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For assistance in understanding or reading this document or specific information about this Agenda or on the "Public Participation" initiative please call the Committee Team on 01629 761133 or email [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk)

12 April 2021

To: All Councillors

As a Member or Substitute of the **Planning Committee**, please treat this as your summons to attend a meeting on **Tuesday, 20<sup>th</sup> April 2021 at 6.00pm** via the zoom application.  
(Joining details will be provided separately)

**Under Regulations made under the Coronavirus Act 2020, the meeting will be held virtually. As a member of the public you can view the virtual meeting via the District Council's website at [www.derbyshiredales.gov.uk](http://www.derbyshiredales.gov.uk) or via our YouTube channel.**

Yours sincerely

A handwritten signature in black ink, appearing to read 'James McLaughlin'.

James McLaughlin  
Director of Corporate Services & Customer Services

## **AGENDA**

### **PLEASE NOTE CHANGE TO PUBLIC PARTICIPATION SCHEME AND DEADLINE**

**SITE VISITS: A Presentation with photographs and diagrams will be given in lieu of site visits.**

#### **1. APOLOGIES/SUBSTITUTES**

Please advise the Committee Team on 01629 761133 or e-mail [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk) of any apologies for absence and substitute arrangements.

#### **2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

09 March 2021

#### **3. INTERESTS**

Councillors 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 Councillor, 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

As the Council cannot hold meetings at the Town Hall, Public Participation can only take place using the Zoom application or by written representations. Members of the public are able to comment or ask questions on the items listed in the agenda and must give notice before 12 noon on the day preceding the meeting by:

**Web-form:** [Make your submission here](#)

**Email:** [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk)

**Post:** Democratic Services, Derbyshire Dales District Council, Town Hall, Matlock DE4 3NN

The Committee Team will assist any member of the public without access to electronic means by capturing their concerns over the telephone.

**Phone:** 01629 761133 (working days only 9am – 5pm)

Written representations, received by the deadline will be read out at the meeting, verbal contributors will be given instructions on how to join the meeting after giving notice.

All meeting proceedings open to the public will be streamed live on our YouTube channel when all non-exempt items are being considered. Recordings of the meeting will also be available after the event on the District Council's website.

#### 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.

	<b>Page No.</b>
<b>5.1 APPLICATION NO. 19/01213/VCOND (Presentation)</b>	<b>04 - 13</b>
Variation of Condition 3 of planning permission 16/00374/FUL, to substitute sound mitigation measures set out in the noise impact assessment by Peak Acoustics, dated July 2016, with acoustic fencing at Four Lane Ends Farm, Gibfield Lane, Hulland Ward.	
<b>5.2 APPLICATION NO. 20/01224/FUL (Presentation)</b>	<b>14 - 27</b>
Change of use of barber's premises to hot food takeaway (sui generis) at 34 - 36 Dale Road, Matlock.	
<b>5.3 APPLICATION NO. 20/01165/FUL (Presentation)</b>	<b>28 - 38</b>
Change of use of hairdressing salon with residential accommodation to house in multiple occupation (use Class C4) at 50 Wellington Street, Matlock.	
<b>5.4 APPLICATION NO. 21/00200/VCOND (Presentation)</b>	<b>39 - 47</b>
Variation of Condition 6 of planning application 16/00941/OUT, to allow for modifications works to road junction to be carried out prior to first occupation of dwelling at Land off Pump Close, Starkholmes, Matlock.	

<b>5.5</b>	<b>APPLICATION NO. 20/00530/FUL (Presentation)</b>	<b>48 - 69</b>
	Erection of replacement dwelling and a swimming pool building (modifications previously approved planning permission 15/00718/FUL) at Bent Farm, Farley Hill, Farley.	
<b>5.6</b>	<b>APPLICATION NO. 20/00919/FUL (Presentation)</b>	<b>70 - 86</b>
	Retention of agricultural access track at Land off Old Stone Lane, Matlock.	
<b>5.7</b>	<b>APPLICATION NO. 20/00920/VCOND (Presentation)</b>	<b>87 - 101</b>
	Variation of Condition 14 of planning permission 15/00861/FUL, to allow on site alternative habitat enhancement at Lane South of Bentley Bridge, Chesterfield Road, Matlock.	
<b>5.8</b>	<b>APPLICATION NO. 20/00958/FUL (Presentation)</b>	<b>102 - 110</b>
	Proposed erection of 10no glamping pods and a building comprising of a cafeteria, administration office and cleaning base with associated access, parking and sewage package treatment plants at Land at Broom Lane, Kirk Ireton, Derbyshire..	
<b>5.9</b>	<b>APPLICATION NO. 21/00243/FUL (Presentation)</b>	<b>111 - 118</b>
	Extension of cemetery and associated infrastructure and landscaping work at Land to the North of Steeple Arch Cemetery, Wirksworth.	
<b>6.</b>	<b>INFORMATION ON ACTIVE AND CLOSED ENFORCEMENT INVESTIGATIONS</b>	<b>119 - 128</b>
<b>7.</b>	<b>APPEALS PROGRESS REPORT</b>	<b>129 - 154</b>
	To consider a status report on appeals made to the Planning Inspectorate.	

**Members of the Committee:**

Councillors Jason Atkin (Chairman), Tony Morley (Vice Chairman)

Robert Archer, Sue Bull, Sue Burfoot, Neil Buttle, Tom Donnelly, Graham Elliott, Richard FitzHerbert, Stuart Lees, Garry Purdy and Peter Slack.

**Nominated Substitute Members:**

Jacqueline Allison, Steve Flitter, Helen Froggatt, Chris Furness, Peter O'Brien and Colin Swindell.

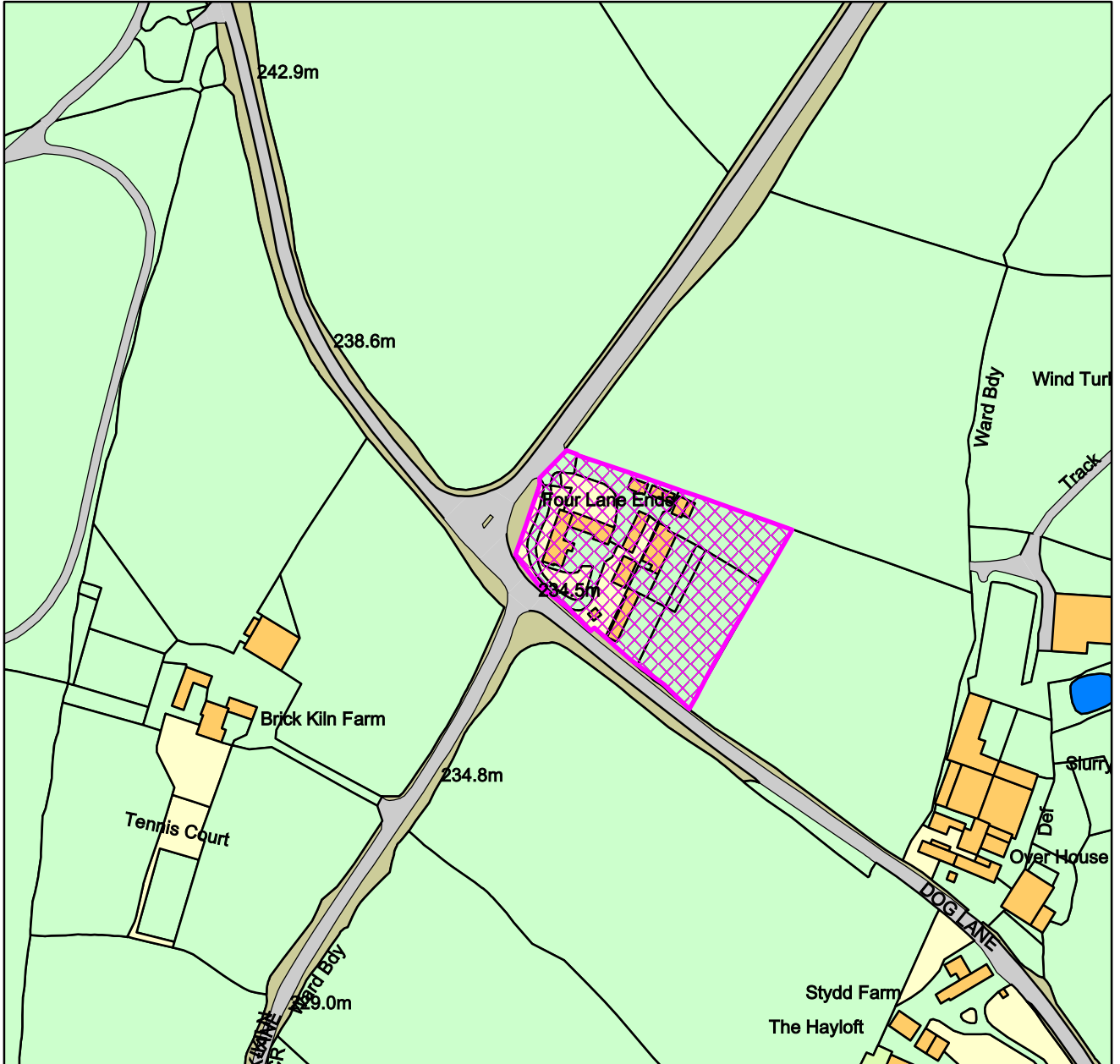
<b>APPLICATION NUMBER</b>		19/01213/VCOND	
<b>SITE ADDRESS:</b>		Four Lane Ends Farm, Gibfield Lane, Hulland Ward	
<b>DESCRIPTION OF DEVELOPMENT</b>		Variation of Condition 3 of planning permission 16/00374/FUL to substitute sound mitigation measures set out in the noise impact assessment by Peak Acoustics dated July 2016 with acoustic fencing	
<b>CASE OFFICER</b>	Mr Chris Whitmore	<b>APPLICANT</b>	Mr Richard Bowler
<b>PARISH/TOWN</b>	Hognaston	<b>AGENT</b>	Mr Brian Reid (B. A. Reid)
<b>WARD MEMBER(S)</b>	Cllr. L. Rose Cllr. Purdy (stand in ward member)	<b>DETERMINATION TARGET</b>	20 <sup>th</sup> December 2019
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Considered sensitive by the Development Manager given the level of interest in the original application and the number of unresolved objections received	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	n/a

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• The planning history of the site and the scope of this application;</li> <li>• Whether the acoustic fence provides suitable attenuation in relation to the replacement kennel building, in lieu of the recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016;</li> <li>• The use of the replacement kennel building to house breeding dogs, and;</li> <li>• The impact of the acoustic fence on the character and appearance of its surroundings.</li> </ul>

<b>RECOMMENDATION</b>
That the application be approved with conditions

19/01213/VCOND

Four Lane Ends Farm, Gibfield Lane, Hulland Ward



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

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Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

# 1. THE SITE AND SURROUNDINGS

1.1 Four Lane Ends Farm lies in open countryside at the junction of Gibfield Lane and Dog Lane, approximately 1km to the north west of Hulland Ward. No longer a working farm, the grouping comprises a large red brick dwellinghouse and a series of buildings associated with a dog breeding business. A dense hedge of native and evergreen species lines the north and south western boundaries and filters views of the site from Dog Lane and Gibfield Lane. Access is from Gibfield Lane. Brick Kiln Farm lies to the south west of the site and Over House Farm, Stydd Farm and The Hayloft are located to the south east. The application relates specifically to land immediately behind a recently constructed kennel building, upon which an acoustic fence has been erected.



(The Existing Dwelling at Four Lane Ends Farm)



(The replacement kennel building pre erection of the acoustic fence)



(The replacement kennel building pre erection of the acoustic fence) Existing fence to the south.



(The acoustic fence – sited behind the replacement kennel building.



(Fence construction - close boarded with a mineral wool insulation core)



## **2. THE APPLICATION**

- 2.1 This application seeks to vary condition 3 of planning permission 16/00374/FUL, which states:

*The sound insulation recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016 in relation to the replacement kennel (to house boarding dogs) and isolation buildings set out in the 1:500 Scale Proposed Block Plan dated 5th October 2016 shall be carried out in full within 3 months of the date of this decision unless otherwise agreed in writing by the Local Planning Authority and retained thereafter in perpetuity. No boarding dogs shall be housed in these buildings until the sound insulation works have been carried out in full.*

The reason for the condition was for the avoidance of doubt and in the interests of safeguarding the amenities of the occupants of nearby residential properties.

- 2.2 It is proposed to substitute the sound mitigation measures set out in the noise impact assessment by Peak Acoustics dated July 2016 with an acoustic fence that has been constructed. The fence sits behind the replacement kennel building and is approximately 17.5m long by 2m high. It comprises a close boarded fence with no gaps and a high density mineral wool (Rockwool Flexi Slab) insulation core.
- 2.3 The Noise Impact Assessment by Peak Acoustics dated July 2016 recommended an improved façade specification with an insulated panel such as 'Europanel S5' or other insulated panels with similar octave band noise reduction properties. Masonry was also suggested to provide the required noise reductions. Additionally, to minimise noise breakout, it was recommended that the kennels should be sealed.
- 2.4 The application documents include a letter from Spire Environmental Consultants Ltd which sets out the specification of the fence and concludes that the installed fencing would provide a suitable acoustic barrier. A further letter dated 4<sup>th</sup> November has been received which states that the fence will provide a minimum attenuation of 10 b(B)(A). Following objections from the Councils Environmental Health Team on lack of information grounds, the Parish Council and the occupant of a nearby dwelling the applicant commissioned a Noise Assessment which was submitted to the Local Planning Authority for consideration and assessment on the 27<sup>th</sup> October 2020.

## **3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK**

- 3.1 Adopted Derbyshire Dales District Council Local Plan (2017)

S4: Development in the Countryside  
PD1: Design and Place Making  
PD5: Landscape Character  
EC1: New and Existing Employment Development  
S9: Rural Parishes Development Strategy  
HC19: Accessibility and Transport  
HC20: Managing Travel Demand

### 3.2 Other:

The National Planning Policy Framework (2019)  
The National Planning Practice Guide

## 4. RELEVANT PLANNING HISTORY

4.1 18/00934/CLEUD - Certificate of Lawful Existing Use - Use of site as a commercial dog breeding business and for dog kennelling – Refused

17/01185/VCOND - Variation of conditions 5 and 6 of application code ref. 16/00374/FUL to enable replacement kennel building to be used to house boarding cats – Granted with Conditions

16/00374/FUL - Use of premises for commercial dog breeding and boarding purposes, replacement kennel and erection of new isolation unit – Granted with Conditions

## 5. CONSULTATIONS

5.1 Hognaston Parish Council:

The Parish Council objects to the application to amend Condition 3 of the planning 16/0374 FUL of 10 May 2017.

They object on the basis that the acoustic fence does not achieve the noise level/reduction specified in the 2016 Peak Acoustic Report which is the basis of Condition 3. This clearly states a larger than 10dB noise reduction plan is need to ensure a satisfactory outcome.

The Report states that a noise level of no more than 35.2 dB at NSR, the Report also states that the existing levels were 54.4dB. Spire Environmental has inspected the fencing and states that the reduction the fencing will achieve is 10dB, this will not achieve the levels required.

5.2 Local Highway Authority commented as follows in respect of application 16/00374/FUL:

The proposal is to replace an existing dog kennel structure and to erect a new, 6 pen kennel; both in association with the existing dog breeding business on site. Based on this information it's unlikely this application will increase the traffic generation associated with the site by any significant level.

Whilst parking spaces are not formally marked out within the site, there are significant hardstanding areas available within the site for parking so it's not envisaged these proposals will result in visitors having to park on the surrounding public highway.

Therefore, the Highway Authority has no objection to the application.

5.3 Environmental Health (Derbyshire Dales District Council):

### Initial comments:

I have reviewed the application and associated documents relating to the acoustic fencing, which was erected to substitute the sound mitigation measures to the replacement dog kennels, which have permission for use for dog boarding.



The noise impact assessment conducted in July 2016 recommended that sound mitigation measures were required to reduce noise from barking dogs at the nearest sensitive receptor. Planning condition 3 required the implementation of the noise consultant's recommendations and that these sound mitigating measure were verified by a competent person.

This variation of condition 3 seeks to substitute the measures set out in the noise impact assessment for the acoustic fencing, which has already been erected prior to approval. The information supplied by the applicant's noise consultant is extremely brief and does not satisfactorily verify the noise reducing ability of the fence, as no noise measurements have been taken. The information from Spire Environmental only assumes that the fence will provide a minimum attenuation of 10dB from the replacement kennels. The consultant has also failed to consider the directionality afforded to the noise reduction, or whether the height of the barrier is sufficient to reduce the noise impact.

After seeing the photographs of the fencing it appears only to run along the rear of the replacement kennel block and has no return around the S/SW elevation. I do not believe that this alone is adequate to reduce noise from barking dogs at the nearest noise sensitive receptor. Unless satisfactorily verified, I still recommend that the noise reduction methods to the kennel block itself, in particular the roof, are carried out. It should also be noted that the kennels were only permitted to house dogs once this work was carried out and verified, and therefore should not currently be in use.

I therefore suggest that a more thorough and detailed verification is submitted in order for this application to be considered. If any noise measurements are taken, the location of measuring should be agreed with Environmental Health beforehand, to ensure that any assessment is in the relevant location in order to verify any noise reduction at the nearest noise sensitive receptor. This is especially pertinent given that there is no return on the S/SW elevation.

I therefore at this stage object to this application based on the lack of information.

Further comments following receipt of the Noise Assessment received 27<sup>th</sup> October 2020 (referenced R20.1493-1-AG):

Verification was sought on the number of dogs housed at the site during the assessment / sound readings as the assessment was made with 35 dogs on site but the permission allows for up to 50 dogs when the additional stud dogs and young dogs not yet ready for breeding are included.

The applicant has then presented evidence comprising registration information for 35 mature dogs and the microchip numbers of the 15 young dogs / puppies that were on site at the time of the sound reading on 15/16th October 2020.

With this verification Environmental Health Officers are satisfied that the findings of the Noise Assessment are acceptable and demonstrate that the acoustic fence is effective in terms of noise attenuation from the nearest noise receptor at Brick Kiln Farm based on 35 mature dogs and 15 puppies. Final comments and agreement to the recommended conditions and any further conditions will be presented as late representations prior to the committee meeting.

## 6. REPRESENTATIONS

- 6.1 Representations have been received from an occupant of Brick Kiln Farm objecting to the application as it doesn't comply with noise assessment as was set out by Peak Acoustics dated 2016. They state that the terms and conditions were not carried out and should be adhered to.

## 7. OFFICER APPRAISAL

### *The planning history of the site and the scope of this application*

- 7.1 It was resolved at the planning committee meeting on the 9<sup>th</sup> May 2017 that planning application code ref. 16/00374/FUL for the use of the site for commercial dog breeding and boarding purposes, replacement kennel and erection of a new isolation unit be granted with conditions. Although an application was made to discharge details reserved by conditions attached to a later application (code ref. 17/01185/VCOND) which sought to utilise the replacement kennel building to house boarding cats, these conditions were not discharged and the applicant has since housed breeding dogs in the building following the erection of the acoustic fence, in lieu of the sound insulation recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016. This application seeks to regularise this situation by varying condition 3 of application code ref. 16/00374/FUL to substitute the original sound insulation recommendations with the acoustic fence that has been constructed and allow the replacement kennel building to continue to be used to house breeding dogs.
- 7.2 The application is made under section 73 of the Planning Act (1990). Any permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. Any permission granted would sit alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted. The principle of the site being used for dog breeding and boarding purposes has already been established through the granting of the original application.
- 7.3 This application seeks to vary condition 3 of application code ref. 16/00374/FUL and consideration therefore needs to be given to the implications of the proposed changes to the condition. Having regard to the nature of the condition and its scope, the main issues for consideration are whether the acoustic fence provides suitable attenuation in relation to the replacement kennel building, in lieu of the recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016, the use of the replacement kennel building to house breeding dogs and the impact of the fence on the character and appearance of its surroundings.

### *Whether the acoustic fence provides suitable attenuation in relation to the replacement kennel building, in lieu of the recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016*

- 7.4 Policy EC1 of the Adopted Derbyshire Dales Local Plan (2017) advises that the District Council will support proposals for new or expansion of existing business or industrial development in appropriate locations provided they are of type and scale of activity that does not harm the character, appearance or environment of the site or its surroundings or to the amenity of occupiers of nearby properties.
- 7.5 Following the concerns raised by the Parish Council, a local resident and the Council's Environmental Health Team the applicant commissioned a Noise Assessment to demonstrate the effectiveness of the acoustic fence that has been erected in terms of noise attenuation. The noise surveys were undertaken during worst case down-wind conditions at

Four Lane Ends Farm and on a grass verge in line with the entrance to the closest sensitive receptor at Brick Kiln Farm. It has also been verified that the number of dogs accommodated on site at the time of the surveys was the maximum allowed by the permission.

- 7.6 During the daytime period, the noise criterion of 41 dB LAeq,16h was exceeded at the Four Lane Ends Farm and Brick Kiln Farm monitoring locations for the entire duration of the survey period. During the night-time period, the noise criterion of 36 dB LAeq,8h was exceeded at the Four Lane Ends Farm and Brick Kiln Farm monitoring locations. The night-time limit of 51 dB L<sub>Amax,f</sub> was exceeded at the Four Lane Ends Farm and Brick Kiln Farm monitoring locations. There was found to be no correlation between the activities at the dog kennels and existing measured noise levels, as the noise levels were dominated by road traffic noise at both receptor locations.
- 7.7 The findings of the Noise Assessment demonstrates that the existing dog kennels can operate without affecting the existing measured noise levels at the closest noise sensitive receptor on Brick Kiln Lane. Although noise levels were exceeded at both the source and receptor site, this was predominantly due to traffic noise, not to dogs. Therefore when dog barking from the 50 dogs housed on site occurred it did not add significantly to the overall noise burden. The assessment recommends that the acoustic barrier behind the replacement dog kennels (at the southern end of the site) should be retained, in order to ensure the noise levels remain within acceptable levels.
- 7.8 At the time of construction of the fence (towards the end of 2019) there was one report of noise from the site. Visits to the site and locality by Environmental Health Officers during this time found no noise nuisance. There have been no reported incidents of noise since. This indicates that the fence has been effective in terms of mitigating noise from the site and the Noise Assessment supports this view. Without any evidence to the contrary the Local Planning Authority is satisfied that the acoustic fences provides suitable attenuation in relation to all dog kennel buildings, in lieu of the recommendations set out in the Noise Impact Assessment by Peak Acoustics dated 20th July 2016 and would not be able to substantiate / defend a reason of refusal at appeal on residential amenity grounds.

#### The use of the replacement kennel building to house breeding dogs

- 7.9 Condition 3 and other conditions attached to planning permission code ref. 16/00374/FUL restrict the use of the replacement kennel building for the housing of boarding dogs. The applicant has confirmed and the Noise Assessment findings are based on the replacement building being used to house breeding dogs. Although the noise emanating from dogs is likely to be the same, such use does not result in a mix of boarding and breeding dogs and the same management complexities and potential disturbance. Such use is also likely to result in a reduction in comings and goings to and from the site.
- 7.10 The use for either boarding or breeding is therefore considered to be acceptable. Any permission granted will need to set out all of the conditions imposed, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. It will be necessary to modify the conditions to enable an either or option and to ensure appropriate controls are in place to protect the residential amenity of the occupants of nearby dwellings going forward. Based on the findings of the noise assessment and verification on dog numbers provided by the applicant at the time of the noise surveys it is considered necessary to condition that the maximum number of mature dogs (excluding puppies) on site shall not exceed 35 no. at any one time, excluding puppies to protect the residential amenity of the occupants of the nearest dwellings. The applicant has agreed to this restriction, which ties in with their existing license issued 20<sup>th</sup> September 2020 for 30 no. breeding bitches and 4 no. stud dogs.

### The impact of the fence on the character and appearance of its surroundings

- 7.11 Being 2m in height the acoustic fence does not in itself constitute development requiring planning permission. Its general appearance and siting, adjacent existing buildings and site boundary treatments are such that it does not result in harm to the existing dwelling or the character, identity and context of this part of the countryside.

### Summary

- 7.12 In summary it is considered that the acoustic fencing does provide appropriate noise attenuation in relation to noise emanating from dogs being kennelled at the site and results in no harm to the character and appearance of its surroundings. Subject to controls remaining in place relating to the use of the buildings, dog numbers, its management and retention of the acoustic fence during the operation of the site for the kennelling of dogs, it is recommended that the application be approved.

### **OFFICER RECOMMENDATION:**

That the application made under S73 be approved subject to the following conditions:

1. The acoustic fencing hereby approved shall be maintained as constructed in terms of its position, height, length and construction throughout the lifetime of the development / use of premises for commercial dog breeding and boarding purposes.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

2. The 15 number replacement kennels set out in the 1:500 Scale Proposed Block Plan dated 5<sup>th</sup> October 2016 shall be used exclusively to house breeding or boarding dogs. They shall not be used to house a mix of both boarding and breeding dogs.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

3. Excluding puppies, the maximum number of dogs on site shall not exceed 35 no. at any one time.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

4. The 6 number isolation units are to be used for the strict purpose of the isolation of sick dogs only and must not be used for the full time occupation of any dog at any time, in order to prevent and control the spread of disease among the dogs. On site records shall clearly document periods of use and associated reasoning plus follow-up actions. The said records shall be readily available to inspecting officers on request.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

5. The dog breeding and boarding business hereby approved shall operate throughout the lifetime of the development in strict accordance with the Noise Management Plan received by the District Council on the 13<sup>th</sup> February 2017 unless otherwise agreed in writing by the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

6. Customers shall not drop off or pick up dogs from the kennels before 8am or after 6pm.

Reason:

For the avoidance of doubt and in the interests of safeguarding the amenity of the occupants of nearby residential properties in accordance with the aims of Policies S4 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2019).

Footnotes:

1. 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 to address the concerns raised by Environmental Health Officers, a local resident and the Parish Council.

This Decision Notice relates to the following documents:

Application form for the removal or variation of a condition following the grant of planning permission, and;

The Letter from Spire Environmental Consultants Ltd dated 23<sup>rd</sup> October 2019 received by the Local Planning Authority on the 25<sup>th</sup> October 2019;

The Letter from Spire Environmental Consultants Ltd dated 4<sup>th</sup> November 2019;

The Noise Impact Assessment by Spire Environmental Consultants Ltd numbered R21.1493-1-AG received by the District Council on the 27<sup>th</sup> October 2020, and;

The evidence / confirmation received from the applicant relating to the number of dogs accommodated on site during the noise surveys received on 8<sup>th</sup> April 2021.

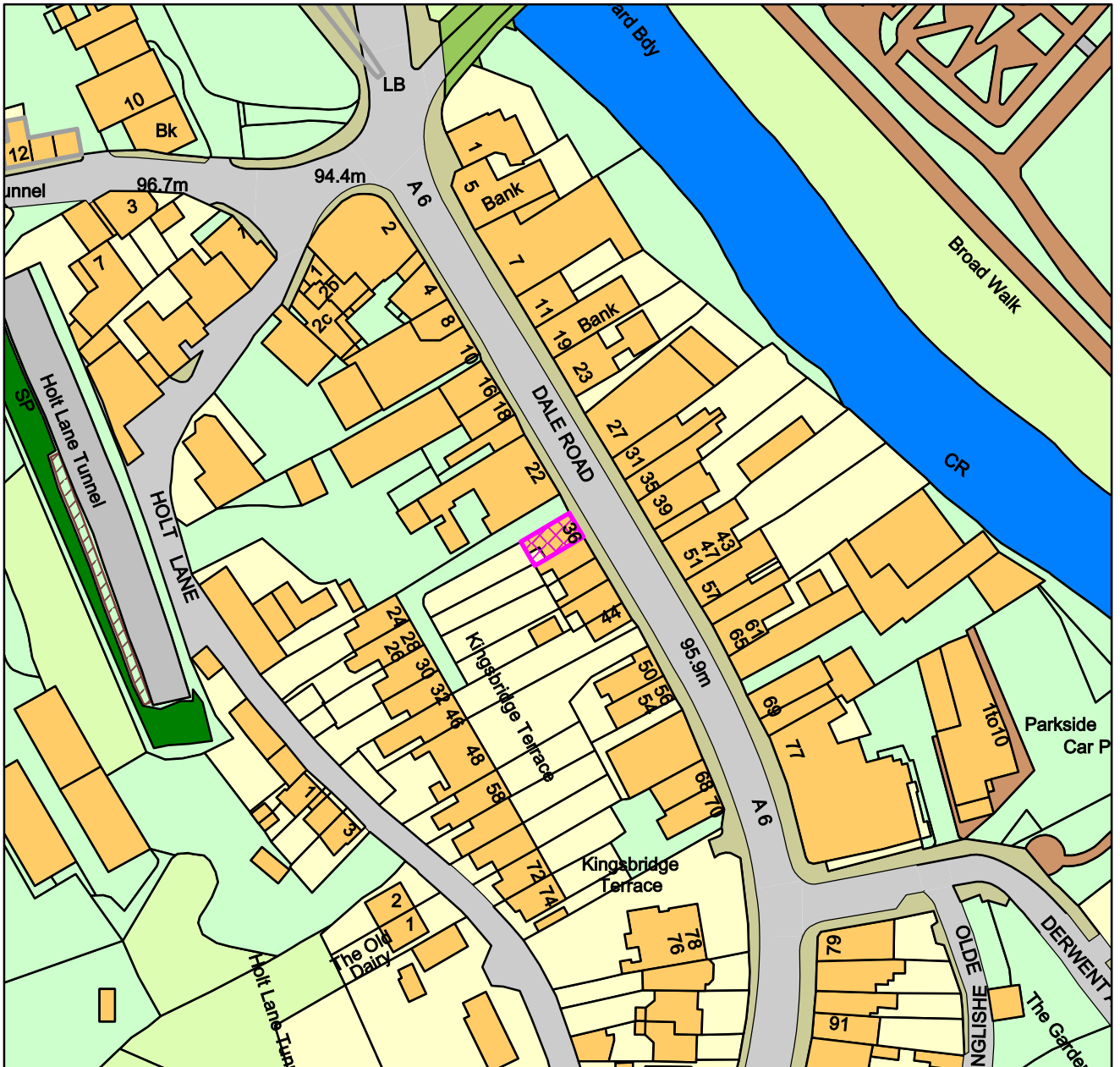
<b>APPLICATION NUMBER</b>		20/01224/FUL	
<b>SITE ADDRESS:</b>		34 - 36 Dale Road, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Change of use of barber's premises to hot food takeaway (sui generis)	
<b>CASE OFFICER</b>	Mr. G. A. Griffiths	<b>APPLICANT</b>	Mr M Akkurt
<b>PARISH</b>	Matlock Town	<b>AGENT</b>	Roger Yarwood Planning Consultant Ltd
<b>WARD MEMBERS</b>	Cllr. M. Burfoot Cllr. S. Burfoot Cllr. S. Wain	<b>DETERMINATION TARGET</b>	27 <sup>th</sup> January 2021
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Requested by Ward Members	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• Principle of the development</li> <li>• Impact on the character and appearance of the Conservation Area</li> <li>• Concentration of evening economy uses</li> <li>• Impact on neighbours' amenity</li> <li>• Impact on highway safety</li> <li>• Climate change</li> <li>• Other matters – Public consultation</li> </ul>

<b>RECOMMENDATION</b>
Refusal

20/01224/FUL

34 - 36 Dale Road, Matlock



Derbyshire Dales DC

1:1,250

Date: 08/04/2021

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Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

# 1. THE SITE AND SURROUNDINGS

1.1 The property is single-storey with a flat roof on the western side of Dale Road. It dates, as does the short row of similar shops, from the late 19<sup>th</sup> century. The premises was last used as a barbers shop. To the rear of the property are the residential properties of Kingsbridge Terrace, with their private gardens extending up to the rear of the property. The property is within the Matlock Bridge Conservation Area and is also covered by the Matlock Bridge Article 4 Direction which restricts alterations to the external appearance of the building without first obtaining planning permission.





## DETAILS OF THE APPLICATION

- 2.1 Full planning permission is sought for a change of use of the premises from a barber's shop, which is closed, to a hot food takeaway. The applicant advises that this is for the purpose of selling fried chicken. At the request of Officers, the applicant has submitted the following information with regard to extraction:

### Proposals for Odour Control:

- It is proposed to use Purified Air UVO system together with ESP 3000 Electrostatic Precipitator in order to eliminate the odour completely.
- The discharge stack will discharge the extracted air not less than 1 m above the roof.
- No chinaman's hats or other cowls will be used.
- High level odour control to be achieved by using fine filtration followed by carbon filtration.
- Maintenance as detailed below will be carried out to ensure good performance level is always achieved.

### Proposals for noise control:

- The system will be designed to avoid statutory nuisance and will comply with the principles of Best Practicable Means.
- The noise control system will include the control of noise at source to the greatest extent possible.
- In this respect, the fan is to be located inside of the building.
- The size of the ductwork will be designed to avoid high air velocities through the ductwork.
- The type and capacity of the fan to be designed to give minimum noise and anti-vibration mountings to be used for fixing.

### Minimum ventilation rates will achieve: -

- An internal ambient air temperature of 28°C maximum.
- Maximum humidity levels not to be more than 70%.
- Dedicated make up air system approximately 85% of the extract flow rate.
- Minimum air change rate to be 40 volume/ per hour.
- Canopy Velocity - 0.35 m/s (applies to deep fat fryers, solid and open top ranges and griddles).

### Specification for ductwork:

- Ducting will be straight and short as possible and extended to at least one metre above the roof of the property.
- Will be fitted with anti-vibration mountings to minimise the vibration caused by air passing through.
- Will be Low Pressure Class 'A' and constructed in accordance with HVCA Specification DW/144[1] with a minimum thickness of 0.8mm. –
- Duct velocity will be as 6-9m/sec –
- All internal surfaces of the ductwork will be accessible for cleaning and inspection.
- Access panels will be grease tight using a heat proof gasket or sealant. –
- Duct work will not pass through fire barriers.

### Specification for fans: -

- Fans will be capable of dealing with the operating static pressure within the duct work and will be designed with a minimum 10% pressure margin.
- Backward curved centrifugal, mixed flow or axial flow impellers will be utilised as they are less prone to imbalance and are more easily maintained/cleaned due to their open construction.
- Fixed or adjustable metal impellers with a robust and open construction will be used.

- Fan motors will be rated to IP55 and the motor will not be mounted outside of the air stream.

#### Maintenance

- The proposed 6 Monthly cleaning period for extract ductwork is to be based on “Moderate Use” - 6-12 Hours Per Day.
- Change of fine filters every two weeks.
- Change carbon filters every 4 to 6 months.

2.2 The applicant advises that, whilst there is a small outside area to the rear of the premises, that waste storage will be inside the building, to avoid attracting vermin, and disposal would be via a weekly collection by a licensed contractor.

### 3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK

3.1 Adopted Derbyshire Dales Local Plan (2017)

- S1 Sustainable Development Principles
- S3 Development within Defined Settlement Boundaries
- PD1 Design and Place Making
- PD2 Protecting the Historic Environment
- PD7 Climate Change
- PD9 Pollution Control and Unstable Land
- HC21 Car Parking Standards
- EC1 New Employment Development
- EC6 Town and Local Centres
- EC7 Primary Shopping Frontages

3.2 Matlock Bridge Conservation Area Appraisal

3.3. National Planning Policy Framework

3.4 National Planning Practice Guidance

### 4. RELEVANT PLANNING HISTORY

4.1 None.

### 5. CONSULTATION RESPONSES

#### Town Council

5.1 - no comments received.

#### Environmental Health (Derbyshire Dales District Council)

5.2 - recommend that further details of the extraction system are submitted, such as drawings showing the siting and scale of the external flue and specification from the manufacturer, in order to fully determine the potential for adverse impact on the locality in food safety terms, if the business does not have anywhere reasonable to store waste. i.e. no outside bin store area, this would likely result in the keeping of waste within the premises until the collection date, unless the food business operator (FBO) could demonstrate other appropriate means of storing or removing the waste were adequate to the satisfaction of the competent authority being DDDC

- as most refuse collectors operate on a weekly basis, this could result in decomposing waste held internally which would represent a significant health hazard and would be an attractant to pests

- EC Regulation 852/2004, Chapter 6 Food Waste requires the FBO to remove food waste as quickly as possible where food is stored so as to avoid their accumulation and to ensure adequate provision for the storage and disposal of food waste, non-edible by-products and other refuse.
- the most widely used food safety management system in England, published by the Food Standards Agency, the Safer Food Better Business Pack, requires FBO's to remove waste daily to an outside storage area which is appropriate, kept clean and is operated in such a way as to deter pests
- unless the FBO can satisfactorily demonstrate suitable provision for the storage and timely removal of waste from the premises, would not support application.

#### Local Highway Authority (Derbyshire County Council)

- 5.3 - no objections in view of town centre location, on street parking restrictions and availability of public car parking.

#### Design and Conservation Officer (Derbyshire Dales)

- 5.4 - Design and Access Statement states that "*no alterations to the exterior of the building are proposed save for replacement of the signage which will be subject to a separate application*" - on the basis of no proposed external alterations, the existing character and appearance of the shop unit will be retained and, therefore, there will be no harm to the Conservation Area.

#### Councillor M. Burfoot

- 5.5 - first issue is with the Council's apparently inconsistent circulation of notification to the relevant affected neighbours, particularly Kingsbridge Terrace to the rear, but including the businesses opposite, though these are now closed due to Covid. Restriction - trust this matter will be reviewed and a decision made about extending the consultation, which is particularly relevant considering the length of time the Council has been closed over Christmas and New Year
- very concerned about the anticipated impact of this 'Change of Use' application, though the submitted plans do not, in my view, constitute acceptable details of the proposed new use, i.e. no internal layout of the building; no indication of ventilation or air extraction equipment and it's siting; and no provision for storage of waste bins within the curtilage if the application site
  - the Barber's business was unlikely to cause any problem in terms of noise, smell or the quantity of waste produced, but a 'fried chicken' takeaway restaurant would inevitably create all of these external impacts on the streetscene, on neighbouring businesses, and in particular on the everyday lives of local residents, in particular those of Kingsbridge Terrace, whose front gardens are immediately to the rear of the subject premises
  - therefore bins, with the obvious risk of vermin and fly infestation, would be situated close to one of the main shared access paths to and from the residential properties, within the most concentrated area of residential property in Dale Road.
  - the already congested location of the premises, close to a pedestrian crossing on the A6 road, will provoke continual unsafe and obstructing roadside parking, including the tendency for customers at nearby establishments to park partly on the relatively narrow footway
  - believe this proposal and its location are totally inappropriate for a hot food takeaway business and if officers are minded to approve this application, would like it to be referred to the Planning Committee.

#### Councillor Mrs. S. Burfoot

- 5.6 - comments to the Local Highway Authority copied to the Local Planning Authority
- Dale Road, even during COVID-19 restrictions, is a very busy road and already has a large number of fast food outlets on it.

- my local knowledge, and that of local residents who frequently contact me, tells me that vehicles often pull up outside these fast food outlets to pick up their takeaways and they are often seen to be running their engines parked on the narrow pavements waiting to collect their takeaways
- this new fried chicken takeaway, if approved, is very near to a pedestrian crossing
- yet another fast food outlet will surely make this situation worse
- present use of the building as a barbers does not involve such action by motorists as they are forced to use the car parks when visiting the barbers
- we are all aware that there are ample car parks within walking distance of this building but, takeaway customers regularly run the risk of parking outside these outlets risking a penalty
- cannot change the actions of irresponsible motorists who choose not to use the car parks and walk but we should not be making the situation worse
- feel that DCC, as Highway Authority, should not be seen to be adding to this problem by raising no objection to this proposed planning application in terms of highway safety and safety to pedestrians who have to manoeuvre round these inconsiderate motorists who park on the footway to collect their takeaway
- have expressed my view in terms of the issue of highway safety and as a member of the planning committee will look at all the evidence put before me before coming to a decision.

