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Tel. No: (01246) 345580 Plot No: 2/144
Ctte Date: 12th March 2018

ITEM 1

OUTLINE APPLICATION FOR THE DEVELOPMENT OF THREE NEW TOWN HOUSES, UPDATED COAL MINING RISK ASSESSMENT RECEIVED 10.01.18, AT ADJACENT TO 46 FLINTSON AVENUE, NEW WHITTINGTON, CHESTERFIELD, DERBYSHIRE FOR STONEWALL DEVELOPMENTS LTD

Local Plan: Unallocated
Ward: Barrow Hill and New Whittington

1.0 CONSULTATIONS

Ward Members	No comments
Environmental Services	No response
Design Services	Comments received – see report
Yorkshire Water	No objections
DCC Highways	Comments received – see report
Coal Authority	Comments received – see report
Neighbours/Site Notice	Three representations received – see report

2.0 THE SITE

2.1 The application site is an area of land situated adjacent to 46 Flintson Avenue, in the New Whittington area of Chesterfield. The site in question is a roughly L-shaped plot of land situated at the end of Flintson Avenue, which is a cul-de-sac. The site is unallocated within the Local Plan, and is largely covered by overgrown areas of vegetation. The gradient of

the site is fairly steep, and the land is situated in between the residential curtilages of neighbouring plots. The residential curtilage of 41 Glasshouse Lane and a field are situated to the North West of the site, the residential curtilages of 35, 37 and 39 Glasshouse Lane are situated to the North East of the site, the turning head to Flintson Avenue is situated to the South East of the site, and the residential curtilage of 46 Flintson Avenue is situated to the South West of the site. The boundary to the North of the site is made up by a raised bank with a timber panel fence above, the boundaries to the North East and South West sides comprise brick walls and areas of foliage, and the front boundary to the South East of the site is occupied by temporary security fencing.





3.0 **RELEVANT SITE HISTORY**

- 3.1 An outline application for the erection of one house was approved in 1994 under application CHE/1194/0670.
- 3.2 An outline application for the erection of one house was approved in 1999 under application CHE/0899/0472.
- 3.3 An application for the erection of a pair of semi-detached houses was approved in 2001 under application CHE/0601/0308.
- 3.4 A full application for the erection of three dwellings was refused in 2004 under application CHE/04/00708/FUL.
- 3.5 A full application for the erection of three new dwellings was approved in 2005 under application CHE/05/00317/FUL.
- 3.6 A full application for the erection of three town houses was refused in 2008 under application CHE/08/00010/FUL.
- 3.7 A full application for the erection of three new town houses was refused in 2012 under application CHE/12/00423/FUL. An appeal was lodged and this was dismissed in 2013.

4.0 **THE PROPOSAL**

- 4.1 An outline planning application with all matters reserved has been made for the development of three new town houses, updated coal mining risk assessment received 10.01.18. The initial application was missing a coal mining risk assessment, and this was subsequently provided and updated. Several agreements were made in order to facilitate an extension of time and the coal authority were re-consulted.
- 4.2 Clearance of the site would be required to cater for the proposed development. No further details have been submitted at this stage, and as such it is not possible to comment on the design, size or layout of the proposed dwellings. No details have been provided in relation to external spaces or access either, although it is expected that the turning head that abuts the site would be utilised. These details and others would be dealt with at the Reserved

Matters stage, as this application purely concerns the principle of residential development on the site only with all matters reserved matters for approval at a later date. The application is assessed on the basis of the application form, site location plan and supporting documentation alone.

5.0 **CONSIDERATIONS**

Local Plan Issues

5.1 The site is situated within the settlement of New Whittington. This area is largely residential with areas of open countryside situated in close proximity. Having regard to the nature of the application, policies CS2 and CS18 of the Core Strategy and the wider National Planning Policy Framework (NPPF) apply. In addition, the Councils Supplementary Planning Document on Housing Layout and Design 'Successful Places' is also a material consideration.

