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File No: CHE/18/00764/FUL
Plot No: 2/3655

ITEM 1

PROPOSED REDEVELOPMENT OF A PREVIOUSLY DEVELOPED SITE FOR 2 NO. SELF BUILD DWELLINGS AND GARAGES (REVISED PLANS RECEIVED 02/05/2019) AT OLDFIELD FARM, WETLANDS LANE, BRIMINGTON, DERBYSHIRE, S43 1QG FOR MR P AND R WALTERS

Local Plan: Open Countryside / Other Open Lane (EVR2 / CS10)
Ward: Brimington South

1.0 CONSULTATIONS

Local Highways Authority	Comments received 08/01/2019 – see report
CBC Environmental Health	Comments received 12/12/2018 – see report
CBC Design Services (Drainage)	Comments received 13/12/2018 – see report
Yorkshire Water Services	No comments received
CBC Tree Officer	Comments received 18/12/2018 – see report
Derbyshire Wildlife Trust	Comments received 04/01/2019 – see report
DCC Archaeology	No comments received
Ward Members	No comments received
Brimington Parish Council	Comments received 17/12/2018 – see report
Site Notice /Neighbours	Twenty one representations received

2.0 THE SITE

2.1 The application site is Oldfield Farm (previously known as Stonepit House), a former pastoral farm located on the western edge of Brimington Common off Westmoor Road / Wetlands Lane. The site is approximately 0.39ha in area, is roughly rectangular in shape and comprises mainly of existing farm buildings (inc. farm house / barns etc), outbuildings, areas of hardstanding and some existing pasture land.

Figure 1: Aerial Photograph



- 2.2 The site is bounded to the North by fields/pasture land; to the East by fields/pasture land (where there is a ditch/stream running along most of this boundary); to the South by Westmoor Road / Wetland Lane; and to the West by pasture land (where there is a public right of way running almost parallel to this boundary).
- 2.3 The site lies on the boundary of the built settlement of Brimington Common. To the north and west of the site lies open countryside. Elevated to the east and visible from the site lies the built settlement of Brimington Common, separated from the site by a field. To the south of the site, beyond Westmoor Road / Wetlands Lane, lies Plover Wood, an area of mature woodland.
- 2.4 There is currently vehicular and pedestrian access to the site via a private drive from Westmoor Road / Wetlands Lane. There are no footways outside the site.

3.0 **RELEVANT SITE HISTORY**

- 3.1 CHE/18/00765/PNCOU - Change of use of existing agricultural building to class C3 (Dwellinghouse) including creation of domestic curtilage and vehicle parking area. Approved 21/12/2018.

3.2 CHE/17/00257/FUL - Demolition of existing farmhouse and dilapidated ancillary buildings and replacement with 5 dwellings. Refused on 08/08/2017 for the following reasons:

01. *The application site is located in the Open Countryside (as designated by Policy EVR2 of the 2006 Local Plan) and in an area identified under policy CS1 of the 2013 Core Strategy to serve as a Strategic Gap between Brimington and Tapton.*

In the context of the policy framework above it is considered that the development proposals, by virtue of their scale and mass, are unacceptable. The development proposals are considered to have a far greater impact upon the open character of the countryside as they will occupy an area materially larger than the site of the existing buildings; and the height of the dwellings proposed are in excess of the height of the existing buildings on site such that the visual impact of the development does not reflect the local character and the development is not in keeping with the surrounding area. For these reasons it is considered that the development proposals are contrary to the provisions of policies CS1 of the Chesterfield Local Plan: Core Strategy 2011 - 2031; policy EVR2 of 2006 Local Plan (which is a retained designation in the Core Strategy); and the wider provisions of the National Planning Policy Framework.

4.0 **THE PROPOSAL**

4.1 The application submitted seeks full planning permission for the proposed development of the site described in section 2.0 above for 2 no. self-build dwellings and garages.

4.2 The development proposals see the retention of the existing farmhouse building located within the application site boundary; and the proposed erection of 2 no. new dwellings (Unit A and B) on land to the rear of the existing farmhouse with associated garages and shared driveway parking.

4.3 The application submission is supported by the following plans and reports / documents:

18.272.01 – Location Plan

18.272.02A – Existing Layout Plan

P12_A – Existing Elevations Sheet 1
P13_A – Existing Elevations Sheet 2
18.272.03A – Site Layout Plan
18.272.04A – Unit A Proposed Plans and Elevations
18.272.05A – Unit B Proposed Plans and Elevations
18.272.06A – Garages Timber
18.272.07A – Garages Stone
19.272.07 – Notional Streetscene
Design and Access Statement
Arboricultural Survey Report & Method Statement (John Booth)
Ecology Appraisal and Bat Survey (Baker Consultants)
Geo-Environmental Assessment – Phase 1 (Idom Merebrook)
Coal Mining Risk Assessment (Idom Merebrook)
Speed Survey and Topographical Survey for Visibility