Councillor S. Wain

- 5.7
- concerns regarding this application and how it has not been effectively publicised to the nearby community
  - raised similar concerns on an application for a wine bar across the road at the back end of 2019
  - have received complaints from residents and businesses that they have not been consulted in relation to this matter and I feel that they should be.
  - realise that a notice has been fixed to a lamp post nearby, but in these restrictive times who is likely to read a notice on a narrow pavement whilst avoiding passers-by?
  - during lockdown who is likely to be out of the house, walking a busy street?
  - do not consider that this consultation will provide a fair reflection of residents' concerns regarding this matter and hence, as of 1<sup>st</sup> January, there were no representations visible on the portal
  - please advise me what parameters you took when deciding the area of consultation?
  - current Vegas Barbers is located near to other fast food outlets, which having local knowledge, does result in antisocial behaviour in the locality, outside these Covid restricted times
  - have received many reports of urination, defecation and vomiting in the alleyways nearby, some of which lead to private dwellings
  - noise from such alleyways from drunken people consuming food is also a regular antisocial issue
  - consider that a further introduction of similar outlets will only exacerbate the situation
  - dwellings to the rear of the property are likely to be impacted by food smells and possibly additional noise emanating from the property
  - the application looks scant and cannot see any consideration regarding ventilation, noise reduction or waste food management systems - without effective systems in place, there is likely to be an increase in vermin
  - type of business proposed differs greatly from that already in operation and is likely to have the potential to provide a greater degree of negative impact on the community
  - surprised that DCC Highways have submitted such a brief response - it is common practice for vehicles to pull up and wait outside fast food outlets whilst food is collected
  - these drivers will have to compete for space with the fast food delivery vehicles, often parked illegally on yellow lines and causing an obstruction of the pavement
  - property is located within the confines of a pedestrian crossing and unsure whether this has been fully considered by DCC - was this a desk top assessment or was there a site visit?

- there are traffic regulations all the way up Dale Road and believe a good number of customers will park illegally, rather than pay for parking a hundred metres away - this will once again exacerbate an already serious problem, affecting road and pedestrian safety
- optimum time for concern regarding road safety is from 1800hrs to 2100hrs
- with regard to antisocial behaviour, will take this matter up with the Police, although any mitigation strategies would be welcomed by the local community and businesses, who regularly have to clean human waste up from their doorways and curtilages.

## 6. REPRESENTATIONS RECEIVED

6.1 A total of four representations have been received. A summary of the representations is outlined below:

### Sustainability

- are numerous places already and in particular Pizza Connection which is next door to Vegas Barbers and already sells fried chicken and burgers as well as pizza.
- will it be a sustainable business with a number of similar takeaways (4 ?) on Dale Road

### Impact on Amenity

- dwellings to the rear of the property are likely to be impacted by food smells and possibly additional noise emanating from the property
- application looks scant and cannot see any consideration of any such ventilation, noise reduction or waste food management systems
- without effective systems in place, there is likely to be an increase in vermin
- no mention of opening hours, frying odours, pollution exhaust, extraction and waste storage
- no mention of fat disposal and filters through main drains, which are frequently blocked
- have to put up with a huge litter problem mainly pizza boxes, polystyrene burger boxes which we regularly clear off our property
- when bars and restaurants and takeaways are open, it has become an area for late night revellers to gather, especially when waiting for food at Pizza Connection
- noise from such alleyways from drunken people consuming food is also a regular issue
- query the positioning of the external extract ductwork which apparently would need to extend at least one meter above the roof - doesn't state where it would exit the premises and concerned that if the pipe comes out of the side wall it would obstruct the narrow access driveway which is already a tight fit for most vehicles - this is a private driveway owned by the four houses on the end of the terrace including my own
- applicants caused us real problems when they converted the previous business (a delicatessen) to the barbers - they used our driveway as a dumping ground /building site without even the courtesy of asking permission or even giving us prior warning that this is what they were going to do
- most alarming of all was finding one morning our driveway was completely blocked by a large skip which remained there for more than a week - this is why we oppose any further conversion projects by the applicants.

### Antisocial Behaviour

- the main entrance to house and the other three at this end of the terrace is a private driveway which runs directly up the side of Vegas Barbers
- current Vegas Barbers is located near to many other fast food outlets, which having local knowledge, results in antisocial behaviour in the locality
- have received many reports of urination, defecation and vomiting in the alleyways nearby, some of which lead to private dwellings
- driveway is regularly used by people who urinate, defecate, have sex or pass out drunk
- have called an ambulance more than once having found people drunk and unconscious in drive

- another takeaway shop, directly by our drive, can only make the problem worse
- will continue to take anti-social behaviour up with the Police, although any mitigation strategies would be welcomed by the local community and businesses, who regularly have to clean human waste up from their doorways and curtilages.

### Highway Matters

- where do the delivery vehicles park as there are traffic lights and zigzag lines outside?
- surprised that DCC Highways have submitted such a brief response
- issues of parking, illegal or otherwise needs to be acknowledged and DCC should be reconsulted
- common practice for vehicles to pull up and wait outside fast food outlets whilst food is collected
- drivers have to compete for space with the fast food delivery vehicles parked illegally on yellow lines and often on the pavement
- property is located within the confines of a pedestrian crossing and unsure whether this has been fully considered by DCC
- there are traffic regulations all the way up Dale Road and believe a good number of customers will park illegally, rather than use the paid parking a hundred metres away
- another takeaway will exacerbate the existing problem of cars parked on the pavement in Dale Road, some of them pizza delivery staff and others customers waiting for food
- sometimes pedestrians have no option but to walk in the road.

### Public Consultation

- have concerns once again how the application has been publicised (not) to the nearby community
- see from the notice that only four properties have been consulted and they appear to be mainly commercial operations, which will be closed at the optimum time of impact of this property
- raised similar concerns on an application for a wine bar across the road at the back end of 2019
- realise that a notice has been fixed to a lamppost nearby but, in these restrictive times, who is likely to read a notice on a narrow pavement whilst avoiding passers-by?
- during lockdown who is likely to be out of the house, walking a busy street
- do not consider that this consultation will provide a fair reflection of residents' concerns regarding this matter
- please advise what parameters were taken when deciding the area of consultation?

## **7. OFFICER APPRAISAL**

### Planning Principle

7.1 Policy S1 of the Adopted Local Plan (2017) is the overarching policy consideration for any development proposal within the Plan Area. The policy states that all development should make a positive contribution towards the achievement of sustainable development. Specific parameters of the policy that need consideration with regard to this planning application are conserving the character and appearance of the area and seek a high standard of design, supporting the local economy and business, seeking to ensure that developments provide a high standard of amenity and that there is a safe, attractive and healthy living environment and risks from pollution are mitigated and take account of climate change. To this end, this policy also refers to specific policies in the Local Plan which need to be considered and which are set out below.

7.2 The site is within the town centre of Matlock and within the settlement boundary of the town. Policy S3 advises that planning permission will be granted where the development is compatible with the character, appearance and amenity of the part of the settlement in which it is located and has access and parking provision appropriate to its use. Policy PD1 seeks

to ensure that new development creates well designed and socially integrated, high quality successful places, where people enjoy living and working and which should respond to climate change. The policy requires that development contributes positively to an areas character, history and identity and that does not cause unacceptable effects by reason of visual intrusion and other adverse impacts on local character and amenity. With regard to climate change, policy PD7 advises that the District Council will promote a development strategy that seeks to mitigate global warming, adapts to climate change and respects environmental limits which includes requiring development to be designed to contribute towards achieving national targets to reduce greenhouse gas emissions.

- 7.3 The site is within the Matlock Bridge Conservation Area and regard needs to be given to the impact of the change of use on the character and appearance of the Conservation Area. The applicant advised that there were to be no external alterations to the building with the originally submitted planning application documents, but then clarified that a flue would be required for the purposes of extraction and details were submitted but no detailed drawings of the proposal. Therefore, the external alterations need to be considered having regard to policy PD2 of the Adopted Local Plan (2017) and Paragraph 196 of the NPPF (2019).
- 7.4 Policy EC1 also encourages proposals for new business development in sustainable locations that contribute to the creation of employment. The site is within an area defined as forming part of the town centre for Matlock. Policy EC6 advises that the District Council will seek to maintain, and where possible, enhance the vitality and viability of town centres by allowing appropriate retail, leisure and other commercial development in centres, of a scale and type appropriate to the role and function of that centre. This is aimed at strengthening the vitality and viability of town centres and providing consumer choice. The policy also advises that developments should create safe, attractive and accessible town centres which provide a range of shopping, food and drink uses, services, etc. However, where proposals may lead to a concentration of evening economy uses, that would give rise to social and environmental issues, the policy advises that these will not be supported.
- 7.5 There is specific protection of retail units from changes of use that may have an impact on the viability of the town centre under policy EC7 of the Adopted Local Plan (2017). However, the premises the subject of this planning application is in an area of the town which is not encompassed by the primary shopping frontage protection contained in policy EC7; this covers Crown Square, the Causeway and Firs Parade areas of Matlock. In such a context, whilst a 'shop' is proposed to be lost (albeit its last uses was as a service provider as a barbers shop), the takeaway is considered an appropriate use in this town centre location, in principle.
- 7.6 Given that the proposed use as a takeaway could have impacts on neighbouring residents, particularly given that the proposal is for a fried chicken outlet which may generate pollutants, regard needs to be given to policy PD9 of the Adopted Local Plan (2017) with regard to pollution control. This advises that the District Council will seek to protect against polluted environments, by only permitting developments that have the potential for adverse effects if those impacts are mitigated to an acceptable level. In the context of this application, this would relate to air pollution (odours and particulate emissions) and noise nuisance and other nuisance, health and safety.
- 7.7 The proposals are assessed against each of these policies below.

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

- 7.8 The only detailed physical, external alteration to the building is to provide an extract flue on the flat roofed element of the building. However, the applicant, whilst being requested by officers, has provided no visual details of the appearance of the extraction system, flue etc. other than to advise it will be 'not less' than one metre in height and have no cover/cowl. As flues for hot food takeaways can be quite large, it is considered that these details should

have been submitted at the outset with the application and the applicant is asking the Local Planning Authority to consider the application without detailing how the proposals may impact on the character and appearance of the building and the Conservation Area.

- 7.9 Members are advised that planning permission was granted in 2017 (ref: 17/00969/FUL) to change a shop to a café/bar at 68 Dale Road and a condition was attached with regard to a flue. It was noted that that flue would be largely screened by it being recessed from the building frontage, although it was considered that this would be visible to some extent in the public domain.
- 7.10 However, given that the permission was for a bar/café, it was not expected that the flue would need to be of a significant size and could be coloured black, or another dark colour, to reduce its visibility and to give it an appearance reflective of metal goods, such as rainwater goods, wastepipes, etc. which are observed throughout the Conservation Area. This was provided without significant impact on the character and appearance of the area.
- 7.11 However, with this current application, the proposal is for a fried food takeaway which can introduce significantly larger extraction systems and flues and its diameter, height and positioning are not clarified by the applicant despite the request of officers. To this end, it is considered that these details should have formed part of the application at the outset and, without an appreciation of such, it is difficult to assess the potential harm this may have on the character and appearance of the building and, therein, the Conservation Area.

#### Concentration of Evening Economy Uses

- 7.12 Dale Road has a number of businesses that operate throughout the day, and some specifically in the evening. There are several bars, restaurants and takeaway facilities in this part of the town centre and it is an area of the town centre where there is a greater grouping of such uses. However, the area contains a number of shops and maintains a retail offer, despite some premises currently being vacant.
- 7.13 Having regard to policy EC6, an assessment has to be made as to whether the proposed use would lead to harm to the manner in which the use as a takeaway would, with other establishments, lead to a cumulative harm to the character and vitality of the area. It is the view of officers that the addition of a further takeaway would not lead to such harm that could be quantified as a reason for refusal of planning permission on this basis. It will reuse a vacant shop, in an area where there other vacant buildings. However, there is a potential for nuisance and harm to amenity that can be associated with the operation premises as a takeaway; this is considered and assessed below.

#### Impact on Neighbours' Amenity

- 7.14 Such uses have the potential to impact on the amenity of neighbouring residents moreso than a shop. However, this does not mean that the impacts are such that would justify refusal of planning permission. Whilst the appearance of the extract system is unknown, the applicant has submitted details of how the system operates. Nevertheless, the District Council's Environmental Health Section, having considered the information submitted, has recommend that further details of the extraction system are submitted, such as drawings showing the siting and scale of the external flue, and specification from the manufacturer, in order to fully determine the potential for adverse impact on the locality.
- 7.15 Concerns have been raised with regard to waste storage. The applicant has advised that waste will be stored within the building. The District Council's Environmental Health (Commercial Team) has been consulted on this and has raised significant concern if the business does not have anywhere reasonable to store waste. i.e. no outside bin store area. This would likely result in the keeping of waste within the premises until the collection date, unless the food business operator (FBO) could demonstrate other appropriate means of storing or removing the waste were adequate to the satisfaction of the competent authority,



being the District Council. As most refuse collectors operate on a weekly basis, this could result in decomposing waste being held internally, which would represent a significant health hazard and would be an attractant to pests.

- 7.16 It is advised that EC Regulation 852/2004, Chapter 6 Food Waste requires the FBO to remove food waste as quickly as possible where food is stored, so as to avoid their accumulation and to ensure adequate provision for the storage and disposal of food waste, non-edible by-products and other refuse. The most widely used food safety management system in England, published by the Food Standards Agency, the Safer Food Better Business Pack, requires FBO's to remove waste daily to an outside storage area which is appropriate, kept clean and is operated in such a way as to deter pests. As such, unless the FBO can satisfactorily demonstrate suitable provision for the storage and timely removal of waste from the premises, the District Council, in its role as competent authority in such matters, would not support application

#### Impact on Highway Safety

- 7.17 Concern has been raised that vehicles will park on the highway where this is subject to the restrictions of a pedestrian crossing. However, this should not occur by law and is a road traffic offence which requires enforcement. The possibility of delivery drivers breaching such restrictions is one of enforcement. If the premises were a shop, there is also a chance that deliveries will be by such unlawful parking. There is a possibility that, with late night trading rather than trading in the day, that the premises being used as a takeaway could result in people parking outside the premises. Again, this is a matter for enforcement of parking regulations which apply along Dale Road, other than where there are limited stay parking facilities. In this respect, the Local Highway Authority has raised no objections to the proposal in view of town centre location, on street parking restrictions and availability of public car parking and officers consider that this is not a matter for consideration in the planning application, as it is addressed by other legislation and would equally apply to any use in Dale Road.

#### Climate Change

- 7.18 The applicant has failed to seek to address policy PD10 of the Local Plan (2017) with regard to mitigating against climate change. However, this is an existing building in a sustainable town centre location and the reuse of the building is sustainable in its own right. Positive improvements could be the addition of solar panels. However, this raises some concern with regard to the impact that such would have on the character and appearance of the building. It is also considered that the site is such that it offers little opportunity for other technologies and rainwater capture that may assist with offsetting the carbon footprint of the premises. The nature of the proposed use is likely to generate heat within the building. As such, it is considered that the reuse of the building is generally compliant with the Policy.

#### Other Matters – Public Consultation

- 7.19 Concern was raised with regard to the public consultation process which it is considered, whilst not strictly a planning consideration, should nevertheless be clarified to members. It was noted on the case officers' visit that the gardens to properties on Knightsbridge Terrace immediately abut the application property; this was not clearly apparent from the information submitted at the time the application was validated and the dwellinghouses themselves were set more than 20m from the application site and the properties were not picked up for consultation. Nevertheless, further to the officer's visit and concern raised by local residents and local Members, the properties that had not been consulted, and that were within a 20m radius of the application site, were also sent formal consultation letters on 4<sup>th</sup> January 2021. A further consultation was undertaken on the additional information submitted by the applicant after it was clarified that no drawn details of the alterations proposed to the building were to be submitted.

## Conclusion

- 7.20 It is the view of officers that the principle of the change of use of the premises is acceptable. The Local Highway Authority has raised no objection to the proposal from the perspective of highway safety and have noted the parking restrictions in place. It is noted that there are concerns with regard to anti-social behaviour and that this is currently taking place; it is considered that such behaviour is unlikely to be exacerbated or attributable to this premises being open as a takeaway when there are other such establishments in the immediate area. Details of the extraction system are unclear but such a facility could be provide, to an appropriate specification, to address any potential impacts on local residents, etc. from odours and noise nuisance.
- 7.21 However, the applicant has provided insufficient information to allow the Local Planning Authority to make a clear assessment of the potential for harm that may be caused by the proposed external alterations to the building and there is concern with regard to the means for the storage of waste. As such, the proposals fail to comply with policies S1, S3, PD1, PD2, PD9 and EC6 of the Adopted Derbyshire Dales Local Plan and government guidance contained in the National Planning Policy Framework (2019).

## **8. RECOMMENDATION**

That planning permission be refused for the following reason:

1. The applicant has provided insufficient information to allow the Local Planning Authority to make a clear assessment of the impact of required external alterations to the building. In this sensitive locality, within the Matlock Bridge Conservation Area, these have the potential to cause harm to the appearance of the building and wider locality which would be contrary to policies S1, S3, PD1, PD2 and EC6 of the Adopted Derbyshire Dales Local Plan (2017) and government guidance contained in the National Planning Policy Framework (2019).
2. Insufficient information has been submitted to demonstrate suitable provision for the storage and timely removal of waste from the premises, which raises concerns with regard to health and safety, and, as such, the proposals fail to comply with policies S1, S3, PD1 and PD9 of the Adopted Derbyshire Dales Local Plan (2017).

### **NOTES TO APPLICANT:**

1. The Local Planning Authority have during the consideration of this application engaged in a positive and proactive dialogue with the applicant with regard to waste disposal, proposed internal arrangements and seeking clarity on the proposed extraction/ventilation system. As detailed drawings that were requested were not submitted with respect to the external alterations to the building, and there was considered to be a potential for harm to the character and appearance of the building and the Conservation Area without such external alterations being provided prior to determining the application, and as the information on the extraction system requested is inadequate, the Local Planning Authority considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis, the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.
2. This decision notice relates to the following documents:

Site Location Plan 1:1250 received on 2<sup>nd</sup> December 2020

Block Plan 1:250 received on 2<sup>nd</sup> December 2020

Design and Access Statement received on 2<sup>nd</sup> December 2020  
Existing and Proposed Internal Layout Plan and Additional Information received on 11<sup>th</sup>  
January 2021  
Additional Information received on 22<sup>nd</sup> March 2021.

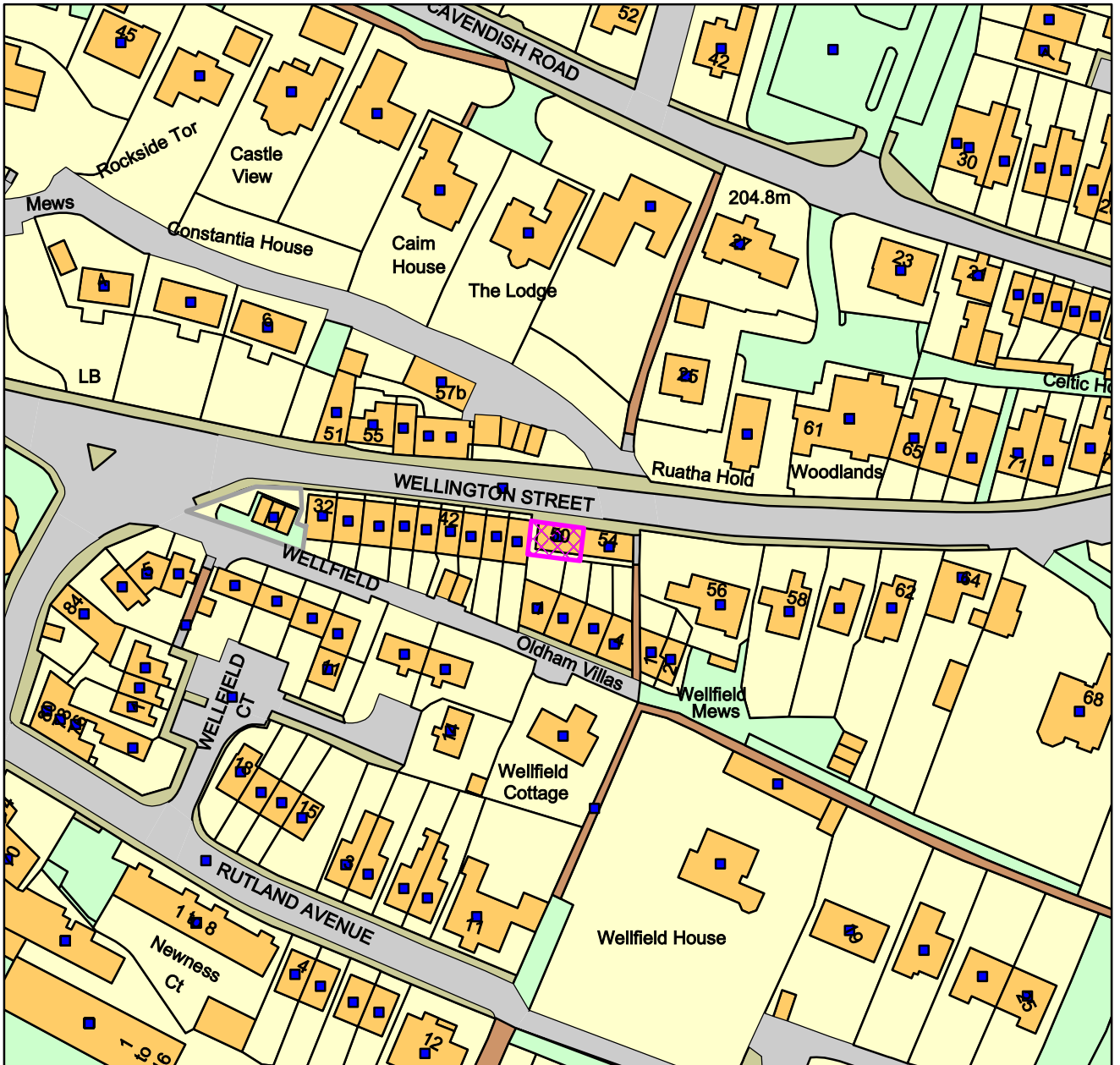
<b>APPLICATION NUMBER</b>		20/01165/FUL	
<b>SITE ADDRESS:</b>		50 Wellington Street, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Change of use of hairdressing salon with residential accommodation to house in multiple occupation (Use Class C4)	
<b>CASE OFFICER</b>	Sarah Arbon	<b>APPLICANT</b>	Ms L Smithem
<b>PARISH/TOWN</b>	Matlock	<b>AGENT</b>	Mr R Yarwood
<b>WARD MEMBER(S)</b>	Cllr S Burfoot Cllr M Burfoot Cllr S Wain	<b>DETERMINATION TARGET</b>	13.01.2021
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Requested by ward councillors	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>- Principle of development</li> <li>- Residential amenity</li> <li>- Highway safety</li> </ul>

<b>RECOMMENDATION</b>
Approval

20/01165/FUL

50 Wellington Street, Matlock, Derbyshire



Derbyshire Dales DC

1:1,250

Date: 27/01/2021

100019785

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Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

## 1.0 INTRODUCTION

- 1.1 This application was deferred by planning committee in order to request further information on bin storage arrangements, the treatment of the shop frontage and resident's privacy and the precise number of future tenants.

### THE SITE AND SURROUNDINGS

- 1.2 The property is located within the Matlock Bank Conservation Area on the southern side of Wellington Street close to the junction with Rutland Street. The property forms part of a terraced building that has over time been divided into two. The frontage is immediately onto the pavement with residential properties to the west stepping down. The terraced properties Oldham Villas are located close to the rear boundary at a lower land level. The property has a narrow path to the west to provide access to the rear terrace area which is at the level of the first floor windows of these properties and enclosed with a 1m wall and trellis.
- 1.3 The building dates to the late 19<sup>th</sup> century and is faced in coursed stonework with stonework dressings to the frontage with a rendered rear elevation and a slate roof. The original sash windows to the frontage of the property survive. The property was designed as a commercial premises and the stone pilasters to the original shopfront survive. However, the current shopfront is modern (possibly 1970s) with an artificial stone plinth, modern painted timber shopfront and a modern fascia board.



## 2.0 DETAILS OF THE APPLICATION

- 2.1 The proposal is to change the use and convert the property from a Hairdresser and Tanning Salon to a House of Multiple Occupation (HMO). The building has three floors of accommodation with the lower ground floor providing access to the outside terrace through the central stairway. Four en-suite bedrooms are proposed with a shared kitchen on the lower ground floor and a shared sitting room on the ground floor. The existing salon occupies the whole of the ground floor and this would be converted to the sitting room and one bedroom.

Dimensions of the bedrooms are as follows:-  
Bedroom 1 - 14.9 sq.m. + en-suite - 3 sq.m.  
Bedroom 2 - 14.8 sq.m. + en-suite - 3 sq.m.  
Bedroom 3 - 11.8 sq.m. + en-suite - 3 sq.m.  
Bedroom 4 - 10.0 sq.m. + bathroom - 6 sq.m.

- 2.2 Since the application was deferred the applicant has submitted a 'Statement of Support' and has confirmed that the number of residents would be four below the requirement for a HMO licence. The existing storage building would be used for bin storage and the existing outbuilding for cycle storage. External changes involve removal of the fascia board. A further site visit has been undertaken to view the building from the rear of Oldfield Villas and photographs of the relationship are above and within the committee presentation. The applicant has also confirmed that the shop window would be changed to frosted glass, however, no elevational details have been supplied.

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

1. Adopted Derbyshire Dales Local Plan (2017)
  - S2: Settlement Hierarchy
  - S3: Development within Defined Settlement Boundaries
  - PD1: Design and Place Making
  - PD2: Protecting the Historic Environment
  - PD9: Residential Sub-Division of Dwellings
  - HC19: Accessibility and Transport
2. Matlock Bank Conservation Area Appraisal
3. National Planning Policy Framework  
National Planning Practice Guidance

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

### **5.0 CONSULTATION RESPONSES**

#### Parish / Town Council

- 5.1 Matlock Town Council object on the basis of the lack of detail in this application. In order to make a decision new plans are needed showing amongst other things, the size of the rooms, details of the entrances to each flat from the street, any access from the rear of the property on Wellfield, bin storage, treatment of what is now a shop window etc. Parking on Wellington Street is extremely difficult so it is not the place to introduce an HMO.

#### Derbyshire County Council (Highways)

- 5.2 The Highways Authority states that the proposal is to convert the existing hairdressers with residential use into a house of multiple occupancy containing four letting rooms with shared kitchen and living room. Wellington Street in this location is a classified road and given that most surrounding dwellings do not have off street parking, on street parking is at a premium. The property does not benefit from any off street parking and therefore if the residents owned a car they would also be looking for on street parking; some parking restrictions are in place on Wellington Street.

Whilst the proposal is not ideal from a highway viewpoint, given that all parking for the proposal would be on street and it is expected that drivers would park in a safe and legal

manner, it is not considered that a highway objection could be sustained. This assessment is also on the basis that given the existing use of the property as a hairdressers and residential dwelling it is not considered that the proposal would result in a significant increase in use. However, it is considered necessary to limit any permission to the four proposed letting rooms proposed.

#### Design and Conservation Officer (Derbyshire Dales)

- 5.3 The application is accompanied by a Supporting Statement which clearly states that “*there will be no alterations to the exterior of the building*”. In terms of the Conservation Area this means that the original sash windows to the front elevation are to remain in-situ. Details of the fascia board should be conditioned due to its impact on the character and appearance of the Conservation Area. Whilst, the Conservation Officer was consulted on the applicant’s description of the change to the shop window, due to lack of elevational detail and that it would be dealt with by a further planning permission in which consultation would occur, it was not considered appropriate for comments as part of this application.

#### Environmental Health (Derbyshire Dales)

- 5.4 The Environment Health Officer initially raised concerns with the property becoming a house in multiple occupation due to possible noise to nearby properties. In addition, no details of fire protection have been submitted and should 5 or more tenants be housed at the property this may also become subject to a need to be licensed. This would also affect the details of the fire protection implemented.

In order to mitigate any impacts it is recommended that a condition requires a scheme of noise insulation measures be submitted both to cover noise between rooms and noise leaving the property together with a scheme of fire protection measures be submitted for the property. Conditions are also recommended to restrict the use to four persons and to ensure the adequate provision of bin storage.

#### Councillor comments

- 5.5 Cllr M Burfoot has concerns about the lack of details submitted, since there is inadequate information about the position of Wellington Street on the floor plans, the annotation of the plans is very poor, no elevations are shown, so it is not even known how the present shop front is to be treated, if at all. There is also concerns in relation to the problems being experienced by the neighbours of another HMO in Dale Road and their constant loss of amenity and experience of noise and nuisance. This location is in the midst of a densely populated residential area, so the impact is likely to be enormous. Added to that is the complete lack of any off street parking, which would also impact on the daily lives of local residents. Therefore, it is considered that this inadequate application fails to satisfy the normal standards expected, so should be rejected, pending the submission of further information. Finally, in view of my observations above, it is requested that the application be referred to the Planning Committee.
- 5.6 Cllr Wain is concerned by the lack of detail in the application and having received a couple of phone calls from local residents, it is not clear what exactly the applicant wishes to do with this property and how it is to be managed. He is aware that the rear of the property is very compact and noise is likely to be an issue if this property is ineffectively managed. There is also a potential issue regarding the storage of any refuse if each individual property is to receive a single bin. The property is in a quiet residential area where many families reside and is also in close proximity to Matlock Bank Conservation Area. Due to the topography of the area, without detailed planning considerations there could be serious negative impacts on the amenity of those living



below and overlooked by the property. This will be exacerbated as there is to be a multiple rear access/egress to the property and use of the rear terrace.

To the front of the property there is limited parking and regularly vehicles have to wait while the residents park in one of the few on street spaces. There are also concerns regarding excessive speed on this road and this has been targeted by the local community neighbourhood speed group. He is surprised by the comments made by the DCC and would ask whether they have physically visited the site, or whether the assessment was done as a tabletop exercise.

The parking in the area is at saturation point and he is surprised by the comments in the application, stating 'it is unlikely to exceed that generated by current use'. If the current use of the property is for one occupant /owner and the occasional visitor to the Tanning Centre, that may account for two vehicles. It does not however account for the other three rooms which if dual occupied could potentially yield up to 6 additional vehicles, if each person was to have a vehicle. It is believed that the provision of a cycle store is there just to tick the environmental and climate change box. He does not believe the average occupant would use a pedal cycle for transport in such a location and is afraid that unfortunately the car will be king.

Whilst appreciating there is a need for houses of multiple occupancy in certain areas, it is not considered that this application would benefit the community and would have a negative impact on its amenity and the request for it to be sent to Committee is supported, if you are minded to recommend approval

## **6.0 REPRESENTATIONS RECEIVED**

6.1 A total of two representations and a petition with 12 signatures were received in relation to the proposal that was deferred. A summary of the representations is outlined below:

- There is not a precedence or need for a HMO in this area.
- There are concerns regarding the potential noise from the large number of residents.
- The outside space is small and backs onto 1-4 Oldham Villas with its use affecting the privacy and enjoyment of their gardens.
- The proposal would add pressure to the limited on street parking in the area which would make it more difficult for existing residents to park.
- There is also a potential for anti-social behaviour and who is responsible for controlling it.
- There is a concern based on evidence of an existing HMO in Matlock which has caused loss of amenity and anti-social behaviour to neighbours.
- The acoustics of the outdoor courtyard is such that noises would be amplified and with greater numbers of people residing at the property that do not live as a family the noise may be excessive.
- The character of the area means that people live in close proximity and thus a mutual respect is required and the proposal would be have a potentially continuous change of occupants where this would be lost.

6.2 Two further letters have been received based on the re-consultation on additional information from the applicant.

- Loss of amenity through the reduction in available on street parking
- Increase in noise and disturbance due to change of use (the housing of four unrelated people) exacerbated by the unique acoustics of the areas caused by the elevation / topography / arrangement of houses creating a 'courtyard' that amplifies and echoes noises

- It is an unsuitable area for a HMO as it is a quiet family area which is densely populated up a steep bank from the town centre which is not easily accessible.
- No opportunity for community attachments due to short term rentals resulting in loss of relationships and understanding with other permanent residents
- Lack of details on how the frontage of the shop will be treated within the conservation area
- Lack of detail on how the waste will be managed.
- The proposal would significantly increase the property value and therefore it is not unreasonable to condition that the facilities for these residents be improved and to help preserve a historic building within the Conservation Area.
- Restrictive living conditions are proposed with very small bedrooms which would be difficult to furnish in the way suggested by the operational policy.
- Is there any relevant guidance from the Joseph Rowntree Foundation (charity) that could be considered in relation to housing and HMO properties? The proposed accommodation clearly would not be suitable for anyone with a disability.
- The furniture plan provided indicates the lack of space proposed.

## 7.0 OFFICER APPRAISAL

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

- Principle of development
- Impact on residential amenity
- Character and appearance
- Highway safety

### Principle of development

7.2 The site is located within the settlement boundary of Matlock and within Matlock Bank Conservation Area therefore Local Plan Policies S3 and PD2 are relevant. Matlock is one of the main towns within the District where Policy S2 considers towns to be the primary focus for growth and development, providing significant levels of jobs and homes.

7.3 Within settlement boundaries Policy S3 allows development that:- 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, retains existing buildings that make a positive contribution to the area and the proposed access and parking provision is appropriate. The site is within a sustainable location within walking distance of facilities and services and accessible by a choice means of transport, therefore, residential development is acceptable in principle.

### Impact on residential amenity

7.4 Policy PD1 requires development achieves a satisfactory relationship to adjacent development in relation to visual intrusion, overlooking, shadowing and overbearing impacts. This also includes developments being designed to minimise opportunities for anti-social or criminal behaviour and to promote safe living environments. This proposal would involve a change to the property from a mixed commercial and residential use to a solely residential one with the provision of two additional bedrooms. Therefore, there would no longer be customer activity during the opening hours within the ground floor with the resultant parking requirements as this would be replaced by residential occupants.

7.5 The residential sub-division of dwellings is controlled by Policy HC9 which requires a regard to adequate vehicular access, amenity space and bin storage, suitable internal

accommodation in terms of privacy, natural light and outlook, impact on the character and appearance of the area, no significant new extensions, the sustainability based on the site's location including accessibility to shops, services and facilities and minimising built form through conversion of outbuildings. The proposal is located in an existing residential area where properties are in close proximity. The lower ground floor and terrace and first floor is already in residential use and as such the relationship with adjacent properties exists, however, the proposal would result in the window serving the salon on the ground floor rear elevation changing to a bedroom window. This window would be at a higher level than the first floor bedroom window of the property to the rear (1 Oldham Villas) with an outlook approximately in line or above its ridge at a distance of 7m. This is considered acceptable as it is similar to existing relationships between dwellings that exist in the vicinity.

- 7.6 The use of the terrace by residents has been raised as a concern as it would be four individuals using it rather than one family. The terrace is at a higher land level than the properties and residents on Oldham Villas to the south mention an amplification of noise due to the relationship of buildings. Whilst, it acknowledged that from the gardens of properties on Oldham Villas the terrace is visible, it is already in residential use and in planning terms the use by four residents for amenity space is considered appropriate as it is not introducing a more intensive form of residential development than a family dwelling. The occupants would have adequate sized bedrooms with en-suite facilities whilst sharing a kitchen and sitting room. The small terrace would provide some amenity space and would not have an adverse impact on the residential amenity properties as it is a relationship that exists.
- 7.7 The Council's Environmental Health Section provides guidance on specific requirements for bedsits and HMOs in terms of size of shared equipment and use of bathrooms etc. This guidance does not provide a minimum for bedroom sizes. Each resident would have the sole use of a bathroom and shared use of the kitchen and living room. The outside terrace would provide amenity space for the residents and the amenity of future residents is a material planning consideration. The compliance with the guidance is within the remit of Environmental Health Legalisation and is of limited relevance of the consideration of the planning merits. The Environmental Health Officer has reviewed the case and considered that a condition for noise insulation measures to cover noise between rooms and noise leaving the property is sufficient mitigation.
- 7.8 The landlord usually has extra legal responsibilities if the property is a house in multiple occupation or HMO. The landlord must get a license from the Council if it has five or more unrelated people live in it or has two or more separate households living there. The extra rules are there to reduce the risk of fire and to make sure that people living in shared houses or flats have adequate facilities.

Landlords of HMOs must make sure that:

- proper fire safety measures are in place, including working smoke alarms
- annual gas safety checks are carried out
- electrics are checked every 5 years
- the property is not overcrowded
- there are enough cooking and bathroom facilities for the number living there
- communal areas and shared facilities are clean and in good repair
- there are enough rubbish bins/bags

- 7.9 The applicant has confirmed they will be four residents in total which is below the requirement for a HMO license. However, the Statement of Occupational Policy does cover safety check requirements, facilities and cleaning. As wheelie bins are impractical

due to the steps the applicant shall continue with current arrangement of bin-bags stored within the storage building on the terrace. There is no trade waste involved.

- 7.10 Concern has been raised by residents that the HMO occupants may create noise, disturbance and potentially anti-social behaviour. The 'Statement of Occupational Policy' outlines the guidance for tenants in terms of mandatory house rules and terms of occupation and this indicates that the behaviour of occupants would be suitability controlled to avoid adverse impacts on the amenity of neighbouring properties together with compliance with fire and safety regulations. The responsibility for compliance falls to the applicant or their management agent and if there are incursions either the Council can enforce through a breach of condition or Environmental Health noise nuisance legislation.
- 7.11 Therefore, the Local Planning Authority has to consider the planning balance. There is clearly a level of local concern over the provision of the HMO and residents consider that this is wrong location for such a building use due to its close proximity to neighbouring properties and the lack of on-street parking. However, the location of the building is sustainable as residents would not be solely reliant on the private car as shops and facilities are within walking distance. The provision of four bedrooms is not considered excessive as the size of building suits the level of accommodation. The National Planning Policy Framework advocates the development of under-utilised buildings, especially if this would help to meet identified needs for housing where land supply is constrained in paragraph 118.
- 7.12 Given the above, it is considered that the re-use of the premises in the manner proposed would not significantly harm the amenity of local residents to such an extent that could reasonably justify a recommendation of refusal and it is not for the Local Authority to determine how people may wish to live by refusing such accommodation in sustainable locations within the District which may be welcome to the tenants. The proposed changes to the shopfront window would be required to ensure the amenity of future tenants in terms of privacy is not compromised due to the large street level window.

#### Character and appearance

- 7.13 Policy PD1 requires development to be of a high quality that respects the character and context of the area, contributes positively to an area's character in terms of scale, height, density, layout, appearance, materials and the relationship to adjacent buildings and landscape features. Policy PD2 requires proposals in a Conservation Area to demonstrate how the proposal has taken account of the local distinctive character and setting of the Conservation Area including open spaces and natural features and how this has been reflected in the layout, design, form, scale, mass, use of materials and detailing, in accordance with Character Appraisals where appropriate.
- 7.14 The application is accompanied by a Supporting Statement which clearly states that "*there will be no alterations to the exterior of the building*". In terms of the Conservation Area this means that the original sash windows to the front elevation are to remain in-situ. Whilst the existing shopfront is also to remain in-situ, its modern design and detailing do not contribute to the architectural quality of the remaining building. As no details of what is to be put in its place have been provide, it is deemed important from a conservation area perspective that details of the shopfront fascia are submitted for consideration by condition prior to any changes being made.
- 7.15 In relation to the proposal to alter the shop window on Wellington Street by splitting it and introducing frosted glass with opening windows to the top. No elevational details have been

supplied and as this would constitute a material alteration to the appearance of the frontage, planning permission is required. An informative to this effect shall be added to any permission as it is not considered appropriate for it to be conditioned. A further application to change the shopfront would be required.