5.2 Policy CS2 (Principles for Location of Development) states that when assessing planning applications for new development not allocated in a DPD, proposals must meet the following criteria / requirements:

- a) adhere to policy CS1
- b) are on previously developed land
- c) are not on agricultural land
- d) deliver wider regeneration and sustainability benefits
- e) utilise existing capacity in social infrastructure
- f) maximise walking / cycling and the use of public transport
- g) meet sequential test requirements of other national /local policies

All development will be required to have an acceptable impact on the amenity of users or adjoining occupiers taking into account noise, odour, air quality, traffic, appearance, overlooking, shading or other environmental, social or economic impacts.

5.3 Policy CS18 (Design) states that all development should identify, respond and integrate with the character of the site and its surroundings and development should respect the local character and the distinctiveness of its context. In addition it requires development to have an acceptable impact on the amenity of neighbours.

In addition to the above, the NPPF places emphasis on the importance of good design stating:

'In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area. Planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.'

5.4 In addition to the above, in July 2013 the Council adopted 'Successful Places' which is a Supplementary Planning Document which guides Sustainable Housing Layout and Design. The development proposed should be assessed against the design principles set out in this supporting document.

5.5 The proposed development site is situated within walking and cycling distance from New Whittington Centre, is on a bus route, however it is located on land that has not been previously developed. The site is located within a built-up area where new housing development would be considered appropriate in principle. As such, this proposed development site is considered to be sufficiently sustainable for a development of this nature.

Design and Appearance (Including Neighbour Effect)

5.6 Although detailed design is not considered at this stage, the proposed plans would potentially improve the appearance of the site by developing an overgrown area of land.

5.7 The site location plan indicates that the development area would abut the boundaries with 35, 37, 39 and 41 Glasshouse Lane and 46 Flintson Avenue. Having regard to the site location plan, the development would impose the

greatest degree of change to these neighbouring properties. It is worth highlighting that the dwellings at 35, 37, 39 and 41 Glasshouse Lane are situated at least 29M away from the proposed development site, and that the rear garden to 46 Flintson Avenue is predominantly North facing. Overall, it is considered that a scheme can be devised that would result in no significant issues for neighbours in terms of overlooking, overshadowing or an overbearing impact. These matters would be clarified through the submission of detailed designs at the Reserved Matters stage. The site location plan indicates that there would be sufficient space to provide three new small dwellings with sufficient parking provision and gardens that meet the requirements of the 'Successful Places' SPD in terms of size. This would also be clarified through the submission of detailed designs at the Reserved Matters stage.

- 5.8 Overall it is accepted that development of this nature would impose an impact upon boundary sharing neighbours. In this instance there is however a case to argue that this impact will be minimal due to the level of separation, and the relationship between properties. On balance, it is considered that the impact of the development on neighbouring properties is capable of being sufficiently mitigated such that a refusal of planning permission could not be warranted. In the context of the provisions of Policies CS2 and CS18 of the Core Strategy and the material planning considerations in relation to neighbour impact, it is concluded that a scheme can be devised that would not impact upon the privacy and/or outlook of the adjoining and/or adjacent neighbours and are acceptable in terms of these policies.

Environmental Services

- 5.9 Environmental Services was consulted on this application and no response was received. In terms of environmental health matters, the government has set an aspirational target for all new vehicles in the UK to be zero emission at source by 2040 (as contained in The UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations: Detailed Plan, published July 2017). As such a condition could be imposed requiring infrastructure for electric charging points to be installed as part of the build phase. With regards to noise control, the

hours of construction should also be limited as per the standard construction hours condition to between 8:00am to 6:00pm Monday to Friday and 9:00am to 5:00pm Saturday, with no working on a Sunday or Public Holiday. It is considered that these conditions are necessary in the interests of reducing emissions and the amenity of neighbours.

Design Services

- 5.10 Design Services was consulted on the application and they raise no objections. It was stated that the site is not shown to be at risk of flooding according to the Environment Agency flood maps. It is noted that the application form states that surface water from the development will be discharged via soakaways. Soil infiltration tests should be completed in accordance with BRE Digest 365 to demonstrate the infiltration capacity of the subsoils. In response to these comments from Design Services, it is considered necessary to impose a condition requiring the submission of drainage details in the interests of sustainable drainage and the prevention of flooding.