- 4.4 The proposed site layout plan indicates that the development will be served by a single shared driveway access which will be modified from the current site access point onto Westmoor Road / Wetlands Lane.
- 4.5 Unit A is a four bedroom property comprising of entrance hall, laundry and cloak room, master bedroom (with dressing room, en-suite and sitting room), bedroom 2, bedroom 3, bedroom 4 and family bathroom at ground floor; and open plan kitchen, dining area, living area with terrace and cloakroom / w.c at first floor.
- 4.6 Unit B is a three bedroom property comprising of entrance hall, laundry and cloak room, master bedroom (with dressing room and en-suite), bedroom 2, bedroom 3, family bathroom and games / movie room at ground floor; and open plan kitchen, dining area, living area, office and separate living area and cloakroom / w.c at first floor.
- 5.0 **CONSIDERATIONS**
- 5.1 **Planning Policy**
- 5.1.1 The site the subject of this application is in a location identified in saved policy EVR2 of the Replacement Chesterfield Borough Local Plan (2006) as Open Countryside and the adopted Core Strategy (2013) indicates the broad location of a Strategic Gap within the area.

- 5.1.2 Having regard to the nature of the application proposals policies CS1, CS2, CS3, CS4, CS7, CS8, CS9, CS10, CS18 and CS20 of the Core Strategy (2013), policy EVR2 of the Local Plan (2006), the National Planning Policy Framework and the Council's adopted Supplementary Planning Document 'Successful Places: Housing Layout and Design apply.

5.2 **Principle of Development / Background**

- 5.2.1 The site the subject of the application comprises of a farmhouse / dwelling and outbuildings associated therewith. For the purposes of establishing a planning policy context the sites last use was agricultural. It is understood however that the farmhouse is currently occupied solely as a domestic property and the outbuildings are not currently being used or occupied for agricultural purposes.
- 5.2.2 Towards the end of 2018 the applicant made an application under the provisions of Class Q of the GPDO to change one of the buildings on site to dwelling; making a case that the site has an established agricultural use. The agricultural use is therefore accepted.
- 5.2.3 Having established the sites agricultural use, under the provisions of the NPPF this means that despite there being an argument that the character of the site appears 'previously developed' (given the extent of outbuildings and areas of hardstanding) the site cannot be regarded as previously developed land (or brownfield land) as defined in the NPPF.
- 5.2.4 If the site is not PDL or brownfield the principles of new residential development on this site must be considered against policies CS1, CS2, CS9 and CS10 of the Core Strategy; policy EVR2 of the Local Plan; and the wider provisions of the NPPF which relate to new housing. These matters are discussed in more detail below.

Policy CS10 – Delivery of Housing

- 5.2.5 The site is currently designated as Open Countryside under saved policy EVR2 of the 2006 Local Plan. Under policy EVR2 residential development would not normally be permitted. Policy CS10 of the recently adopted Local Plan Core Strategy (adopted July 2013), also states that residential development on greenfield

sites will not normally be permitted whilst the Council is able to demonstrate a supply of deliverable housing sites sufficient for five years. It is the case that the Council are currently able to demonstrate a supply of deliverable sites (2019 supply statement).

- 5.2.6 Other policies of the Local Plan continue to apply, the most relevant in this case being CS1 'Spatial Strategy', CS2 'Principles of Location of Development' and CS9 'Green Infrastructure and Biodiversity'. Indeed, all proposals for development must accord with CS1 and CS2 to be acceptable, regardless of whether it is a residential proposal and/or whether the council can demonstrate a 5 year supply of housing land. Furthermore other provisions of the revised NPPF which relate to the control of housing in rural areas are also of relevance.

Policy CS1 and CS2 – Walking and Cycling

- 5.2.7 Having regard to the provisions of policies CS1 the property is a 2.5km (30 minute) walk to the nearest local centre (Brimington), which would not be considered a suitable walking and cycling distance from centre to residential development. A recommended distance of 800 metres is considered an appropriate distance which should include a safe pedestrian route based on guidance within the "Guidelines for Journeys on Foot" (Institution of Highways and Transportation).

- 5.2.8 Having regard to the above the site is within walking and cycling distance of some local facilities, including a Primary School, pubs, bus stops and convenience store in Brimington Common. Although not strictly in a designated local centre the Council must be mindful that an argument based upon the strict CS1 and CS2 parameters was not supported by the Planning Inspector for a 2016 appeal for 3 dwellings on the site just opposite the application (land adj 33 Westmoor Road - APP/A1015/W/15/3133464) as follows:
- The proposed development is at the edge of the settlement and is functionally linked to an established residential area which has access to regular bus services to the settlements of Chesterfield and Brimington, via Calow. In addition, whilst the appeal site is not located within walking distance of an allocated retail centre, future occupants would be within walking and cycling distance of a primary school, pub, church, convenience store and post office which are located within Calow. These could provide for their day to day needs. Whilst the spatial strategy of the CS set out within*

Policy CS1 is to concentrate development within walking and cycling distance of centres, this does not mean that the location of all new development, irrespective of scale, such as the construction of three dwellings is required to be restricted within those parameters. Consequently, I conclude that the proposed development is in line with Policy CS1 of the CS.