### Highway safety

7.16 The Highways Authority have assessed the application and they acknowledge that is not ideal that there is no off street parking available within the site curtilage. However given the existing use of the property as a hairdressers and residential dwelling it is not considered that the proposal would result in a significant increase in use. Any on street parking would need to be in a safe and legal manner. In view of this it is not considered that a highway objection could be sustained at appeal. The proposal is therefore considered acceptable in this location within the town of Matlock which is accessible by a choice means of transport in accordance with Policies S3 and HC19.

## **8.0 RECOMMENDATION**

That planning permission be granted 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.

Reason:

This is a statutory period which is specified in Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall not be brought into use until a scheme of works for noise insulation, both to cover noise between rooms and noise leaving the property, has been submitted to and approved in writing by the Local Planning Authority and implemented in full. The approved scheme shall be maintained in accordance with the approved details at all times thereafter.

Reason:

In order to safeguard the amenity of neighbouring residents in accordance with Policies PD1 of the Adopted Derbyshire Dales Local Plan (2017).

3. The internal arrangements of the building shall be laid out fully in accordance with the submitted 'Plans as proposed' scale 1:100 (with dimensions) prior to the first occupation of the premises and shall not be altered unless otherwise agreed in writing by the Local Planning further to the submission of a planning application.

Reason:

To safeguard the amenities of the building and the wider area to comply with Policies S3 and PD3 of the Adopted Derbyshire Dales Local Plan (2017).

4. The development hereby approved, once first occupied for the approved purpose, shall be operated fully in accordance with the Statement of Operational Policy received on 25<sup>th</sup> January 2021 unless otherwise agreed in writing by the Local Planning Authority.

Reason:

To safeguard the amenities of local residents to comply with Policies S1, S3 and PD9 of the Adopted Derbyshire Dales Local Plan (2017).

5. Prior to the first occupation of the premises full details of works to the shop fascia shall be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved details.

Reason:

To safeguard the character and appearance of the Conservation Area in accordance with Policy PD2 of the Adopted Derbyshire Dales Local Plan (2017).

## **9.0 NOTES TO APPLICANT:**

The Local Planning Authority prior to and during the consideration of the application 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 detail of the fascia and management of tenants.

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 decision notice relates to the following documents:

Location Plan Scale 1:1250

Block Plan Scale 1:500

Plans are proposed Scale 1:100

Supporting Statement

Statement of Operational Policy

The changes to the shopfront window are not covered by this permission and a further planning permission is required for these external alterations that materially affect the appearance of the building.

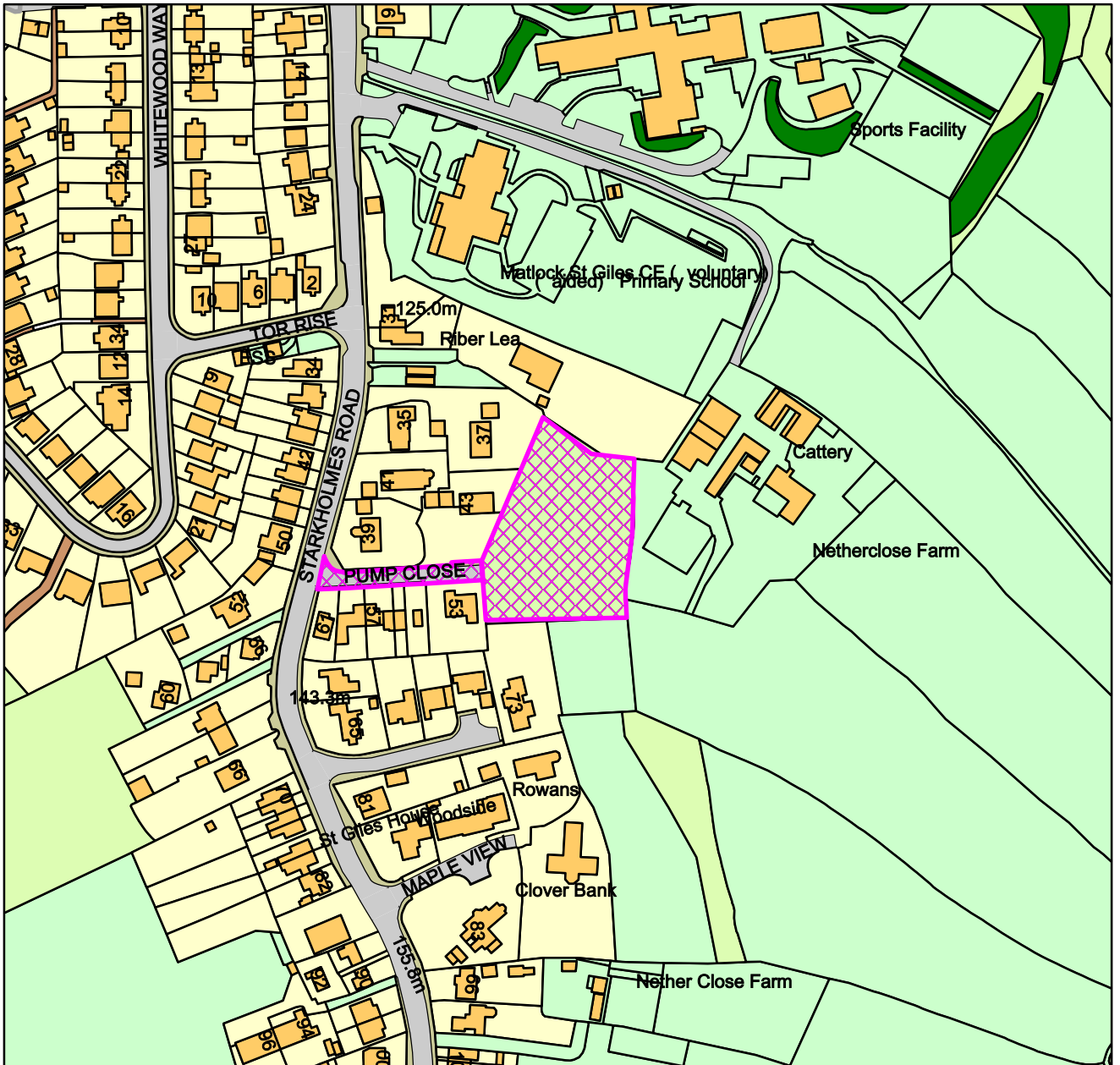
<b>APPLICATION NUMBER</b>		21/00200/VCOND	
<b>SITE ADDRESS:</b>		Land off Pump Close, Starkhomes, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Variation of condition 6 of planning application 16/00941/OUT to allow for modifications works to road junction to be carried out prior to first occupation of dwelling	
<b>CASE OFFICER</b>	Sarah Arbon	<b>APPLICANT</b>	Thatchers Croft Limited
<b>PARISH/TOWN</b>	Matlock Town	<b>AGENT</b>	Planning & Design Practice Ltd
<b>WARD MEMBER(S)</b>	Cllr S Flitter Cllr P Cruise Cllr D Hughes	<b>DETERMINATION TARGET</b>	12 <sup>th</sup> April 2021
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	5 or more unresolved objections received	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	n/a

<b>MATERIAL PLANNING ISSUES</b>
– The principle of the development and access arrangements

<b>RECOMMENDATION</b>
Approval

21/00200/VCOND

Land at Pump Close, Matlock



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

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Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk



## 1.0 THE SITE AND SURROUNDINGS

- 1.1 The application site comprise an undulating field, some 0.36 hectare in area beyond the Pump Close cul-de-sac, off Starkholmes Road. The land level on the southern boundary is 7m higher than that of land within the north western corner. There are trees on the northern and eastern boundaries with trees on the eastern boundary covered by a County Council TPO 035/A1. There is an Oak tree in the south eastern corner of the site and an established hedge encloses the southern boundary with the adjacent field. Netherclose Farm is adjacent to the eastern boundary and there are dormer bungalows that step down along the western boundary with a mix of detached and semi-detached stone properties running parallel with the south side of Pump Close. An existing gate provides access to the field adjacent to the end of the road.



## 2.0 DETAILS OF THE APPLICATION

- 2.1 Reserved Matters approval was granted for appearance, landscaping, layout and scale for 7 single storey dwellings at committee on the 10<sup>th</sup> November 2020. Outline permission (16/00941/OUT) was granted on the 12<sup>th</sup> April 2017 for 9 dwellings including access.
- 2.2 This application seeks to vary the wording of Condition 6 which reads:-  
6. Before any other operations are commenced (excluding Condition No 4 above) Pump Close's existing junction to Starkholmes Road shall be modified in accordance with the application drawings and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 41 metres to the south and 38 metres to the north measured to the nearside wheel track in each direction. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

The variation of the wording proposed is to change the wording from 'before any other operations are commence' to 'prior to first occupation'. This change would allow works to progress on site prior to the signing of the Section 278 agreement with the Highways Authority.

## 3.0 PLANNING POLICY AND LEGISLATIVE FRAMEWORK

1. Adopted Derbyshire Dales Local Plan (2005)  
S1: Sustainable Development Principles  
S2: Settlement Hierarchy  
S3: Development within Settlement Framework Boundaries  
PD3: Biodiversity and the Natural Environment

PD6: Trees, Hedgerows and Woodlands  
HC19: Accessibility and Transport

2. National Planning Policy Framework (2019)  
National Planning Practice Guidance

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

19/01050/REM - Reserved Matters Application for the approval of appearance, landscaping, layout and scale of 7no. dwellinghouses (outline planning permission reference 16/00941/OUT) – Approved 10<sup>th</sup> November 2021

16/00941/OUT – Residential development of up to 9 dwellings and associated access (Outline) – Approved 12<sup>th</sup> April 2017

14/00776/OUT – Residential development of up to 9 dwellings and associated access (Outline) – Approved 25<sup>th</sup> February 2016

#### **5.0 CONSULTATION RESPONSES**

##### Matlock Town Council

- 5.1 No comments

##### Derbyshire County Council (Highways)

- 5.2 No highway objections to the variation of condition 6.

#### **6.0 REPRESENTATIONS RECEIVED**

- 6.1 A total of 6 representations have been received. A summary of the representations is outlined below:
  - a) The condition stipulates that the splay at the end of Pump Close be improved to ensure there was enough visibility for cars before any building works commenced and this has not been adhered to.
  - b) The access is dangerous when cars are parked which restricts access and accidents have been narrowly missed.
  - c) The junction would remain unsafe for the period when there will be considerable volumes of traffic.
  - d) The houses would generate more traffic and access works should be carried out to improve it.
  - e) Works have already been taking place on site with the resultant construction traffic in breach of this condition.
  - f) Completing the access works prior to works on site would reduce the risk and there is no reason for this to be altered.
  - g) There is no logical or defensible reason that the junction improvements should not be in place during the initial construction period as there will be more vehicle movements.
  - h) In allowing this variation it would be much more difficult to prevent or delay occupation should it be found that the technical issues cannot be resolved.
  - i) The applicant was aware of the wording of Condition 6 prior to purchasing the site and must have been also known the timescale of 8-10 weeks for securing a Section 278 agreement.
  - j) The applicant does not have the right to alter / change / modify Pump Close with residents engaging a solicitor to write to the applicant's solicitor without a response received.
  - k) Residents should be consulted on the S278 agreement.

- l) There will be 30-40 trucks over the 8-10 week period prior to the signing of the S278.

## 7.0 OFFICER APPRAISAL

- 7.1 Having regard to the reserved matters for consideration and the relevant provisions of the development plan, the following material planning issues are relevant to this application:

- The principle of development and access arrangements

### Principle of development and access arrangements

- 7.2 Outline permission with access was approved in April 2017 with the reserved matters approval granted in November 2020. This application has been made under Section 73 of the Town and Country Planning Act. If permission is granted under section 73, a new, independent, permission to carry out the same development as previously permitted subject to new or amended conditions is created. The new permission sits alongside the original permission, which remains intact and unamended. There is a presumption that a re-examination of the principle or details already approved does not take place as part of a Section 73 application, however, an assessment on any change in material circumstances or planning policy since the approval is required together with focus on the nature of the specific condition to be varied. A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to remain pertinent.
- 7.3 National guidance within the National Planning Policy Framework (NPPF) has not changed in respect of the principle of housing in this locality and in particular in relation to requiring developments to have safe and suitable access. Local Plan Policy HC19 reiterates this guidance for safe access. A section 73 application cannot be used to vary the time limit for implementation and if approved, this condition must link to the approval of reserved matters determination date. Should permission be granted it is necessary to update the conditions that remain relevant and link this permission with the approved reserved matters application 19/01050/REM.
- 7.4 Policy S3 requires development to have a layout, access and parking provision appropriate to the proposed use, site and its surroundings. Policy HC19 seeks to ensure that development can be safely accessed in a sustainable manner and adequate parking is provided.
- 7.5 Access was granted as part of the outline permission with conditions 4-9 attached to this permission some of which are superceded through the grant of the reserved matters approval details of layout or through approval of conditions. Issues in relation to the access have been raised in the representations on the principle of the access which was approved by the outline permission received. This variation simply seeks to vary the trigger of implementation of the Highways Works. The highways works proposed have not changed since the outline approval and the report to planning committee in respect of the outline application stated the following:

*7.16 The development of the site includes a scheme to alter the junction at Pump Close and Starkholmes Road. The intention is to build out the junction by 0.5m along with realigning/tapering the footways either side to tie-in with the revised give way markings. Specific details/distances regarding the footway tapers have not been submitted but the Highway Authority is satisfied that these can be finalised when the S278 agreement for the works are submitted, it is recommended that the footways are tapered at a ratio of 1:30.*

*7.17 The conclusions of the Highway Authority were questioned by local residents in the original application in terms of vehicles crossing the centre line of the road when travelling in a downhill direction. Those concerns have been reiterated in this application. However the Highway Authority are aware of these concerns and are satisfied that the width of the roadway is acceptable for the proposed alterations to the junction to give a satisfactory access.*

*7.18 Pump Close is a private road and comments have been made regarding the rights of the applicant to alter the junction and have new housing accessed along this road. The applicant's agent has confirmed that there is an appropriate right of way and have completed the certificates on the application form in their view correctly in this regard. Such matters of ownership will have to be resolved as a private legal matter and cannot be resolved through the planning process. This also applies to the potential for damage to because to the surface of Pump Close and ongoing maintenance costs.*

- 7.6 The Local Highway Authority has no objection on highway safety grounds to allowing the condition to be changed to prior to occupation rather than prior to commencement. The applicant has provided a copy of the draft Section 278 agreement that is in progress and the Highways Authority have instructed their legal section with the construction approval details and subject to signing, relevant fees paid and the booking of road space works to improve the access can commence.

### Conclusion

- 7.7 The variation of the trigger of condition 6 is considered acceptable and complies with Policies S3 and HC19 of the Local Plan. Subject to the imposition of conditions attached to the original outline consent that remain relevant to the development and a condition tying a new outline permission to the already approved reserved matters detail the proposal would satisfy the relevant provisions of the development plan. A recommendation of approval is put forward on this basis.

## **8.0 RECOMMENDATION**

That the application be granted subject to the following conditions.

1. The development hereby permitted must be begun before the 10<sup>th</sup> November 2022 as this is the end date of the reserved matter approval that relates to this permission.

Reason:

This is a statutory period which is specified in Section 92 of the Town and Country Planning Act 1990.

2. This development shall be completed in accordance with the approval of reserved matters application 19/01050/REM which fully detail the agreed scheme in term of appearance, landscaping, layout and scale.

Reason:

For clarity given the grant of the approval of reserved matters.

3. No works of construction shall take place on the site outside of the following hours:  
Monday to Friday                    08.00 to 20.00  
Saturday                                09.00 to 13.00  
Sunday/Bank Holidays            No construction

Reason:

To protect residential amenity in accordance with Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

4. The approved area for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles as shown on the 'Proposed location and layout of site compound' plan shall be retained free from any impediment to its designated use throughout the construction period.

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

5. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

6. Prior to first occupation of any dwelling Pump Close's existing junction to Starkholmes Road shall be modified in accordance with the application drawings and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 41 metres to the south and 38 metres to the north measured to the nearside wheel track in each direction. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

7. No dwelling shall be occupied until details of the proposed parking and manoeuvring areas within the site have been completed in accordance with the approved details on plan no. 472\_P01 Rev F with these facilities thereafter be retained for use at all times.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

8. No dwelling shall be occupied until the bin storage area as detailed on plan no. 472\_P01 Rev F has been provided and facilities retained for the designated purposes at all times thereafter.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

9. The approved highway surface water scheme as detailed in the conditions document dated 1<sup>st</sup> December 2020 shall be undertaken and completed prior to the first use of the access and retained as such thereafter.

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

10. Prior to the commencement of development a detailed strategy for resolving the presence of the spring on the site shall be submitted along with a detailed assessment of the effects of this upon ground water and wildlife habitats within the locality. The development shall be carried out in accordance with the agreed strategy.

In order to prevent localised flooding and loss of habitat in accordance with Policy PD3 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework.

11. In relation to assessment of site contamination the approved investigation and risk assessment includes details within the Contamination Report November 2020 Revised March 2021 Rev 1, the Soil Lead Report received on the 15<sup>th</sup> March 2021 and the Thatchers Croft Ltd letter dated 31<sup>st</sup> March 2021.

#### B. Submission of Remediation Scheme

Having regard to the contents of the submitted reports prior to the commencement of built development a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works, site management procedures and proposals for how the remediation works will be verified once completed. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

#### 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 guidance contained within the National Planning Policy Framework.

### 9.0 NOTES TO APPLICANT:

1. The Local Planning Authority considered the application as submitted to be acceptable. On this basis, there was no need to engage with the applicant in a positive and proactive manner to resolve any problems with the application and Permission was granted without negotiation.
2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website:

[http://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp), email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

3. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards Pump Close measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge onto Pump Close. This usually takes the form of a dish channel or gully laid across the access, discharging to a drain or soakaway within the site.
4. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting this Authority via email - [es.devconprocess@derbyshire.gov.uk](mailto:es.devconprocess@derbyshire.gov.uk). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
5. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
6. 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.
7. This decision notice relates to the following documents:  
Letter from Planning and Design Ltd dated 12<sup>th</sup> February 2021  
Letter from the agent dated 21.12.16  
Location plan no. 825-001 received 23.12.16  
Highway detail no. 825-002A received 23.12.16  
Indicative layout no. 825-SK003 received 23.12.16  
Great Crested newt report received 23.12.16  
Phase 1 Habitat and protected fauna survey received 23.12.16  
Arboricultural Survey received 23.12.16

<b>APPLICATION NUMBER</b>		20/00530/FUL	
<b>SITE ADDRESS:</b>		Bent Farm, Farley Hill, Farley	
<b>DESCRIPTION OF DEVELOPMENT</b>		Erection of replacement dwelling and a swimming pool building (modifications to previously approved planning permission 15/00718/FUL)	
<b>CASE OFFICER</b>	Mr. G. A. Griffiths	<b>APPLICANT</b>	Mr M Slack
<b>TOWN</b>	Darley Dale	<b>AGENT</b>	Roger Yarwood Planning Consultant Ltd
<b>WARD MEMBERS</b>	Cllr. J. Atkin Cllr. M Salt Cllr. A. Statham	<b>DETERMINATION TARGET</b>	31 <sup>st</sup> August 2020
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	The number of representations received objecting to the development	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

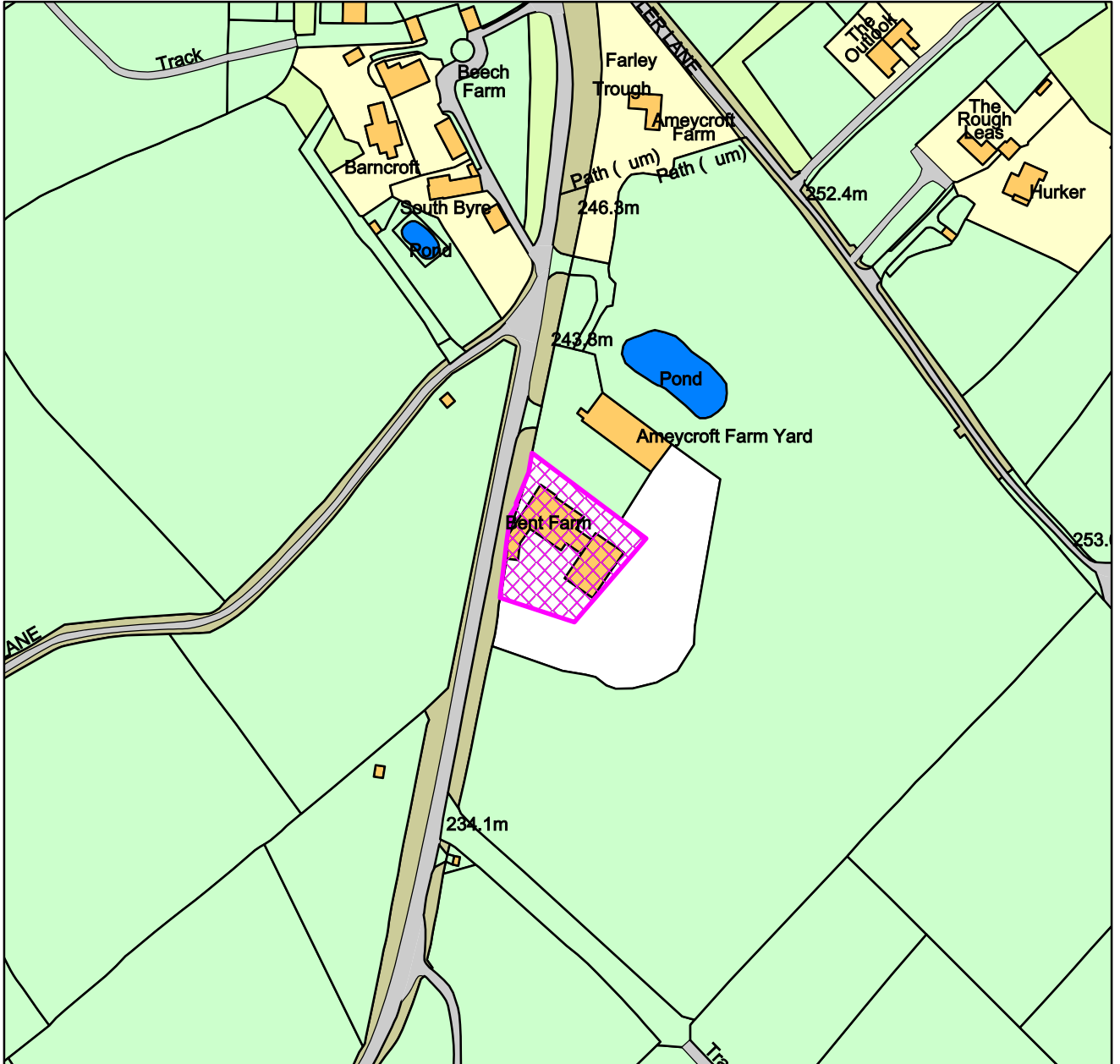
<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• Background and principle of the development</li> <li>• Impact on the character and appearance of the area</li> <li>• Highway matters</li> <li>• Impact on residential amenity</li> <li>• Ecology</li> </ul>

<b>RECOMMENDATION</b>
Approval with conditions.



20/00530/FUL

Bent Farm, Farley Hill, Farley



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

Crown Copyright and database rights (2018) Ordnance Survey (100019785)  
Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

## 1. THE SITE AND SURROUNDINGS

- 1.1 The property comprises a dwellinghouse which is nearing completion in its construction. This has replaced a traditional farmhouse with associated barn. The dwelling is set side on to a highway verge to the east of Farley Hill. To the east and south, the site is bounded by open fields. To the north, is an agricultural building, which forms the remnants of a chicken farm enterprise, which has been partially demolished and replaced with a metal framed and clad building.
- 1.2 Access to the property is directly off Farley Hill via new access gates which are in a similar position to the former access. There is an unmade area of hardstanding to the front of the dwelling and a raised area of land which then drops down to the field. The applicant has also erected boundary walls, with a gate, and timber panel fencing.

2015



2020





## 2. DETAILS OF THE APPLICATION

- 2.1 Full planning permission (ref: 15/00718/FUL) was granted for the demolition of the former farmhouse and agricultural buildings and the replacement with this larger dwellinghouse and a linked building to house a swimming pool. A structural report of the dwellinghouse was submitted with that planning application which provided a justification for replacement because of significant structural problems.
- 2.2 The replacement dwellinghouse was approved to be constructed with tooled sandstone walling and slate with smooth stone quoins, copings and lintels. The pool building was approved to be constructed with tumbled gritstone to the lower walls with timber clad weatherboarding above and a slate roof. The link is largely glazed. The dwellinghouse was approved to measure as follows:
- main element - to measure 16m wide by 9m deep and 9m high
  - east side projection to measure 7m wide by 9m deep and 8.5m high
  - front west side two storey projection to measure 5.5m wide by 6.5m deep and 7.5m high
  - front west side single storey projection to measure 5m wide by 8.3m deep and 3.9m high
  - front porch to measure 4m wide by 2m deep and 3.65m high
  - two storey rear projection measuring 8m wide by 8m deep and 8.3m high
  - single storey flat roofed rear projection measuring 14.5m wide by 7m deep and 3.8m high with two roof lanterns set atop
  - pool building measuring 12.8m wide by 21.4m deep and 6.2m high
  - link building measuring 7m wide by 5.4m deep and 3m high.
- 2.4 In terms of the size of the approved replacement dwelling, compared to that which it replaced, the dwellinghouse was approved with a floor area of some 454sqm compared to the previous dwelling, and its attached buildings, having had a floor area of some 407sqm. The pool building was approved with a floor area of some 275sqm and the link some 37sqm. The former farm also had a separate agricultural building which was demolished.
- 2.5 In terms of accommodation, the approved replacement dwellinghouse has a sitting room, dining room, kitchen, hall, study and family area on the ground floor. The link provides a sunroom leading to the pool building which was approved to include a pool, sauna, steam room, shower and plant room. At first floor level, the approved scheme has five bedrooms. A basement is also provided under the main part of the dwelling.
- 2.6 Whilst the development was granted planning permission under application ref: 15/00718/FUL, the applicant has not erected the dwellinghouse fully in accordance with the approved details. This planning application seeks to regularise matters. The discrepancies between the approved drawings and the as built development are as follows:

- the proposed single storey projection closest to the site entrance is now some 2.2m higher than approved (measured at approximately 6.1m in height on site and detailed as 3.9m in height on the approved drawings);
- the eaves line of the main part of the dwellinghouse has no step down on the building as constructed, which differs from the approved drawings where this was detailed two thirds of the way along from the roadside;
- many of the windows of the dwellinghouse have not been provided in accordance with the approved drawings and have a horizontal emphasis rather than the approved vertical emphasis;
- the chimney is not positioned as approved as it is inset further off the gable;
- the front porch is of a different size and has been provided with a lean-to roof rather than a pitched roof, and has a different door;
- the swimming pool building has been set some 2.3m back from the approved siting;
- the ridge height of this the swimming pool component has increased by some 300mm
- the swimming pool building has windows inserted in the boarding of the front gable and the ones at the rear gable are larger than the one that had been detailed on the approved drawing;
- the front facing windows to the ground floor of the swimming pool building have been changed from three to two;
- the window/door openings to the rear are different to those approved;
- the cladding to the swimming pool building has been applied horizontally rather than vertically as detailed in the approved drawing;
- the stone has been taken up to above the top of the windows where boarding was previously detailed for the top half of the windows up to eaves level;
- a fence has been provided to the roadside boundary which was not approved with the original permission and should be a boundary wall (the applicant advises this to be a temporary measure); and
- the apparent extent of the curtilage to the front (south of the dwelling) is not as detailed on the approved drawings.

### **3 PLANNING POLICY AND LEGISLATIVE FRAMEWORK**

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

S1	Sustainable Development Principles
S4	Development in the Countryside
PD1	Design and Place Making
PD5	Landscape Character
PD7	Climate Change
HC7	Replacement Dwellings
HC21	Car Parking Standards

#### 3.2 Darley Dale Neighbourhood Plan (2019-2033)

NP9	Protecting the Landscape Character of Farley
NP19	Design Principles for C3 Residential Development in Farley

#### 3.3 National Planning Policy Framework

#### 3.4 National Planning Practice Guidance

### **4 RELEVANT PLANNING HISTORY**

15/00718/FUL Demolition of existing dwelling and barn and erection of replacement dwelling and swimming pool building - Granted

## 5 CONSULTATION RESPONSES

### Town Council

#### 5.1 Comments on original submission

- object
- overbearing appearance
- out of scale
- bulk and massing of design
- disproportionate development.

#### Comments on Amended Drawings

- object to plans submitted, as not a true reflection of what has been built (refer to Town and Country Planning Act – Article 7 (1) (c) Development Management)
- object to building as built for the following reasons (Material Planning Considerations):
  - overbearing appearance
  - out of scale
  - bulk and massing of design
  - visual amenity
  - disproportionate development
- Neighbourhood Plan - object with regard to Policy NP19 Design Principles.
- ask that the Planning Department fulfils its duty to communicate with all residents and reply to letter from Groves Town Planning and Farley Hill Residents Group
- like Councillor Martin Burfoot and the Councillor Hughes, Mayor of Matlock, also have grave concerns that the Planning Department is not carrying out its duties with regard to enforcement in this case
- object to plans submitted , as not a true reflection of what has been built
- astounded that the Planning Department are even considering these plans due to the incompleteness of the information provided.

### Local Highway Authority (Derbyshire County Council)

#### 5.2 Comments on original submission

- see previous highways comments where no objections were raised subject to conditions
- however, the submitted plans are of insufficient quality to accurately determine whether the dwelling has been constructed on the footprint of the former dwelling
- according to the Highway Authority records, the front face of the built dwelling forms the highway boundary and the wall, already partially erected in advance of this, would therefore be located within, and enclosing the adopted public highway, which is not acceptable

#### Comments on Amended Drawings

- further to site meeting, satisfied that the realigned wall no longer encroaches the adjacent public highway.

### Councillor M. Burfoot (Ward Member for Matlock All Saints)

- #### 5.3
- obviously the responsibility of planning officers to assess the accuracy of the most recently submitted plans relating to the encroachment of the building on to the highway verge, but there appears to be some discrepancy between the new site plan annotation: “stone wall to be rebuilt to 1.5m” and the confusing email from the County Council highways officer
  - consider the applicant needs to submit a further drawing to show EXACTLY where the ‘rebuilt’ boundary wall is to be located, in relation to the encroaching farmhouse outer wall
  - local residents and passers-by, who constantly make comments about this development, need assurance that the finished boundary treatment will appear reasonable in the streetscene.

- note that an email from Mr Yarwood (11/09/20) states that “landscape proposals will be submitted separately” - have these proposals been submitted yet and assessed by an officer with relevant professional expertise, since the applicant and his agent may not propose a satisfactory scheme, based on previous experience on site?
- is there also a similar requirement for the submission of a suitable landscaping scheme to help screen the caravan and campsite?
- this new build farmhouse and attached swimming pool appears to be of a similarly obtrusive landscape impact to the new dwelling at Hognaston being considered at a next Tuesday’s Planning Committee
- one of the critical conditions attached to that recommended approval is a further landscaping scheme, in addition to one already submitted, which is designed to reduce the impact of and help absorb the large new dwelling into its surroundings - believe that an equivalent scheme is required to this at Bent Farm, so trust it will be expected by officers, in order to fulfil the landscaping condition
- given the significant time delay on this site, can I request that a deadline for implementation of the scheme is the end of March 2021 - a similar deadline is required for screening the caravan and campsite.

Councillor S. Wain (Ward Member for Matlock All Saints)

- 5.4 - concerns raised with him with regard to the pumping of water from the property onto the highway as follows:
- *understand that the pressure of water occasionally pushes the cover off the drain, leaving a dangerously flooded drain completely exposed to pedestrians walking on the verge, thereby exposing them and their dogs to unnecessary harm*
  - *understanding that DCC are aware of this issue as the area was coned just before Christmas, but the water flow continues to erode the highway*
  - *if there is unauthorised water discharge, should this not be remedied before any determination*
  - *seek assurance that the underlying issue, namely the cause (possible unauthorised pumping) is being investigated and advice on the current situation*
  - can you consider this in any assessment of the planning of this building?

## 6 REPRESENTATIONS RECEIVED

6.1 Four representations by, and on behalf of, Farley residents have been received with respect to the initial submission. A summary of the representations is outlined below:

- Planning Practice Guidance refers to Article 7(1) (ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and notes a requirement for plans and drawings to accurately describe the proposed development
- plans which cross out block plans and elevations should not be considered acceptable
- the plans should clearly show the difference between the approved and as built development
- difficult to comment when drawings do not seem to reflect what is physically there
- main block roofline and gutter line wrong as no step down with the whole block being taller than the drawings
- porch wrong shape and size and has wrong door
- dining room roof lights missing.
- sunroom roof lights wrong
- too many pool roof lights
- increase in glazed area of approximately 5 times
- pool windows wrong - on side 3, too many Pool windows
- wrong on rear elevation
- chimney completely wrong position and wrong shape
- driveway not as described on drawings

- location of entire footprint not as described on original or current application
- building is too close to the western boundary and at some points is nearly a metre outside the developer's land and, consequently, much of the stone wall shown on the plans cannot be built without going into the public verge - the original boundary was dead straight at this point
- southwest corner of the main block appears to actually breach the original boundary
- part of the stone wall built so far, isn't as tall as specified.
- provision of "garden" areas as described in original application ignored and spaces concreted
- wooden garden boundary in parts, instead of stone wall
- failure (in application) to acknowledge four mature trees immediately adjacent to the development, which subsequently were put at risk by excavation, necessitating intervention from Tree Officers
- application wrongly alleges that the building and landscaping are finished
- list isn't exhaustive, and inspection by someone from the planning department would reveal more
- according to the elevation plans the swimming pool building is a (proportionately) modest adjunct to the main dwelling where in reality it is a behemoth and far closer in height to the house
- actual heights of the buildings need to be independently assessed and presented before a judgement can be made
- absurd to consider making a decision based on drawings when there is an actual building already in place
- the enormous gable ends and two large openings at ground level take the pool building, far from the relatively anonymous looking barn-like structure originally proposed
- given how obtrusive and incongruous to the area the property already is, should it not follow that the conditions originally imposed be strictly upheld in order to help preserve what sense of rurality is left here in Farley
- would like to know how the planning department will check that the latest drawings meticulously and accurately reflect the dimensions and arrangements of the building as it now stands
- past experience leaves no trust between the group and the applicant and his agent

6.2 Seven representations by, and on behalf of, Farley residents have been received with respect to the amended submissions. A summary of the representations is outlined below:

#### Background

- have written on behalf of the Farley residents on many occasions
- past experience leaves a position of no trust between the group and the developer and his agent
- as it stands, suggest that no planning permission exists for development of any kind on this site as conditions were not complied with and development is unlawful and there is a considerable body of case law which supports this contention
- contend that it is highly likely that the building, as it stands, is in its entirety unlawful – there is scope to consider the planning application now submitted as a new development, rather than as an amendment to a development which benefits from planning permission
- cannot seek revision of a planning application that does not exist
- with this in mind, submissions made with the application must be of sufficient quality and accuracy to clearly and precisely describe the development

#### Comments on assessment of previously granted permission 15/00718/FUL

- Officer's consideration of the previous planning application to some extent dismisses the Council's own policy in favour of the advice contained within the 2012 National Planning Policy Framework and the assessment of the development in terms of impact



on character and appearance aligns local plan policies H6, SP4 and SP5, with paragraph 89 of the 2012 NPPF, using consideration of continued residential use and whether proposed structures are materially larger than existing, to judge impact on character and appearance

- assessment of the relative scale of existing and proposed development can at best be described as simplistic and, to a large extent, illogical
- only the floor area of existing and proposed buildings is assessed - there is no comparison of volume, relative existing and proposed ground levels or building heights
- floor areas for the existing building are totalled, whereas floor areas for different elements of the proposed development are expressed separately
- using the figures provided in the officer report the existing buildings on the site have a total floor area of 407m<sup>2</sup> - the new dwelling, pool building and link building have a total floor area of 719m<sup>2</sup> which represents a very significant 58% increase in floor area
- difficult to agree with the conclusion of issue 3 of the issues section of the report that there is anything about the design of the building which balances the clearly, materially larger building to any extent which would be expected to enable compliance with the Local Plan policies then applicable
- whilst it may be considered that the 2015 grant of planning permission was irrational and inconsistent with policy, the Council made that decision and it was not challenged at the time - is very clear the scope to consider whether that permission remains, given that pre-commencement conditions have not been complied with, that permission has not been implemented and has subsequently lapsed
- Officer appears to accept that, at best, his recommendation is marginally acceptable by considering the need to impose controls over further development given the size and scale, design and appearance of the buildings and the prominence of the site

#### Policy Consideration of the development

- relevant to consider the current application under the provisions of the policies of the current NPPF and the Adopted Local Plan (2017)
- Policy HC7 now provides criteria against which proposals for replacement dwellings in the countryside should be assessed, referencing paragraph 55 of the 2012 NPPF, now paragraph 79 of the 2019 NPPF - neither of the versions of the NPPF directly reference replacement dwellings
- HC7 continues to apply criteria which must be met before a replacement dwelling can be permitted. These criteria include
  - the existing dwelling does not make a positive contribution to landscape character or distinctiveness such that it should be retained;
  - the scale, form, design and massing of the replacement dwelling does not detract from the character or appearance of its setting or surroundings.
- development was questionably acceptable when assessed against H6 in 2015 but as it now stands the precedent created by the development would effectively negate application of Policy HC7 elsewhere in the Borough

#### Accuracy of drawings

- without assurances on the accuracy of the drawings, the ability to comment on the planning application will be undermined
- so called "amended plans" submitted in March 2021 show no discernible differences from those submitted in October 2020 - they still do not adequately reflect the 'as built' situation
- would like to know how the planning department will check that the latest drawings meticulously and accurately reflect the dimensions and arrangement of the building as it now stands
- attempts to measure drawings are hindered by the absence of quoted scales on a number of drawings and no indication of paper sizes for original plans
- scales on floor plans are different for ground and first floor, yet show the same foot print

- clarity over the exact scale, level and position of the newly built structure could be easily secured with the engagement of a surveyor providing a topographical and dimensional assessment of the development - this would enable both the Council and third parties to properly understand and assess the impact of departures from any approved plan
- surprised by Officer observations - unaware of any guidance, legislation or case law which indicates that it is sufficient that the drawings are 'reflective' of the development proposed
- Planning Practice Guidance refers to Article 7(1) (c) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and notes the requirement for plans and drawings necessary to describe the proposed development – contend that the plans fail to meet this requirement
- respectfully suggest that drawings of the approved and as built development should be presented side by side
- Implication is that prepared to consider granting planning permission based on plans which are acknowledged to be incorrect – this means the dwelling as constructed will remain unlawful which would seem the accepted test in the Wednesbury Case and the decision would be challengeable by law and the Council would have no reference point to assess the precise scale and dimensions of the original dwelling
- request that either the application is refused or accurate plans are secured which enable proper assessment of the development
- consider that the block plan (RY S20.02) remains inaccurate and does not show the building as constructed in the right place
- whilst it does perhaps better show the general position of the buildings, the agent is totally wrong in his assertion that the plan "shows the correct relationship of the dwelling to the highway" and that "the proposed stone boundary wall is correctly shown"
- new property and its orientation was significantly altered - it was turned to face more towards the west so that the facade was facing more directly to the road and this brought the SW corner of the main building, and the arm containing the sitting/dining rooms, out towards the road
- from the aerial photographs and maps it is possible to ascertain that these elements of the building are, at the very least, actually on the boundary but more likely to be in excess of 0.75m over the boundary
- there is certainly no way that much of the proposed stone a wall can be built within the property's boundary
- the short length of wall already built is very clearly within the verge, beyond the boundary and is very obvious on the ground - sure that a little work by your technical staff will confirm my findings
- the new block plan shows the building's proximity to the road a little more accurately than before but, had it been submitted at the start, prior to construction, would it have been approved?
- property as built differs significantly from what was approved (15/00718) especially regarding it's perceived bulk and scale (a point of concern raised when the application was considered in 2015/2016)
- following changes from what was approved have all contributed, in varying degrees, to the over-bulky and over-bearing appearance of the as built structure and thus to its unacceptability
  - raising the height of the angled extension on the front (sitting /dining rooms) and locating it nearer to the roadside
  - turning the whole building so that the facade is considerably more face on to the road which has also helped to make the pool building more prominent even though it was stepped back
  - using almost smooth stone blocks on the exterior rather than the more traditional coursed natural gritstone as on the previous property (and as was proposed in the first application)