Yorkshire Water

- 5.11 Yorkshire Water was consulted on this application and raised no objections.

DCC Highways

- 5.12 DCC Highways has raised no objections. It was stated that it is recommended that the following conditions are included in any consent;
1. Before any other operations are commenced, a new vehicular and pedestrian access shall be formed to Flintson Avenue, located, designed, laid out, constructed and provided with visibility splays of 2.4m x maximum achievable over land the subject of the application and/or highway in both directions, all as agreed in writing with the Local Planning Authority, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height

(0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

2. The premises, the subject of the application, shall not be occupied until space has been provided within the site curtilage for the parking of vehicles, located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.

5.13 DCC Highways recommended that the following notes be included for the benefit of the applicant;

1. 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 & Communities 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, email ETENetmanadmin@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.
2. The Highway Authority recommends that the first 5m of the proposed access/driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.
3. Pursuant to Sections 149 and 151 of the Highways Act 1980, steps shall be taken 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 (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

4. Car parking provision should be made on the basis of two spaces per two/three bedroom dwelling or three spaces per four/four plus bedroom dwelling. Each parking bay should measure 2.4m x 5.5m (larger in the case of spaces for use by disabled drivers). If garages are to be provided these should have adequate internal dimensions (see 6 C's design guide at www.derbyshire.gov.uk transport and roads roads and traffic development control) with any space in front of a garage having appropriate length depending on the type of garage door (see 6 C's)

5.14 In response to these comments from DCC Highways, it is considered necessary to impose the suggested conditions and informatives in the interests of highway safety.

The Coal Authority

5.15 The Coal Authority was consulted on this application and they initially objected due to the absence of a coal mining risk assessment, and then an inadequate coal mining risk assessment. An updated coal mining risk assessment was provided on 10.01.18, the Coal Authority was re-consulted and no objections were raised.

5.16 The Coal Authority stated that the agent handling this application has now provided a copy of a Coal Mining Risk Assessment, dated 10 January 2018 and prepared by Chandlers Building Surveyors Ltd. This report has been updated from that previously submitted. I appreciate that the report author has acknowledged that the site is at risk from past coal mining activity and that further investigation works are required in order to establish the exact situation in respect of coal mining legacy issues on the site. In order to try and expedite the planning process we accept the view in this case that further intrusive investigations are required and that the findings of these should inform the layout of development and remedial measures required. The intrusive site investigations should be designed by a competent person and should ensure that they are adequate to properly assess the ground conditions on the site in order to establish the exact situation in respect of coal mining legacy and the potential risks posed to the development by past coal

mining activity. These works should establish to locate the line of the adits on the application site by probe drilling. The Coal Authority considers that due consideration should also be afforded to the potential risk posed by mine gas to the proposed development. The nature and extent of the intrusive site investigations should be agreed with the Permitting Section of the Coal Authority as part of the permissions process. The findings of the intrusive site investigations should inform any remedial measures which may be required.

5.17 The Coal Authority stated that it considers that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. The Coal Authority recommends that the LPA impose a Planning Condition should planning permission be granted for the proposed development requiring these site investigation works prior to commencement of development. In the event that the site investigations confirm the need for remedial works to treat the mine entries (adits) and areas of shallow mine workings to ensure the safety and stability of the proposed development, this should also be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

5.18 The Coal Authority recommended that a condition should therefore require prior to the submission of the reserved matters:

- * The submission of a scheme of intrusive site investigations for the mine entries (adits) for approval;
- * The submission of a scheme of intrusive site investigations for the shallow coal workings for approval;
- * The undertaking of both of those schemes of intrusive site investigations;

- * As part of the reserved matters application the submission of a report of findings arising from both of the intrusive site investigations;
- * As part of the reserved matters application the submission of a layout plan which identifies the location of the adits, if found to be present on the site, and how these relate to the development layout;
- * As part of the reserved matters application the submission of a scheme of treatment for the mine entries on site for approval;
- * As part of the reserved matters application the submission of a scheme of remedial works for the shallow coal workings for approval; and

A condition should also require prior to the commencement of development:

- * Implementation of those remedial works.