- 5.2.9 It is therefore considered that an objection on the grounds of non-compliance with policies CS1 and CS2 in respect of walking and cycling distances is unlikely to be substantiated in this case. However it is accepted that an occupier of this site would if choosing to walk / cycle to the centre the Inspector had regard, be required to walk along the carriageway of Wetland Lane / Westmoor Road for a distance of approximately 107m to reach a footpath.

- 5.2.10 Policy EVR2 / NPPF – New Dwellings in Open Countryside
Looking in turn at the principle of new dwellings in the open countryside policy EVR2 (saved from the 2006 Local Plan) states that:
“Within the areas of open countryside... planning permission will only be granted for new development which is necessary for the need of agriculture and forestry or is related to recreation tourism or other types of farm or rural diversification”.

- 5.2.11 The proposed development fails this test and therefore parts c) and f) of policy EVR2 are required to be considered:
Planning permission will be granted for the replacement of existing dwellings with new dwellings provided that criteria (c) and (f) are met:
(c) the scale, siting, design, materials and landscape treatment are such that the visual effect of the proposal is minimised and reflect local character; and
(f) the proposed building does not have a greater impact on the open character of the countryside and the purpose of including land within it than the existing buildings and does not occupy a materially larger area of the site than the existing buildings”.

- 5.2.12 In addition to this the latest NPPF states:
Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
c) the development would re-use redundant or disused buildings and enhance its immediate setting;
d) the development would involve the subdivision of an existing residential dwelling; or
e) the design is of exceptional quality, in that it:
- is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

- 5.2.13 Having regard to the provisions of the NPPF above criteria a) to d) are not met. Furthermore giving consideration to the design, siting and layout of the scheme presented it is not considered that the proposals are of such a high architectural quality that are truly outstanding or innovative such that criteria e) is demonstrably met.

Procedural Matters

- 5.2.14 As part of a previous application for the entire re-development of this same site for 5 no. dwellings (see site history above) the officer report associated therewith argued a series of considerations against the criteria of policy EVR2, which gave a greater weight to a comparative exercise of the extent of the sites 'developed' character and the visual impact of the development being proposed against criteria c) and f). Notwithstanding this the decision maker (planning committee) took a different view (to which they were entitled to do so) and this led to the application being refused on the basis the decision maker considered the development to have a far greater impact upon the open character of the area by virtue of scale and mass.
- 5.2.15 In respect of these matters it is considered necessary to clarify that the previous officer report didn't have correct regard to the definition of PDL as set out in the NPPF. The officer gave greater weight in their deliberations of the site to the suitability of the scale of the development proposals, based upon an opinion of the extent the site had been previously used, however the definition set out in

the NPPF would not support this view given the site overarching agricultural use.

Policy CS1 / CS9 and EVR2 – Strategic Gap / Impact upon Open Countryside

5.2.16 The Core Strategy Key Diagram set the board locations of strategic gaps which are shown as an ellipsis in the diagram.

5.2.17 Although the site the subject of this application does not appear to lie directly within the ellipsis on the diagram, its purpose was to be diagrammatic and the boundaries are to be determined at a later stage in the Local Plan process. The text of policy CS1 and CS9 which refer to the strategic gap carry the most weight.

Policy CS1 - Strategic gaps give distinct identity to different areas, prevent neighbouring settlements from merging into one another, and maintain open space. Green Wedges provide access to the countryside from urban areas. The open character of Strategic Gaps will be protected from development between:

- Brimington and Tapton
- Ringwood and Hollingwood
- Lowgates / Netherthorpe and Woodthorpe / Mastin Moor
- Woodthorpe and Markham Vale
- Old Whittington and New Whittington
- Brimington North

Policy CS9 - Development proposals are required to meet the following criteria where appropriate, and should:

- a) not harm the character or function of the Green Belt, Green Wedges and Strategic Gaps, and Local Green Spaces
- b) enhance connectivity between, and public access to, green infrastructure
- c) increase the opportunities for cycling, walking and horse riding
- d) enhance the multi-functionality of the borough's formal and informal parks and open spaces
- e) conserve or enhance the local distinctiveness and character of the landscape
- f) enhance the borough's biodiversity and where possible link habitats
- g) Protect existing ancient and non-ancient woodland and increase tree cover in suitable locations in the borough
- h) in cases where loss of a green infrastructure asset is unavoidable, include provision of alternative green infrastructure,

on site where possible, to ensure a net gain in quantity, quality or function

- 5.2.18 Looking at the potential impact of the development proposals upon the Strategic Gap it is noted that Oldfield Farm sits on the edge of the area broadly identified. Given the fact the development proposals centre around the replacement of existing structures, the impact on the function of the gap as a whole is unlikely to be significant in the context of policies CS1 and CS9.
- 5.2.19 The development proposals will remain a concentrated pocket of development within the Strategic Gap but that does not mean that its acceptance weakens the status or purpose of such a designation. The development proposals the subject of this application are to some degree unique. They do not take the form of a high density urban / settlement extension which would weaken the defensible boundary of a strategic gap. They are a concentrated pocket of redevelopment proposals on a site which already includes buildings / structures. Such sites can make a positive contribution in the form of new housing without being harmful to the character and appearance of the surrounding area. A nearby example of such a development of the same constraints and designations being debated is the residential development located at Ploverhill Farm (on the opposite side of Wetlands Lane to the south of this site).
- 5.2.20 Turning to the potential impact of the development upon the open countryside (policy EVR2) the degree of impact on the openness and local character of the open countryside will be integral to whether the development is considered to be materially harmful. The proposed re-development is within the existing agricultural site boundary but does not strictly follow the footprint of the existing layout.
- 5.2.21 Under the provisions of policy EVR2 f) the impact the development will have on the open character of the countryside (its urbanising effect) should be considered alongside the provisions that the development should not be materially larger than the existing site.
- 5.2.22 The photographs and maps included below show the extent of the site as it appears today as well as how the site was developed historically.

Figures 2: Historic Map; and Figure 3: Site Photograph of Hard Surfacing

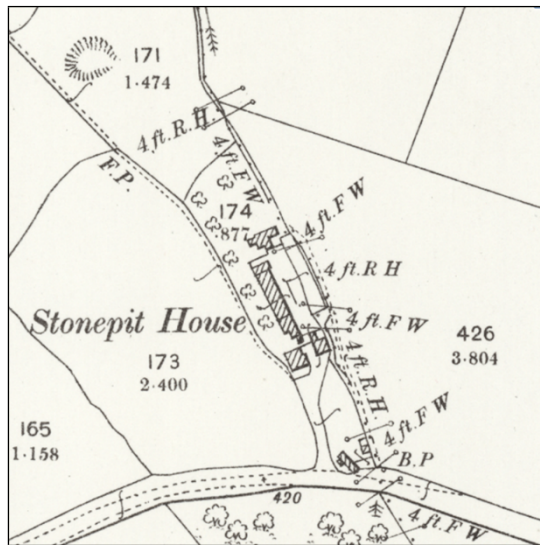


Figure 4: Photographs looking west at edge of building footprint



Figure 5: Photographs looking east at edge of building footprint



- 5.2.23 It is accepted that the development will alter the character of the site by design and shift the built footprint arrangement; however the wording of policy EVR2 does not preclude a contemporary design solution to a sites redevelopment taking place. The applicant has sought to detail the material finish of the proposed dwellings in line with those of an agricultural finish and of a scale that is now no greater that the scale / height of the existing farmhouse which is to be retained. It is therefore considered that it could be argued that the visual effect of the development proposals will be of no greater detriment to the open countryside than that of the existing site and buildings; having regard to criteria c) and f) of EVR2.

Conclusion

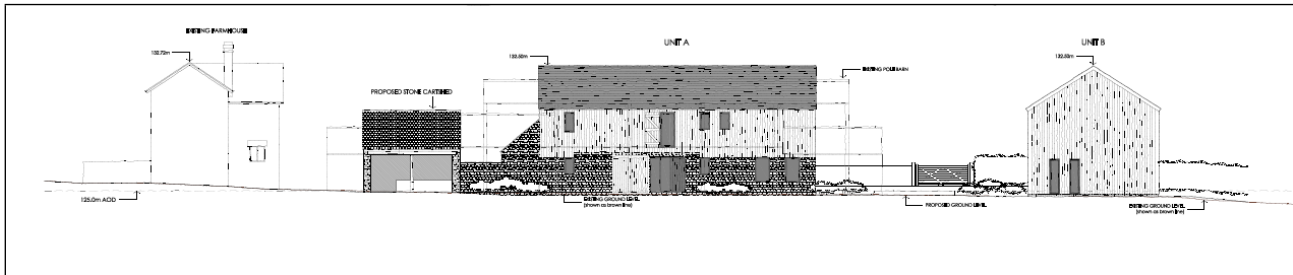
- 5.2.24 It is clear given the arguments presented above that the development proposals are finely balanced and therefore the decision maker must carefully balance all of the issues (positive and negative) to formulate a final conclusion.
- 5.2.25 It is clear that the Council's own Spatial Strategy acknowledges the importance of creating additional dwellings within the Borough and the decision maker is required to accord weight to proposals that provide social and economic benefits, such as regeneration of a predominantly brownfield site which is no longer utilised or required for its purpose as agricultural.
- 5.2.26 There is no doubt that the principles of policy EVR2 are important in that they assist to protect the character of the open countryside