- building at a higher ground level than the previous property -probably due to the incorporation of a full height cellar under the whole of the main building
- not stepping down the ridge on the main block.
- changing the design of the porch roof from pitched to lean-to
- erecting over-sized gate posts with a very large gate (not at all in keeping with local vernacular styles
- raising the height of the pool building by 1m and its width by 1.25m along with significant changes to design details, i.e., using horizontal rather than vertical cladding, raising the height of the lower stone wall, and incorporating a very large gable end window - this building was proposed to have a simple agricultural style, very different to what has been built
- not defining the property curtilage, especially to the front and east, to give some sense of containment
- clear that the western boundary of the pre-existing dwelling ran on line consistently parallel with boundary of the verge and the surfaced part of the highway
- re-orientation of the building compared to the approved plan results in the forwardmost, south western corner of the new building projecting into the highway verge by as much as 750mm
- proportions of the swimming pool building are incorrect and the building appears taller than permitted - the height of this building on the south east elevation is different to that shown on the south west elevation
- one plan appears to show the building at least 500mm higher than the other - photographs of the structure as built appear to confirm that the ridge and eaves are built to this greater height
- ability to assess the exact size of the swimming pool building is further hindered with inconsistency between floor plans and elevations - contend that this building is at least 1000mm higher and 1250mm wider than that which has been approved
- window openings to the swimming pool on the south east elevation shown on RY.S20.05B, measure 2550mm in width, on the floor plan the same windows measure 2150mm a difference of 400mm per window
- roof lights are incorrectly shown
- the porch is larger than approved and now has a mono-pitched roof as opposed to the approved pitched roof
- plans submitted with the current application suggest a distinctive drop in the ridge height of the main dwelling across the south west elevation emphasised by the addition of a false parapet, above the roof plane - this feature mimics the broken ridge line of the original dwelling on the site
- drawings submitted under 20/00530 acknowledge the significant increase in height of the roof to the sitting room to the front of the site
- appears that the residential curtilage to the site is larger than that which was occupied by the dwelling which previously occupied the site
- access has moved and is far grander than was previously the case
- elaborate pillars and increased heights of boundary treatment appear to lack planning permission - understood that the Council have already raised issue over the height and form of the gates and frontage boundary which is conveniently ignored by this application
- comparison of photographic evidence of the state of the site and levels as previously existed suggest that the new building has been built with higher floor levels than was previously the case
- floor plans do not show internal changes in floor level which must exist given window positions and elevational treatments – suggest that this is likely to be the result of incorporating a full height basement, beneath part of the main house.
- failure of the applicant to comply with the requirements of pre-commencement conditions attached to the planning permission granted under 15/00718 means that building materials used in the development have never been approved- as a

consequence, the development has been carried out using smooth stone blocks in regular courses rather than the traditional natural gritstone used for the previous building and as proposed in the approved scheme

- in common with many other submissions relating to this application drawings do not match, show different site boundaries, a different position and alignment of the highway.
- note recent comment from the Council's highway advisors that it is now considered that the building does not encroach onto the highway but the wall which is part of the development for which planning permission is sought is located on the highway - not sure that plan S20.03b actually shows this with the corners of the building seemingly merging into the wall such is the poor quality of the plan.
- situation raises issue with the accuracy of ownership certification submitted with the application.
- the current application can be considered de novo - even if that position was not to be accepted, it should be considered necessary to resubmit plans submitted with the 2015 application and the development should be assessed against current policy
- any decision relating to the application as it stands would fail the test of Wednesbury reasonableness in the Courts

### Character and appearance

- regard the project with dismay – what could have been an architectural gem and a positive addition to the locality is a monstrosity
- character and appearance of Bent Farm is incongruous within environment
- how can permission be granted to renovate or replace an existing traditional, natural gritstone farmhouse with a smooth stone block monstrosity almost double its size
- the newly constructed Bent Farm in its highly prominent location, with its unauthorised scale, proportion and new levels, has had a dramatic and detrimental effect on the character and appearance of the area
- the house, despite looking like a small hotel, has been built with scant regard to the planning permission
- the taller, wider pool, no longer mimics an agricultural building but now more closely resembles a car showroom
- the differences between the development as approved and as built must still be assessed against the requirements of those policies seeking to protect character and appearance – HC7
- clear from the Officer report which considered 15/00718, that the development then proposed was considered to be at a maximum level acceptable under the terms of H6 - such was the extent of this position that it was considered appropriate to impose conditions restricting the erection of garden sheds – “to ensure that the extent of built form is not overbearing on this prominent site”
- conditions were imposed for reasons relating to the safeguarding of the character and appearance of the development – a slightly muddled form of wording as it was the character and appearance of the area in which the development was to be located which was to be protected as per H6
- very difficult to accept any argument which would conclude that the new development has not had a dramatic and detrimental impact on the character and appearance of the area
- impact can only be increased by the scale and form of the building indicated in the plans now submitted and to an even greater extent by the building as constructed
- building is much too close to the highway and leaves next to no room for any landscaping (as was proposed in the initial design statement) - doubt that the proposed rebuilt stone wall can be accommodated without incursion into the verge
- developer made a massive error when laying out the foundations of the property which resulted in the extreme proximity to the road and so much more of the development is detrimentally different from the original plans - seems entirely wrong that he should be rewarded for his failings and incompetence with a stamp of approval!

- differences between the approved and as built developments bear repetition
  - greater ridge heights
  - failure to break long ridge lines,
  - higher buildings of greater massing extending beyond the established front boundary of the site;
  - reorientation and repositioning of the building
  - increase in the curtilage of the site
  - inappropriate access
  - inappropriate boundary treatments
  - inappropriate building materials
  - increase in the prominence of buildings as a consequence of land levels and building heights

Each of these breaches and departures erodes the acceptability of the development when assessed against the expectations of HC7

### Scale

- it is on the wrong footprint in terms of size and orientation, it is oversized and uses different materials
- the building looms over the road in a dominating display of bad taste
- undeniable that this unlawful build, due to its overbearing size (referred to locally as Tesco) for
- a domestic modern dwelling completely dominates the hillside of Farley
- disproportionate to the rest of Farley and is not sympathetic to the rural location and surroundings
- the vital issue which has yet to be resolved is that the drawings which are supposed to clearly and accurately specify the building, as built, remain unaltered and are of insufficient quality to allow the application to be assessed, or to move forward - trust you will require the developer to address this before any further delay?

### Siting

- the building breaches the boundary of the property and the curtilage exceeds that of the previous farmhouse
- using aerial photographs (recent and historic) and OS maps it is clear that the western boundary to the property ran for about 26m from the entrance gatepost to where the old house abutted the verge at a constant width of 4.5m to 5.0m from the edge of the road
- Planners have allowed breaches of the boundaries, orientation, proximity to the road and encroachment of the public verge -without insisting on detailed accurate scrutinised plans, there is no evidence that the building sits on the original footprint and no indication as to what extent it differs from the agreed plans – the result is an overbearing and incongruous monstrosity
- interesting to note that the house has been built closer to the road than shown on the original planning application - have pasted part of the original design statement below.
  - *The position of the dwelling is to be moved approximately 1800mm further away from the highway boundary. This is considered to significantly improve the overall appearance of the dwelling from the adjacent highway. The high boundary wall is to be replaced with a low level dry stone wall. The space between the dwelling and boundary is to be planted to improve the views from the highway to the proposal. The position of the pool building is to be turned and squared with the dwelling frontage to simplify the appearance of the front elevation. The side boundary walling is to be moved outwards slightly to allow access around the pool building. The rear single storey flat roofed element is not visible from the highway and shielded from view across the fields by the pool building.”*
- you may agree with me that the building we are faced with today fails to meet these specifications?

## Landscaping

- absolutely no details regarding landscaping, surface treatments and boundary walls (other than the rebuild of the roadside wall)
- block plan shows boundaries to the east and south but there is no evidence of these on the ground - these should be detailed
- to help mitigate this building's dreadful domination of the area, a comprehensive and extensive landscaping scheme must be submitted for approval and actually implemented sooner rather than later.

## Other

- have written to the Council on two previous occasions - receiving no response - these letters raise issue with the difficulty of assisting the local residents when persistent inaccuracy in submissions and the impossibility for the Council to properly determine the application on the basis of these submissions - notwithstanding the time which has passed since previous correspondence, would still appreciate your comments
- development on the ground obviously lacks the necessary planning permission - it is clearly possible for the applicant to provide an as built survey by a competent professional, which would at least resolve issues over inaccurate plans - in the absence of such a submission, it would seem increasingly appropriate for the Council to take enforcement action over the clear breach of planning control which currently persists.
- enforcement action should be taken against all elements of the development which depart from the plans approved in 2015
- comments on the integrity of officers, the applicant and his agent
- given that the planners have been too tolerant and trusting, it is now time to assess the differences meticulously between agreed plans and the final building 'as constructed'
- whilst our planners prefer to 'trust' applicants and their agents, surely, in the interest of good practice, deliberate material misrepresentations should be challenged
- over time, our confidence in our Planning Department has been eroded - they have continually moved the goalposts in favour of the applicant
- in its dealings with the applicant, the planning department has shown, at best, complete incompetence and, at worst, it has displayed a highly suspicious level of inconsistency in how it applies, follows and enforces planning law
- think the shambolic attitude taken by the planning department to the 'development' (aka destruction and ruin) of Bent Farm can best be summarised by the following quote from your planning officer Gareth Griffiths:  
*"The drawings may not be wholly accurate but the building has been constructed and it is hardly likely that the applicant will seek to alter the scale of the dwellinghouse to comply with the full details of the drawings."*
- main excuse for such lack of diligence in enforcing regulations is what they consider to be 'in the public interest' - Farley residents are 'the public' in this area and for years have been subject to a continual bias in the applicant's favour and a failure to protect and safeguard our local environment
- tired of the excuses given by our planners not to do anything and would like to see the Planning Department being equitable and fair to all Farley residents and not just to an interloping builder who has treated his neighbours and their rural environment with total disrespect
- experience in Farley is that if you push hard enough, the planners will eventually capitulate by inviting the Applicant to 'regularise' or follow the appeals procedure - continuous appeasement never works; it has served only to encourage the applicant to continue to abuse the planning system
- the planning department has shown, at best, complete incompetence and, at worst, it's displayed a highly suspicious level of inconsistency in how it applies, follows and enforces planning law – would argue that, to any outsider, the whole debacle stinks to high heaven, and we look forward to hearing the views of the ombudsman in due course
- rogue builders should not be allowed to profit from their behaviour

- told that justification for the planners inaction is because it is in the 'public interest' – we are the Farley public and for once we would like to be heard
- have to object to the above application in the hope that a lesson will have been learnt and that future developments in Matlock will be more sympathetic to the environment and not be plagued with planning breaches.

## 7 OFFICER APPRAISAL

### Background and Principle of the Development

- 7.1 The principle of the replacement dwellinghouse and its general size has been previously secured permission. Whilst the replacement dwellinghouse is larger than the farmhouse it replaced, it was considered that the design of the replacement dwelling was appropriate in its context and that it would sit comfortably in this rural, edge of settlement location when read in context with the neighbouring dwellinghouses, particularly the larger ones to the north. However, given the size and scale of replacement dwellinghouse, and the consideration of its design and appearance, it was deemed reasonable that permitted development rights were removed.

The principal matters for consideration are the differences in the details shown in the approved drawings, and/or required by condition, to the as built detail of the dwellinghouse and the swimming pool building which have been set out above.

### Policy Principle

- 7.2 Since the previous planning permission was granted, the former Local Plan (2005), and its policies by which the proposals were previously assessed, has now been replaced by the Adopted Derbyshire Dales Local Plan (2017).
- 7.3 Policy S1 (Sustainable Development Principles) of the Adopted Derbyshire Dales Local Plan (2017) advises that all developments should seek to make a positive contribution towards the achievement of sustainable development and includes making effective use of land which has been previously developed. It also advises of the need to provide a mix of types and tenures of quality homes to meet the needs and aspirations of existing and future residents in sustainable locations. This seeks to minimise the need to travel by promoting development in locations where there is access to a broad range of jobs, services and facilities which are accessible by foot, cycle or public transport with reduced reliance on the private car.
- 7.4 The site is outside of a Settlement boundary and in open countryside. In this respect, Policy S4 (Development in the Countryside) advises that the District Council will seek to ensure that new development protects and, where possible, enhances the landscape's intrinsic character and distinctiveness. In terms of residential development, this can be supported where it constitutes a single replacement dwelling in accordance with Policy HC7 (Replacement Dwellings). Policy HC7 advises that replacement dwellings will be permitted where:
- the residential use was not abandoned;
  - the dwelling is lawful;
  - the number of units is not increased;
  - the existing dwellinghouse does not make a positive contribution to the landscape
  - the scale, form, design and massing of the replacement dwelling does not detract from the character and appearance of the setting and surroundings; and
  - the existing dwelling is demolished.

- 7.5 In this case, the residential use of the former dwelling was not abandoned, it was lawful, the number of units remains as a single dwellinghouse and the former dwelling was demolished to make way for redevelopment. The former dwelling and its associated buildings did make a positive contribution to the landscape but, as advised above, it was not considered viable to undertake the significant repairs necessary to the building to make this secure going forward and a replacement dwelling was justified in this respect. The matters of the scale, design and massing of the modified replacement dwelling are considered below.
- 7.6 In terms of new development, Policy PD1 (Design and Place Making) seeks to ensure that the layout and design of new development creates well designed, socially integrated, high quality successful places where people enjoy living and working. This also seeks to ensure that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable loss to local character and amenity. Policy PD5 (Landscape Character) also seeks to protect, enhance and restore the landscape character of the Plan area by recognising its intrinsic beauty.
- 7.7 Whilst the former dwelling has been replaced with the current dwelling, there was a requirement to address matters of ecology. To this end, Policy PD3 (Biodiversity and the Natural Environment) advises that development should include measures to contribute positively to the overall diversity of the Plan area. In addition, Policy PD7 (Climate Change) requires that development seeks to mitigate global warming.
- 7.8 Further to the granting of the previous planning permission, the Darley Dale Neighbourhood Plan (2019-2033) has also been adopted and is a material consideration. Policy NP 9 (Protecting the Landscape Character of Farley) advises that planning permission will be supported for development in Farley where the proposal can demonstrate a layout that reflects the open and fragmented character which allows for long views to the Peak District National Park. Policy NP 19 (Design Principles for C3 Residential Development in Farley) advises that planning permission will be supported for residential development in Farley where the proposal is of a high design quality that will positively contribute to the character of its setting and may demonstrate:
- a) the use of local stone and slate tile roofs to reinforce the unity of the settlement; and
  - b) a range of boundary treatments to delineate boundaries and reinforce the distinctive character (dry stone walling) and landscaping (trees).

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

- 7.9 The acceptability of a replacement dwelling has been established. The principal matters for consideration are how the original approved scheme has been altered from the approved plans in its construction and whether these alterations are deemed acceptable/unacceptable in the round. There are a number of differences detailed above which it is considered are worth reflecting upon again. These are:
- the proposed single storey projection closest to the site entrance is now some 2.2m higher than approved (measured at approximately 6.1m in height on site and detailed as 3.9m in height on the approved drawings);
  - the eaves line of the main part of the dwellinghouse has no step down on the building as constructed, which differs from the approved drawings where this was detailed two thirds of the way along from the roadside;
  - many of the windows of the dwellinghouse have not been provided in accordance with the approved drawings and have a horizontal emphasis rather than the approved vertical emphasis;
  - the chimney is not positioned as approved as it is inset further off the gable;
  - the front porch is of a different size and has been provided with a lean-to roof rather than a pitched roof, and has a different door;
  - the swimming pool building has been set some 2.3m back from the approved siting;



- the ridge height of this the swimming pool component has increased by some 300mm
- the swimming pool building has windows inserted in the boarding of the front gable and the ones at the rear gable are larger than the one that had been detailed on the approved drawing;
- the front facing windows to the ground floor of the swimming pool building have been changed from three to two;
- the window/door openings to the rear are different to those approved;
- the cladding to the swimming pool building has been applied horizontally rather than vertically as detailed in the approved drawing;
- the stone has been taken up to above the top of the windows where boarding was previously detailed for the top half of the windows up to eaves level;
- a fence has been provided to the roadside boundary which was not approved with the original permission and should be a boundary wall (the applicant advises this to be a temporary measure);
- the relationship of the dwelling and proposed boundary wall to the highway verge; and
- the apparent extent of the curtilage to the front (south of the dwelling) is not as detailed on the approved drawings.

7.10 The originally approved replacement dwelling, whilst larger in proportions, was designed to seek to emulate the previous farmhouse and buildings by providing the main dwelling with elements projecting from it. To this end, it was considered important that the elements projecting to the front stepped down from the main part of the dwelling as a reflection of ancillary farm buildings. The main areas of change in the dimensions of the building detailed in the previously approved drawings, to that as built, are the height of the single storey element projecting off the front of the building, adjacent to the highway, which has increased by some 2.2m from the approved 3.9m in height to 6.1m in height. This has somewhat diluted the hierarchy of 'buildings' stepping down in height as they move away from the main part of the dwelling. However, whilst this impacts upon the original design philosophy, and raises the mass of the development in how it is appreciated adjacent to the highway, this is not deemed by Officers to be of such harm that it would reasonably justify refusal of planning permission.

7.11 The other main change to the dimensions of the main part of the dwelling is the eaves height to the east side of the building beyond the roof parapet. On the original approved drawings, this detailed with a drop in height of some 0.1m but has been constructed without this. Nevertheless, it is the view of Officers that the raising in height of the front elevation on the eastern end of the main part of the dwelling (beyond the parapet) is not such a perceptible alteration that it significantly harms the character and appearance of the dwelling to an extent that could justify refusal in terms of these specific increases in the height of the building; the raised parapet and change in roof height are considered to still provide a sense of intervention between the western and eastern sides of the main dwelling.

7.12 In terms of design detail, the alterations to the window proportions to the main part of the dwellinghouse, and the swimming pool building, are not deemed to be harmful to the character and appearance of the building. The porch has been provided as a lean-to, which is considered more appropriate to the appearance of the building than the projecting gabled detail which was approved for the porch. The chimney is offset further from the roadside gable, than detailed on the approved drawings, but is not considered so out of place to be deemed harmful.

7.13 The height of the swimming pool building has increased by some 300mm. The timber boarding to the swimming pool building was preferred by Officers to be of a vertical application, as one would normally find of agricultural buildings and which this element of the scheme was seeking to emulate. This was also approved to extend below the lintel line and half way down the windows. Whilst the end result dilutes the original agricultural genre, the overall design does not undermine it to an extent that would justify its removal and

replacement. This has allowed the applicant to insert large windows into the timberwork in the gable ends given the alignment of the boarding. Again, as a contemporary take on an agricultural building, these alterations are not considered so harmful that it is necessary to correct this detail back to the original approved drawings. The setting back of the swimming pool building does not compromise the original design concept for the replacement development. The front elevation of the swimming pool building has two large openings rather than the three approved; this is considered an improvement to the design of this building.

- 7.14 There are clearly departures from the drawings approved with planning permission 15/00718/FUL. However, the development has been constructed substantially as approved in terms of its footprint and scale. It has been constructed of locally sourced gritstone and is considered appropriate in its materials.
- 7.15 Concern has legitimately been raised that the drawings submitted initially, and as amended, did not reflect accurately upon the development. However, officers have sought amended drawings which reflect on measurements officers have taken on site. Members have to consider the building as erected against the approved scheme. Whilst it does differ, the overall impact is largely the same and the change to the design is considered by officers to be acceptable.
- 7.16 In granting planning permission previously, it was recognised that the replacement dwelling was larger than the previous farmhouse and outbuildings. In this regard, permitted development rights were removed for extensions to the dwelling. In referring back to the previous planning permission, it is also considered reasonable that details of any garden sheds are submitted for approval to ensure the extent of built form is not overbearing on this prominent site as required in granting the previous planning permission and that details of the landscaping and boundary treatment are submitted.
- 7.17 Concern has also been raised that the domestic curtilage, as being engineered, goes beyond that shown on the approved drawings. However, should planning permission be granted, a condition will be required on the submission and implementation of a landscaping scheme, which the applicant will need to implement within a reasonable time period within the curtilage defined in the application drawings; this was a requirement of the previous permission. This will need to secure the provision of the boundary wall along the highway verge.

#### Highway Matters

- 7.18 The Local Highway Authority advised that they have no concerns with regard to the application subject to conditions being attached which were required on the previous planning permission, and where these were still relevant. However, there was concern that the dwellinghouse, as built, and the proposed boundary wall, encroach/would encroach into highway land. This was assessed further at a site meeting with officers of the Local Highway Authority and revised plans were submitted by the applicant detailing a realignment of the proposed boundary wall. On this basis, the Local Highway Authority is satisfied that the development is, and can be, provided without encroachment onto highway land. Officers are satisfied that whilst the boundary wall does not present itself fully across the side elevation, that the revised design where the wall abuts to the dwelling, is acceptable.

#### Impact on Residential Amenity

- 7.19 With regard to amenity, the replacement dwellinghouse is of sufficient distance from the neighbouring dwellinghouses to not result in a loss of privacy, outlook or light to those properties that could be deemed harmful.

## Ecology

7.20 In granting the previous planning permission, mitigation measures with respect to wildlife were requested. To this end, the same condition can be attached to any grant of planning permission.

## Climate Change

7.21 Policy PD7 advises that, in addressing the move to a low carbon future, the District Council will promote a development strategy that seeks to mitigate global warming, adapts to climate change and respects environmental limits. As such, new development should be designed to achieving national targets to reduce greenhouse gas emissions. The development, when initially granted planning permission, was not subject to such policy consideration as this Policy emerged with the Adopted Local Plan (2017).

7.22 Therefore, it is considered difficult to retrospectively design in such features that may reduce carbon emissions into the development which is nearing completion. Nevertheless, the stone facing materials are locally sourced gritstone which goes some way to reducing the carbon footprint of the development. The main part of the dwelling is south facing and there is a potential in the future of the applicant providing solar panels on the roofscape, subject to planning permission. On this basis, it is not considered reasonable to refuse planning permission in the context of Policy PD7.

## Drainage

7.23 District Council Officers are aware that the applicant has been pumping water from the property, believed to be from the cellar of Bent Farm, and that this has been advised to the Local Highway Authority. The impact of the water on the dwelling is not strictly a matter for planning to resolve. However, any engineering works to address the drainage, that are external to the dwellinghouse may need planning permission; Officers have not been advised that there is a need for such and the Local Highway Authority has been made aware of the situation regarding the pumping of the water.

## Conclusion

7.24 The principle of the replacement dwelling was accepted with the previous grant of planning permission. The matters for consideration are therefore whether the building that has been erected is a reasonable reflection on the approved scheme or do the discrepancies between the as built development and the approved drawings create significant harm. If the latter was concluded it would only be reasonable to enforce back to the original scheme. Whilst it is recognised that some elements of the development as built are not how it was expected, particularly the alteration to the single storey projection at the front and the detailing of the swimming pool building, these alterations are not so harmful in their context that a recommendation of refusal is justified in this case.

7.25 As such, it is recommended that planning permission be granted subject to the boundary wall to the verge being in accordance with the amended drawing, details of the landscaping and boundary treatments are submitted to the Local Planning Authority and implemented within a reasonable timescale and that permitted development rights are removed to control extensions to the dwellinghouse given its already large size as required with the original grant of planning permission.

## **8 RECOMMENDATION**

8.1 That planning permission be granted subject to the following conditions:

1. The boundary wall to the public highway, detailed on the amended drawing RY.S20.03b shall be provided within 12 months of the date of this permission in accordance with the submitted details.

Reason:

To define the permission for the avoidance of doubt and to ensure the satisfactory appearance of the development to comply with Policies S1, S4, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017) and with Policies NP9 and NP19 of the Darley Dale Neighbourhood Plan (2019-2033).

2. Within six months of the date of this permission, details of the following shall be submitted to and approved in writing by the Local Planning Authority:
  - details of all soft landscaping;
  - details of hard surfacing areas and materials; and
  - details of all other boundary treatments other than as detailed in condition 1 above

The hardsurfacing and boundary treatments shall be provided in accordance with the approved details within 12 months of the date of this permission. All soft landscaping comprised in the approved details shall be carried out by no later than the 2021/2022 planting and seeding season. 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 the satisfactory appearance of the development to comply with Policies S1, S4, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017) and with Policies NP9 and NP19 of the Darley Dale Neighbourhood Plan (2019-2033).

3. Within six months of the date of this permission, a swallow compensation and enhancement strategy shall be produced and agreed in writing by the Local Planning Authority. Once agreed, the mitigation strategy shall be implemented in full within 12 months of the date of this planning permission.

Reason:

To safeguard protected species to comply with government guidance contained in the National Planning Policy Framework and Policy PD3 of the Adopted Derbyshire Dales Local Plan (2017).

4. Condition PD4 Permitted Development: Gates, Walls, Fences and Curtilage Buildings

Reason:

To safeguard the character and appearance of the development to comply with Policies S1, S4, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017) and with Policies NP9 and NP19 of the Darley Dale Neighbourhood Plan (2019-2033).

## NOTES TO APPLICANT:

1. 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 £116 per request. The fee must be paid when the request is made and cannot be required retrospectively.
2. The Local Planning Authority have prior to and during the consideration of this application engaged in a positive and proactive dialogue with the applicant which overcame initial problems with the application relating to the accuracy of the application drawings.
3. This decision notice relates to the following documents:

Site Location Plan 1:2500 received on 6<sup>th</sup> July 2020

Design and Access Statement received on 6<sup>th</sup> July 2020

Amended Drawings Nos. RY.S20.03B, 04B and 05B received on 17<sup>th</sup> September 2020

Amended Drawing of North West Swimming Pool Element received on 25<sup>th</sup> September 2020

Amended Drawings Nos. RY.S20.01B and 01C (excluding details of the boundary wall) received on 30<sup>th</sup> September 2020

Amended Drawing of Boundary Wall No. RY.S20.03B.

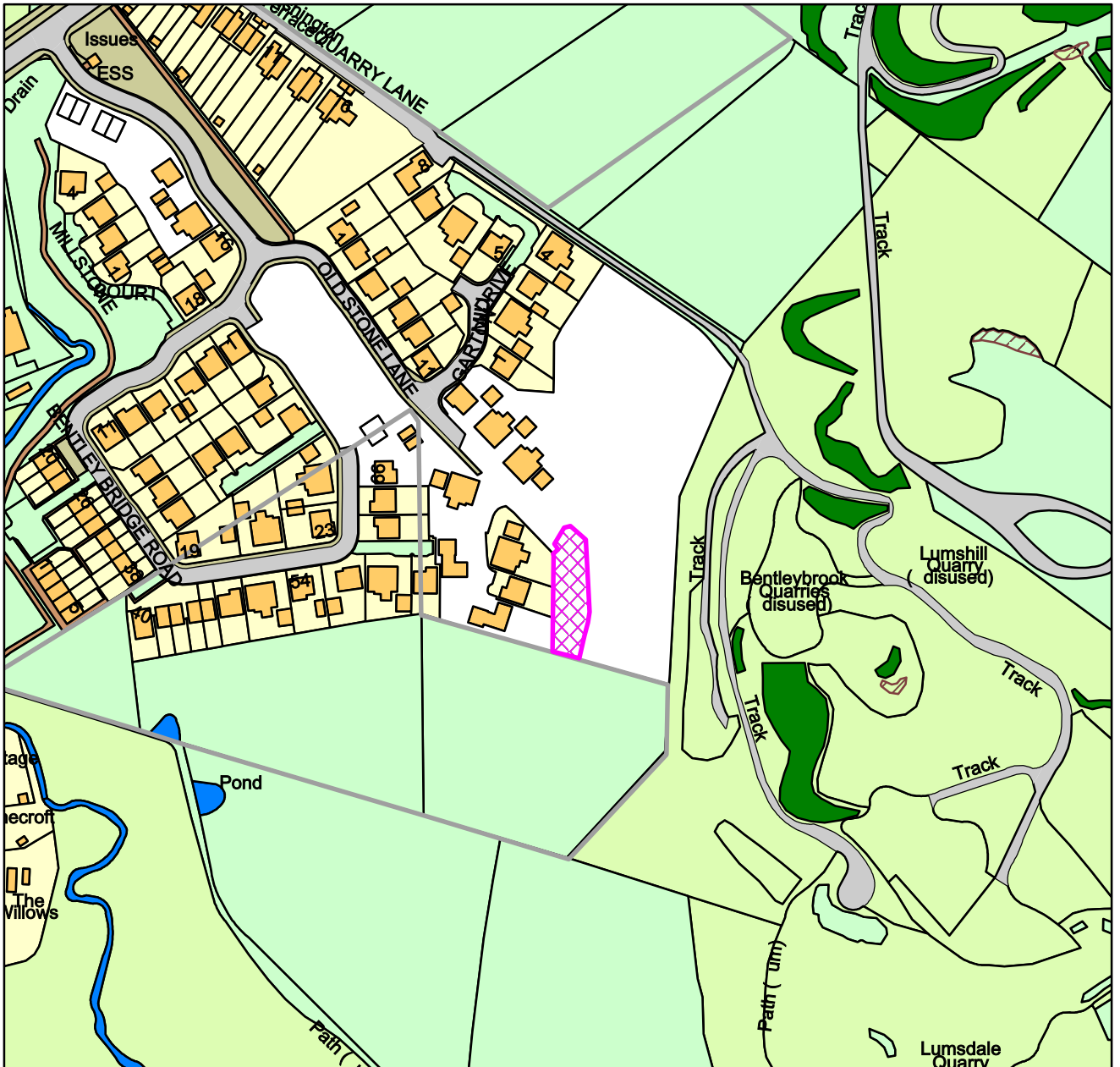
<b>APPLICATION NUMBER</b>		20/00919/FUL	
<b>SITE ADDRESS:</b>		Land off Old Stone Lane, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Retention of Agricultural Access Track	
<b>CASE OFFICER</b>	Mr. G. A. Griffiths	<b>APPLICANT</b>	Harron Homes (North Midlands)
<b>PARISH</b>	Matlock	<b>AGENT</b>	N/A
<b>WARD MEMBERS</b>	Cllr. P. Cruise Cllr. S. Flitter Cllr. D. Hughes	<b>DETERMINATION TARGET</b>	7 <sup>th</sup> December 2020
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	The number of representations objecting to the proposals	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• Background</li> <li>• Principle of the development</li> <li>• Impact on the character and appearance of the area</li> <li>• Impact on residential amenity</li> <li>• Land stability and drainage</li> <li>• Nature conservation</li> <li>• Highway matters</li> <li>• Public footpath and impact on heritage asset</li> </ul>

<b>RECOMMENDATION</b>
Refusal

20/00919/FUL

Land Off Old Stone Lane, Matlock



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

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Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

# 1. THE SITE AND SURROUNDINGS

1.1 The site comprises a field, across which there is a public footpath, which is to the east of a residential development which is currently under construction but largely occupied.





## **2. DETAILS OF THE APPLICATION**

- 2.1 Retrospective planning permission is sought for the retention of an access track to the fields that are tenant farmed. The slope of the land has been flattened to form a level in which a compacted hardcore track of some 5m in width has been laid. The track is accessed off an estate road and rises for some 25m to where it levels out and turns southwards along the field for some 37m until it terminates just beyond the gateway to an adjacent field. The first section of the track from the highway is proposed to be aligned with railings and fencing and to have a field gate set some 15m back from the highway edge.
- 2.2 The slope between the track and the retaining walls to the rear of the gardens to residential properties that back onto the field of the field has been set at a steeper angle to the fall of the field. The applicant has provided details of the retaining structure that supports the land but the retaining structure is not confirmed. The retaining structure is faced with brick, to match that of the dwellinghouses, and a 1.8m high, close boarded fence is set atop the retaining wall.
- 2.3 Public Footpath 7 crosses the access track but it is not clearly evident. To the north side of the track is a swale, which terminates at the track and then is formed into a drain along the sloping land between the track and the domestic curtilages.
- 2.4 The applicant advises that the access track has been formed at the tenant farmer's request, to allow access to fields beyond the residential development site; access was previously gained off a field gate off Chesterfield Road and possibly a field gate of Quarry Lane. With the residential development, these accesses are no longer available. However, an access point to the field was designed into the residential scheme to allow access to the fields at the point detailed on the submitted drawings; the approved drawings did not detail any engineering works or formation of a formal access along the slope of the field.
- 2.5 The applicant advises that the sloping land presented a significant risk should heavy machinery fall across the boundary of the housing development and there were also concerns with regard to long term damage to the retaining wall and drainage infrastructure from heavy machinery passing close by on an informal and unengineered track. The access track has been constructed a minimum of 4m from the residential curtilages to maintain health and safety criteria and has a crossfall that does not exceed 1:30. A sub-base and surface layer were constructed to enable the finished levels to be flush with the surrounding ground levels. A geotextile layer and land drainage has also been provided to the high side of the track due to the wet nature of the ground. It is also a concern that mud brought from adjacent fields would be brought onto the public highway via an untreated access route.
- 2.6 The applicant is of the view that this is a common type of track and that it will meld into the landscape over time. It is proposed that the banks either side of the track will be reinstated with a species-rich meadow mix.

## **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
  - PD2 Protecting the Historic Environment
  - PD3 Biodiversity and the Natural Environment
  - PD4 Green Infrastructure
  - PD5 Landscape Character
  - PD7 Climate Change

PD8 Flood Risk Management and Water Quality  
PD9 Pollution Control and Unstable Land

3.2 Derbyshire Dales Landscape Character and Design (2018)

3.3 National Planning Policy Framework

3.4 National Planning Practice Guidance

#### 4. RELEVANT PLANNING HISTORY

20/00192/VCOND Variation of Condition 14 of planning permission 15/00861/FUL to allow on site alternative habitat enhancement – to be determined

15/00861/FUL Residential development of 86 dwellings and associated public open space – Granted

14/00482/OUT Residential Development (Outline) – Granted

14/00436/FUL Residential Development of 64 dwellings with associated infrastructure – Granted

14/00120/OUT Residential Development (Outline) – Withdrawn

13/00456/OUT Residential Development of 65 dwellings with associated infrastructure (Outline) – Granted.

#### 5. CONSULTATION RESPONSES

##### Town Council

5.1 - no comment.

##### Local Highway Authority (Derbyshire County Council)

5.2 - no objection subject to the track being surfaced in a bound material for the first 10m from the (proposed) adopted highway and measures put in place to prevent surface water discharging from the track onto the (proposed) adopted highway.

##### Public Rights of Way ((Derbyshire County Council)

5.3 - please note the alignment of Footpath 7

- no gates, stiles or similar structures shall be erected across the path without the express consent of the County Council under the provisions of S147 of the Highways Act 1980
- have submitted a plan detailing the definitive line of the footpath which passes through the neighbour's garage and garden.

##### Peak and Northern Footpaths Society

5.4 - object

- no regard has been paid to the protection of the footpath in accordance with relevant legislation
- field gate and pedestrian gate across the path where the footpath leaves the new estate road are unauthorised and can only be authorised by the County Council for specific purposes
- the surface of the footpath where it is co-incident with the new track has been altered without the necessary authority of the County Council
- the unauthorised signing of the footpath does not indicate the correct legal route
- if minded to approve this application, which it is hoped does not happen, the barriers across the path, the signing of the path and the surface and alignment of the path must be approved by the County Council and the public's use of the path must not be compromised

- since the path will allow the residents of the development, among others, to reach the open countryside, it will be an important recreational asset and should be improved by the developers, not harmed.

#### Derbyshire Dales Group of Ramblers

- 5.5
- object
  - field gate and pedestrian gate across Matlock FP 7 are unauthorised
  - field gate is very difficult to open from the housing site side and is therefore an obstruction
  - the Definitive Map footpath is not aligned correctly and is not evidenced on the ground
  - the ad hoc signage is misleading
  - the surface of the footpath has been altered without authority
  - Matlock FP7 from Chesterfield Road to the quarry/woods has been closed for too long due to Harron Homes developing this housing site
  - the footway below the gates is yet to be completed and a digger was in front of the gates at time of visit
  - retrospective application fails to ensure that FP7 is both open and walkable for both residents and walkers and may deter access to the quarry/woods and the Right of Way network
  - FP7 has been built over by two garages and two gardens and also means that the field gate and pedestrian gate are incorrectly sited
  - the potential malalignment and obstruction of FP7 should be resolved before any approval is given to the application.

#### Development Control Archaeologist (Derbyshire County Council)

- 5.6
- concerns with regard to impact of the development on paved cartways of late 19<sup>th</sup> century date surviving in and around the former quarries behind Bentley Bridge (Lumshill, Bentleybrook and Lumsdale, Derbyshire HER entries MDR5115, 13816 and 13817) identified to the County Archaeologist in 2017
  - should be identified as an undesignated heritage asset of local importance, subject to the policies for such assets at NPPF chapter 16.
  - applicant should therefore submit sufficient information to establish the level of preservation and significance of the asset within the current proposal site(s) and to describe the proposed impacts thereon (in line with NPPF para 189) and should then be reconsulted on each application.

