features, which shall include (but not limited to) the following:
- 2x integrated universal nest bricks.
  - 1x integrated bat box or 2x tree-mounted bat boxes.
  - 1x bee brick.
  - Fencing gaps 130mm by 130mm to maintain connectivity for hedgehogs.
  - A summary of ecologically beneficial landscaping, including replacement tree planting.

The development shall not be carried out other than in accordance with the approved Biodiversity Enhancement Plan and the approved features shall be maintained throughout the lifetime of the development.

- 9) No vegetation clearance shall take place between 1 March and 31 August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. Nest boxes shall also be removed outside of this period or be checked for use before moving. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken with the exclusion zones whilst nesting birds are present.
- 10) The development hereby permitted shall not be carried out other than in complete accordance with section 5 and section 6 of the submitted Arboricultural Impact Assessment ref JC/307/221207 dated 7 December 2022.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no external alterations or additions shall be made to the dwelling hereby approved and no buildings, extensions, hardstanding, gates, fences or walls (other than those expressly authorised by this permission) shall be erected on the site without an application for planning permission having first been made and approved in writing by the local planning authority.

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## Appeal Decision

Site visit made on 3 October 2023

by **Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

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**Appeal Ref: APP/P1045/C/23/3318697**

**Racecourse Retreat/ Gorse Bank Fields Farm, Hey Lane, Wirksworth, Derbyshire DE4 4AF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr B Britland against an enforcement notice issued by Derbyshire Dales District Council.
  - The notice, numbered ENF/21/00127, was issued on 8 February 2023.
  - The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of a general purpose agricultural building for use as a general workshop/store facility.
  - The requirements of the notice are to: Permanently cease the use of the building (shown in blue on the attached plan) for storage and workshop purposes unconnected with agriculture.
  - The period for compliance with the requirement is: 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the words '*unauthorised change of use*' from Section 3 and their replacement with '*unauthorised material change of use*'.
2. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matter

3. At my site visit it was evident that part of the building subject to the notice is now in residential use. Having sought clarification on this matter from the parties, it is common ground that the residential use had not commenced at the time that the notice was served, even though it would appear that works had begun to facilitate this. Accordingly, it is not necessary to correct the notice to make reference to residential use.

### The Notice

4. I have varied the notice in order to add the word 'material' into the allegation. This is necessary to provide clarity and in order to reflect s55 of the Town and Country Planning Act 1990 (as amended) (The Act), which identifies that the making of a material change in the use of any buildings or other land is development. I am satisfied that no injustice would be caused to any party as a result of this minor change.

## **Reasons**

### *Ground (c)*

5. Appeals under s174(2)(c) of The Act are made on the ground that the matters stated in the notice do not constitute a breach of planning control. In this instance, the appeal on ground (c) is made on the basis that the building was not being used as a general workshop/store facility, other than ancillary to the lawful use of the site. As such, the appellant's contention is that there has been no material change of use and no breach of planning control. The burden of proof in an appeal on ground (c) falls on the appellant and the standard of proof is the balance of probability.
6. The evidence available, including photographs attached to the notice and those in the Council's Statement of Case which are dated 18 January 2022, appear to show the building being used for the storage of non-agricultural equipment such as domestic items and roof tiles. The same submissions also suggest the partial use of the building as a workshop, with a large timber framed structure being under construction.
7. The appellant advises that what was identified by the Council was in part in conjunction with the conversion of the building to residential use and in part ancillary to agricultural use. However, this is disputed by the Council and the burden of proof falls on the appellant. While some items shown on the photographs available might well have been domestic items stored in anticipation of the residential conversion, others such as tools and workshop facilities are also consistent with the allegation in the notice. Moreover, it is difficult to understand, and has not been explained, how the construction of the large timber-framed structure related to the uses the appellant claims. Thus, it has not been shown, on the balance of probability, that the matters stated do not constitute a breach of planning control.
8. Overall, it has not been shown, on the balance of probability, that the matters stated in the notice were ancillary to the lawful use of the building or lawful for any other reason. Consequently, the appeal under ground (c) does not succeed.

### *Ground (f)*

9. Section 173(4) of the Act sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the ceasing of the unauthorised use. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).
10. Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive. The case for this set out by the appellant is that it may be, in due course, that the lawful use of the building will include activity to create a dwelling within the building. They therefore seek an amendment to the requirement to substitute reference to 'agriculture' with the words 'lawful use of the building'.
11. There is nothing before me to suggest that moves have been made to regularise the current residential use or to obtain planning permission for a

residential conversion of the building either in whole or part. There is also no dispute that the lawful use of the building is for agriculture. Even if a lawful residential use were to take place at some point in the future, that does not suggest to me any need to change the requirements relating to workshop and storage uses.

12. Accordingly, the requirement to cease the use for storage and workshop purposes unconnected with agriculture is not excessive and is necessary to remedy the breach of planning control. I have noted the appellant's revised wording, but since I regard the wording in the notice as satisfactory, no change is necessary. As a result, the appeal on ground (f) fails.

*Ground (g)*

13. An extension to the period of time to comply with the requirement of the notice is sought, to allow a period of 6 months instead of 3 months. This is made on the basis that it is not clear how long it will take to secure a new permission for residential use. However, the requirement of the notice itself could be achieved within a period of 3 months, and it is not reasonable to extend the compliance period in anticipation of a future use that may or may not materialise. The appeal on ground (g) therefore fails.

**Conclusion**

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

*Graham Wraight*

INSPECTOR

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## **BACKGROUND PAPERS**

The following documents have been identified in accordance with the provisions of Section 100(d) (5) (a) of the Local Government Act 1972 and are listed for inspection by members of the public.

Background papers used in compiling reports to this Agenda consist of:

- The individual planning application, (including any supplementary information supplied by or on behalf of the applicant) and representations received from persons or bodies consulted upon the application by the Local Planning Authority and from members of the public and interested bodies by the time of preparation of the Agenda.
- The Town and Country Planning Act 1990 (as amended), the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and related Acts, Orders and Regulation and Circulars published by or on behalf of the Secretary of State for the Department for Communities and Local Government.
- The National Planning Policy Framework
- The Planning Practice Guidance

These documents are available for inspection and will remain available for a period of up to 4 years from the date of the meeting, during normal office hours. Requests to see them should be made to our Business Support Unit on 01629 761336 and arrangements will be made to comply with the request as soon as practicable.

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