and promote sustainable patterns of development alongside policies CS1 and CS2; however there will be sites such as this one which are an exception. The characteristics of this site and the buildings thereon exist in an arrangement which does not lend itself to be easily converted and therefore redevelopment in the manner being proposed presents a facilitating solution which takes into account parameters of the overriding designations and works with them to provide what is considered to be a high quality design solution. The relationship of the site to the surrounding will undoubtedly change as a result of the development but it is considered that the benefits of the scheme outweigh any acknowledged adverse impact such that there is a presumption in favour of sustainable development and the principle of development can be accepted.

5.3 **Design and Appearance Considerations (inc. Neighbouring Impact / Amenity)**

- 5.3.1 The proposal has been carefully designed from the outset to address the concerns of members of the Planning Committee regarding the scale and impact of the previously-refused scheme. The previous application was refused owing to the fact that the proposal would occupy a materially larger area of the site, and be taller than, the existing buildings on the site and thus would have a greater impact on the open character of the countryside and not be in keeping with the surrounding area.
- 5.3.2 The scheme now being considered retains the farmhouse and agricultural building to the front of the site and involves only the replacement of the existing cow shed, dutch barn, stables and garage with 2no. new (self-build) dwellings and garaging. The footprint of the buildings to be removed (the cow shed, dutch barn, stables and existing garage) extend to some 376sqm. The footprint of the 2no. new dwellings and garages is 385sqm – representing an overall increase of just over 2%.
- 5.3.3 The proposal is substantially smaller than the scheme refused on the site in 2017. The scheme now proposed has a floor space less than half of the previously refused scheme (672 sqm as opposed to 1389 sqm) and also a volume less than half of the refused scheme (2263m³ compared to 4591m³).

- 5.3.4 The heights of the 2no. new dwellings have also been kept at a similar level to the existing farmhouse and are lower than the height of Unit 5 of the refused scheme.



- 5.3.5 Having regard to the above, the proposal will not occupy a materially larger area of the site (or be materially taller) than historic development within the site - and is significantly smaller than the previously refused scheme. As such, it will have a similar impact on the character of the countryside as the existing development and is therefore acceptable in relation to Policy EVR2.
- 5.3.6 In addition to the above, it is also considered that the layout and design of the individual buildings proposed also represent a much more sensitive and appropriate development than the previously-refused scheme which ensure that the proposal reflects and reinforces the character and agricultural origins of the site and does not appear prominent or incongruous within its countryside setting.
- 5.3.7 Having regard to the provisions of policy CS18 of the Core Strategy and the guidance contained in the adopted SPD 'Successful Place – Housing Layout and Design' the overall design of the development proposals are considered to be appropriate.
- 5.3.8 The nearest residential neighbours to the site will be the properties located on Barry Road and Wheathill Close which are located to the east and north east of the application site boundary. At its closest point the edge of the application site boundary is no less than 50m from the boundary of the nearest neighbour and therefore the development proposals do not result in the introduction of any adverse overlooking, overshadowing or overbearing impacts to these nearby neighbouring properties. Internally the development proposals are designed and laid out

such that they offer each other appropriate protect and levels of amenity.

- 5.3.9 Overall the development proposals detail a high quality contemporary design solution to the redevelopment of the site. There is no doubt that the scheme will have a differing appearance to the existing agricultural cluster of development currently in situ on the site; however there is merit to support the entire redevelopment of the site if it results in an comprehensive high quality development pocket which delivers housing to the Borough. The detailed architectural design of the dwellings will use a mixture of external finishes and materials which will route the development into the landscape, alongside appropriate boundary treatments; both of which can be the subject of planning conditions to secure their individual detail and approval.

5.4 **Highways Issues**

- 5.4.1 The application proposals were reviewed by the **Local Highways Authority** (LHA) who provided the following comments:
'The site is located off Westmoor Road, a non-classified road on the outskirts of Brimington and is subject to the national speed limit adjacent the site.

The site has been the subject of a previous planning application (CHE/17/00257/FUL), which sought the demolition of the existing farmhouse and construction of 5 replacement dwellings. Whilst this application was ultimately refused, the Highway Authority during the consultation process considered achievable sightlines to be in excess of those required to accommodate 85%ile approach speeds (based on speed readings) from the existing access location onto Westmoor Road. Accordingly, visibility onto Westmoor Road is considered acceptable.

Internally within the site, the existing access is shown as being widened, in accordance with current guidance.