#### Councillor D. Hughes

- 5.7
- this retrospective planning application concerns a road that has been built by Harron Homes to re-establish access to a field adjacent to the development
  - it provides a link from the development through one field to the entrance of another behind the back gardens of three new houses in the development
  - the gardens are protected by a retaining wall with unknown properties about 1.8 metres in height
  - the road passes over a 33KVA cable, and in order to provide sufficient protection for the cable, the ground level has been raised by approximately 1 metre - the road therefore rises from the development to a level above the top of the retaining wall, and then falls down to nearer the top of the retaining wall where it enters the second field
  - at its highest point, which continues behind the three houses, it is approximately 2 metres above the height of the top of the retaining wall and between 2 and 4.7 metres from the retaining wall and, therefore, the slope from the road to the retaining wall has a gradient that varies between 1:2 and 1:3
  - believe material planning considerations are sufficiently strong to indicate that the application should be refused and the applicant should be asked to think again about the road
  - failure to notify residents of a planning application - the neighbours are not aware of any notification of the submission of a planning application

- the notice has since been confirmed to have been posted at the junction of Footpath 7 and A632 Chesterfield Road, approximately 250m away from the site of the application
- inaccurate drawings - the Track Plan and Section dated 16/09/20 (A1 - L) provided by Harron Homes indicate that the road is some 1 metre above the top of the retaining wall - at its peak, the road is in fact at least 2 metres above that point
- the gap between the road and the wall varies; at its closest the wall is about 2 metres from the retaining wall - as a consequence, the slope between the retaining wall and the road is between 1:2 and 1:3, and not 1:6 as indicated by Herron Homes; Planning Officers should therefore not rely on the drawings when coming to a decision on the application
- Harron Homes has not provided definitive drawings of the wall as it is built, and hence it is not possible to have confidence in any statement that they may make that it is sufficient to withhold the additional estimated 270 tonnes of clay and road material that has been used to raise the level of the ground and construct the road
- drawings that Harron Homes has shown to neighbours enabled the company to suggest that the wall has been constructed with concrete re-enforcement to retain land to a height of 1.3 metres above the gardens of the adjacent properties - while neighbours believe that level of re-enforcement was sufficient for the original design, they believe that the additional weight and the steeper slope of the land above the retaining wall puts the wall at risk
- neighbours have been told informally by independent structural engineers that they should not allow their children to play in the garden close to the retaining wall because its safety cannot be established - such loss of amenity is severe and in itself should be sufficient for DDC as a planning authority to reject this planning application and require re-instatement
- drainage and drains - no additional surface water drainage system has been provided for the road and its embankment, the clay used is already saturated and neighbours are concerned that run off will happen over the retaining wall into their properties
- perhaps more seriously, neighbours are concerned about the possibility of slippage and a failure of the retaining wall as a result of such saturation - again, there is a potential loss of amenity
- loss of privacy - because footpaths have been diverted, the road is now used as a thoroughfare from footpaths in the woods above the properties - the increased height of the road above the retaining wall has meant that the fencing provided behind two of the properties does not give privacy
- biodiversity in the field through which the road runs - it is understood that conditions have been applied to the field through which the road is built but there is no apparent conformance with those conditions
- the excessively wide construction and the import of material to form an embankment has a negative impact on biodiversity and is in conflict with Local Plan Policy PD3
- protection of footpaths crossing the field - note the objection made by the Peak and Northern Footpaths Society
- future land use - this matter is not a planning issue relevant to the application, but is indicative of the bad faith in which Harron Homes has approached this matter
- while Harron Homes has sold adjacent properties with up to 300 snagging faults, some of which are still outstanding, it has seen fit to invest in a road wide enough and with foundations good enough to be used as a residential road when a simple track between fields would have been sufficient to enable farming access
- the road is built on a field owned by Wildgoose Construction and provides access to another field farmed by another construction company
- local residents strongly believe that the road has been constructed to create a precedent for future development of these two fields
- such future land use would be against Local Plan Policy S4
- DDC should now support the Arkwright Society proposal to put the fields given access by this new road outside the settlement boundary

- liability for any damage to and maintenance of the retaining wall - this matter is not a planning issue but is indicative of the bad faith in which Harron Homes has approached this matter
- Harron Homes has indicated that Wildgoose Construction and the adjacent householders would have joint liability for the wall, yet Wildgoose Construction has no involvement in the application made or in the development and may therefore reject any liability over its construction
- object to this application on behalf of the residents on the material planning considerations and policy considerations outlined above
- in addition, believe that the settlement boundary should be defined in this location to exclude the fields bounding the present development by Harron Homes and, to avoid any doubt, the fields that are the subject of this present application - by doing so, developers and residents alike would have certainty over future development in this area.

## 6. REPRESENTATIONS RECEIVED

6.1 A total of 19 representations have been received. A summary of the representations is outlined below:

### Provision of Access Track

- knowingly constructed without permission – have no rights granted by the landowner or the LPA
- construction emplaced is in no way replicating the existing means of access that was afforded over the field by the farmer
- Harron Homes have constructed this access on land that they only have limited rights to
- whilst appreciate that the farmer requires access into the fields (in order to undertake 'appropriate management'), the track which has been constructed is disproportionate for this use
- whilst the crossfall of the field on the upper slopes may be an issue, the track could have been constructed by cutting it into the slope rather than building it up with imported material
- track is flush with the high side ground levels but evidently not flush with the low side levels hence the need for such steep banking below the track – this is completely unnecessary and could have been avoided had the track been made narrower or the land on the high side been retained by a low wall
- track clearly elevated above the fence and increases danger of damage and harm to occupants of neighbouring properties should a vehicle fall
- had Harron Homes followed due planning procedures, a far more suitable design could have been found to minimise impacts on safety, intrusion and damage to the mature biodiversity of the field - option chosen was to add 260 tonnes of ear to rear of 10 Old Stone Road alone
- believe the decision to import large amounts of earth and artificially raise the height of the track was to satisfy statutory rules regarding the minimum depth of utility apparatus beneath land used for agricultural purposes
- as a 3300V electricity cable passes beneath the track at its northern extent, understand that Western Power Distribution made Harron Homes aware of the lack of sufficient cover above the cable and recommended diverting it (either horizontally away from the track or deeper) – Harron Homes evidently decided to raise the ground level instead
- should be instructed to return the land to the level it was previously and arrange for the cable to be diverted
- track is not the safest design solution available, merely the easiest/cheapest
- planning application provides no reasonable evidence as to the need for the track – sloping ground is not an excuse to need an access track of this magnitude when agricultural machinery is perfectly capable of maintaining and accessing much more difficult terrain

- no indication of the use of the land and why heavy machinery may be required

### Retaining Wall

- Harron Homes have not demonstrated that the retaining walls constructed in the rear gardens of Plots 21-33 have been designed to cope with the additional increased load from raising the ground levels
- a Director of Harron Homes has shown details of how a standard wall is built with the caveat that no current member of Harron Homes staff witnessed the particular wall being built – the drawing advised that the slope should not exceed 1:6 – in reality the slope varies between 1:2 and 1:3 (were refused a copy of the drawing)
- wall was never built to retain the track and two independent structural engineers have visually inspected the wall and the size of the earth behind it and advised not to let children play near the wall
- note in their submission that there could be a long term risk of damage to the retaining wall and drainage infrastructure from heavy machinery passing close by on informal and unengineered tracks – suggests have not designed the retaining wall to an appropriate standard irrespective of the track construction and have not demonstrated how the construction of the track will mitigate this
- access track was constructed after Plots 31-33 had been legally exchanged and completed and the retaining wall was constructed in at least three stages and may not be consistent in its design and build along its length
- advised that track is set a minimum of 4m away from the retaining wall to maintain health and safety but its southerly end is only 1.7m away
- figure plan 6 of access track indicates rear wall to 10 Old Stone Road to be a 0-2m retaining structure – original drawings specify only a maximum of 1.3m of earth retained by the wall
- have experienced large plant colliding with the fence and knocking down a section of the retaining wall (photograph provided)
- the steep angle of the mud slope downwards from the track towards the fence would increase the force of such a future collision
- a better design would be to cut the land back on the high side to create a lower height, level platform level with the height of the retaining wall with either a slightly steep slope into the field or a small purpose design and purpose built retaining wall
- this would remove the additional 260 tonnes of clay based earth, reduce the risk of the retaining wall collapse, reduce the visual obtrusion of the track being visible above fence height and reduce the overbearing height of the raised embankment which intrudes on the privacy and security of adjoin properties

### Use of Land as a Green Buffer

- the intention to create the field between the housing development and the woodland on the upper slopes was first put forward as part of planning application 13/00456/OUT submitted by Wildgoose to address issues raised in the consultation responses and appears to have been determined as an acceptable design as it creates a green buffer to address landscape and visual concerns as well as ecological considerations ‘maintaining an unbroken field network along the foot of the wooded ridge to the east
- along with the wider margin of the site adjacent to Bentley Brook, this ensured that wildlife corridors were maintained, minimising the ecological impact of the development
- Derbyshire Wildlife Trust’s response to the planning application for the adjacent housing development (15/00861/FUL) recommended the ‘retention, protection and long-term appropriate management of fields 1, 2 and 3 to the south of the site and the retained field to the east of the site’ as mitigation and/or compensation for the adverse impact upon grassland of nature conservation interest caused by the development
- believe that a key determinant in the granting of the first planning permission on this land was the revision to the site layout, resulting in the creation of the green buffer field on the upper slopes of the site

- field is also reported to be/have been a protected wildflower meadow which further reinforces it's importance to local biodiversity and was originally included as offsetting for the adjacent housing development in earlier planning applications for the site
- Harron Homes say that they have re-seeded the land around the track with a meadow mix – to neighbours' knowledge, no reseeded works have taken place

#### Impact on the Field/Landscape

- the construction of the 'agricultural access track' has significantly disturbed this field and the extent of the constructed track has a notable environmental impact considering it's intrusion into the 'green buffer' (shown to be approximately 20% of the width of the field in the planning statement)
- track has been installed ripping up part of the protected wildflower meadow
- refer to Policies S1, S4, PD1, PD3, PD4, PD5 and PD8 of the Local Plan (2017)
- design solutions are available and refer to DDDC Landscape Character and Design Supplementary Planning Document (2018)

#### Impact on the Public Right of Way

- footpath is an historically significant wagon way
- have stated that a new public right of way is to exist within or adjacent to the boundary but not stated what this is
- construction works have caused significant damage to the footpath which overlaps with the track construction
- footpath is littered with construction waste which pose a significant trip hazard which has not been removed despite multiple requests to do so

#### Impact on Amenity

- track is significantly higher than required and overlooks fences on the boundary of the estate
- impact on privacy and security from walkers being diverted away from public footpath due to its lack of evidence
- right of way has been neglected throughout the building of Thornberries
- overlooking/loss of privacy would not have been the case for the average height pedestrian had the track been cut into the field at a height nearer to the height of the retaining wall rather than being raised up as an embankment
- refer to Secure By Design principles which supports the repeated request to raise the fence height along the rear boundary

#### Impact on Land Drainage

- the removal of vegetation which previously absorbed surface water, to make way for the access track, could potentially lead to an increase in surface water discharge onto the eastern boundary of neighbours' property with existing drainage problems – doubt as to whether this has ever been considered
- have strong doubts that drainage has been applied to the high side of the track as claimed
- reinstatement of the previous vegetation cover of the field, removing the low porosity track surface and a reduction in the gradient of the banking below the track would increase the capacity of the field to retain water.

#### Impact on Archaeology

- an historic quarry wagon way, made largely of stone setts in two tracks, has largely been destroyed but survives in part of the field within the land affected
- submitted objections in 2014 and 2015 to the Harron Homes applications requesting protection be afforded but no such protection was granted

- destroyed by laying of Old Stone Lane but also suspect was needlessly destroyed in laying the modern path adjacent to Quarry Lane gardens
- none of this was shown on the original plans or contemplated by their planning permission
- photographs submitted of the stone tracks prior to and post development
- topsoil from the fields has been regularly taken from the field to be used as fill within the Thornberries development and replaced with imported spoil

#### Impact on Ecology

- land should be a designated wildflower meadow which would have helped the main sites biodiversity offsetting requirements
- a wildflower meadow does not require an access in the form constructed – a much shorter length of track would be sufficient to enable the farmer to have access to the field and it certainly does not need to return at the rear of new housing
- loss of habitat in the meadow, with the installation of the track, has been catastrophic as well as affecting birds and other wildlife in the adjacent woodland due to loss of much of their food supply – additional planting on the Thornberries site will only go a little way to rectify this
- the banks either side of the track are currently saturated mud and have been told that they are being left to let nature take its course – the banks are imported clay spoil that will not result in a like-for-like replacement of what has been lost, without intervention
- Harron Homes have damaged the field in various ways including unauthorised changes to the topography, systematic removal of native soil (including its inherent biomass) to be replaced with biologically inert infill, removal of natural vegetation over a large proportion of the field's area
- clearly there has been a sustained and cavalier attitude towards their impact upon the local natural landscape and biodiversity

#### Inaccuracies in the Application

- clear that the application contains questionable information, in particular the Figure 5 cross section which shows either an undersized tractor or that the track is disproportionate in size as it is over 3 times the width of the tractor
- cross sectional drawing is inaccurate
- cross section is taken from the best possible point
- centre section of the track (behind Plots 31 and 32) is in fact above the height of the 1.5m high fence (drawn as a 2m high fence) – after protracted battling, Harron Homes have raised the height of a fence panel and added trellis to the top of the remaining 1.5m fence to increase security to 10 Old Stone Lane)
- the angle of slope is wildly misrepresentative – roughly 1:5 on the drawing and 1:2 or 1:3 in reality
- indicating an inconceivably small tractor further adds to the deception
- having witnessed all works on the field and spoken with contractors, have never seen or been told about a geotextile membrane nor installation of drainage on the high side of the track.

#### Developer's Intentions

- is this application for a farmer's track or a more substantial service road – given its over-engineered construction, would suspect service road to highways specification for reasons unknown
- whilst the application is to retain an agriculture access track, the applicant's planning statement makes numerous references to a 'Service Road' and 'Access Road' - this terminology should be considered in conjunction with the facts that the size of the road is significantly wider than may be required for a small tractor (as depicted in the planning statement) and the Settlement Development Boundary in the Local Plan which extends up to the woodland



- whilst Historic England have stated that they do not object to residential development, with the exception of the fields bounding the Scheduled Ancient Monument, the fields further up the hill do not have this protection - however, they should be considered with reference to the need for the 'Green Buffer' maintaining wildlife corridors as detailed above
- request that the Council question the real intention for the construction of this track whilst determining the outcome of this application.

#### Other Matters

- a significant section of the track falls within 6.5m of the Thornberries site boundary and the management company (the residents) would be legally and financially responsible for maintaining that section
- should maintenance works to the swale be required, there would be the potential to excavate the track which would increase costs to the Management Company

## 7. OFFICER APPRAISAL

### Background

- 7.1 The unauthorised development of the access track was brought to the attention of officers around June 2020 and an enforcement case established. However, the applicant has chosen to seek retrospective planning permission for the development. Having received the application, officers sought clarity from the developer of the following matters:
- provide a statement confirming that the retaining wall is structurally sound in design and construction and that the track is not part of any structural mitigation for any failings in the wall design
  - provide a statement as to the size and type of vehicle that the farmer uses
  - consider amended proposals that show the track at a width/appearance more fitting to a farm track – officers suggested a reduced width, twin track, crushed limestone finish
  - the public footpath requires signage to ensure people don't inadvertently follow the track south
  - provide information regards the intended action to ensure the public footpath diversion
  - discuss the heritage issues, if any, with the DCC archaeologist, although as this is a retrospective planning application it is unlikely that any mitigation would be possible should any heritage issues arise.

The applicant gave no formal response to these matters and has requested the application be determined on the basis of the application details and the development that has been provided on the site.

### Principle of the development

- 7.2 In considering the development, regard has to be given to the following policies of the Adopted Derbyshire Dales Local Plan (2017). Policy S1 is the overarching Policy by which developments need to be considered. This advises that all development will need to conserve and enhance the distinct Peak District character. The policy also states that development should have regard to impacts on matters such as landscape value, achieving high quality design, amenity, ecology and drainage which are considered relevant matters for consideration with this application.
- 7.3 Whilst the site was within open countryside, it is nevertheless identified as being within the Settlement Boundary for Matlock in policy S2 of the Adopted Local Plan (2017) and policy S3 advises that within such a boundary, development will be permitted provided it is compatible with the character, appearance and amenity of that part of the settlement, does

not adversely affect the purposes of the Peak District National Park, it is not harmful to its valued characteristics and does not conflict with any other relevant policy in the Local Plan.

- 7.4 Policy PD1 requires that development responds positively to the environment and climate change whilst also contributing to local distinctiveness and sense of place. This is expected to be achieved by development being of high quality design that respects the character, identity and context of townscapes and landscape within the District. This is also based on a thorough appraisal of the site, that design quality is reflected in the development and that development on the edge of settlements should enhance and/or restore landscape character. It is also required that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects of visual intrusion or other adverse impacts on local character and amenity and minimising opportunities for crime and promoting safe living environments.
- 7.5 Policy PD2 seeks to protect the historic environment and requires that all works that impact on a heritage asset or its setting to be informed by a level of historical, architectural and archaeological evidence proportionate to their significance and sufficient to understand the impact on the proposal. This requires proposed developments that affect a heritage asset to demonstrate how the proposal has taken account of the asset to minimise harm to it. Policy PD3 advises that the District Council will seek to protect, manage and where possible enhance biodiversity.
- 7.6 Policy PD4 relates to green infrastructure networks which include public footpaths and requires that development will not have a detrimental effect on the amount or function of existing green infrastructure unless replacement provision is made of greater or equal value. Policy PD5 advises that the District Council will protect, enhance and restore the landscape character of the Plan area having particular regard to maintaining the aesthetic and biodiversity qualities of the natural and man-made features within the landscape and having regard to 'The Landscape Character of Derbyshire' and Landscape Character of the Derbyshire Dales' assessments. This includes resisting development that would harm or be detrimental to the character of the local and wider landscape or the setting of a settlement.
- 7.7 Policy PD7 advises that, in seeking to move to a low carbon future, the District Council will promote a development strategy that seeks to mitigate against global warming, adapts to climate change and respects environmental limits. Policy PD8 advises that new developments shall incorporate appropriate sustainable drainage measures and will reduce flood risk elsewhere where possible. Policy PD9 advises that that the District Council will protect people and the environment from unsafe environments which includes taking account of land stability.
- 7.8 As referred to in policy PD5, the District Council's The Landscape Character and Design Supplementary Planning Document (2018) needs to be considered. This states in Section LCD 1.1 that:

*Development should conserve what is valued, enhance the environment and encourage good design, addressing needs rather than demands.*

In Section LCD 3.1 it also states the following:

*The District Council regards landscape design as an integral part of the planning and development process. It believes a high quality landscape design can enhance both the development and the local environment. The early consideration of landscape design within the process is, therefore, essential. To regard it as an afterthought is not acceptable. All development will be expected to either maintain or enhance the quality of the landscape.*

*The District Council recognises the link between design and crime prevention. The overall design of any development should, therefore, be, as far as is practicable, in accordance with the principles of "Secure by Design."*

The development is assessed against these Policies and Guidance.

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

- 7.9 The settlement boundary was principally established in this area to reflect on the principle of residential development of the Thornberries site prior to the adoption of the current Local Plan (2017). In considering planning applications for the residential development, the field in which the access track has been formed was identified throughout as being a sensitive upland area which should be retained as a field, as with the adjacent fields. This was assessed at the outset of the initial planning applications in 2013 as being a sensitive buffer between the residential development and the woodland/quarry above. The field is also crossed by what is advised to be an historic public right of way and through the formed access, albeit this is not delineated within the field or across the track. The permissions that were granted sought to retain the field for biodiversity enhancement to offset the impact of building the residential estate on green field land.
- 7.10 The access track that has been created is heavily engineered, with a steeply graded slope from the retaining walls to the residential properties, and it is considered overly wide for purpose. The applicants have not sought to limit the impact through careful design consideration, but to merely to create a substantive road. Whilst it is appreciated that farm tracks may be necessary to gain access to fields, it is considered that for the nature of the farming operation undertaken, this access is to an unnecessarily high specification, more akin to an access road rather than a farm track. The design of the track, its width and the steeply graded bank between the track and the retaining wall to rear of the residential properties, are all considered unnatural or unexpected features in the rural landscape. It is therefore considered harmful to the character and appearance of the landscape and the appreciation of this area of transition from townscape to open countryside.

#### Impact on Residential Amenity

- 7.11 Whilst walkers appear to be using the farm track as a footpath, it is considered that this would be addressed by better revealing the line of the designated public footpath through the field. If potential confusion over the line of the public footpath could be addressed, it is considered that comings and goings by the farmer to access his fields would not lead to a significant loss of privacy. The way-marking and definition of the footpath could be a condition of any grant of planning permission for the benefit of the nearby residents and for walkers.

#### Designing Out Crime

- 7.12 Concern has been raised that the presence of the track could lead to more opportunities for criminal behaviour. However, it is the view of officers that persons intending to access private property without permission would do so whether the track existed and it is not considered that a farm access track would be likely to increase or encourage such.

#### Land Stability and Drainage

- 7.13 During the consideration of the application, officers have requested details of the structural design/integrity of the retaining wall above which the associated works to engineer the track have been undertaken. Despite these requests, no information has been provided and the applicant has referred to the submitted drawings. Notwithstanding the understandable concern raised by the public in relation to the structural integrity of the wall and lack of

information provided this is a civil matter between the land owner and the owners of the properties affected.

- 7.14 The applicant advises that the track has been constructed 4m from the retaining wall due to meeting requirements for safety; this is not the case as the track is significantly closer to the retaining wall as it enters the adjacent field.
- 7.15 The applicant advises that the proposals are to assist with drainage and that drainage has been provided to the land above the track. However, no details have been submitted of what this drainage is and to where it runs.

#### Nature Conservation

- 7.16 The formation of the access track has clearly reduced the area of field and thus associated habitat. However, there have been further concerns raised by local residents that the field has been tipped on; this will need further investigation as this may have required planning permission in its own right. It is considered by officers that the provision of the wildflower meadow, as initially proposed to address offsetting the loss of biodiversity resulting from the housing estate development on greenfield land, cannot be realistically enforced. Whilst the field was included in the application site for biodiversity enhancement on initial proposals to offset the loss of green fields, it was removed by the applicant from the development that was ultimately granted planning permission; the loss of this compensatory meadow is a matter being considered with application 20/00920/VCOND elsewhere on this agenda with proposals to offset this within the estate development.

#### Highway Safety

- 7.17 The Local Highway Authority has raised no objection subject to the track being surfaced in a bound material for the first 10m from the (proposed) adopted highway and measures put in place to prevent surface water discharging from the track onto the (proposed) adopted highway. Such a requirement would lead to a substantive area of hardsurfacing and it is considered that this could be addressed through providing 500mm wide twin tracks for the first 10m, of a bound material, to limit the impact on the area given that the access is merely for vehicles relating to the agricultural use of the land.

#### Public Footpath and Impact on Heritage Asset

- 7.18 The County Archaeologist has advised that In 2017 his attention was drawn to surviving paved cartways of late 19<sup>th</sup> century date surviving in and around the former quarries behind Bentley Bridge (Lumshill, Bentleybrook and Lumsdale, Derbyshire HER entries MDR5115, 13816 and 13817). These typically have two parallel lines of paving with an unpaved area between, although in many cases the historic paving is hidden beneath vegetation or later tarmac.
- 7.19 One of these cartways forms Footpath 7, which runs/ran through what is now the Thornberries' development and the access track the subject of this application. The historic cartways were not identified at the time of the initial planning application for the residential development and, unfortunately, there was no planning control to enable its retention. At the time of the County Archaeologist's site visit in September 2017, the central part of this particular cartway had already been lost in grading operations within the development, although there were still surviving lengths between Chesterfield Road and the graded section, and then running from the back of the development up towards the former quarries behind.
- 7.20 Contact was made with the developer, and with Derbyshire Rights of Way, to promote retention of the historic paved surfaces where they survive. The County Surveyor has had

no further correspondence on the matter but some of the responses from members of the public to the current application seem to suggest that further losses have occurred. To this end, it is advised that both this application and the planning permission for the residential development would appear to impact the line of the historic cartway corresponding with Footpath 7.

- 7.21 It is therefore advised that this should be identified as an undesignated heritage asset of local importance, subject to the Policies for such assets in Chapter 16 of the NPPF. In this regard, the County Archaeologist advises that the applicant should submit sufficient information to establish the level of preservation and significance of the asset within the current proposal site(s) and to describe the proposed impacts thereon (in line with NPPF para 189) and he should then be reconsulted on each application.
- 7.22 To this end, it is considered reasonable to attach a condition on any grant of planning permission that the historic footway is reproduced as far as the public highway, and across the access track, to delineate the line of the footpath and to also serve to encourage walkers to follow the alignment of the footpath and not to be confused with the line of the access track which takes them away from it. It is considered that the applicant should be advised to contact the County Council with regard to the installation of a finger post detailing the line of the footpath, for the avoidance of doubt, and there will, in any event, need to be an application to seek a diversion of the line of the footpath.

### Conclusion

- 7.23 The applicant advises that the farm track, as constructed, is necessary to allow the tenant farmer access to his land for its agricultural use and management. This appears a rather unforeseen circumstance by the tenant farmer, the landowners and the applicants as the general layout of the residential estate has always proposed access to the field at this point but has never suggested the need for a heavily engineered access. Had this been the case, there was scope to amend the layout of the residential development site at an early stage to allow the farmer to access the land in a different manner.
- 7.24 It is considered that the applicant has not put forward a convincing case for such a highly engineered track for agricultural purposes. There is scope for a trailer to be left close to the gateway and any crop, etc. brought to the trailer. An experienced tractor driver would be able to negotiate sloping fields without a formal access or there could be a case presented to sympathetically manipulate the slope of the land for such purposes; this is not uncommon in the District.
- 7.25 What has been presented is an engineered access, albeit with no clarity of its stability. Local residents have referred to drainage and electricity cables that may have gone some way to informing the form of the access. However, the heavily engineered access is not considered the only means by which such matters could be addressed. To this end, the access in the form provided is considered harmful to the character and appearance of the area and will appear as a significant scar in the landscape visible to walkers using the footpath. In fact, it is considered that the line of the footpath should take precedent, rather than the access which crosses it in order to preserve its remaining character and appearance.
- 7.26 Given the above, members are recommended to refuse to grant retrospective planning permission for the track and confirm powers of delegation for the Development Manager to take enforcement action, as may be appropriate, to remove the track and reinstate the land prior to the works having taken place. In addition, approval is sought to further investigate the matter of the tipping of material on the land and the extent of unnecessary damage that may have occurred to the right of way.

## 8. RECOMMENDATION

That planning permission be refused for the following reason:

1. The track, by reason of its width, size and appearance and the engineering of the landscape to facilitate it, is an unjustified and harmful encroachment into the field which is harmful to the character and appearance of the open countryside and to the enjoyment of the open countryside by walkers using Matlock Footpath 7, the definitive line of which is crossed by the unauthorised track. As such, the proposals fail to comply with policies S1, S3, PD1, PD4 and PD5 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained in the District Council's supplementary planning document Landscape Character and Design (2018).

### NOTES TO APPLICANT:

1. The Local Planning Authority considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.
2. This decision notice relates to the following documents:

Site Location Plan received on 12<sup>th</sup> October 2020

Drawing Nos. 521-013, 560 received on 12<sup>th</sup> October 2020

Planning Statement received on 12<sup>th</sup> October 2020.

<b>APPLICATION NUMBER</b>		20/00920/VCOND	
<b>SITE ADDRESS:</b>		Land South Of Bentley Bridge, Chesterfield Road, Matlock	
<b>DESCRIPTION OF DEVELOPMENT</b>		Variation of Condition 14 of planning permission 15/00861/FUL to allow on site alternative habitat enhancement	
<b>CASE OFFICER</b>	Mr. G. A. Griffiths	<b>APPLICANT</b>	Harron Homes (North Midlands)
<b>PARISH</b>	Matlock	<b>AGENT</b>	N/A
<b>WARD MEMBERS</b>	Cllr. P. Cruise Cllr. S. Flitter Cllr. D. Hughes	<b>DETERMINATION TARGET</b>	22 <sup>nd</sup> December 2020
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	The number of representations objecting to the proposals	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

**MATERIAL PLANNING ISSUES**

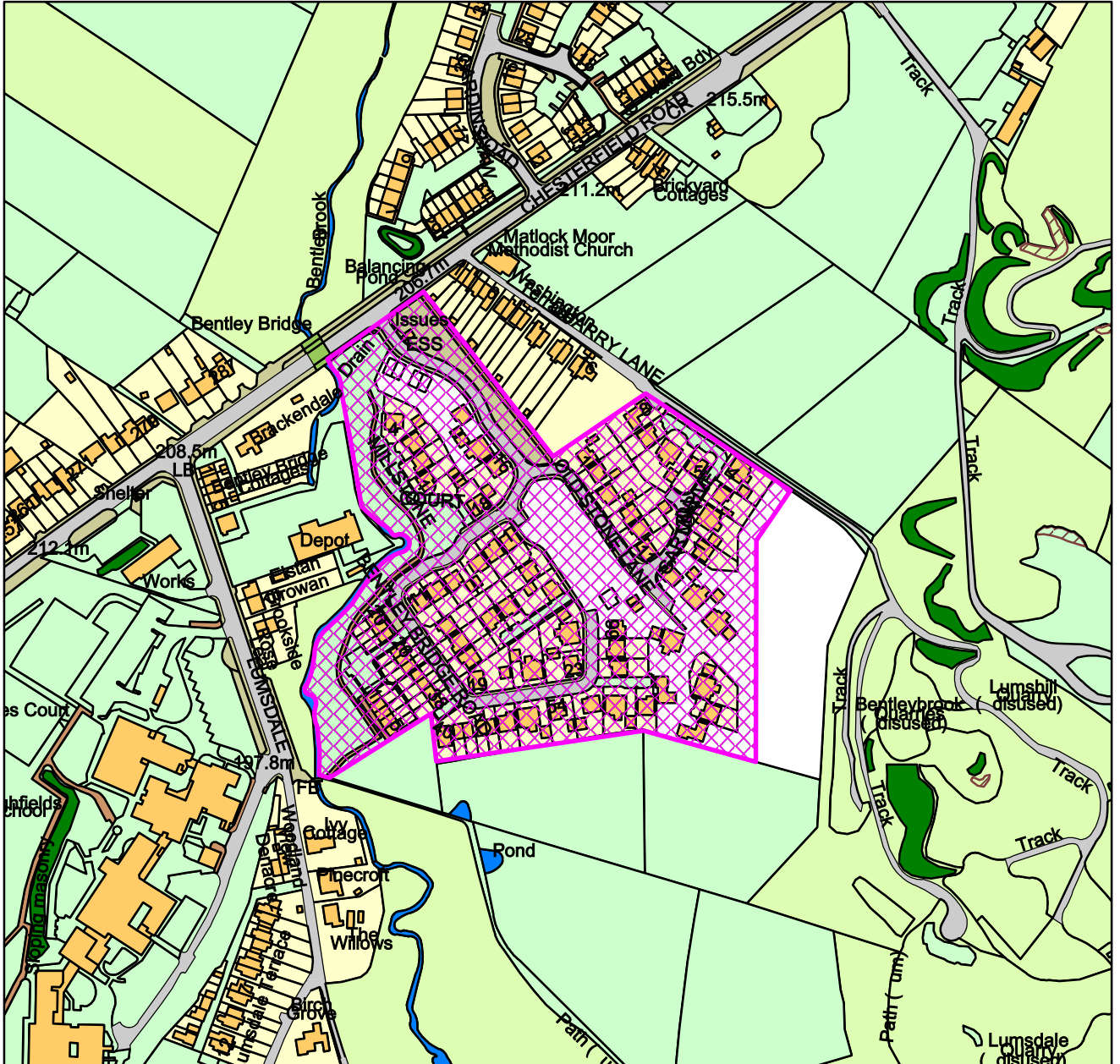
- Introduction
- Ecological assessment of the proposals
- Impact on the character and appearance of the area
- Impact on heritage assets

**RECOMMENDATION**

Approval with conditions and subject to a linking agreement to tie the permission to the S106 legal agreement attached to planning permission 15/00861/FUL

20/00920/VCOND

Land South Of Bentley Bridge, Chesterfield Road, Matlock



Derbyshire Dales DC

1:3,500

Date: 08/04/2021

100019785

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Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk



## 1. THE SITE AND SURROUNDINGS

- 1.1 The site comprises the public, grassed areas of much of the residential development and a field to the west of the residential development.



## 2. DETAILS OF THE APPLICATION

- 2.1 Permission is sought to vary Condition 14 of Planning permission 15/00861/FUL for the residential development which is nearing completion at 'Thornberries.' The condition is as follows:

*Before the development commences, a management plan for the 'field' between the housing development and the woodland on the upper slopes shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter be carried out in accordance with the approved details.*

- 2.2 The applicant contends that, whilst the field had been included in previous development proposals for the site, this was not the case with the development which is currently being constructed with planning permission 15/00861/FUL. To this end, the applicant contests that the Condition cannot be complied with as it is outside of the red edged application site for planning permission 15/00861/FUL; that land belongs to Wildgoose Construction, as detailed in the blue edged area of the site location plan, and not to the developer, Harron Homes, albeit they have an interest.
- 2.3 To offset the loss of this field to biodiversity enhancement, the applicant initially proposed to provide additional biodiversity enhancements within the development site, which included 84m of hedgerow, 20 native trees, 202 native shrubs and 29 climbing plants. However, Condition 14 was designed to address the loss of approximately 0.6 ha of semi-natural grassland (semi-improved acid grassland) and the alternative approach initially presented did not address the biodiversity loss on a like for like basis. Therefore, further to comments from Derbyshire Wildlife Trust, the applicant now proposes that areas of grass, which were set aside as informal public open space, would be utilised for the creation of meadow grassland. The applicant now proposes no climbing plants to be provided.
- 2.4 Following consultation with residents and statutory consultees, alternative proposals have been put forward to seek to meet the biodiversity off-set objectives of Condition 14, and in particular the loss of grassland habitat. Condition 14 required a management plan for the field to the east of the housing development. The field is an agriculturally unimproved pasture and is cropped once or twice a year in its current state. The management plan for this area would have required that this regime be maintained, in effect requiring no additional action.
- 2.5 The revised plan, shows the creation of 0.54ha of meadow grassland in line with Derbyshire Wildlife Trust's recommendations. The meadow areas would replace the amenity grass that has already been planted around the estate. The mixes used are those recommended by the Trust for use within the public open spaces. They include:
- NV12 Acid Soils Meadow Mix (Naturescape) A mix of 18 native wildflower species and 6 species of grass.
  - NV9 Value Hedgerow Meadow Mix (Naturescape) A mix of 18 native wildflower species and 6 species of grass. The mixture contains a diverse range of species suitable for both sun and semi-shade
  - N2 Tall herb Meadow Mix (Naturescape) A mix of 23 native wildflower species which grow on a wide range of soils and are chosen for their height.

The applicant advises that, once established the meadow areas would be cut once or twice a year with a close-cut border maintained around the edge to ensure the area looks in-keeping with the estate. It is advised that limiting the mowing regime allows the flowers and grasses to grow more naturally and the value of the habitat to wildlife is increased.

- 2.6 It is advised that the area is under the management company auspice. The Management Company is currently under the Harron Homes Directors' control and will be transferred to resident control late spring/ early summer. As such, the applicant can make the change without resident consultation, although it is advised that Harron Homes will inform them of the changes and the rationale.

### **3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK**

- 3.1 Adopted Derbyshire Dales Local Plan (2017)
- |     |  |
|-----|--|
| S1  | Sustainable Development Principles                         |
| S3  | Development within Defined Settlement Boundaries           |
| S10 | Local Infrastructure Provision and Developer Contributions |
| PD1 | Design and Place Making                                    |

PD2	Protecting the Historic Environment
PD3	Biodiversity and the Natural Environment
PD5	Landscape Character
PD7	Climate Change
PD8	Flood Risk Management and Water Quality
PD9	Pollution Control and Unstable Land
HC1	Location of Housing Development

3.2 Derbyshire Dales Landscape Character and Design (2018)

3.3 National Planning Policy Framework

3.4 National Planning Practice Guidance

#### 4. RELEVANT PLANNING HISTORY

20/00919/FUL	Retention of Agricultural access track – to be determined
15/00861/FUL	Residential development of 86 dwellings and associated public open space – Granted
14/00482/OUT	Residential Development (Outline) – Granted
14/00436/FUL	Residential Development of 64 dwellings with associated infrastructure – Granted
14/00120/OUT	Residential Development (Outline) – Withdrawn
13/00456/OUT	Residential Development of 65 dwellings with associated infrastructure (Outline) – Granted.

#### 5. CONSULTATION RESPONSES

##### Town Council

5.1 - no comment

##### Derbyshire Wildlife Trust

- 5.2 - condition 14 was designed to address the loss of approximately 0.6 ha of semi-natural grassland (semi-improved acid grassland)
- the alternative approach of additional enhancements include 84m of hedgerow, 20 native trees, 202 native shrubs and 29 climbing plants does not address the biodiversity loss on a like for like basis
  - note that the LEMP states that species rich grasslands will be sown throughout the scheme and also note that this is specifically linked (in part) to the creation of species rich grasslands but the seed mixes are not species rich seed mixes – they are a hedgerow grass mix and lawn grass mix and do not appear to include any wild flower species
  - concerned that the alternative approach put forward fails to address the loss of the species rich semi-natural grassland and that the existing proposals to establish species rich grassland will not achieve this objective
  - advise the LPA to ask the applicant to change the seed mixes to more species rich types such as the following:-
    - NV12 Acid Soils Meadow Mixture (Naturescape)
    - NV9 Value Hedgerow Meadow Mixture (Naturescape)
    - N2 Tall herb meadow mixture (Naturescape)
  - the above mixes would be appropriate for use within the public open space along the western side of the development towards the Bentley Brook and the NV12 one could be used more widely within the site.
  - would advise that a plan should be provided highlighting where the species rich grassland is to be sown and stating the total area (ha) that will be sown with these seed mixes

- advise that the LEMP is updated to include the sowing of species rich grassland and management recommendations are updated to ensure that they are sympathetic and will maintain these grassland vegetation communities in a favourable condition.
- if the LEMP can be amended to demonstrate that species rich meadows will actually be established within the development site, would have no objection to the variation of the condition
- at the current time we consider that the additional enhancements fail to address the loss of the grassland habitat.

#### Development Control Archaeologist (Derbyshire County Council)

- 5.3
- concerns with regard to impact of the development on paved cartways of late 19<sup>th</sup> century date surviving in and around the former quarries behind Bentley Bridge (Lumshill, Bentleybrook and Lumsdale, Derbyshire HER entries MDR5115, 13816 and 13817) identified to the County Archaeologist in 2017
  - should be identified as an undesignated heritage asset of local importance, subject to the policies for such assets at NPPF chapter 16.
  - applicant should therefore submit sufficient information to establish the level of preservation and significance of the asset within the current proposal site(s) and to describe the proposed impacts thereon (in line with NPPF para 189) and should then be reconsulted on each application.

## **6. REPRESENTATIONS RECEIVED**

- 6.1 A total of 30 representations have been received. A summary of the representations is outlined below:

#### History of Condition 14

- intention to create the field between the housing development and the woodland on the upper slopes was first put forward as part of planning application 13/00456/OUT submitted by Wildgoose
- appears to have been determined as an acceptable design as it creates a green buffer to address landscape and visual concerns as well as ecological considerations 'maintaining an unbroken field network along the foot of the wooded ridge to the east'
- along with the wider margin of the site adjacent to Bentley Brook, this ensured that wildlife corridors were maintained, minimising the ecological impact of the development
- application 13/00456/OUT was permitted with conditions which included Condition 9 requiring a management plan for the field on the upper slopes - this appears to have been maintained in subsequent applications
- Wildgoose then sold the fields with permission for development (full and outline) to Harron Homes, who subsequently submitted a revised full planning application for the site as is
- Derbyshire Wildlife Trust provided a consultation reply dated 27<sup>th</sup> January 2016 in which they recommend that mitigation and compensation for the development 'could be achieved through the retention, protection and long-term appropriate management of the fields 1,2 and 3 to the south of the site and the retained field to the east of the site' (on the upper slopes)
- both Harron Homes and Wildgoose will have been fully aware of the conditions within previous planning permissions, and therefore it is unlikely that they each overlooked the inclusion of Condition 14 in the current planning permission 15/00861/FUL
- a subsequent complication appears to have occurred on 27<sup>th</sup> January 2017 when DDDC validated the discharge of conditions 10, 12, 14, 18, 20 and 26 - this is shown on the planning portal as reference 15/00861/DCOND/3 but only notes the Status as 'Discharged Conditions in Part' without any further information - request that this be investigated to explain how this pertains to the validity of Condition 14 and whether this implies acceptance of Condition 14 by Harron Homes and/or Wildgoose?