5.19 In response to these comments from The Coal Authority, it is considered that the suggested condition is required in the interests of coal mining legacy and safety.

6.0 **REPRESENTATIONS**

6.1 As a result of neighbour notification, letters of representation were received from residents at 35 and 37 Glasshouse Lane, and 46 Flintson Avenue .

6.2 The letters of representation raise concerns that the application provides insufficient detail as to what would be constructed.

In response to these comments, no further details have been submitted at this stage as this application purely concerns the principle of residential development on the site. Details with regards to the design, size and layout of the proposed dwellings and other matters would be dealt with at the Reserved Matters stage. The application

is assessed on the basis of the application form, site location plan and supporting documentation alone.

- 6.3 The letters express concerns with regard to residential amenity, raising issues relating to a loss of privacy, overshadowing, and an overbearing impact.

In response to these comments, it is considered that a scheme can be devised that would result in no significant issues for neighbours in terms of overlooking, overshadowing, a loss of privacy or an overbearing impact. These matters would be clarified through the submission of detailed designs at the Reserved Matters stage.

- 6.4 The letters of representation raise concerns with regards to coal mining legacy and potential subsidence being caused for neighbouring properties as a result of the disturbance of the site.

In response to these comments, the Coal Authority has been consulted with regards to these matters and raised no objections subject to the imposition of conditions.

- 6.5 The letters of representation raise concerns with regards to the quantum of development being excessive and state that applications for the development of three developments have been refused in the past.

In response to these comments, the site location plan indicates that there would be sufficient space to provide three new small dwellings with sufficient parking provision and gardens that meet the requirements of the 'Successful Places' SPD in terms of size. Although applications for the development of three houses on the site have been refused in the past, applications for the development of three houses on the site have also been approved in the past. It is considered that the previous approvals on the site indicate that there is scope to provide the level of development currently proposed.

7.0 **HUMAN RIGHTS ACT 1998**

7.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom.

7.2 It is considered that the recommendation is objective and in accordance with clearly established law.

7.3 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.

7.4 Whilst, in the opinion of the objectors, the development affects their amenities, it is not considered that this is harmful in planning terms, such that any additional control to satisfy those concerns would go beyond that necessary to accomplish satisfactory planning control.

8.0 **STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT**

8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF).

8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application.

The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.

- 8.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

9.0 **CONCLUSION**

- 9.1 The proposal is considered to be appropriate in principle, would be in keeping with the character of the surrounding area and would not have a significant unacceptable impact on the amenities of neighbouring residents or highway safety. The location of the proposed development site is sufficiently sustainable and is adequately served by public transport and amenities. As such, the proposal accords with the requirements of policies CS2, CS10, CS18 and CS20 of the Core Strategy and the wider National Planning Policy Framework.

- 9.2 Furthermore subject to the imposition of appropriate planning conditions the proposals are considered to demonstrate wider compliance with policies CS7, CS8 and CS10 of the Core Strategy and the wider NPPF in respect of drainage and coal mining legacy. This application would be liable for payment of the Community Infrastructure Levy.

10.0 **RECOMMENDATION**

- 10.1 That the application be **GRANTED** subject to the following conditions:

Conditions

1. Approval of the details of the access, scale, layout, external appearance and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.

2. Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Details of the existing and proposed land levels and the proposed floor levels of the dwellings hereby approved shall be submitted in writing concurrently with any application for the reserved matters being submitted to the Local Planning Authority for consideration. The details submitted shall include sufficient cross sections to fully assess the relationship between the proposed levels and immediately adjacent land/dwellings. The dwellings shall be constructed at the levels approved under this condition unless otherwise agreed, in writing, by the Local Planning Authority.
5. Before construction works commence or ordering of external materials takes place, precise specifications or samples of the walling and roofing materials to be used shall be submitted to the Local Planning Authority for consideration. Only those materials approved in writing by the Local Planning Authority shall be used as part of the development unless otherwise agreed by the Local Planning Authority in writing.
6. Demolition, remediation or construction work to implement the permission hereby granted shall only be carried out on site between 8:00am and 6:00pm Monday to Friday, 9:00am to 5:00pm on a Saturday and no work on a Sunday or Public Holiday. The term "work" will also apply to the operation of plant, machinery and equipment.