With regard to parking, a timber cartshed to serve the new dwellings and stone cartshed to serve the existing farmhouse are proposed. Whilst acceptable in principle, the internal dimensions to these buildings are considered too small to accommodate vehicles, with guidance taken from Delivering Streets and Places

recommending standard dimensions for a single garage of 3.6m x 6.5m and for a double garage 7.2m x 6.5m.

In addition to the above, in view of the number of bedrooms proposed the Highway Authority would recommend that 3 parking spaces be provided per new dwelling. Concerning the existing farmhouse, the same level of parking should be retained as is currently provided.

There would appear to be ample space within the control of the applicant to provide parking in accordance with the above and the Highway Authority would therefore recommend that revised parking be provided.

Finally, in the interest of safety for future occupants of/visitors to the site, creation of a footway link with that which exists to the east of the site should be explored and, if feasible, provided. Such a facility was noted in previous comments provided by the Highway Authority in relation to the earlier residential development proposed.

Accordingly, before making my formal recommendations I would be obliged if you could ask the applicant to revise the proposal in view of the above comments and in the meantime please hold the application in abeyance until revised plans have been submitted.'

- 5.4.2 Having regard to the comments made above it is clear that there is more than enough space within the boundary of the application site to provide ample parking provision for the 2 no. new dwellings and the retained farmhouse. This is reflected on the site layout plan submitted and a further condition can be imposed requiring the maintenance of 3 no. parking space per dwelling in perpetuity. It is also appropriate under the provisions of policy CS20 of the Core Strategy that the provision of electric vehicle charging points are secured for the 2 no. new dwellings.
- 5.4.3 The LHA acknowledge that a Speed Survey and Visibility Splay Topographical Survey previously undertaken adequately demonstrates that site visibility commensurate with vehicle speeds is achievable and an appropriate condition can be imposed on any permission issued to secure these access amendments in connection with the development proposals and policy CS20 of the Core Strategy.

- 5.4.4 It is noted in the comments of the LHA above they suggest investigation into a connection of the footway on Westmoor Road to the east, along the verge to the application site. The image below (Figure 6) shows the point of Westmoor Road where the footpath currently ends and upon further investigation it is considered that a large proportion of the soft verge and vegetation leading down to the application site boundary would have to be removed to secure a very limited width of footway.

Figure 6: Street View Extract



- 5.4.5 Looking further down towards the application site there are also pinch points in the actual carriageway width where the creation of a new footway in addition might encroach and thus would not meet highway standards (Figure 7). The LHA would be unlikely to accept the creation of a substandard footway in highway limits and furthermore it is considered that the introduction of footway would be harmful to the character of the lane which clearly changes at the edge of the built settlement. On balance it is considered that the development site itself offers appropriate levels of off-street parking (which is acknowledged achievable by the LHA) such that on balance the visual harm and substandard nature of any such provision outweighs the limited benefits of this facility.

Figure 7: Street View Extract

* See next page



- 5.4.6 It is accepted that concerns about highway safety, congestion / additional vehicles from the development site and vehicle speeds / highway user safety in the vicinity of the development have been raised. Notwithstanding this the applicant / agent have provided all of the details commensurate with the LHA requirements to demonstrate the development can be appropriately served by adequate parking and exit visibility as part of an amended access point to the local highway network. The fall-back position being that the site is agricultural and albeit no longer in operation, could be re-occupied as such without any further permission being needed which would also generate a significant number of vehicular movements from the existing access. This scheme as proposed offers an improvement to that which accords overall with the provisions of policy CS20 of the Core Strategy and is acceptable.

5.5 **Heritage / Archaeology**

- 5.5.1 The property the subject of the application is not recognised as being of any historical / heritage value and the wider application site is not influenced by any heritage designation.
- 5.5.2 The previous application proposed the demolition of the existing farmhouse; whereas this latest application does not. It is retained with the 2 no. new dwellings located on land behind the farmhouse building.
- 5.5.3 DCC Archaeology were consulted on the latest application proposals; however no comments were received. Notwithstanding

this however their comments on the previous application confirmed the following position:

‘Oldfield Farm is shown on historic mapping as early as Sanderson’s map of 1835, when it is identified as ‘Oldfield’, although the mapping between 1880-1915 shows the site as ‘Stonepit House’. There is no documentary evidence to place the origins of the site much earlier than this. ‘Oldfield’ is identified in the 1849 Brimington Tithe Map as the names of the field to the west of Dark Lane, and it may be that the farm took its name from this (and perhaps ultimately from a division of the medieval open field in this area).