- depending on the outcome of this investigation, also request that thorough consideration be given as to why this application to vary Condition 14 has only been submitted once construction of the site is almost complete, when the condition specifically stipulates 'before the development commences...' ?
- belief that a key determinant in the granting of the first planning permission on this land was the revision to the site layout, resulting in the creation of the green buffer field on the upper slopes of the site
- application (submitted by Harron Homes) to vary Condition 14, deleting it and replacing it with alternative habitat enhancements, essentially removes the grounds on which the original development was permitted
- land to the east of the development up to the woodland has always been regarded as special and necessary to provide a buffer between the natural and developed parts of the town and is quite visible from several higher areas in the surrounding countryside and deserves the treatment agreed

#### Intentions of the developer

- if Condition 14 is removed it is likely the developer would request permission to build on the land causing the destruction of the wildflower meadow and eliminating habitat of wildlife
- Harron Homes and Wildgoose have applied and been denied in the past – would appear they have colluded to provide access across designated wildflower meadows in an attempt to persuade Derbyshire Wildlife Trust to buy into a sham scheme all in pursuit of a future planning application
- residents are tied into a management fee to retain the communal areas which could be increased dramatically due to the extra landscaping

#### Current Landscaping

- not yet completed all landscaping on the site and areas they have are not satisfactory and grass is uneven, patchy and waterlogged - fear any further landscaping would be as unsatisfactory

#### Planting of Climbers

- will grow on the outside face of walls and fences of properties not owned by Harron Homes
- plans to plant climbers to grow up the outside of property has never previously been tabled
- Harron Homes have not consulted regarding this proposal and had no prior knowledge before receipt of the notice of the application to vary Condition 14
- such planting will damage property and result in it requiring premature replacement

#### Planting of trees in close proximity to private dwellings

- concerned that this will result in damage to both drive and foul drain which will be within the spread of the tree's root system
- the location of a tree was not advised when purchasing the property and concerned that it's inclusion within the LEMP, and this planning application, will result in long term issues and unnecessary costs to residents.

#### Inability to comply with proposed design

- the 'trim trail' (children's play equipment) has already been installed, but was unable to be located as planned due to the topography of the ground - these locations have not been updated
- has resulted in 4 pieces of equipment being installed on the flat ground adjacent to the footpath at the side of our property - plans show a total of 279 plants and a tree being planted in this location

- whilst understanding the reasons for these amendments, Harron Homes' inability to submit accurate plans (updated with relevant structures, and consequential impacts) confirms that they will be unable to fulfil their proposed planting scheme
- object as the application to vary Condition 14 on the basis that it is unenforceable as the plans are not accurate and cannot be adhered to
- proposed additional planting will go little toward rectifying the biodiversity losses
- conflict with Policies S1, S4, PD1, PD3, PD4, PD5 and PD8 of the Local Plan
- compensatory planting significantly less than the 0.81ha of compensatory grassland/wildflower meadow which should have been planted

#### Intention to comply with proposed design

- Harron Homes have not yet installed much of the planting in the current schedule
- If the original landscaping has not been fully provided, what guarantee is there that this offer of extra landscaping will be fulfilled
- whilst this may be explained as the site is still under construction, suggest that the fact that large areas of the site were finished months (if not years) ago, could imply that Harron Homes had always intended to alter the proposed planting in this manner
- would suggest that their delay in raising the legitimacy of Condition 14 is a premeditated, strategic move
- works undertaken to date have evidenced that the undertakings already made in the current LEMP have not been completed in line with the specification
- if Harron Homes did not feel that Condition 14 could be met, this should have been taken up with the Case Officer prior to development commencing, not as a means to supporting planning application 20/00919/FUL in which disturbance of the field in question has already taken place
- Harron Homes advise that they have limited access to the field – consider they have no rights to undertake development of the track
- no action has been taken to make Harron Homes accountable
- most of the grassed areas which would be classified as margins to the public open spaces were left to self-seed - subsequently there are substantial areas of annual and perennial weeds, including Dock
- observed the contractors seeding the embankment adjacent to the path alongside Bentley Brook - this was not undertaken in accordance with paragraphs 4.5 – 4.7 in the revised LEMP (which are not highlighted orange and therefore remain unchanged)
- question whether the mitigation strategies detailed within the Whitcher Wildlife report reference 151108 have been implemented?

#### Ongoing management costs

- Condition 15 of the planning permission 15/00861/FUL was included at the request of Derbyshire Wildlife Trust and requires the inclusion of 'an annual work plan capable of being rolled forward over a twenty-five year period'
- residents of the Thornberries development purchased their properties with knowledge that they would be responsible for the management of the public open spaces, which will be overseen by the Thornberries Management Company
- an illustration was provided of the budgeted annual costs, which also showed an indicative annual maintenance cost that would be payable by each household
- Paragraph 0.2 of the revised LEMP states: 'The existing management company for the site will maintain the proposals.'
- considering such information was being provided as early as October 2017, it clearly could not have included for the ongoing maintenance costs that will be attributed to the proposed habitat enhancements
- immoral that such changes can be implemented retrospectively - Harron Homes appear to be attempting to pass off the cost of their undertakings to residents

- object to the revised LEMP on the basis that it is Obtrusive by Design, in that such charges are unwelcome and uninvited.

#### Alternative solutions

- in the revised LEMP, paragraph 0.3(1) states that the field provides a landscape buffer between the site and the adjacent woodland which appears to reflect the wording of the report entitled 'Landscape Rebuttal
- Paragraph 0.3(2) states that:
 

*'The field currently comprises approximately 0.72ha of unimproved grassland currently managed by taking an annual or biannual hay cut. A management plan meeting Condition 14 would have proposed no change to the management regime.'*
- Harron Homes' submission implies that they recognise that the original landscape design does not sufficiently offset the impact to biodiversity the development has had, as there is no control over the field on the upper slopes
- would welcome improvements to the original landscape plan which would not require extensive maintenance, such as planting wildflowers along the embankment adjacent to the path alongside Bentley Brook and the installation of 'bug hotels' within the margins adjacent to Bentley Brook.
- suggest that there are two potentially acceptable solutions that Harron Homes acquire rights to manage the field in accordance with the current Condition 14 or they resubmit accurate plans relating to this application, addressing the residents' concerns and providing financial provision to cover any costs over and above those stated at the time of purchasing properties
- urge DDDC to ensure that any protection given to the field on the upper slopes is maintained to avoid disruption to the landscape, visual and ecological benefits this green buffer provides.

#### Other matters

- key reason the for Harron Homes wishing to vary Condition 14 is the presence of the unauthorised access track in the field which is the same width as a residential road and has been constructed to Department for Transport highway specification as stated by the applicant in Drawing 521-560 of planning application 20/00911/FUL
- why would a farmer require a 5m wide track, built to highway specifications, just to access undeveloped land?
- have left construction waste in the field and two broken heras fence panels pose a trip hazard
- steps up the steep banking from the footpath that runs by Bentley Brook are totally inadequate and fell into dangerous disrepair after late summer rain given their sandy gravel construction held back by flimsy split wooden railing
- when it rains, oily substance seeps out of the banking towards Bentley Brook below Millstone Court
- installation of a number of wildlife habitat structures has not been provided
- conditions need to be enforceable – it is clear that Condition 14 is not enforceable and question why it was attached in the first place – was this a case of the applicant pulling the wool over the Council's eyes or a mistake by the Officer at the time - feel this situation, and how it came to pass, should be fully investigated prior to a decision being made
- surely outstanding matters should have shown up on local searches
- most properties were sold off plan and surely the landscaping plan as it stood was part of the sale agreement and integral to the sale contract – can the developer legally alter that without the express agreement of each purchaser
- footpath between Chesterfield Road and Lumsdale has a completely unacceptable surface and needs tarmac along its whole length

- can only assume that new plan is an attempt to cut costs
- meadow, public footpath linking to other footpaths and footpath signage should be reinstated
- concern for the protection of Footpath 7, which is an historic wagon way made of large stone setts in two tracks which has been largely destroyed but survives in part within the land affected – this was not shown on the original plans or contemplated by the planning permission
- submitted objections in 2014 and 2015 with a request that protection be afforded so far as possible to the footpath – no such protection was granted
- should be required to investigate and reinstate the line of the footpath and wagon way under archaeological supervision and to conserve it as an important relic of the industrial heritage of the area
- to remove Condition 14 would set a dangerous precedent of allowing protected land to be permanently damaged by adjacent landowners in exchange for a small token of small-scale tree and hedge planting elsewhere.

## 6.2 Matlock Civic Association

- oppose the relaxation of the planning application (20/00920/VCOND)
- remedial work linked to the footpath system and landscape treatment is still required and should be insisted upon by application of the existing planning condition
- Harron Homes submitted a Landscape Master Plan to support their application for the residential development of Thornberries
- the plan area was surrounded by a red line, which included the site which is now developed plus the adjoining land to the east up to the western boundary of Quarry Wood
- the application was accompanied by a certificate confirming that notice had been served on Wildgoose Construction who owned the whole of the area bounded by the red line
- the Master Plan included no details for the land between the housing site and Quarry Wood, and consequently Condition 14 was reasonable and necessary - therefore, the equitable way forward is for the council to refuse this application
- the applicants should then proceed to produce plans for this area and give the Council the opportunity to enable the necessary improvements to the landscape
- significant that Public Footpath FP7 passing through the Thornberries Estate becomes indecipherable beyond its eastern boundary and this should be restored as part of the landscaping process, particularly since the alternatively used route into Quarry Wood via Quarry Lane, is not a Public Footpath.

## 6 OFFICER APPRAISAL

### Introduction

- 7.1 The Condition was required to address concerns with regard to the residential development's impact on biodiversity. These were open fields with scattered trees but the grassland was managed.

### Ecological Assessment of the Proposals

- 7.2 As advised above, the initial proposal was for the loss of biodiversity enhancement to be compensated with 84m of hedgerow, 20 native trees, 202 native shrubs and 29 climbing plants; this did not address the biodiversity loss on a like for like basis on the residential site, beyond those details of landscaping which had been approved; this was considered wholly inadequate by DWT and Officers and raised a number of concerns by residents as to the potential impact on their property with regards to climbing plants proposed to the walls and responsibility for their management.
- 7.3 Derbyshire Wildlife Trust (DWT) advised that Condition 14 of planning permission 15/00861/FUL was required to address the loss of approximately 0.6 ha of semi-natural grassland (semi-improved acid grassland). It was also noted that the seed mixes proposed by the applicant were not species rich seed mixes and were a hedgerow grass mix and lawn



grass mix and did not appear to include any wild flower species. As such, DWT were concerned that the alternative approach put forward failed to address the loss of the species rich semi-natural grassland and that the submitted proposals to establish species rich grassland would not achieve this objective.

7.4 In this regard, DWT has advised that the applicant to change the seed mixes to more species rich types such as the following:

- NV12 Acid Soils Meadow Mixture (Naturescape)
- NV9 Value Hedgerow Meadow Mixture (Naturescape)
- N2 Tall herb meadow mixture (Naturescape)

These mixes would be appropriate for use within the public open space along the western side of the development towards the Bentley Brook and the NV12 could be used more widely within the site. It is advised that a plan should be provided highlighting where the species rich grassland is to be sown and stating the total area (ha) that will be sown with these seed mixes.

7.5 It is also advised that the LEMP is updated to include the sowing of species rich grassland and management recommendations are updated to ensure that they are sympathetic and will maintain these grassland vegetation communities in a favourable condition. On this basis, it is considered that such details and information can be required as a variation to Condition 14. In addition, whilst the loss of the field as a set aside wildflower meadow will not occur, the field will nevertheless still remain as a field and as a habitat for wildlife.

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

7.6. With regard to the field that was originally proposed to be utilised as the wildflower meadow, there will be little change to the field as it currently appears, albeit an access track which has been formed without permission is the subject of consideration with planning application 20/00921/FUL which is to be considered elsewhere on this agenda. To this end, there is considered to be no harm to the landscape.

#### Impact on Heritage Assets

7.7 The County Archaeologist has advised that In 2017 his attention was drawn to surviving paved cartways of late 19<sup>th</sup> century date surviving in and around the former quarries behind Bentley Bridge (Lumshill, Bentleybrook and Lumsdale, Derbyshire HER entries MDR5115, 13816 and 13817). These typically have two parallel lines of paving with an unpaved area between, although in many cases the historic paving is hidden beneath vegetation or later tarmac.

7.8 One of these cartways forms 'footpath 7' which runs/ran through what is now the Thornberries' development. The historic cartways were not identified at the time of the planning application for the residential development and, unfortunately, there was no planning control to enable its retention. At the time of the County Archaeologists site visit in September 2017, the central part of this particular cartway had already been lost in grading operations within the development, although there were still surviving lengths between Chesterfield Road and the graded section, and then running from the back of the development up towards the former quarries behind.

7.9 Contact was made with the developer, and with Derbyshire Rights of Way, to promote retention of the historic paved surfaces where they survive. The County Council has had no further correspondence on the matter but some of the responses from members of the public to the current application seem to suggest that further losses have occurred. To this end, it is advised that both this application and planning application 20/00919/FUL would appear to impact the line of the historic cartway corresponding with 'Footpath 7'. It is therefore advised that this should be identified as an undesignated heritage asset of local importance,

subject to the Policies for such assets in Chapter 16 of the NPPF. In this regard, the County Archaeologist advises that the applicant should submit sufficient information to establish the level of preservation and significance of the asset within the current proposal site(s) and to describe the proposed impacts thereon (in line with NPPF para 189) and he should then be reconsulted on each application.

- 7.10 These comments need to be considered with both applications. However, the consideration of this application is merely to vary Condition 14 of a planning permission which has largely been implemented. Therefore, it would be unreasonable to attach any conditions to any permission that do not relate to addressing Condition 14 or that may be ongoing Conditions attached to the planning permission 15/00861/FUL. In this respect, such a Condition requested by the County Archaeologist would be retrospective and unenforceable.

#### Conclusion

- 7.10 Whilst the proposals will impact on areas for informal play, the site is in close proximity to the formal playing fields at Highfields School. There are also areas set aside for childrens' play around the site. To this end, it is considered that the compensatory proposals will enhance the setting of the residential properties rather than having managed grassed which would need regular maintenance. Given the above, it is recommended that a variation of Condition 14 be permitted subject to the permission including those conditions of planning permission 15/00861/FUL, which are considered to be ongoing conditions or conditions which are yet to be fully implemented, being repeated in essentially a revised planning permission.

## **8. RECOMMENDATION**

Subject to a linking agreement to tie this permission to the Section 106 Agreement attached to planning permission 15/00861/FUL, that condition 14 of planning permission ref: 15/00861/FUL be replaced, and further planning permission be issued, with the following conditions and ongoing conditions repeated as follows:

1. The development hereby approved shall be carried out in accordance with the original submitted documents except as amended by the information and drawings received on 8<sup>th</sup> April 2021 unless otherwise agreed in writing by the Local Planning Authority and unless as required by other conditions the subject of this permission.

Reason:

To define the permission for the avoidance of doubt.

2. Notwithstanding the submitted details, details of the legal and funding mechanisms for all areas of public open space and the species rich meadow grassland shall be submitted to and approved in writing by the Local Planning Authority within one month of date of this permission which, in the case of the meadow grassland, shall include a scheme for the sewing, management and maintenance of the grassland areas, in the form of a LEMP. The details of the approved LEMP shall be then carried out prior to the end of May 2021.

Reason:

In order to retain and enhance, via management, the biodiversity value of the area in order to compensate for the loss of grassland habitat to the development in accordance to comply with Policies S1 and PD3 of the Adopted Derbyshire Dales Local Plan (2017).

3. Once approved, the LEMP shall be carried out with the agreed legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery, monitoring and

contingencies and/or remedial action where the conservation aims and objectives of the LEMP are not being met.

Reason:

In order to retain and enhance, via management, the biodiversity value of the area in order to compensate for the loss of grassland habitat to the development in accordance to comply with Policies S1 and PD3 of the Adopted Derbyshire Dales Local Plan (2017).

4. Condition LA13a Landscaping to be Carried out and Maintained

Reason:

To ensure the satisfactory appearance of the development to comply with Policies S1, S4, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017).

5. No works of construction shall take place on the site outside of the following hours:

Monday to Friday	08.00 to 20.00
Saturday	09.00 to 13.00
Sunday/Bank Holidays	No construction.

Reason:

To safeguard the amenity of residents of the development site.

6. The sole means of vehicular access to the application site shall be from Chesterfield Road only. There shall be no other means of vehicular access to the site or via Quarry Lane.

Reason:

In the interests of highway safety

7. The carriageways and footways shall be constructed up to and including base course surfacing to ensure that each dwelling prior to occupation has a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling, unless otherwise agreed in writing by the Local Planning Authority.

Reason:

In the interests of highway safety.

8. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason:

In the interests of highway safety.

9. The proposed driveway gradients shall be no steeper than 1:14 for the first 5m from the nearside highway boundary and 1:10 thereafter.

Reason:

In the interests of highway safety.

10. The agreed means of refuse storage, including details of any bin stores to be provided, shall be retained for such purposes at all times.

Reason:

In the interests of highway safety.

11. No external lighting shall be erected on the properties fronting Chesterfield Road without details being first agreed with the Local Planning Authority. Precise details of the intensity, direction, spread of luminance and shielding of light sources (so as to minimise the risk of drivers on the highway being dazzled), shall be submitted to and approved in writing by the Local Planning Authority, the lighting thereafter being maintained in accordance with the approved scheme.

Reason:

In the interests of highway safety.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), there shall be no vehicular access created to Quarry Lane in the future.

Reason:

In the interests of highway safety.

13. The remaining dwellings, which have yet to be occupied, shall not be occupied until space has been provided within the property curtilages for the parking and manoeuvring of residents (including secure/covered cycle parking), located, designed, laid out and constructed in accordance with the approved drawings and maintained throughout the life of the development free from any impediment to their designated use.

Reason:

To ensure the provision of adequate off street parking provision in the interests of highway safety.

14. The approved drainage strategy shall be implemented, maintained and managed after completion and shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason:

To provide satisfactory surface water drainage to comply with Policy PD8 of the Adopted Derbyshire Dales Local Plan (2017).

15. The first floor windows to the north elevation of Plot 23 shall be obscure glazed and retained as such for the life of the dwellinghouse and, notwithstanding the Town and Country Planning (General Permitted Development) Order 2015, there shall be no additional windows, doors or rooflights inserted on that elevation unless first approved with a planning application submitted to the Local Planning Authority.

Reason:

To safeguard the amenity of the neighbouring property to comply with Policies S1, S3 and PD1 of the Adopted Derbyshire Dales Local Plan (2017).

#### **NOTES TO APPLICANT:**

1. The Local Planning Authority has, prior to the submission of the application, and during its consideration, engaged in a positive and proactive dialogue with the applicant which

resulted in a scheme that overcame initial concerns relating to the loss of biodiversity provision.

2. This permission shall be read in conjunction with the linking agreement dated .....to tie this permission to the Section 106 Agreement attached to planning permission 15/00861/FUL and dated 8<sup>th</sup> December 2016.
3. 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 £116 per request. The fee must be paid when the request is made and cannot be required retrospectively
4. This decision notice relates to the following documents:

Site location plan received on 22<sup>nd</sup> September 2020

Amended drawing no. YOR.2646.002K received on 8<sup>th</sup> April 2021

Additional information received on 8<sup>th</sup> April 2021.

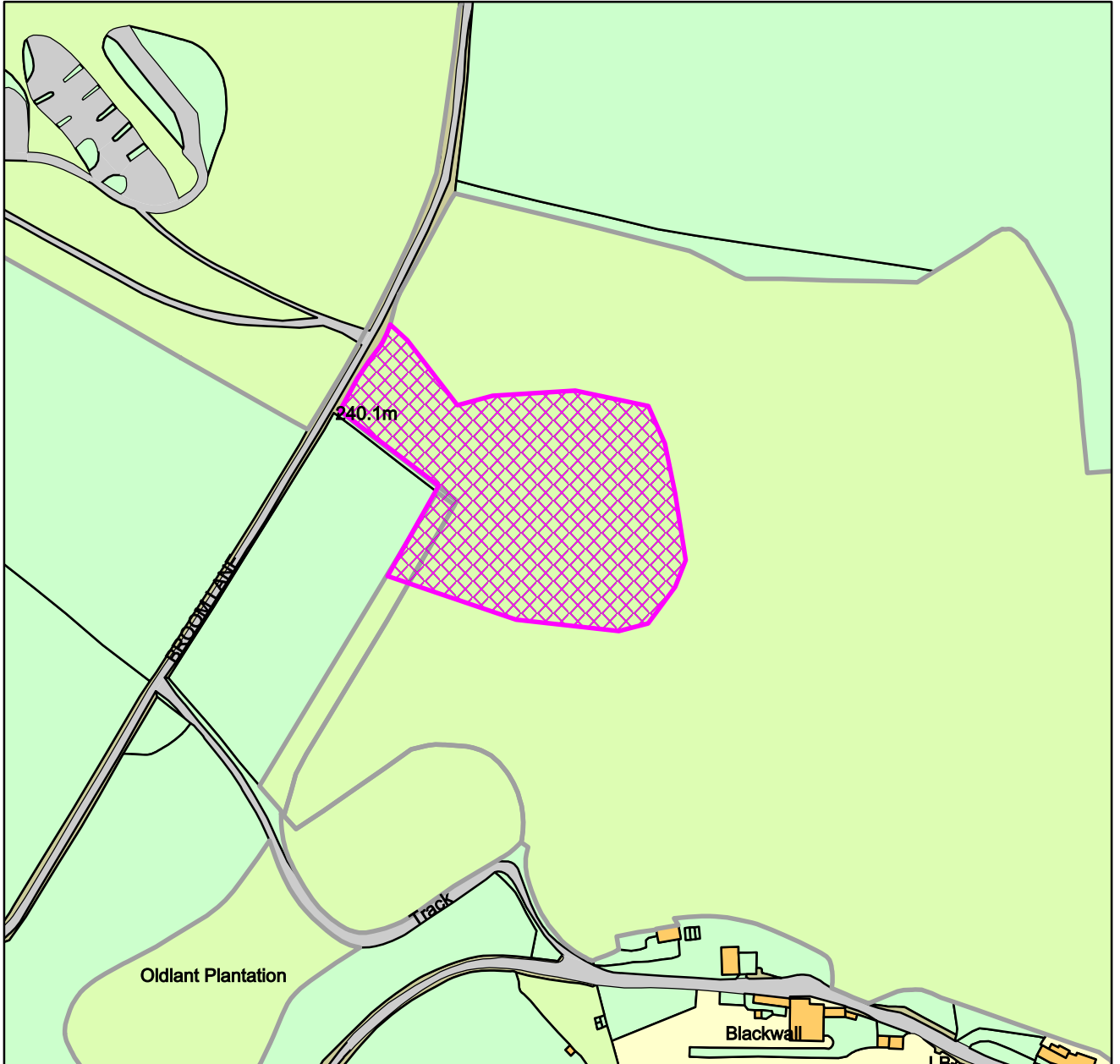
<b>APPLICATION NUMBER</b>		20/00958/FUL	
<b>SITE ADDRESS:</b>		Land at Broom Lane, Kirk Ireton, Derbyshire	
<b>DESCRIPTION OF DEVELOPMENT</b>		Proposed erection of 10no. glamping pods and a building comprising of a cafeteria, administration office and cleaning base with associated access, parking and sewage package treatment plants	
<b>CASE OFFICER</b>	Mr. Andrew Stock	<b>APPLICANT</b>	Charles Blackwall
<b>PARISH/TOWN</b>	Kirk Ireton	<b>AGENT</b>	N/A
<b>WARD MEMBER(S)</b>	Cllr. R. Bright	<b>DETERMINATION TARGET</b>	1 <sup>st</sup> January 2021
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	Requested by Ward Member	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	n/a

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>• Principle of the development, having regard to its location;</li> <li>• Impact of the development on the character and appearance of this part of the countryside, and;</li> <li>• Highway safety.</li> </ul>

<b>RECOMMENDATION</b>
Refusal.

20/00958/FUL

Land At Broom Lane, Kirk Ireton



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

Crown Copyright and database rights (2018) Ordnance Survey (100019785)  
Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk

## 1. THE SITE AND SURROUNDINGS

- 1.1 The site forms part of the Blackwall Estate which is owned by the Blackwall Family and is located within the open countryside, east of Carsington Reservoir. The application site, a former sand and gravel extraction quarry site, extends to approximately 0.72 hectare and has been recolonised by native tress species, predominately birch since quarrying ceased operations a number of years ago.
- 1.2 The quarry is set over two levels, the lower level of the application site is located at the base of the quarry face and the second level above the quarry face to the north. The site is bounded by Broom Lane to the west, open countryside to the north, Blackwall Lane to the south and open countryside to the east and is accessed directly off Broom Lane which is a single width non-classified road subject to the national speed limit.
- 1.3 The application site is within a Local Wildlife Site (Blackwall Sandpit DD268) and extends across an area of 0.97 ha which is approximately 10% of the Local Wildlife Site. The Local Wildlife Site is designated as a habitat mosaic, but over time has become increasingly wooded and now effectively supports deciduous woodland and the woodland is included by Natural England within their dataset of Priority Habitat as Deciduous Woodland.



## 2. DETAILS OF THE APPLICATION

- 2.1 Planning permission is sought for the erection of 10 no. glamping pods and a building comprising of a cafeteria, administration office and cleaning base with associated access, parking and sewage package treatment plants, as illustrated on submitted plans date stamped 8<sup>th</sup> October 2020.
- 2.2 The timber glamping pods would each measure approximately 3m (W) x 6m (L) x 3.1m (H). The T shaped timber woodland building to be used as a cafeteria/administration office/cleaning base would measures approximately 13.6m (W) x 12.5m (L) x 4.1m (H).
- 2.3 The T shaped timber woodland building would be located at the base of the quarry set against the quarry face on the lower level of the application site with 10 no. glamping pods



spread across the upper level along the north-western boundary. Further works include the formation of an internal access track wrapping around the T shaped timber woodland building leading up to the upper level of the forming an access to the 10 no. glamping pods.

### **3. PLANNING POLICY AND LEGISLATIVE FRAMEWORK**

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

S1	Sustainable Development Principles
S4	Development in the Countryside
S9	Rural Parishes Development Strategy
PD1	Design and Place Making
PD3	Biodiversity and the Natural Environment
PD5	Landscape Character
PD6	Trees, Hedgerows and Woodlands
PD7	Climate Change
EC1	New and Existing Employment Development
EC8	Promoting Peak District Tourism and Culture
EC9	Holiday Chalets, Caravan and Campsite Developments
HC19	Accessibility and Transport
HC21	Car Parking Standards

### **4. RELEVANT PLANNING HISTORY**

4.1 None relevant.

### **5. CONSULTATION RESPONSES**

#### **5.1 Derbyshire County Council (Highways)**

Initial response –

On the basis of the submitted information the proposals are open to highway objection.

Final response –

Taking account of the former commercial activity undertaken via the access, I am now satisfied that the applicant has addressed the original concerns and subject to suitable conditions, a highway objection is not considered to be sustainable.

#### **5.2 Environmental Health Officer**

No objection - if the application is successful, the person(s) operating the business must for the purposes of the Commercial Section comply with current food safety and health and safety legislation.

#### **5.3 Environmental Agency**

No comment to make.

#### **5.4 Trees and Landscapes Officer**

Initial response -

The applicant should submit for approval an Arboricultural Impact Assessment, Tree Retentions and Removals Plan, Method Statement and Tree Protection Plan. These documents/plans will allow assessment and identification of trees to be removed and retained, reasons for removals, details of protection for retained trees during development works and details of how the buildings/surfaced areas would be constructed and how underground services would be installed without harm to retained trees.

Final response –

I think overall, there will not be a loss to the woodland in the longer term and so I am satisfied that the proposals are acceptable from an arboricultural/landscape point of view.

## 5.5 Derbyshire Wildlife Trust

The application site is within a Local Wildlife Site (Blackwall Sandpit DD268) and extends across an area of 0.97 ha which is approximately 10% of the Local Wildlife Site. The Local Wildlife Site is designated as a habitat mosaic, but over time has become increasingly wooded and now effectively supports deciduous woodland. The woodland is included by Natural England within their dataset of Priority Habitat as Deciduous Woodland. With respect to the Local Wildlife Site designation the whole wood would need to be re-assessed against the Local Wildlife Site selection guidelines to see if it qualifies as secondary broad-leaved woodland or closely resembles a particular type of woodland as defined in the National Vegetation Classification System. The Phase I habitat survey has been undertaken at an acceptable time of year and has provided information and initial assessment of a selection of protected species. However, we would advise the LPA that the following issues should be addressed prior to determination:-

- [REDACTED]
- Trees – we consider that more details are required of potential tree and shrub loss at the site.
- Any trees (other than saplings and very young trees) likely to be lost should be assessed for potential bat roosts.
- More information on bat species present within the wood is needed in order to understand potential impacts on bats, particularly in relation to light.
- There could be impacts on priority woodland bird species and/or protected species or birds of conservation concern. A breeding bird survey of the wood is recommended.
- More details are needed with regard to whether there is likely to be any loss of woodland plant species including the following that were recorded: bluebell, greater stitchwort, hart's-tongue fern. Pendulous sedge, Lords-and-Ladies, foxglove, holly and rose species.
- Further details of the potential to implement a sympathetic management scheme for the remainder of the woodland would help to understand the potential for the development to avoid a net loss in biodiversity and ideally provide a measurable net gain.

## 6. REPRESENTATIONS RECEIVED

- 6.1 One objection to the application has been received on the grounds of poor access to the site.

## 7. OFFICER APPRAISAL

- 7.1 Having regard to the policies of the development plan and national planning policy the main issues to assess are:
- Principle of the development, having regard to its location;
  - Impact of the development on the character and appearance of this part of the countryside, and;
  - Highway safety.

## ***Principle of the development, having regard to its location***

- 7.2 Policy S4 of the Adopted Derbyshire Dales Local Plan (2017) supports applications for development in the countryside when it represents the sustainable growth of tourism and where the proposal would contribute to the ongoing operation of the existing business.
- 7.3 Policy EC1 of the Adopted Derbyshire Dales Local Plan (2017) provides support for proposals for new or expansion of existing business development in sustainable locations that contribute toward the creation and retention of jobs and employment opportunities.
- 7.4 Policy EC8 of the Adopted Derbyshire Dales Local Plan (2017) deals specifically with 'promoting Peak District tourism and Culture' supports new tourist provision and initiatives in towns and villages, and in the countryside through the reuse of existing buildings or as part of farm diversification, particularly where these would also benefit local communities and support the local economy.
- 7.5 Policy EC9 of the Adopted Derbyshire Dales Local Plan (2017) specifically relates to proposals for new holiday accommodation which considers the appropriateness of a site in terms of sustainability as well as other matters which will be explored later in the report. It states development will be permitted provided that the site is in a sustainable location within, or in close proximity to an existing settlement with good connections to the main highway network, and the public rights of way network and/or cycle ways, and is either served by public transport or within a safe attractive ten minute walk of regular public transport services.
- 7.6 The application site is located within the defined open countryside, east of Carsington Reservoir. Broom Lane is a single width non-classified road which is subject to the national speed limit. The lane is unlit and has no formal pedestrian provision. There are no public rights of way or pavements linking the site to the existing public transport modes which are located approximately 1 mile south-west of the site. The application site is not located within, or in close proximity to existing settlements with good connections to the main highway network, public rights of way network and/or cycle ways, and is neither served by public transport or within a safe attractive ten minute walk of regular public transport services.
- 7.7 The applicants have, through discussions with the Local Highway Authority, suggested the creation of a new public right of way that could be formed through the adjacent caravan site, known as Carsington Water Caravan Club Site to the nearby bus stop along Carsington Water bypass road. Whilst it is acknowledge that this would reduce the overall distance of travel and subsequently increase the attractiveness of walk for end users, the proposed land in which the public right of way is proposed is not within the ownership of the applicants nor does it fall within the application site (red edged) boundary.
- 7.8 In terms of sustainability, it is considered that the creation new build holiday accommodation, in this otherwise remote and isolated location within the countryside, where visitors are most likely to depend on their own private motor vehicle to visit the site, given the lack of infrastructure available to make the fullest possible use of public transport, walking and cycling route would constitute an unsustainable form of development which does not promote sustainable rural tourism.

## **The impact of the development on the character and appearance of this part of the countryside**

- 7.9 Policy S4 of the Adopted Derbyshire Dales Local Plan (2017) seek to ensure that new development protects and where possible, enhances the landscape's intrinsic character

and distinctiveness, including the character, appearance and integrity of the historic and cultural environment.

- 7.10 Policy PD1 of the Adopted Derbyshire Dales Local Plan (2017) requires development to be of high quality design that respects the character, identity and context of the Derbyshire Dales townscapes and landscapes, development on the edge of settlements to enhance and/or restore landscape character, contribute 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.
- 7.11 Policy PD5 of the Adopted Derbyshire Dales Local Plan (2017) seeks to resist development, which would harm or be detrimental to the character of the local and wider landscape.
- 7.12 Policy EC9 of the Adopted Derbyshire Dales Local Plan (2017) further states that proposals for caravan and campsite developments will be permitted provided they would not have a prominent and adverse impact on the character and appearance of the immediate or wider landscape and that any visual impact would be screened by existing landscape features from areas outside the site to which the public has access for the whole of the proposed operating season. Camping, caravan and chalet development will need to be carefully controlled to ensure that they do not have an adverse impact up.
- 7.13 The application site, a former quarry, now appears as a natural woodland setting as it has been recolonised by native tree species, predominately birch since quarrying ceased operations. There are currently no trees on site subject to Tree Preservation Order and there are no recognised veteran/ancient trees or ancient woodland at or close to the application site.
- 7.14 The application proposes the erection of 10 no. timber glamping pods and a single storey T shaped timber woodland building. The T shaped timber woodland building would be located at the base of the quarry set against the quarry face on the lower level of the application site with 10 no. glamping pods set across the upper level along the north-western boundary. Further works include the formation of an internal access track wrapping around the T shaped timber woodland building leading up to the upper level of the site creating access to the 10 no. glamping pods.
- 7.15 The quarry is well contained and screened from public vantage points due to its sunken position within the landscape. The proposed development of the small scale buildings set within the quarry's varying gradient levels would not appear prominent within the immediate or wider landscape. It is considered that, subject to a suitable hard and soft landscaping and management scheme to ensure the preservation of existing trees on site the proposed development could be accommodated within the woodland/quarry area as to not result in significant harm on the character and appearance of this part of the countryside as the development would be entirely screened from public vantage points by existing landscape features.

### ***Highway safety***

- 7.16 Broom Lane is a single width non-classified road with occasional, albeit not intervisible passing opportunities, and subject to the national speed limit. The lane is unlit and has no formal pedestrian provision. The Local Highway Authority has advised that due to the location of the existing access, it emerges at a location where, due to the margin width and vegetation, including mature trees, the achievable visibility sightlines are considerably reduced from the 203m required.

- 7.17 The applicants have undertaken a speed survey and met with the Local Highway Authority on site to discuss the initial concerns raised. The Local Highway Authority has confirmed that as a results of the site meeting and submission of a speed survey they conclude that vehicle speeds are sufficiently reduced at this location to enable suitable sightlines to be provided across the frontage of the site. Furthermore it was noted that the restrictions to the sightlines are from trees and vegetation that are growing within the highway verge, where such vegetation could be removed to the deliver the required sightlines.
- 7.18 Whilst there are questions over the sustainability of the site in terms of connectivity to existing sustainable transport modes, as examined within the first section of this Committee Report, the Local Highway Authority has concluded that taking account of the former commercial activity undertaken via the access, they are now satisfied that the applicant has addressed the original concerns and subject to suitable conditions, a highway objection is not considered to be sustainable.

### ***Other matters***

- 7.19 It is acknowledged that existing crop of trees are self-sown and unmanaged and that there are no trees on site subject to Tree Preservation Order or recognised veteran/ancient trees at or close to the site. However, the Councils Trees and Landscapes Officer has advised that the applicant should submit an Arboricultural Impact Assessment, Tree Retentions and Removals Plan, Method Statement and Tree Protection Plan to fully consider the impact of the development on existing trees within the site.
- 7.20 The applicants following the comments by the Trees and Landscapes Officers comments have submitted an Arboricultural impact assessment of the site. Following re-consultation with the Trees and Landscapes Officer it has been confirmed that whilst a number of trees are to be removed to facilitate the proposed development, they are relatively young with the majority of trees on site are to be retained. It was concluded that there will no net loss of woodland in the longer term and so that Trees and Landscapes Officer is satisfied that the proposed development is acceptable from an arboricultural point of view.
- 7.21 The application site is within a Local Wildlife Site (Blackwall Sandpit DD268) and extends across an area of 0.97 ha which is approximately 10% of the Local Wildlife Site. The Local Wildlife Site is designated as a habitat mosaic, but over time has become increasingly wooded and now effectively supports deciduous woodland and the woodland is included by Natural England within their dataset of Priority Habitat as Deciduous Woodland.
- 7.22 In terms of the impact of the development on protected species Derbyshire Wildlife Trust has advised that the submitted Phase I Habitat Survey has been undertaken at an acceptable time of year and has provided information and initial assessment of a selection of protected species. However, they consider that some potential impacts have not been fully explored as they need to be, including the impacts on; birds, ruderal species, bats, ██████████ and invertebrates. The application therefore as submitted fails to provide sufficient information to fully demonstrate that development would not harm protected species that may be present within the application site.
- 7.23 Policy PD7 of the Adopted Derbyshire Dales Local Plan (2017) 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. Whilst no details submitted have been submitted to consider the requirements of Policy PD7, as measures to mitigate the impact of the development could be controlled via condition, the

lack of consideration in this respect is not considered to be sufficient to warrant a reason for refusal on its own merits.

7.24 With regard to impacts on nearby resident, it is considered that given the isolated location of the site, significantly detached from any neighbouring residential properties the proposed development is compatible with neighbouring land uses and would not result in a significant loss of privacy or amenity for the occupants of neighbouring properties. The comments by a local resident are noted with regard to increase vehicular movements to and from the application site, however it is considered that following the comments by the Local Highway Authority with regard to the site existing quarrying activity the proposal is not considered to result in any significant inconvenience to existing highway users.

## **Conclusion**

7.25 The development of new build holiday units, in this otherwise remote and unsustainable location within the countryside, would promote an unsustainable form of rural tourism where users of the facility would be heavily reliant on the private motor vehicle for access.

2.26 Taking the above into consideration the application does not satisfy the relevant provision of the Adopted Derbyshire Dales Local Plan (2017). Accordingly the application is recommended for refusal.

## **8. RECOMMENDATION**

That planning permission be refused for the following reason(s);

1. The proposal is in a remote rural location not served by public transport such that visitors would be wholly reliant on the private car to access the facility. The proposal as such is an unsustainable form of rural tourism contrary to Policies S1, S4 and EC9 of the Adopted Derbyshire Dales Local Plan (2017).
2. The application fails to provide sufficient information to fully demonstrate that development would not harm protected species that may be present within the application site. The application therefore conflicts with Policy PD3 of the Adopted Derbyshire Dales Local Plan (2017).

## **NOTES TO APPLICANT:**

1. The Local Planning Authority considered the merits of the submitted application and judged that there was no prospect of resolving the fundamental planning problems with it through negotiation. On this basis the requirement to engage in a positive and proactive manner was considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.