7. Before any other operations are commenced, a new vehicular and pedestrian access shall be formed to Flintson Avenue, located, designed, laid out, constructed and provided with visibility splays of 2.4m x maximum achievable over land the subject of the application and/or highway in both directions, all as agreed in writing with the Local Planning Authority, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
8. The premises, the subject of the application, shall not be occupied until space has been provided within the site curtilage for the parking of vehicles, located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.
9. No development shall take place until details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, have been submitted to and approved in writing by The Local Planning Authority.
10. Prior to the submission of the reserved matters, site investigation works shall be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site. Details of the site investigation works shall be submitted to and approved in writing by The Local Planning Authority. The details shall include;
 - The submission of a scheme of intrusive site investigations for the mine entries (adits) and shallow coal workings for approval;
 - The undertaking of both of these schemes of intrusive site investigations;
 - As part of the reserved matters application the submission of a report of findings arising from both of the intrusive site investigations;

- As part of the reserved matters application the submission of a layout plan which identifies the location of the adits, if found to be present on the site, and how these relate to the development layout;
 - As part of the reserved matters application the submission of a scheme of treatment for the mine entries on site for approval;
 - As part of the reserved matters the submission of a scheme of remedial works for approval; and
 - Implementation of those remedial works prior to the commencement of development.
11. Electric vehicle charging points shall be installed as part of the build phase and which shall be retained available for use for the life of the development.

Reasons for Conditions

1. The condition is imposed in accordance with article 3 (1) of The Town and Country Planning (General Development Procedure) Order 1995 (as amended).
2. The condition is imposed in accordance with sections 91, 56 and 93 of the Town and Country Planning Act 1990.
3. The condition is imposed in accordance with sections 91, 56 and 93 of the Town and Country Planning Act 1990.
4. In the interests of residential amenities.
5. The condition is imposed in order to ensure that the proposed materials of construction are appropriate for use on the particular development and in the particular locality.

6. In the interests of residential amenities.
7. In the interests of highway safety and parking.
8. In the interests of highway safety and parking.
9. To ensure that the development can be properly drained.
10. In the interests of coal mining legacy and safety
11. In the interests of reducing emissions in line with Core Strategy policy CS20 and CS8

Notes

1. Any new drainage for the proposed building and any amendments to the existing building drainage may require Building Control approval. Consultations with Yorkshire Water will be required should the applicant wish to discharge to a public sewer.
2. You are notified that you will be liable to pay the Community Infrastructure Levy (CIL) to Chesterfield Borough Council as CIL collecting authority on commencement of development. This charge will be levied under the Chesterfield Borough Council CIL charging schedule and s211 of the Planning Act 2008. A CIL Liability Notice will be issued at the time of a detailed planning permission which first permits development, in accordance with the Community Infrastructure Levy Regulations 2010 (as amended). The extent of liability will be dependent on the permitted Gross Internal Area. This will be calculated on the basis of information contained within a subsequent detailed planning permission. Certain types of development may be eligible for relief from CIL, such as self-build or social housing, or development by charities. Further information on the CIL is available on the Borough Council's website.

3. 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, e-mail highways.hub@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.
4. The Highway Authority recommends that the first 5m of proposed driveways should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.
5. Pursuant to Sections 149 and 151 of the Highways Act 1980, steps shall be taken 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 (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
6. Car parking provision should be made on the basis of two spaces per two/three bedroom dwelling or three spaces per four/four plus bedroom dwelling. Each parking bay should measure 2.4m x 4.8m (larger in the case of spaces for use by disabled drivers) with adequate space behind each space for manoeuvring.