The site lies just within the unparished area of Chesterfield at the edge of Brimington Common, and in the former township of Tapton. This is a marginal location at the edge of common land and it is likely therefore that the farm site originates in encroachment onto former common land during the late 18th or early 19th century. Photographs of the site are provided in the applicant’s Design and Access Statement – the farmhouse seems to have a modern frontage but retains some earlier features to the rear which on map evidence seem to date from the late 19th century. The north-south range of farm buildings in the middle of the site may originate earlier still – this arrangement is shown on the 1835 map. The farm buildings are re-roofed but retain some historic features, but are not of particular architectural significance.

The site therefore has no potential for below-ground archaeological remains of any significance, and the very modest vernacular buildings – much altered – do not merit historic building recording under the NPPF.’

- 5.5.4 On the basis of the comments received above it is considered that the new development proposals are acceptable in the context of policy CS19 of the Core Strategy.

5.6 **Ecology and Trees**

- 5.6.1 As detailed in the application site description the site comprises mainly of existing farm buildings (inc. farm house / barns etc), outbuildings, areas of hardstanding and some existing pasture land which is flanked on its eastern boundary with mature trees and an open ditch / watercourse.

- 5.6.2 The application submission is accompanied by an ecological appraisal, arboricultural survey and bat survey which have been reviewed by the **Derbyshire Wildlife Trust** (DWT) and the Council's **Tree Officer** (TO) alongside the details of the development proposals.
- 5.6.3 **Derbyshire Wildlife Trust** commented as follows:
'As per our previous comments on this application (dated 23.06.17), additional information should be provided to demonstrate the mitigation strategy to maintain roosting opportunities for brown long-eared bats on site. This should give the LPA confidence that 'three tests' can be met and that Natural England are likely to approve the mitigation licence. As part of this mitigation strategy, we advise that the applicant should demonstrate how mitigation for both swallows and little owl will also be incorporated. Once this additional level of detail has been provided, the mitigation and licensing can be secured through planning conditions, which we would be happy to recommend.'
- 5.6.4 DWT's comments dated 23/06/2017 were as follows:

'The updated ecological surveys have concluded brown long-eared bat roost on site. The proposed development works at the site have the potential to destroy bat roost using the building(s). This is considered a significant impact and detrimental to the favourable conservation status of common species of bats at a local level for brown long-eared bats.

Ideally, the ecology report would provide sufficient details on bat mitigation such as capture and exclusion, detailed design of the bat loft (the report discusses bat box, but the proposals include garages and a bin store which can easily accommodate a bat loft); Post development monitoring, additional information such as timber treatments, roofing felt (breathable roofing membranes should not be used in bat mitigation), materials to be used etc. Only two activity surveys have been undertaken with ten day spacing; ideally surveys should be spaced two weeks apart and a confirmed bat roost should have a total of three nocturnal surveys.*

**Although the roost is of low conservation significance, the proposals could easily accommodate additional enhancements for*

bats by utilising the communal buildings. In addition these building could provide enhancement for swallows and other bird species.

Following standard advice from NE and subsequent government standard planning guidance, Local Authorities and NE are now required to request information that demonstrated the maintenance and longevity of a species' Favourable Conservation Status where proposals affect, or are likely to cause an effect on individual or population status. Therefore the Local Authority must satisfy themselves that the development proposals address potential impacts on the species and demonstrate suitable and adequate mitigation in order to maintain favourable conservation status of brown long-eared bats. The mitigation strategy therefore must provide sufficient confidence and satisfying these requirements, as well as inclusion for aspects of biodiversity enhancement, at present, this information is lacking.

The LA must be confident in the approach, as well as satisfying the three tests and Natural England. The mitigation strategy should follow standard industry practices and will be transposed to a subsequent EPSL that must be secured before any development of this site. It is intended to provide confidence to the Local Authority, that in determining the planning application for this site, it will be developable within certain constraints with respect to bats (and birds). Ultimately this site cannot be legally developed (with respect to bats) in absence of an EPSL which can only be granted once planning has been approved for the site. In order to apply for an EPSL application must be made within 2 years of the last survey. Survey data in excess of 2 years will not be accepted by NE and the surveys undertaken will need to be repeated to inform the EPSL, if there are any further delays.

The report correctly states that an EPS Bat Mitigation Licence from Natural England will be required in order to derogate from the legal protection afforded to bats. At present, it is considered that insufficient mitigation has been submitted, however, the proposals can clearly accommodate mitigation and enhancements on site. The mitigation is considered to be achievable on site, however, a detailed mitigation strategy should be submitted and conditioned, if planning permission is granted.