2. This decision notice relates to the following documents:  
Submitted plans date stamped 8<sup>th</sup> October 2020.

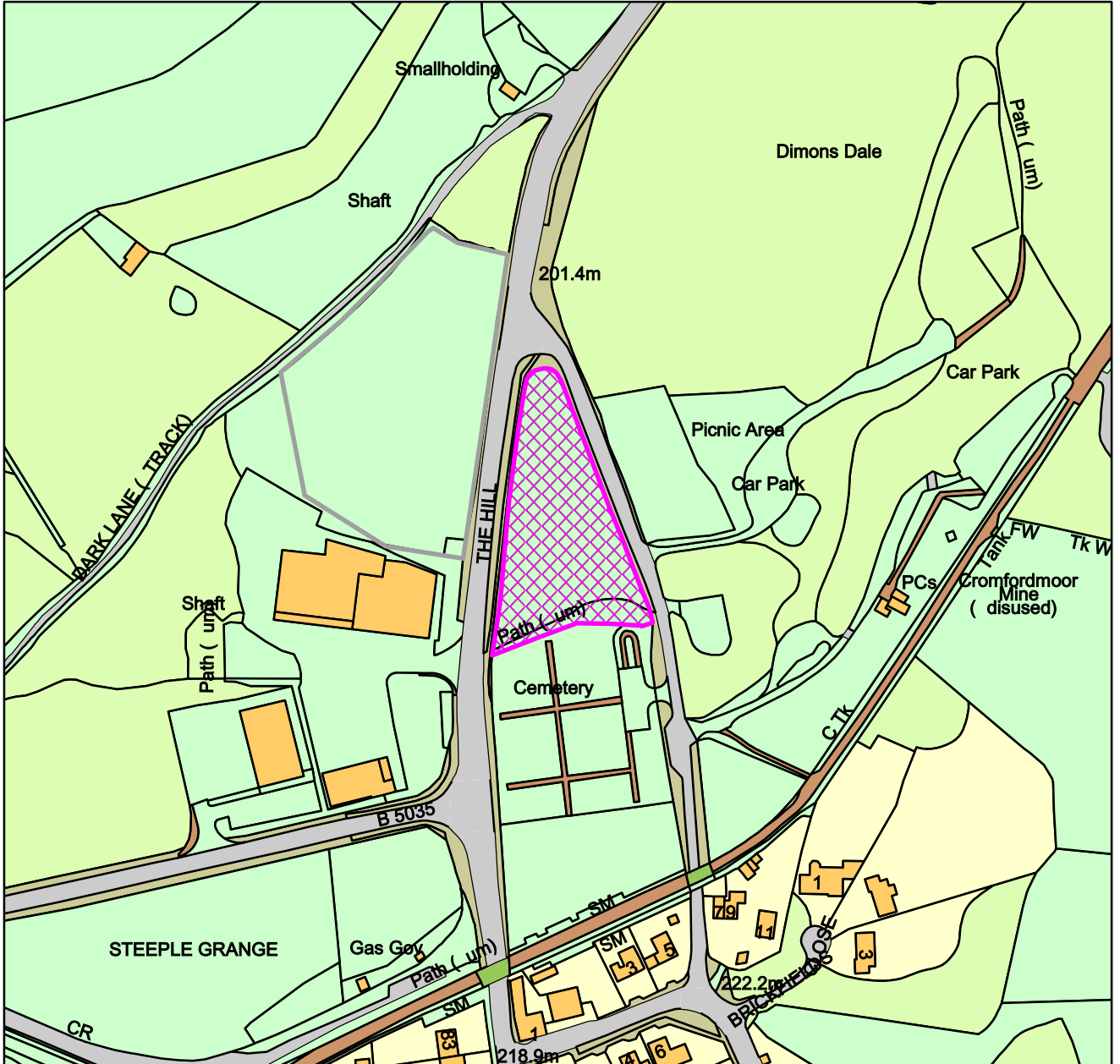
<b>APPLICATION NUMBER</b>		21/00243/FUL	
<b>SITE ADDRESS:</b>		Land to the north of Steeple Arch Cemetery, Wirksworth	
<b>DESCRIPTION OF DEVELOPMENT</b>		Extension of cemetery and associated infrastructure and landscaping works	
<b>CASE OFFICER</b>	Sarah Arbon	<b>APPLICANT</b>	Vikki Hatfield (Neighbourhoods Manager)
<b>PARISH/TOWN</b>	Cromford	<b>AGENT</b>	
<b>WARD MEMBER(S)</b>	Cllr G Purdy	<b>DETERMINATION TARGET</b>	20th April 2021
<b>REASON FOR DETERMINATION BY COMMITTEE</b>	DDDC Application	<b>REASON FOR SITE VISIT (IF APPLICABLE)</b>	

<b>MATERIAL PLANNING ISSUES</b>
<ul style="list-style-type: none"> <li>- Principle of development</li> <li>- Impact on visual amenity</li> <li>- Controlled Waters</li> <li>- Highway Issues</li> </ul>

<b>RECOMMENDATION</b>
Approval

21/00243/FUL

Land North Of Steeple Arch Cemetery, Wirksworth



Derbyshire Dales DC

1:2,500

Date: 08/04/2021

100019785

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Derbyshire Dales District Council,  
Town Hall, Bank Road, Matlock, Derbyshire DE4 3NN.  
Telephone: (01629) 761100.  
website :www.derbyshiredales.gov.uk



## 1.0 THE SITE AND SURROUNDINGS

- 1.1 The 0.38 ha site is a triangular piece of land to the north of Black Rocks with The Hill (B5035) to the west and Oakerthorpe Road to the east. It is located to the north of the existing Steeple Arch Cemetery which has a vehicle access off Oakerthorpe Road with some hardstanding for parking. The land is enclosed by low level stone walls with some small trees on the boundary and land levels drop to the north. The land is currently grassed and has been owned by the District Council since 2015. Cromford Public Footpath 14 runs along the southern boundary of the site.



## 2.0 DETAILS OF THE APPLICATION

- 2.1 Planning permission is sought for an extension to the cemetery for 460 plots. The existing footpath would be retained and with a bitmac surface and a new hedge laid to the north of its route. Thirty seven new trees are proposed to be planted adjacent to the road boundaries to the east and west and the northern most point of the site planted with twelve extra heavy standard trees. The existing stone walls would be repaired and an access off Oakerthorpe Road adjacent to the southern boundary with hardstanding is proposed for hearse turning and drop off. A sunken garden of memorial is proposed in the south western corner. Central paths would provide pedestrian access and a larger section of hardstanding is proposed in the northern part of the site with a water tap point.

### 3.0 PLANNING POLICY AND LEGISLATIVE FRAMEWORK

1. Adopted Derbyshire Dales Local Plan (2017)
  - S4: Development in the Countryside
  - PD1: Design and Place Making
  - PD3: Biodiversity and the Natural Environment
  - PD5: Landscape Character
  - PD6: Trees, Hedgerows and Woodlands
  - HC19: Accessibility and Transport
2. National Planning Policy Framework  
National Planning Practice Guidance

### 4.0 RELEVANT PLANNING HISTORY:

None

### 5.0 CONSULTATION RESPONSES

#### Cromford Parish

- 5.1 No objection to the above application, but suggest that a bus shelter be provided near the site.

#### Peak and Northern Footpaths Society

- 5.2 No objection provided that the full width of Footpath 14 Cromford remains unobstructed at all times. If it is necessary to obstruct any part of the path during the construction work, a temporary closure order must be obtained from the County Council. It seem that it might be the intention to change the surface of the footpath - if this is the case, the authority of the County to do this must be obtained.

#### Derbyshire County Council (Highways)

- 5.3 Vehicle speeds of 60 mph do not seem at all likely considering road characteristics and the verge affords a good degree of exit visibility at the access location, therefore the available exit visibility would be sufficient to serve the access. Conditions are requested in respect of the access, turning and gates.

#### Derbyshire Dales Ramblers

- 5.4 No objection providing that:
- i) Any temporary closure of Wirksworth FP 14 should be authorised by PRoW
  - ii) The stone squeeze stile at the B5036 end is retained
  - iii) The FP width is sufficient to ensure that the proposed hedging does not encroach onto the path
  - iv) At present, the Definitive Map FP line is obstructed by a large pile of soil at the Black Rock end

Further comments for requested consideration:

- could a natural stone surface for the FP be considered instead of tarmac? DDDC has declared a Climate Emergency. Tarmac is best kept to a minimum, plus a more natural surface relates better to the nearby Countryside leisure facilities.
- there are recently installed FP signposts at each end of the FP
- there is an access point across the FP between the existing cemetery and the proposed extra site. A further one would be acceptable.
- measures to stop vehicles obstructing the start of the FP from the Black Rock end would be very welcome.

#### The World Heritage Partnership

- 5.5 The application does not meet the criteria for requiring comments.

Arboriculture Officer (Derbyshire Dales)

5.6 No objections.

Environmental Health (Derbyshire Dales)

5.7 No objections.

Environment Agency

5.8 Objects to the proposed cemetery extension at this location at present as the application has not been supported by any form of risk assessment with regards to controlled waters.

Councillor Comments

5.9 Cllr G Purdy states that notwithstanding this is an Authority planning application it is necessary to allow more facilities for extending the Cemetery

## **6.0 REPRESENTATIONS RECEIVED**

6.1 No representations have been received.

## **7.0 OFFICER APPRAISAL**

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

- Principle of development
- Impact on visual amenity
- Controlled Waters
- Highway safety

7.2 The site is located within the countryside and Policy S4 applies. No buildings are proposed as part of the cemetery extension and it is an essential community facility which cannot be located within the identified settlement boundary of Wirksworth and has a safe access which would not generate significant amounts of traffic. The land slopes down to the north towards Cromford with woodland screening between the site and this settlement. The character of the land would remain open with low level stone walls and trees set in from the road boundaries and low level grave stones. On this basis, the proposal is considered to safeguard the appearance of the land through the introduction of trees and hedges and the repair of the stone walls.

7.3 Policy HC15 stipulates that cemeteries are considered community facilities and states that new facilities should preferably be located within defined settlement limits where they are most accessible. It goes on to state that in exceptional cases, facilities may be located adjacent to these areas where it can be demonstrated that this is the only practical option and where a site is well connected to the existing settlement. In this case, the proposal is an extension of an existing facility. The Council completed a Burial Review in 2017 which highlighted that Steeple Arch was nearing full capacity. The existing cemetery is close to the settlement boundary of Wirksworth and is located within walking distance of this settlement together with being on a main route from Wirksworth to Cromford and Matlock, as such it is considered well related and connected to both Wirksworth and Cromford.

Impact on visual amenity

7.4 The existing character of the site is open grassed land that slopes to the north towards Cromford Hill with woodland separating it from views of this settlement. The development would involve the introduction of paths through the site and plots with grave stones with rows of trees set in from the road boundaries and a group of trees in the northern most corner. The land would remain in the whole grassed with small areas of hardstanding. Whilst the site is visually prominent the extension to the cemetery within it would not significantly change its character in the landscape and the repair of the stone walls and introduction of

trees would offset the changes proposed. On this basis, the proposal preserves the landscape in accordance with Policies S4, PD1 and PD5.

#### Controlled Waters

- 7.5 The Environment Agency has a holding objection to the proposed cemetery extension as the application has not been supported by any form of risk assessment with regards to controlled waters. The proposed cemetery extension is located within a Groundwater Source Protection Zone (SPZ I). The SPZ is associated with Merebrook Sough, Ladyflatte Mine and Matlock Water (a) and (b). Further Risk Assessment would be required to assess whether this proposal is likely to have a significant impact on controlled waters.
- 7.6 In order to overcome the objection the Environment Agency criteria for burial sites requires assessment. The Environment Agency state that during the coronavirus pandemic they will not require environmental permits for proposed cemetery developments and will carry out groundwater risk assessments to help local authorities in their decision making, and will offer advice and guidance based on these risk assessments to protect the environment. The applicant has been in negotiation with the Environment Agency since their objection to clarify the criteria and have instructed them to carry out the groundwater risk assessment on their behalf.
- 7.7 The groundwater risk assessment has been instructed, but may not be available in time for the committee meeting. On the basis that the facility is essential for the community it is considered expedient to present the application to this committee. Should members support the scheme they may need to delegate authority to the Development Manager to determine the application on satisfactory resolution of this matter.

#### Highways Issues

- 7.8 Policy S4 requires safe access to be provided and Policy HC19 requires that development is located where the highway network can satisfactorily accommodate the traffic generated and is well related to public transport. The site is located on a main route between Wirksworth and Matlock with bus stops in the vicinity on Potter Lane and opposite Malthouse Close and it thus considered accessible in accordance with these policies. Whilst the Parish Council have requested a bus shelter, this is not within the remit of planning, but that of the bus operator in consultation with the Highway Authority.

## **8.0 RECOMMENDATION**

That delegated authority be given to the Development Manager to grant permission on the successful completion of negotiation over the issue of controlled waters with the following conditions.

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.

Reason:

This is a statutory period which is specified in Section 91 of the Town and Country Planning Act 1990.

2. This permission relates to drawing no. H\_SAC\_001 and the specification document received by the Local Planning Authority on the 23<sup>rd</sup> February 2021.

Reason:

For the avoidance of doubt.

3. Before any other operations are commenced a new vehicular access shall be created to Oakerthorpe Road laid out and constructed in accordance with the application drawings. The entire site frontage shall be cleared, and maintained thereafter clear, of any obstruction exceeding 1m in height (600mm for vegetation) relative to the road level for a distance of 2m into the site from the highway boundary in order to maximise the visibility available to drivers emerging onto the highway.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017).

4. The site shall not be taken into use until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017).

5. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason:

In the interests of highway safety in accordance with Policy HC19 of the Adopted Derbyshire Dales Local Plan (2017).

## 9.0 NOTES TO APPLICANT:

1. The Local Planning Authority prior to and during the consideration of the application engaged in a positive and proactive dialogue with the applicant which resulted in the submission of a scheme that overcame initial concerns relating to access visibility and controlled water.
2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website [http://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp), e-mail [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.
3. 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.

4. This decision notice relates to the following documents:  
Location Plan Scale 1:1250  
Drawing no. H\_SAC\_001  
Specification document

## Ashbourne North

ENF/19/00016	Installation of artificial grass to steps, neon internal signage and spotlights to Grade II Listed Building	5 Church Street Ashbourne Derbyshire DE6 1AE	Pending Consideration
ENF/19/00082	Siting of caravan and alterations to associated access track	Land To The Rear Of Woodcock Delph And Adjacent To Herdsman Close Farm Ashbourne Road Fenny Bentley Derbyshire	Pending Consideration
ENF/19/00154	Breach of Conditions 19 and 20 of Planning Permission 09/00496/FUL (Allowed on appeal)	The Mount 4 North Avenue Ashbourne Derbyshire	Pending Consideration
ENF/20/00003	Installation of solar panels to roof	13 Church Street Ashbourne Derbyshire DE6 1AE	Notice Issued
ENF/20/00055	Unauthorised engineering works to facilitate a vehicular access and parking space onto a classified road, 23 Buxton Road, Ashbourne.	23 Buxton Road Ashbourne Derbyshire DE6 1EX	Pending Consideration
ENF/21/00008	Installation of metal bars to windows and erection of gates at Grade II Listed Building	Gate Farm Belper Road Sturston Derbyshire DE6 1LN	Pending Consideration

## Ashbourne South

ENF/17/00038	Unauthorised works to listed building	Avanti Jewellers 2 - 4 Church Street Ashbourne Derbyshire DE6 1AE	Pending Consideration
ENF/18/00125	Breach of Conditions 6 (Soft Landscaping), 7(Landscape Management Plan), 8 (Amenity and Play Areas laid out before first occupation) and 27 (Landscape and Ecological Management Plan) of 14/00722/FUL	Land Formerly Hillside Farm Wyaston Road Ashbourne Derbyshire DE6 1NB	Notice Issued
ENF/18/00164	Unauthorised siting of caravan for residential purposes.	Land To The Rear Of Mayfield Road Cadet Hut Mayfield Road Ashbourne Derbyshire DE6 1AR	Pending Consideration
ENF/19/00040	Breach of Condition 10 (Construction Management Plan) of planning permission 15/00060/OUT	Land Off Lathkill Drive Ashbourne Derbyshire	Pending Consideration

ENF/19/00114	Provision of traffic regulation order and markings to restrict parking secured via section 106 agreement not yet in place, landscaping/ damaged fencing on site and unauthorised signage (banner sign and advanced sign) for local housing site being displayed. Related planning approval 18/00180/FUL	Unit 6 Blenheim Road Airfield Industrial Estate Ashbourne Derbyshire	Pending Consideration
ENF/20/00030	Breach of Condition 24 (Tree Protection) of planning approval 17/00250/REM and damage to protected trees	Land South Of Leys Farm Wyaston Road Ashbourne Derbyshire	Pending Consideration
ENF/21/00021	Siting of storage container	Henmore Trading Estate Mayfield Road Ashbourne Derbyshire DE6 3AS	Notice Issued

## Brailsford

ENF/17/00058	Unauthorised erection of replacement fencing around boundary of South Lodge, Long Lane, Longford, Derbyshire	South Lodge Long Lane Longford Derbyshire DE6 3DS	Pending Consideration
ENF/18/00009	Unauthorised building works to barn at West Mammerton Farm, Sutton Lane, Longford	Buildings At West Mammerton Farm Sutton Lane Longford Derbyshire	Pending Consideration
ENF/18/00138	Unauthorised change of use of Agricultural land and the erection of a timber built cabin.	Land North East Of Willow Croft New Road Mercaston Derbyshire	Notice Issued
ENF/19/00062	Creation of new fishing lake	Birch House Fishing Lake Derby Lane Ednaston Derbyshire	Pending Consideration
ENF/20/00139	Dwelling not built in accordance with planning approval reference 18/00726/FUL	Former Sunny Bank Longford Lane Longford Derbyshire DE6 3DT	Pending Consideration

## Carsington Water

ENF/16/00034	Unauthorised erection of Dog kennels	Four Lane Ends Farm Gibfield Lane Hulland Ward Derbyshire DE6 3EJ	Notice Issued
ENF/18/00013	Building not built in accordance with approved plans	Mulino Lodge Agnes Meadow Lane Kniveton Derbyshire DE6 1JR	Pending Consideration
ENF/18/00196	Works to Holiday Let - Installation of chimney, erection of conservatory and extension to single storey element. Other Works - Caravan hookups, associated timber structure and extension to shower block	New Harboro Farm Manystones Lane Brassington Derbyshire DE4 4HF	Pending Consideration



ENF/19/00067	Unauthorised engineering works to create a raised platform base for the approved building, and a new access and access track onto land off Manystones Lane, Brassington.	Land North Of Wirksworth Dale Brassington Derbyshire	Pending Consideration
ENF/19/00096	Unauthorised change of use of the building known as Shaws Barn, from B8 (Limited storage and distribution) use, to a use including the sale of alcohol.	Shaws Barn Winn Lane Atlow Derbyshire DE6 1NS	Pending Consideration
ENF/20/00128	Erection of shed and boundary fence	3 Haven View Mill Lane Bradbourne Derbyshire DE6 1PA	Pending Consideration
ENF/21/00025	Unauthorised engineering works to facilitate a wider access and hardsurfaced track around field to a newly created hardstanding area, stationing of a mobile caravan, domestication of the agricultural land with the erection of a childrens climbing frame with slide and a sunken childrens trampoline, and the erection of a decking area. Further works include the creation of an enclosure with a field shelter to accomodate an Alpaca and a couple of sheep.	Land North West Side Of Manystones Lane Brassington Derbyshire	Pending Consideration

## Clifton And Bradley

ENF/19/00151	Alterations to bridleway including resurfacing to create access track, recessing of gateway and tarmac of entrance onto Sides Lane	Snelston BW 3 Sides Lane Snelston Derbyshire	Pending Consideration
ENF/19/00159	Formation of a new access off a Classified Road	The Flatts Wyaston Road Ashbourne Derbyshire	Pending Consideration
ENF/20/00005	Clearance of hedgerow at 'The Firs' residential development and erection of fence - Related planning applications 16/00340/OUT and 18/00699/REM	Land At The Firs Main Road Wyaston Derbyshire DE6 2DR	Pending Consideration
ENF/20/00141	Siting of static caravans	Cloud Barn Clifton Road Clifton Derbyshire DE6 2DH	Pending Consideration
ENF/20/00159	Erection of signage and change of use of yard to rear of premises	Duke Of York Filling Station Mayfield Road Mayfield Ashbourne Derbyshire DE6 2BN	Pending Consideration
ENF/21/00044	Engineering works to extend existing bunding	Darley Moor Motor Cycle Road Racing Club The Darley Moor Sports Centre Darley Moor Ashbourne Derbyshire DE6 2ET	Pending Consideration

## Darley Dale

ENF/12/00034	Unauthorised demolition of a Listed wall and unauthorised access off the A6 at Dale Road North Darley Dale.	Stancliffe Quarry, Darley Dale, Matlock.	Notice Issued
ENF/17/00016	Breach of pre commencement conditions on planning permission 15/00718/FUL Demolition of existing dwelling and barn and erection of replacement dwelling and swimming pool building.	Former Bent Farm Farley Hill Matlock Derbyshire DE4 5LT	Pending Consideration
ENF/17/00139	Works comprising the siting of an office building on "the land"	Ameycroft Farm Farley Hill Matlock Derbyshire DE4 5LR	Notice Issued
ENF/19/00102	Continued siting of mobile home (Breach of Condition 1 of Appeal Decision APP/P1045/C/15/3131891)	Woodside Farm Back Lane Darley Moor Matlock Derbyshire DE4 5LP	Pending Consideration
ENF/19/00144	Without planning permission the unauthorised use of the site as a camping and caravan site	Land Opposite Square And Compass Main Road Darley Bridge Derbyshire DE4 2EQ	Pending Consideration
ENF/20/00154	Felling of Scot's Pine tree subject to Tree Preservation Order 119 (G3)	Land At St Elphins Park Dale Road South Darley Dale Derbyshire	Pending Consideration

## Doveridge And Sudbury

ENF/19/00017	Unauthorised commencement of development prior to correctly discharging planning conditions relating to planning permissions 15/00389/OUT - residential development of upto 70 dwellings and 18/00891/REM - Approval of reserved matters for the erection of 62 dwellings- Land East of Bakers Lane, Doveridge	Land To The East Of Bakers Lane Doveridge Derbyshire	Pending Consideration
ENF/20/00010	Change of use of land to site a crane and condition 4 (landscaping works to screen mounding) of planning permission 11/00806/FUL not fully implemented	Steve Foster Crane Hire Units 1 To 3 Derby Road Doveridge Derbyshire DE6 5JU	Pending Consideration
ENF/20/00129	Formation of a car park in association with the fishing club	Land Between Dove Villa And Tollgate Cottage Doveridge Derbyshire	Pending Consideration

## Hulland

ENF/15/00004	Unauthorised engineering works including substantive excavation on land at Common Farm.	Common Farm Mugginton Lane End Weston Underwood Ashbourne Derbyshire DE6 4PP	Pending Consideration
ENF/15/00024	The unlawful use of the buildings outlined and hatched green on the 1:2500 and 1:1000 Scale attached plans, as a dwellinghouse (Use Class C3).	Blackbrook Lodge Farm Intakes Lane Turnditch Derbyshire DE56 2LU	Notice Issued

ENF/18/00155	Replacement agricultural storage building not built in accordance with permission 15/00616/AGR, construction of car park and building being used as a dog training business	Moorside Farm Moor Lane Kirk Ireton Derbyshire DE6 3JZ	Pending Consideration
ENF/20/00115	Unauthorised siting of caravan	Land To East Of Hoon Well Lane Biggin Ashbourne Derbyshire	Pending Consideration
ENF/20/00123	Provision of additional caravan pitches, Breach of Condition 6 of Planning Permission Reference 16/00568/FUL and erection of storage buildings and band stand	Blackbrook Lodge Camping And Caravan Site Intakes Lane Turnditch Derbyshire DE56 2LU	Pending Consideration
ENF/21/00005	Erection of yurt for personal use and associated change of use of land	Keepers Field Bullhill Lane Ireton Wood Derbyshire DE56 2EA	Pending Consideration

## Masson

ENF/15/00054	Unauthorised alterations to a Grade II Listed Building.	Rita's Fish Bar 182 South Parade Matlock Bath Derbyshire DE4 3NR	Pending Consideration
ENF/18/00077	Unauthorised change of use of buildings from fully self contained holiday cottage.	The Carriage House Building 24 Cromford Mill Mill Road Cromford Derbyshire DE4 3RQ	Pending Consideration
ENF/18/00078	The painting of the shopfront with a paint colour that is not approved under the Matlock Bath Conservation Area Article 4 Direction	196-198 South Parade Matlock Bath Derbyshire DE4 3NR	Notice Issued
ENF/18/00140	Commencement on site prior to discharging conditions 3, 4 and 7 of planning application 17/01097/FUL	Outbuilding To The Rear Of 14 - 16 Yeoman Street Bonsall Derbyshire DE4 2AA	Pending Consideration
ENF/18/00177	Unauthorised erection of decking in the rear garden of Ranmoor, Waterloo Road, Matlock Bath	Ranmoor Waterloo Road Matlock Bath Derbyshire DE4 3PH	Pending Consideration
ENF/19/00086	Breach of condition 16 (paint finish and colour of all external joinery) of planning permission DDD/0697/0381/C - Repainting of premises without prior consent to variation	Unit 5 The Riverside South Parade Matlock Bath Derbyshire DE4 3NR	Pending Consideration
ENF/19/00139	Breach of Conditions - Use of premises as a hotel without compliance with conditions 2, 4, 6 and 7 of planning permission 17/01012/FUL and conditions 2, 3, 6, 7 and 8 of listed building consent 17/01013/LBALT	Cromford Court Derby Road Matlock Bath Derbyshire DE4 3PY	Pending Consideration

ENF/20/00015	Unauthorised erection of fence adjacent to a classified road, A6, and within close proximity to protected trees (DCCTPO/123/A1).	Rock Cottage Rock Lodge 69 Derby Road Cromford Derbyshire DE4 3RP	Notice Issued
ENF/20/00020	Construction of raised platforms	Weavers Cottage 45 Yeoman Street Bonsall Derbyshire DE4 2AA	Pending Consideration
ENF/20/00035	Externally illuminated signage	The Coven The George Centre 30 North Parade Matlock Bath Derbyshire DE4 3NS	Pending Consideration
ENF/20/00068	Unauthorised internal and external works to this listed building	90 The Hill Cromford Derbyshire DE4 3QU	Pending Consideration
ENF/20/00097	Use of shed as letting accommodation, installation of outdoor toilet and shower room and creation of wetroom in property	14 The Hill Cromford Derbyshire DE4 3QL	Notice Issued

## Matlock All Saints

ENF/18/00042	Unauthorised alteration of shop frontage	Turkish Delight 57 Dale Road Matlock Derbyshire DE4 3LT	Notice Issued
ENF/19/00044	Erection of verandah to top of shed	133 Smedley Street Matlock Derbyshire DE4 3JG	Notice Issued
ENF/19/00091	Alleged change of use of Band Hall to business/domestic storage facility	Hall Jackson Road Matlock Derbyshire	Notice Issued

## Matlock St Giles

ENF/13/00084	Unauthorised erection of workshop	Phillips Woodware Smuse Lane Matlock Derbyshire DE4 5EY	Notice Issued
ENF/17/00020	Unauthorised use of land for the storage and stationing of caravans.	Duke William Hotel 91 Church Street Matlock Derbyshire DE4 3BZ	Notice Issued
ENF/18/00178	The development is not in accordance with the approved plans.	Land Adjacent To 9 Oak Tree Gardens Tansley Derbyshire	Pending Consideration
ENF/19/00008	Use of land for the parking of vehicles, unloading and storage of aggregates, unloading and storage of domestic and business waste and as a personal allotment with a greenhouse	Land To The Rear Of Sunnyside Farm Riber Road Riber Matlock Derbyshire DE4 5JU	Pending Consideration
ENF/19/00015	Formation of access onto a classified road (A615)	The Cottage Alfreton Road The Cliff Matlock Derbyshire DE4 5EZ	Notice Issued

ENF/19/00027	Tipping of materials additional to soil including rock, concrete and redundant farm machinery	Land At Junction Of Cunnery Lane And Alders Lane Tansley Derbyshire	Pending Consideration
ENF/19/00167	(a) Without planning permission, unauthorised engineering work, including retaining walls, to facilitate the formation of a compound area, the erection of enclosing walls and gate piers to this compound. (b) Without planning permission, utilising the compound for the storage of building materials, plant and equipment.	Land And Barn At The Corner Of Thatchers Lane And Alders Lane Tansley Derbyshire	Notice Issued
ENF/19/00168	Replacement windows in Grade II* Listed Building	St Andrews House Lumsdale Road Matlock Derbyshire DE4 5NG	Pending Consideration
ENF/20/00012	Unauthorised erection of garage within the domestic curtilage	20 Lynholmes Rise Matlock Derbyshire DE4 3DX	Pending Consideration
ENF/20/00092	The extension of domestic curtilage, engineering works and laying of hardsurfacing.	Land And Barn At The Corner Of Thatchers Lane And Alders Lane Tansley Derbyshire	Notice Issued
ENF/20/00103	Breach of Condition 14 of planning permission 15/00861/FUL and formation of roadway and associated engineering works (raising of land and formation of swales)	Land South Of Bentley Bridge Chesterfield Road Matlock Derbyshire	Pending Consideration
ENF/20/00145	Installation of air conditioning unit to exterior of Grade II Listed Building	Tavern At Tansley Nottingham Road Tansley Derbyshire DE4 5FR	Pending Consideration
ENF/20/00147	Erection of treehouse	Littlemoor Farm Littlemoor Lane Riber Matlock Derbyshire DE4 5JS	Pending Consideration

## Norbury

ENF/17/00056	Unauthorised engineering works to facilitate access at Old House Farm, Can Alley, Roston, Derbyshire	Old House Farm Can Alley Roston Derbyshire DE6 2EF	Pending Consideration
ENF/17/00156	Unauthorised engineering works to create a vehicular access to the holiday lets from the Roston Inn car park	Roston Inn Mill Lane Roston Derbyshire DE6 2EE	Pending Consideration
ENF/18/00142	Siting of shipping container	Land Off Rodsley Lane Yeaveley Derbyshire	Pending Consideration
ENF/19/00034	Erection of Building	The Orchard Audishaw Lane Boylestone Derbyshire	Notice Issued

ENF/19/00079	Breach of condition 11 of planning permission 16/00587/FUL - No machinery shall be operated on the site, no process or operations shall be carried out and no deliveries shall be taken at or despatched from the site except between 8:00 and 18:00 hours Monday to Friday and 9:00 and 13:00 on Saturdays or at any time on Sundays and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.	Mushroom Farm Rodsley Lane Yeaveley Derbyshire DE6 2DT	Pending Consideration
ENF/20/00006	Without planning permission the change of use of land for the stationing of caravans for the purposes of human habitation with associated building and engineering works comprising of the construction of amenity buildings, laying of hard surface and erection of fencing	Land East Of Grove Lane Somersal Herbert Derbyshire	Pending Consideration
ENF/20/00018	Unauthorised change of use of garage block to independent dwelling	Coton Wood Lodge Muse Lane Boylestone Derbyshire DE6 5AB	Pending Consideration
ENF/20/00148	Unauthorised stationing of static and mobile caravans for the purposes of human habitation and the change of use of land for the storage of vehicles and machinery not associated with agriculture	Shaw Lane Farm Shaw Lane Marston Montgomery Derbyshire DE6 2FJ	Notice Issued

## Stanton

ENF/20/00062	Erection of stables, extension of residential curtilage and extension of access	Rowsley Barn Chesterfield Road Rowsley Derbyshire DE4 2EG	Pending Consideration
ENF/20/00120	Without planning permission, the unauthorised erection of a dwellinghouse, deliberately concealed inside an agricultural storage/stable building Without planning permission the erection of a single storey, lean to extension to the agricultural storage/stable building	North Park Farm Whitworth Road Darley Dale Derbyshire DE4 2HJ	Pending Consideration

## Winster And South Darley

ENF/20/00016	Construction of storage buildings approved under application code ref. 19/00525/FUL using corugated steel sheets to the walls finished in an unauthorised off white colour	H J Enthoven And Sons Darley Dale Smelter Oldfield Lane Warren Carr Derbyshire DE4 2LP	Pending Consideration
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## Wirksworth

ENF/17/00002	Unauthorised engineering operations to create a raised area	11 New Road Bolehill Derbyshire DE4 4GL	Pending Consideration
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ENF/17/00018	Unauthorised works to remove a fire surround in a Grade II Listed Building.	Red Lion Hotel Market Place Wirksworth Derbyshire DE4 4ET	Pending Consideration
ENF/17/00023	Breach of conditions on planning permission 14/00891/FUL	Mount Cook Adventure Centre Porter Lane Middleton By Wirksworth Derbyshire DE4 4LS	Pending Consideration
ENF/17/00051	Unauthorised change of use of garage/store to beauty studio.	The Mews 3 Wirksworth Hall Farm Wash Green Wirksworth Derbyshire DE4 4FD	Pending Consideration
ENF/18/00126	Removal of front wall and erection of ply wood replacement	Kenwood Cottage Wash Green Wirksworth Derbyshire DE4 4FD	Pending Consideration
ENF/18/00216	Breach of conditions 3 and 4 of planning permission 15/00793/FUL - Conversion and extension of garage to form dependant relative unit.	38 West End Wirksworth Derbyshire DE4 4EG	Pending Consideration
ENF/19/00004	Installation of hot tub to front of property	Stowe Cottage 4 New Road Middleton By Wirksworth Derbyshire DE4 4NA	Pending Consideration
ENF/20/00008	Unauthorised ground works to facilitate a car park and large plant training area.	Land To The North Of Jacksons Ley And Porter Lane Middleton By Wirksworth Derbyshire	Pending Consideration
ENF/20/00077	Unauthorised building works, consisting of demolition of outbuilding and erection of two storey side extension to dwelling at 5 Churchill Avenue, Middleton by Wirksworth.	5 Churchill Avenue Middleton By Wirksworth Derbyshire DE4 4NG	Pending Consideration
ENF/20/00101	Erection of shed	The Old Barn Rise End Middleton By Wirksworth Derbyshire DE4 4LS	Pending Consideration
ENF/20/00164	Without planning permission, the unauthorised change of use of the building and associated land from office use (Use Class B1) permitted under Part 3, Class R of Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order (2015) (as amended) to a Dwellinghouse (Use Class C3).	Land At Manor Lodge Little Bolehill Bolehill Derbyshire DE4 4GR	Notice Issued

**Total Open Cases**

**96**

# Enforcement Investigations Closed



In the Month Prior to 08/04/2021

## Brailsford

ENF/21/00002	Breach of Condition 18 (Construction Management Plan/ Construction Method Statement) of planning permission 18/00711/REM - Parking of vehicles of site operatives and visitors	Land At Luke Lane / Mercaston Lane Brailsford Derbyshire	Complaint Unfounded	09/03/2021
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## Carsington Water

ENF/20/00002	Replacement dwelling and annexe not being built in accordance with planning permission 16/00054/FUL - Possible extension outside of domestic curtilage and additional works	Formerly Goodacres Furlong Lane Hognaston Derbyshire DE6 1PX	Planning Application Received	09/03/2021
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## Darley Dale

ENF/21/00038	Unsafe half built extension.	12 Cleve Avenue Matlock Derbyshire DE4 3BD	Complaint Unfounded	15/03/2021
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## Norbury

ENF/21/00032	Formation of access onto classified road	The Manor House Riggs Lane Marston Montgomery Derbyshire DE6 2FF	Planning Application Received	15/03/2021
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**Total Closed Cases** 4



**NOT CONFIDENTIAL** - For public release

PLANNING COMMITTEE – 20<sup>th</sup> April 2021

**PLANNING APPEAL – PROGRESS REPORT**

REFERENCE	SITE/DESCRIPTION	TYPE	DECISION/COMMENT
Southern			
17/00752/FUL	The Manor House, Church Street, Brassington	WR	Appeal being processed
18/00662/LBALT	Brook Cottage, Pethills Lane, Kniveton	WR	Appeal being processed
20/00108/FUL	1 Church Street, Ashbourne	WR	Appeal allowed – a copy of the decision is attached
20/00109/LBALT	1 Church Street, Ashbourne	WR	Appeal dismissed – a copy of the decision is attached
20/00286/FUL	3 to 5 Rodsley Lane, Yeaveley	WR	Appeal dismissed – a copy of the decision is attached
ENF/20/00006	Land east of Grove Lane, Somersal Herbert	IH	Appeal being processed
20/00317/DCOND	Milnhay, Broadway, Kirk Ireton	HOUSE	Appeal being processed
20/008300/FUL	6 Grange Avenue, Hulland Ward	HOUSE	Appeal allowed – a copy of the decision is attached
19/01240/FUL	Meadow View Cottage, Cross O Th Hands, Turnditch	HOUSE	Appeal being processed
20/01188/LBALT	Mill Barn, Foxholes Lane, Ashbourne	WR	Appeal being processed
20/99972/FUL	87 Belper Road, Ashbourne	WR	Appeal being processed
20/01011/OUT	Reevsmoor, Hoargate Lane, Hollington	WR	Appeal being processed
20/01137/FUL	Barn at Oak Tree Farm, Nether Lane, Biggin, Ashbourne	WR	Appeal being processed

Central			
20/00625/FUL	114 Northwood Lane, Darley Dale	HOUSE	Appeal allowed – a copy of the decision is attached
20/00902/CLPUD	214 Dale Road, Matlock	WR	Appeal allowed – a copy of the decision is attached
ENF/20/00120	North Park Farm, Whitworth Road Darley Dale	IH	Appeal being processed
20/00610/FUL	Elmcroft, Derby Road, Cromford	WR	Appeal being processed
20/00581/FUL	5 Asker Lane, Matlock	IH	Appeal dismissed – a copy of the decision is attached
20/00974/FUL	Field adjacent to Oldfield Lane, Warren Carr, Matlock	WR	Appeal being processed
ENF/19/00144	Square and Compass, Main Road, Darley Bridge	WR	Appeal being processed
20/00023/S106	Foxgloves, Chesterfield Road, Rowsley	WR	Appeal being processed
20/00348/FUL	The Old Barn, Rise End, Middleton	WR	Appeal being processed
20/00535/FUL	Rock Cottage, 69 Derby Road, Cromford	WR	Appeal being processed
ENF/20/00164	Manor Lodge, Little Bolehill, Bolehill	WR	Appeal being processed

20/01247/CLEUD	Manor Lodge, Little Bolehill, Bolehill	WR	Appeal being processed
20/01227/FUL	40 Prospect Drive, Matlock	HOUSE	Appeal being processed
20/00840/FUL	Cuckoostone Grange, Cuckoostone Lane, Matlock Moor, Matlock	WR	Appeal being processed

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

**OFFICER RECOMMENDATION:** That the report be noted.



## Appeal Decisions

Site Visit made on 16 November 2020

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2021

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### Appeal A, APP/P1045/W/20/3254365

1 Church Street, Ashbourne DE6 1AF

- 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 Ian Potter against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00108/FUL, dated 5 February 2020, was refused by notice dated 1 April 2020.
  - The development proposed is the conversion and change of use of former bank into public house with 4no. hotel rooms and creation of exterior patio area.
- 

### Appeal B, APP/P1045/Y/20/3254364

1 Church Street, Ashbourne DE6 1AF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Ian Potter against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00109/LBALT, dated 5 February 2020, was refused by notice dated 1 April 2020.
  - The works proposed are the conversion and change of use of former bank into public house with 4no. hotel rooms and creation of exterior patio area.
- 

## Decisions

### *Appeal A*

1. The appeal is allowed and planning permission is granted for the conversion and change of use of former bank into public house with 4no. hotel rooms and creation of exterior patio area at 1 Church Street, Ashbourne DE6 1AF in accordance with the terms of application, Ref 20/00108/FUL, dated 5 February 2020, subject to the conditions set out in the attached Schedule.

### *Appeal B*

2. The appeal is dismissed.

## Applications for costs

3. An application for costs was made by Mr Ian Potter against Derbyshire Dales District Council. This application is the subject of a separate Decision.

## Preliminary Matters

4. **The Council's first reason for refusal on the application that led to Appeal A** refers to internal works and alterations to the appeal building. However, with

regard to Section 55 of the Town and Country Planning Act 1990, internal works do not amount to acts of development and are therefore beyond the scope of an application for planning permission. That said, in relation to the other elements of the proposal, I am mindful of the statutory duties set out in Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and will consider Appeal A with regard to these duties.

## Main Issues

5. I consider the main issues to be:

- Firstly, in relation to Appeal A only, the effect of the proposed development on the living conditions of nearby residents, having particular regard to the character and function of the area, and noise, disturbance and odours; and,
- secondly, in respect of both appeals, whether the proposal would preserve the special architectural and historic interest of No 1 Church Street, a Grade II Listed Building (listed as National Westminster Bank, 1 Church Street), and whether it would preserve or enhance the character or appearance of the Ashbourne Conservation Area.

## Reasons

### *Site, surroundings and the appeal scheme*

6. The appeals concern the former National Westminster Bank at 1 Church Street, Ashbourne. The property is a three-storey Grade II Listed Building and occupies a commanding position at the junction of Church Street, St John Street and Dig Street.
7. The appeal scheme entails the change of use of the building, as described above, to facilitate a public house on the ground floor with hotel rooms to the first and second floors. Internal works comprise the installation of a new staircase and alterations to the plan-form of the first and second floors, including the insertion and removal of partition walls to facilitate the hotel accommodation. External alterations are limited to the insertion of new doors and windows to the rear elevation and the formation of an outside patio area, for customer use, in the rear yard/garden area. Opening hours are proposed to be from 12 noon to 12 midnight each day.

### *Living conditions*

8. The appeal site is located within Ashbourne Town Centre, which is defined by policy EC6 of the Derbyshire Dales Local Plan 2013-2033 (the DDLP) as a Principal Town Centre. It contains a range of uses typical of such centres, including a variety of cafés, public houses, bars and restaurants. Within the immediate vicinity of the appeal site are a range of commercial uses including a jewellers and other retail units, a café, hair and beauty salons and a cocktail bar opposite the site, on the corner of Dig Street.
9. The appeal property is located on a busy road junction and main route through the town centre. It strikes me that the general character and function of the **site's immediate surroundings is** that of a busy town centre environment with a variety of uses, attracting a regular flow of vehicular traffic, including delivery vehicles, and high levels of pedestrian footfall to access the local services and

facilities on offer. Given the character of the area and the nearby commercial uses, there are clear indications of an active night-time economy. Accordingly, a significant degree of noise and disturbance associated with the general hustle and bustle of a town centre environment already exists in the immediate vicinity and is likely to persist into the evening hours.

10. A number of residential properties bound the rear of the site, with others in close proximity. This includes a modern development of residential apartments at The Old Pine Store, which lie to the northeast, the balconies of which overlook the appeal site. In this context, I accept that the rear of the site, and its immediate surroundings, has a quieter character **to that of the site's** frontage, but, nevertheless, and while only a snapshot in time during the day, I observed at my visit that background noise levels remain moderately high owing to its location to the rear of a busy town centre frontage.
11. The proposal would generate some additional activity late into the evening, particularly the use of the rear garden and patio area during the summer months, which has the potential to accommodate a large number of people. However, by virtue of their central location, it is not unreasonable for the occupiers of nearby properties to expect a degree of noise and general disturbance associated with neighbouring commercial uses, reflecting the hustle and bustle of a vibrant town centre environment.
12. Moreover, it is not unusual or unique for commercial uses which generate a degree of noise and general disturbance, as is proposed, to be located alongside or in close proximity to residential properties, especially in town centre locations such as this. A balance must therefore be struck between the competing interests of residential and commercial uses to ensure the ongoing vitality of such centres. In this particular case, while customers may make some noise while frequenting the premises, this is unlikely to be at a level which is harmful to nearby residential occupiers given the predominantly commercial character and function of the area and in the context of existing background noise levels.
13. There is an intervening boundary wall of circa 1.5 metres between the proposed patio and the residential apartments at The Old Pine Store, with the appeal site set at a substantially lower ground level than those adjacent dwellings. Consequently, whilst I note the differing estimates made by the appellant and interested parties of distance between the appeal site and the Old Pine Store, I nevertheless consider that there is sufficient distance and elevation between the appeal site and those adjacent dwellings. In my view, these factors would enable odours caused by patrons smoking or vaping in the rear garden area of the appeal site to adequately disperse without causing significant harm to the living conditions of nearby residents.
14. **I acknowledge the concerns expressed by the Council's** Environmental Health Team over the lack of information regarding noise and odour control, with similar concerns raised by a number of nearby residents. Nevertheless, the appellant has raised no objection to the imposition of conditions to secure further details in these regards, including details of extraction equipment and odour control, and subject **to the Council's approval** of these details prior to the use commencing I see no reason why a satisfactory specification cannot be secured to address these concerns. Conditions can also be imposed to restrict the hours of use of the outside area, to prohibit amplified music and to control delivery times. Subject to the imposition of these conditions, I am satisfied that

the development would maintain acceptable living conditions for nearby residents with regard to noise, disturbance and odour.

15. Although the proposed use would be different in character to the existing use of the building in terms of the number of customers it would attract, the length of time they would stay, and the time of the day and portions of the site they may use, I have no substantive evidence before me which would indicate that unacceptable levels of anti-social behaviour would occur as a result of this.
16. Residents at The Old Pine Store are concerned that there would be a loss of privacy to their balcony areas, which provide their only outdoor amenity space. However, given the exposed and elevated position of these balconies, they do not, to my mind, serve as wholly private outdoor areas as they already experience a significant degree of intervisibility with the surrounding buildings and land. I accept that there is a degree of intervisibility between the rear garden area of the appeal site and that of the southeast facing windows at The Old Pine Store. Nevertheless, given the separation distance between the two, the appeal **site's high boundary walls** and the change in ground levels, I am satisfied that there would be no direct overlooking or unacceptable loss of privacy.
17. Taking the above points together, I conclude that the proposed development, subject to conditions, would not result in material harm to the living conditions of nearby residents, having particular regard to the character and function of the area, and noise, disturbance and odours. Therefore, in this regard, I find no conflict with Policies S3 and PD1 of the DDLP. Together these policies seek to achieve development that is compatible with the character appearance and amenity of the part of the settlement in which it would be located and not cause unacceptable effects by reason of noise, overlooking or other adverse effects on local amenity. Consequently, I also find no conflict with the associated provisions of the National Planning Policy Framework (the Framework) which seek to promote health and well-being and achieve high standards of amenity.

#### *Special Interest and Significance*

18. Dating from the late-18<sup>th</sup> Century, 1 Church Street is a prominent three-storey redbrick building with Grade II listed status. Photographic evidence shows the building as it existed in 1884, with a large central arched entrance to the ground floor façade, and reveals its former use as the Wheat Sheaf Commercial Hotel. The building is thought to have been re-faced when it became a bank towards the latter end of the 19<sup>th</sup> Century, primarily remodelling the ground floor façade, with the loss of its central arch. The building displays typical Georgian-style architectural features to its principal elevation, including a stone eaves cornice, banding and quoins and stone window surrounds to the ground floor with side door flanked by stone consoles under a decorative dentil cornice.
19. Front facing windows to the first and second floors display a strong symmetrical arrangement across the elevation and are headed with panelled lintels and comprise oversized central keystones – the style of which is replicated in neighbouring buildings to either side. This window arrangement reflects the internal plan-form of the building, with front-facing principal rooms comprising two large rooms flanking a smaller central room, the windows of which being set slightly apart from those of the adjoining rooms. These rooms also contain some decorative plasterwork and covings to their ceilings, emphasising their historic plan-form and adding to their significance.

20. Although the building has been subject to various alterations, from the evidence before me and in so far as it relates to these appeals, I consider that its special interest and significance is largely derived from its historic and architectural interest as a prominent building of late 18<sup>th</sup> Century origins, typical of its period. **The building's age**, strong architectural aesthetic, historic fabric and the surviving internal plan-form of its principal rooms at first and second floor all make important contributions in these regards.
21. The appeal site lies within the Ashbourne Conservation Area, which is dominated by a variety of historic buildings that display a high degree of architectural quality and heritage value. The conservation area is predominantly characterised by a mix of fine Georgian and Victorian-era properties, highlighting the high social status of Ashbourne during those periods of history. The significance of the conservation area, in relation to these appeals, is primarily associated with the architectural integrity of its historic buildings.
22. Accordingly, as a late-18<sup>th</sup> Century building of architectural and historical significance, the appeal property makes a positive contribution to the character and appearance of the conservation area.

*The effect of the appeal scheme - proposed works*

23. The plan-form of the principal rooms to the first and second floors is well preserved, with the historic layout of these rooms remaining legible, despite the existing non-original openings to either side of the front facing central room on the first floor.
24. The appeal scheme would include works to enlarge the front facing central rooms on the first and second floors. To the first floor, this would involve infilling the existing opening to the left-hand side and widening the existing opening to the right-hand side, retaining its existing height. A new partition wall would then be installed to the right of this enlarged opening. A new door would also be installed for access to the lobby. To the second floor, the existing doorway opening between the central room and the hall would be infilled with studwork and plaster. A new opening would be formed in the dividing wall between this central room and the room to its right. While annotations on the plans refer to this as an enlargement of an existing opening, I note that no such opening currently exists. A new partition wall would then be created to the right of the existing division in order to enlarge this room.
25. Taken together, these internal alterations would harmfully detract from the historic plan-form of these principal rooms. The retention of nibs to either side and a retained section of downstand to demarcate the original divisions would not mitigate these harmful effects. Indeed, the introduction of new partitions in such close proximity to the historic divisions would appear particularly contrived and only serve to accentuate their incongruity. Moreover, the proposed infilling of the doorway between the hallway and the central room on the second floor would further erode the legibility of the building's historic layout. Overall, the proposal would detrimentally alter the surviving historic plan-form of the first and second floors, harmfully **diminishing the building's** historic integrity and identified significance.

26. Furthermore, annotations on the submitted plans<sup>1</sup> indicate structural interventions over the existing divisions to the specification of a Structural **Engineer's design. However**, other than this vague annotation, no illustrative details or specifications have been provided for what could be significant structural interventions. The extent of this element of the proposal and how it may impact upon the historic fabric of the building is unclear and, therefore, so too is its effect on the significance of the building.
27. This lack of detail does not allow for a meaningful assessment of the potential effects of these measures to the historic fabric, and thus to the significance and special interest of, the listed building. Due to the degree of ambiguity over what is proposed, it would be unacceptable to leave such matters to be controlled by conditions. Consequently, in these regards I conclude that it has not been demonstrated that these interventions would preserve the listed building and its special interest.
28. Consequently, in relation to Appeal B, being mindful of the duty set out at Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I find that the proposed works would fail to preserve the listed building and its features of special architectural or historic interest. In doing so, the proposed works would harm the significance of the designated heritage asset and is therefore contrary to Policy PD2 of the DDLP and the associated provisions of the Framework, which together seek to conserve heritage assets in a manner appropriate to their significance.
29. The proposed works are mainly internal in nature, and in so far as they relate to externally visible aspects of the building, they would have only very limited visual effects in terms of the wider conservation area. On this basis, I conclude that the proposed works would preserve the character and appearance of the Ashbourne Conservation Area. However, the lack of harm in this regard is a neutral factor that weighs neither in favour of nor against the proposal.

*The effect of the appeal scheme - proposed development*

30. The proposed development mainly comprises the change of use of the building, external alterations to the rear elevation of the building - insertion of timber French doors and bi-fold doors - and operations to facilitate the external patio in the rear garden/yard area.
31. With regard to their heritage impacts, the Council raise no objection to these elements of the proposal and, noting that these operations would largely affect the 20<sup>th</sup> Century extension to the rear, I see no reason to demur from this. Consequently, in applying the duty set out at Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I find that these elements of the proposal would avoid harm to the significance of the listed building and its setting and would therefore preserve its special interest.
32. In considering the effects of the proposed development on the character and appearance of the Ashbourne Conservation Area, I appreciate that the development of the patio area and use of the rear garden by customers of the proposed public house would alter views across the site and therefore views through the conservation area. However, public views of this rear area are limited and in any case the garden character of the rear of the property would

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<sup>1</sup> Drawing No. 15A: Proposed Alterations plans – First and Second floors



largely be preserved, albeit more intensively used and maintained. Accordingly, I find that the proposed development would preserve the character and appearance of the Ashbourne Conservation Area.

33. Accordingly, in relation to Appeal A, I conclude that the proposed development would preserve the special architectural and historic interest of the listed building and also preserve the character and appearance of the Ashbourne Conservation Area. Therefore, the proposed development would satisfy the requirements of the Act<sup>2</sup> and consequently there would be no conflict with Policy PD2 of the DDLP, the aims of which are set out above.

#### Other Matters

34. It has been put to me that the external patio area is unnecessary and not considered to be fundamental to the proposed business use. Nevertheless, the necessity or otherwise of this element of the proposal is a matter for the appellant. Therefore, I have considered the proposal as presented, and based on its planning merits.
35. Concerns have been raised over the impact of the proposal on nearby property values and how it may affect the ability to attract and retain tenants at The Old Pine Store. Nevertheless, it is a well-founded principle that the planning system operates in the public interest and therefore does not exist to protect private interests such as the value of land or property.
36. Interested parties have suggested that the proposal is unlikely to protect and enhance biodiversity nor provide opportunities for wildlife to thrive. However, given the scale and nature of the proposal and the retention of landscaping within the garden area, I am satisfied that there will be no significant adverse effects in this regard. Furthermore, the Council has not raised this as a concern, and I see no reason to take an alternative view.
37. Concerns are also raised with regard to highways impacts, the suggestion being that there is a lack of parking provision and deliveries could compromise highway safety. However, I see that the proposal has been subject to the scrutiny of the Local Highway Authority who offer no objection in these regards. Furthermore, I could see that highway restrictions exist to the front of appeal property and therefore this would prohibit deliveries from obstructing the safe flow of traffic along Church Street. As such, I am content that highway safety would not be compromised as a result of the proposal.
38. No exterior lighting is proposed as part of the appeal scheme and therefore I am satisfied that there would be no adverse effects relating to light spill or general light pollution.
39. The appellant is concerned over the quality and content of the pre-application advice he received from the Council prior to making the applications which led to these appeals. However, I am mindful that pre-application discussions are informal and not binding on any future decision the Council may make.
40. The appellant also feels aggrieved over the fact that the Council did not raise concerns over the proposed internal layout during its determination of two previous applications<sup>3</sup> that were refused permission. He also cites concerns with

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<sup>2</sup> Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>3</sup> Application Ref. 19/00515/FUL and 19/00516/LBALT

a lack of communication from the Council during the determination of the applications that led to these appeals. **I acknowledge the appellant's** frustrations over these matters, but this does not diminish the harm I have found.

41. In support of the proposed works, my attention has been drawn to a recent approval for the conversion of a Grade II listed bank into seven residential apartments in Wirksworth, which involved significant alterations to the **building's internal layout**<sup>4</sup>. However, I have not been provided with the full details of the circumstances which led to these proposals being permitted and for this reason it has not been demonstrated that they represent a direct comparison to the appeal proposal. In any case, I have considered the appeal on its own merits and on the evidence before me.

#### Planning Balance

42. The Framework anticipates that once harm is found to the significance of a heritage asset that the magnitude of that harm should be assessed. In this case, and specifically in relation to the works proposed under the application that led to Appeal B, due to the extent of the **appeal scheme's impact it would** clearly result in less than substantial harm to the significance of the listed building. Nevertheless, the Framework makes clear<sup>5</sup> that great weight should be given to **a heritage asset's conservation**, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Under such circumstances, paragraph 196 of the Framework requires the harm to be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use.
43. The appeal scheme would bring about economic and social benefits through the operation of its proposed use, which I note would create nine full-time and 11 part-time jobs. In doing so, it would also contribute to the local tourism offer and support the aims of the Derbyshire Dales Economic Plan 2015. I also recognise that the proposal would refurbish and bring back into use a currently unoccupied historic building within the town centre, making a positive contribution to the vitality of the area. These public benefits provide moderate weight in favour of the appeal proposal.
44. However, it has not been conclusively established that the proposed works are the only way of converting the building to secure these public benefits. The appellant states that the first and second floor central rooms are too small to be used as bedrooms, but I have no firm evidence to confirm this to be the case. Even if I were to accept this assertion, I see no reason why a revised layout could not utilise these rooms to serve a different purpose as part of the overall proposed use. Therefore, I cannot be certain that a less harmful alternative option is not possible. In this context and given the harmful effects as a result of the proposed works, I am of the view that the appeal proposal would not be the optimum viable use of the building.
45. Consequently, the public benefits resulting from the appeal proposal would not tip the balance in its favour when set against the great weight and importance that I attach to the harm it would cause to the significance of the listed building. For these reasons, the proposed works would conflict with the

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<sup>4</sup> Application Ref. 20/00255/FUL and 20/00269/LBALT

<sup>5</sup> At paragraph 193

Framework, insofar as it seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.

#### Conditions

46. The Framework sets out<sup>6</sup> that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With regard to Appeal A, I **have assessed the Council's suggested conditions** on this basis and made some minor revisions in the interests of precision and clarity. I have also limited the number of pre-commencement clauses to where this is essential for the condition to achieve its purpose. In such circumstances, and in accordance with the regulations<sup>7</sup>, the appellant has been consulted over the wording of the condition and has provided their written agreement<sup>8</sup>.
47. I have imposed the standard timescale condition for implementation and a condition specifying the approved plans for the avoidance of doubt and in the interests of certainty. Conditions are also imposed to secure details of the method of extraction along with the requirement for a scheme to control odour and noise and restrictions on the timings of deliveries in order to maintain acceptable living standards for nearby residents.
48. To ensure a satisfactory appearance, a condition has been imposed to require that the external extraction ducting be given a black matt painted finish and retained as such.
49. In addition to **the Council's list of suggested conditions**, to ensure that the development would protect the living conditions of nearby residents, I have imposed conditions to restrict the opening hours of the drinking establishment and that of the outdoor area to the rear and to prohibit any amplified music being played outside of the building. The parties were consulted over these conditions and I have taken into account their representations in this regard.
50. It is not necessary to restrict the occupancy of the premises as it is clear from the description of development that the proposal is for a public house with hotel accommodation. If it were to be occupied as a permanent residence this would be beyond its permitted use and the Council could exercise its enforcement powers accordingly.

#### Conclusions

51. With regard to Appeal B, I have found that the appeal scheme would fail to preserve the special interest of the listed building; would not accord with the Framework; and would conflict with the above-cited policies of the development plan. Consequently, Appeal B is dismissed.
52. However, for the above reasons and subject to conditions, Appeal A is allowed.

*Jeff Tweddle*

INSPECTOR

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<sup>6</sup> At paragraph 55

<sup>7</sup> The Town & Country Planning (Pre-commencement Conditions) Regulations 2018

<sup>8</sup> Email from Darren Archer to the Planning Inspectorate on 12 January 2021 at 13:15

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - i. Location and Block Plan, Drawing No 05B
  - ii. Proposed Site Plan, Drawing No 06D
  - iii. Proposed Plans and Elevations, Drawing No 11B
  - iv. Proposed Demolition Plans – Cellar and Ground Floor, Drawing No 12
  - v. Proposed Demolition Plans - First and Second Floors, Drawing No 13
  - vi. Proposed Alterations Plans – Cellar and Ground Floor, Drawing No 14C
  - vii. Proposed Alterations Plans – First and Second Floors, Drawing No 15A
  - viii. Proposed Section Through New Stairs, Drawing No 16
  - ix. Proposed Details, Drawing No 17A
  - x. Proposed Window and Door Details, Drawing No 18A
- 3) Prior to the first use of the development hereby approved, a scheme containing details of the arrangements for internal air extraction, odour control, noise control and the discharge to the atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the Local Planning Authority. The works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be **maintained in accordance with the manufacturer's instructions and operated** at all times when cooking is being carried out.
- 4) The external extraction ducting shall be given a black matt painted finish (inc ventilation hood) and retained as such thereafter.
- 5) The drinking establishment shall only be open to customers between the hours of 1200hrs and 0000hrs on any day.
- 6) The delivery of goods to and from the site shall take place only between the hours of 0800hrs and 1800hrs Monday to Friday, 0800hrs and 1300hrs on Saturdays, with no deliveries on Sundays and Bank Holidays.
- 7) The outdoor area to the rear of the building shall only be open to customers between the hours of 1200hrs and 2200hrs on any day.
- 8) No amplified sound shall be played outside of the building at any time.



## Appeal Decision

Site Visit made on 16 December 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

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Appeal Ref: APP/P1045/W/20/3260234

3 to 5 Rodsley Lane, Yeaveley, Ashbourne, DE6 2DT

- 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 & Mrs L Milward against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00286/FUL, dated 17 March 2020, was refused by notice dated 19 May 2020.
  - The development proposed is formation of accesses and off-street parking areas for 3, 4 and 5 Rodsley Lane.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. The residential properties situated on Rodsley Lane are a mix of styles. Some are positioned close to the boundary with the highway, whereas others such as the three dwellings subject of this appeal are set back from the road. There is no pedestrian footway to the section of road fronting the appeal site and together with the varied building line and the soft landscaping that exists to many of the frontages this combines to give Rodsley Lane a distinctive semi-rural character.
4. There are existing examples of frontage parking in the area. However, these are generally provided in a way which utilises the natural landform. Where hard landscaping does exist, this is more often interspersed by the gardens and soft landscaping which is also prominent on Rodsley Lane. On my site visit, I saw the parking area that has been provided to No 6 Rodsley Lane. This appears as a heavily engineered and hard landscaped feature within the streetscene which contrasts considerably with the gently sloped soft landscaped gardens that front the dwellings subject of this appeal.
5. The proposals would excavate a considerable portion of the soft landscaped gardens which front the appeal dwellings. In combination with the existing parking area at No 6, the development would result in a proliferation of similar excavated hard surfaced parking areas with associated retaining walls. I

acknowledge that the proposals would include the provision of planting beds and that the block paved surfacing would contrast with the tarmacadam used to the frontage of No 6. Even so, these elements of the proposals would not sufficiently assimilate the alterations to the garden levels or extent of hard landscaping proposed. Overall, I find that the development would be detrimental to the streetscene and would result in significant harm to the semi-rural characteristics of Rodsley Lane.

6. I conclude that the development would have a significantly harmful effect on the character and appearance of the area. In that particular regard the development would conflict with those parts which seek to ensure development is of a high quality design that respects the character and local distinctiveness of the Derbyshire Dales townscapes and landscapes in Policies S4 (Development in the Countryside) and PD1 (Design and Place Making) of the Adopted Derbyshire Dales Local Plan (2017).

#### Other Matters

7. I note there is some third-party support for the proposals, particularly with regards to the potential for the development to improve road safety through a reduction in the number of cars parked on the highway. I noticed the prevalence of on-street parking close to the appeal site at the time of my visit. I acknowledge this only provides a snapshot of the highway conditions on Rodsley Lane. Even so, from what I saw, there is good visibility for drivers and pedestrians on Rodsley Lane. The anecdotal evidence before me does not convince me that the on-street parking that currently occurs gives rise to any significant highway safety issues or more than moderate inconvenience for local residents, drivers and pedestrians.
8. With regards to the suggestion that benefits would arise from the ability to facilitate charging for electric vehicles, given the number of properties involved I consider any such benefits would be likely to be relatively modest. I am also not convinced that the proposals are the only way in which such facilities could be provided. Overall, I am not persuaded that any potential benefits that could arise through the provision of off-street parking or vehicle charging points for the appeal properties would justify the significant harm that I have identified to the character and appearance of the area in this instance.
9. The appellant has also drawn attention to there being permitted development rights for parking areas and retaining walls. However, from the evidence before me, the proposals in this instance require planning permission given they would be accessed off a classified road. In the circumstances I must consider the effect of the development against the policies of the development plan and I therefore do not find this argument persuasive.

#### Conclusion

10. For the reasons given above I conclude that the appeal should be dismissed.

*M Russell*

INSPECTOR



## Appeal Decision

Site Visit made on 26 February 2021

by Chris Baxter BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

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Appeal Ref: APP/P1045/D/20/3264229

6 Grange Avenue, Hulland Ward, Ashbourne DE6 3FX

- 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 Mrs Laura Wilkinson against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00830/FUL, dated 27 August 2020, was refused by notice dated 23 October 2020.
  - The development proposed is a two storey side extension.
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### Decision

1. The appeal is allowed and planning permission is granted for two storey side extension at 6 Grange Avenue, Hulland Ward, Ashbourne DE6 3FX in accordance with the terms of the application, Ref 20/00830/FUL, dated 27 August 2020, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX 81 01; EX 81 02; EX 81 03; SK 81 01.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

### Preliminary Matters

2. For the sake of clarity and brevity I have used the description of development **from the Council's decision** notice.

### Main Issue

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

### Reasons

4. The surrounding area is characterised predominantly by residential properties of mixed styles, sizes and forms. It is this variation in the built form which contributes positively to the character of the area.
5. The proposed development would be sensitively designed being set back from the front building line of the property and having a hipped style roof. Due to its design and scale, the proposal would be subservient and not appear as an intrusive feature within the surrounding area.

6. Properties in the area have been altered overtime, including those on the same row as the appeal property. These changes to some of the properties have altered the rhythm of the built development providing a variation in the form, layout and size of buildings. The proposed development would add to this variation in the built form in a positive manner. The appeal property is visually prominent however, the proposal would be sympathetically sited as not to have any detrimental effects on the appearance of the street scene.
7. Accordingly, the proposal would not be an incongruous addition and would not have a harmful effect on the character and appearance of the surrounding area. The proposal would be in accordance with Policy PD1 and part b) of Policy HC10 of the Derbyshire Dales Local Plan 2017 and the National Planning Policy Framework which seeks development to contribute to local distinctiveness and require extensions to be in keeping with the scale and character of the original dwelling.

#### Other Matters

8. I have had regard to all representations and photographic evidence from local residents, including comments on privacy, light, proximity of proposal to neighbouring properties, maintenance, damp, drainage and surface water run off, topography, previous planning application<sup>1</sup> and construction of the proposal. I have given careful consideration to these matters and note that the Council have not raised concerns to some of these matters. They do not lead me to a different overall conclusion on the main issue nor do I find that they would result in the scheme having any harmful effects that would be contrary to the relevant development plan policies.

#### Conditions

9. Conditions relating to timeliness and the identification of plans are necessary in the interests of proper planning and to provide certainty. In the interests of the character and appearance of the area a condition is necessary in relation to materials.

#### Conclusion

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

*Chris Baxter*

INSPECTOR

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<sup>1</sup> Local Planning Authority Reference Number: 20/00288/FUL





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## Appeal Decision

Site visit made on 26 January 2021 by Darren Ellis MPlan

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

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Appeal Ref: APP/P1045/D/20/3263913

114 Northwood Lane, Darley Dale, Nr Matlock, Derbyshire, DE4 2HS

- 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. R.J. Ayres and Ms J.C. Baillie against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00625/FUL, dated 29 June 2020, was refused by notice dated 11 September 2020.
  - The development proposed is a Two Storey Extension to House to form: Hall, Bedroom and Staircase. New Window and Rooflights to North Elevation.
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### Decision

1. The appeal is allowed, and planning permission is granted for a two storey extension at 114 Northwood Lane, Darley Dale, Nr Matlock, Derbyshire, DE4 2HS in accordance with the terms of the application 20/00625/FUL, dated 29 June 2020, subject to these conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan title no. DY515754; Site Plan Scale 1:250; Proposal Drawing - Elevation; Proposal Drawing – Floor Plans.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as described on the Proposed Drawing – Floor Plans and shall match those used in the existing building.

### Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Main Issue

3. The main issue is the effect of the development on the character and appearance of the appeal property.

### Reasons for the Recommendation

4. The appeal site comprises a two-storey semi-detached dwelling located on Northwood Road. The building was formerly a barn that was converted into three dwellings, with two of the dwellings later combined to form the current

No 114. The street is comprised of a mix of detached and semi-detached properties of varying sizes and styles, most of which are stone built however there are examples of properties finished with brick or render. Some of the properties in the street have been previously extended. The proposed development would see the erection of a two-storey rear extension.

5. There is a disagreement between the parties over whether the rear elevation constitutes the principal elevation of the property. The rear elevation contains more windows and doors, however it is not visible from a public viewpoint. The front elevation contains the main entrance to the property and fronts the highway.
6. Irrespective of whether the elevation upon which the extension is proposed is the principal elevation of the property, I find that its scale and design would respect the character and appearance of the appeal property. It would be of a subservient scale and design with a set down from the ridge height of the main roof and finished in materials that match the existing property. While the extension would project approximately the same depth as the existing dwelling, it would have very limited visibility from the street.
7. For these reasons, the proposed extension would not be a dominant feature and would not detract from the character and appearance of the appeal property. As such, I conclude that the proposal would accord with Policies PD1 and HC10 of the Adopted Derbyshire Dales Local Plan (December 2016), which both seek, amongst other things, for development to respect the context and character of the original dwelling.

#### Conditions

8. The standard time limit condition and a condition specifying the approved plans are required to provide certainty.
9. In the interests of the character and appearance of the area, it is necessary for a condition requiring the external materials of the extensions to match the exterior materials of the existing dwelling.
10. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed, and planning permission granted subject to the conditions listed above.

*D Ellis*

APPEAL PLANNING OFFICER

#### Inspector's Decision

11. **I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed, and planning permission is granted subject to the conditions above.**

*R C Kirby*

INSPECTOR



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## Appeal Decision

Site visit made on 9 March 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

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Appeal Ref: APP/P1045/X/20/3263178

214 Dale Road, Matlock Bath DE4 3PT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Sandeep Manaktala of Blue Mountain Homes against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00902/CLPUD, dated 14 August 2020, was refused by notice dated 13 November 2020.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is described on the application form as C2 – residential institution.
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

### Main Issue

2. The main issue **is whether the Council's decision to refuse** to grant a certificate of lawful use or development was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

### Reasons

3. The appeal property is a detached two storey dwellinghouse situated on the main road (A6) between Matlock Bath and Matlock. It is situated adjacent to a row of terraced houses and is separated from the main road by a small front garden with a path leading to the front door. It has a small rear garden that backs onto a steep cliff and there is on-site parking immediately adjacent to the house. The proposed use is as a home for up to three children or young people with care provided on a rota basis. A member of staff would sleep on the premises to provide 24 hour care and a carer would attend during the day. Therefore, the carers would not live permanently at the property but rather would operate on a shift basis.
4. A similar scenario to this case was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C. R. 38* which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).

This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.

5. As previously set out in this decision, the property would be occupied by up to three children or young people who would live in the house under the care of two carers working on a rota basis sleeping overnight (two days on and two days off). A manager would be on site during weekdays between 0900 and 1700 and there may be occasional visits from a social worker or clinician. The property would not be the main residence of the carers. Consequently, the Council states that the main consideration in this case is that the carers would not be full time residents, but would work in shifts, consistent with a C2 use. The Council goes on to argue that there is no permitted change from C3 to C2 under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the proposed use cannot therefore be considered to be permitted development.
6. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant accepts that the proposed use is within Class C2 but contends that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. That is the basis on which I have determined this appeal and in order to establish whether or not there would be a material difference a comparison between the existing and proposed uses must be carefully considered.
7. The property currently comprises of a sitting room, living room, dining room, kitchen, WC and hall at ground floor level with four bedrooms, an additional bedroom/dressing room, WC and bathroom on the first floor. The house could quite easily accommodate a family with two adults and three or more children and therefore the proposed use for up to three children or young people and their carers would not be materially different from the authorised use as a single four or five bedroom family dwellinghouse. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be additional journeys linked to taking children and young people to school or college and taking them to other activities or appointments. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.
8. It is my understanding that the appellant will be required to comply with a range of regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management requirements, I do not find there to be any reason why the use proposed would have planning impacts that would result in it being considered to be a material change of use.

## Conclusion

9. For the reasons given above I conclude, on the evidence now available, that **the Council's refusal to grant a certificate of lawful use or development in**

respect of use of the property for C2 - residential institution purposes was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*A A Phillips*

INSPECTOR



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(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 14 August 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

*A A Phillips*

INSPECTOR

Date: 15 March 2021

Reference: APP/P1045/X/20/3263178

### *First Schedule*

The use of the dwellinghouse within Class C2 of the UCO, for occupation by up to three children or young people with care provided on a rota basis

### *Second Schedule*

Land at 214 Dale Road, Matlock Bath DE4 3PT

## NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



## Plan

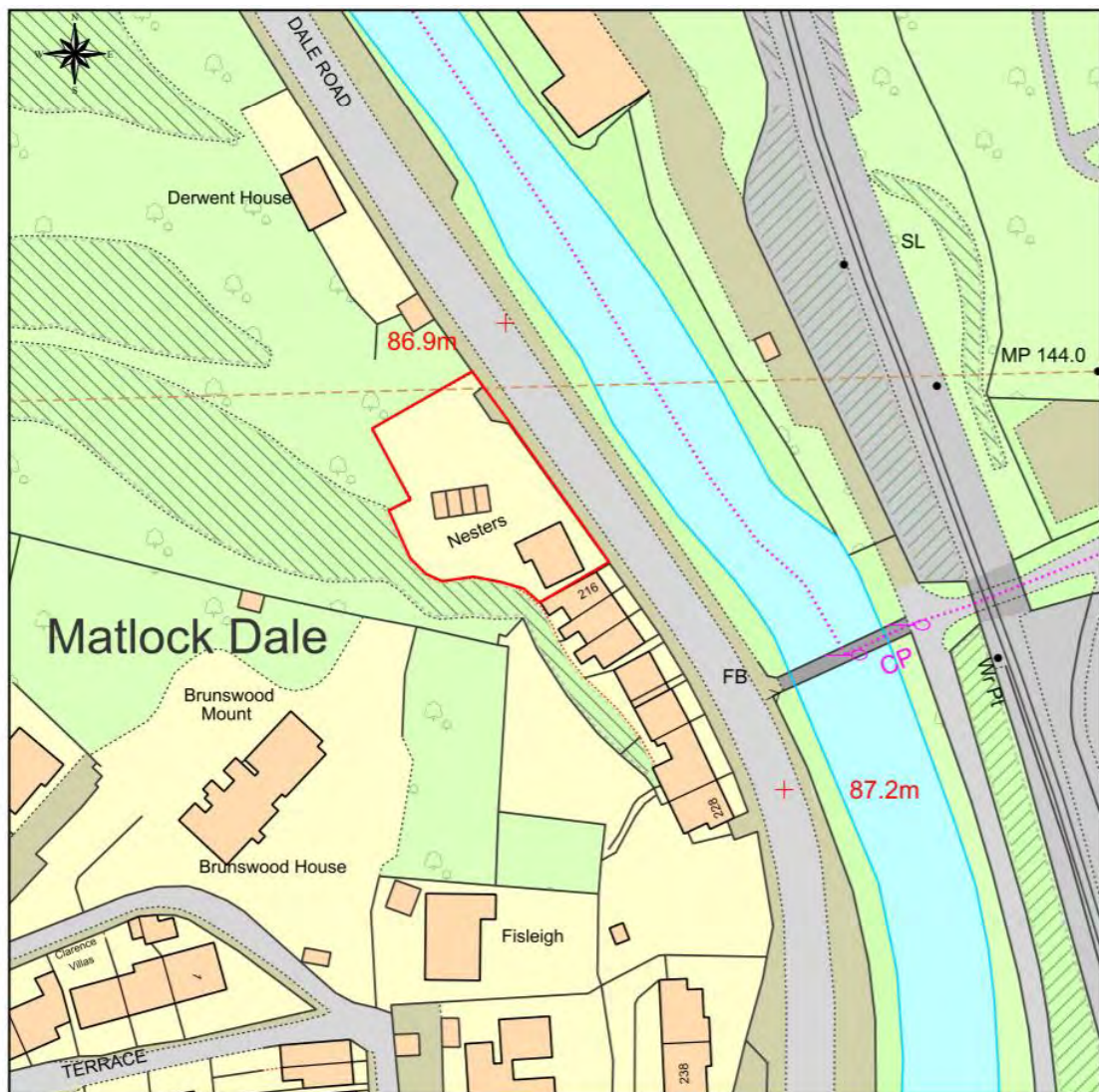
This is the plan referred to in the Lawful Development Certificate dated: 15 March 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

Land at: 214 Dale Road, Matlock Bath DE4 3PT

Reference: APP/P1045/X/20/3263178

Scale: Do not scale





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# Appeal Decision

Site visit made on 3 March 2021

by S Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 March 2021

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Appeal Ref: APP/P1045/D/21/3266944

5, Asker Lane, Matlock, Derbyshire DE4 3FY

- 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 M Bonsall against the decision of Derbyshire Dales District Council.
  - The application Ref 20/00581/FUL, dated 18 June 2020, was refused by notice dated 30 November 2020.
  - The development proposed is ground and first floor alteration and extensions.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. Permission is sought for various alterations and extensions to both the front **and rear of No 5 Asker Lane. The Council's decision notice and officer report set out that Council's objection relates specifically to the glazing panels and balustrades to the two-storey gabled extension to the front.** I have no reason to consider that the other aspects of the proposal are unacceptable and I have therefore limited my considerations to those elements of the proposal in dispute only.

## Main Issues

3. The main issue in this case is the effect of the proposal on the character and appearance of the host property and surrounding area.

## Reasons

4. 5 Asker Lane, which I understand dates from the **1960's**, is a two-storey house with a single storey element to the side and is of simple form and detailing with modestly proportioned windows and a brick and render finish. At the time of my site visit the house was being renovated. The site lies within a well-established residential area comprising properties of a variety of designs which are generally traditional in terms of their appearance.
5. The proposed two-storey extension at the front would feature a series of full-height glazed windows to ground and first floor level with glazed balustrading at the first floor. Lookalike insulated glazed panels at a high level would in effect extend the glazing into the apex of the gable. A smaller gable, double

- full-height doors and balustrade would be positioned on the lower element of the first-floor extension.
6. The gable feature would be an obvious change to the front elevation of the building but nevertheless would be proportionate in terms of its size and scale to that of the building considered as a whole. However, the extent of glazing proposed, from ground level to the apex of the gable, which extends to just below the original ridgeline, would be extensive and would contrast starkly with the simple brick and render appearance of the house. In addition, the triangular shape of the high-level glazing would not reflect the simple, traditional proportions of the fenestration of this property, or others in the street scene. As such, given its extent and form, compounded by the presence of the first-floor balustrade, this element of the proposal would appear discordant and dominant on the front elevation.
  7. Given the prominent position of the dwelling close to a busy road junction, the dwelling is visible in the street scene from a number of viewpoints. Given my findings above, the glazed part of the extension would be highly prominent in the street scene, discordant with the simple architectural form and detailing of properties around it, and would thereby detract from the modest character of the street scene. Whilst I noted the presence of other gables to the front elevation of houses in the area, none are as extensively glazed as the proposal before me and are not therefore directly comparable in terms of their visual impact.
  8. For the above reasons, the proposed development would detract from the modest character and appearance of the host dwelling and the wider street scene. I therefore conclude that it would be contrary to Policies PD1 and HC10 of the Derbyshire Dales Local Plan 2017 which require that developments contribute to, amongst other things, local distinctiveness and a sense of place and require that the form and design of an extension is in keeping with the scale and character of the **original dwelling and the site's wider setting and location**.

#### Conclusion

9. For the reasons set out above and taking all other matters raised into account, I conclude that the appeal should be dismissed.

*S. Ashworth*

INSPECTOR

## **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.

**BACK TO AGENDA**