It is recommended that if the Council are minded to grant planning permission for this development that the following conditions are attached:

- 1. No works shall commence on site until a copy of the Natural England Bat Licence Application has been submitted to and approved in writing by the LPA, in advance of submission to Natural England.*
- 2. No work shall commence on site until a detailed bat mitigation, compensation and enhancement strategy has been submitted to and approved in writing by the LPA. Such approved measures should be implemented in full and retained thereafter.*
- 3. No works shall commence until a detailed external lighting scheme has been submitted to and approved in writing by the LPA. Such approved measures should be implemented in full and maintained thereafter.*
- 4. No works shall commence until a copy of the Natural England EPS Bat Mitigation Licence has been submitted to and approved in writing by the LPA.*
- 5. The bat and bird mitigation measures will be monitored for a minimum of two years after construction with reports submitted to the LPA, Derbyshire Wildlife Trust and Derbyshire Bat Conservation Group immediately following completion of each survey.*
- 6. No works to buildings or structures or removal of vegetation that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period, and details of measures to protect the nesting bird interest on the site, have first been submitted to and approved in writing by the local planning authority and then implemented as approved.*
- 7. No work shall commence on site until a bird mitigation, compensation and enhancement strategy for nesting birds (and in particular swallow) has been submitted to and approved in writing by the LPA. Such approved measures shall be implemented in full and maintained thereafter.*

8. Retain habitats such as trees, hedgerows and water course should be protected throughout the works, and where possible enhanced. Pollution prevention measures and best practices should be adhered to and maintained.'

5.6.5 The **Tree Officer** commented as follows:

'There are six trees to the frontage of the site that are covered by the above mentioned provisional tree preservation order which may be affected by the development. In general the proposed development does not affect the retained trees on site and I therefore have no objections to the application, however further details are required along with more details of the tree protection measures to be implemented during the demolition and construction phases.'

Access

It is proposed that a new access and driveway are to be constructed off Wetlands Lane/Westmoor Road which may have an effect on the adjacent trees within G1 and T1 Ash to the west of the access. It is proposed that part of the existing stone wall is removed and the access curved into the new driveway. This shouldn't be a problem however more details should be provided of the construction method including cross sectional drawings with existing and proposed levels to show how this affects the adjacent trees.

Drainage and other services

No details of the drainage layout for the development have been provided with the application. Any service runs should be outside the root protection areas (RPA's) of the retained trees as outlined in the Arboricultural Report by John Booth.

Tree Protection

If consent is granted to the application then a condition should be attached requiring a Tree Protection Plan (TPP) and detailed Arboricultural Method Statement (AMS). This should include the follow:

Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012,

including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority.

Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.*
 - b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.*
 - c) Details of construction within the RPA or that may impact on the retained trees.*
 - d) a full specification for the installation of boundary treatment works.*
 - e) a full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.*
 - f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.*
 - g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.*
 - h) a specification for scaffolding and ground protection within tree protection zones.*
 - i) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.*
 - j) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires*
 - k) Boundary treatments within the RPA*
- The development thereafter shall be implemented in strict accordance with the approved details.*

Reason: Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality.'

- 5.6.6 Having regard to the comments received from DWT in respect of the development proposals the resulting impact on the bat roost and bat population are noted, as are the initial concluding remarks of DWT which accept there is sufficient space and scope with the development site to incorporate appropriate bat mitigation. Their comments highlight the necessary steps required by any prospective developer to ascertain a license from Natural England to undertake works which affect the identified bat roost and they suggest that a copy of that license is submitted to the LPA prior to development commencing in order for the LPA to be satisfied that an appropriate mitigation strategy is achieved.
- 5.6.7 The LPA support the recommendations as they are aware that the steps required ascertaining the license include demonstration to Natural England that appropriate and proportionate mitigation can be secured. Furthermore, given that the steps described above encourage the bat population to co-habit the development site in the future the further steps recommended by DWT which relate to complimentary lighting design and other biodiversity enhancements measures to promote biodiversity should also be secured in the interests of policy CS9 of the Core Strategy.
- 5.6.8 It is noted that in their comments DWT suggest that the mitigation measures agreed and implemented should be monitored for a period of two years and the survey works should be submitted to the LPA and them under an appropriate planning condition however it is not considered that such a requirement would be reasonable. If planning permission is given, the necessary license from NE ascertained and the mitigation measures implemented; it is unclear what benefit the survey work would secure? Planning conditions are only supposed to be imposed where they are necessary to make a permission acceptable on planning grounds and therefore what planning purpose would the monitoring / survey secure if permission is granted and the measures had already been deemed acceptable to best mitigate the impact. Imposition of such a condition would fail the tests of the NPPG.
- 5.6.9 Looking in turn therefore to the impact of the development upon trees the Tree Officer is accepting of the recommendations made in the Arboricultural Report and subject to condition he is happy that the development proposals will not adversely impact upon the protected trees. In this context appropriate conditions can be secured as per his recommendations to allow the trees to be

retained coincidental to the development. This approach is supported by the provisions of policy CS9 of the Core Strategy.

5.7 **Flood Risk and Drainage**

5.7.1 Having regard to flood risk and drainage matters the application site is identified to be at low risk of surface water flooding in the Environment Agency flood maps. The site is however not within flood risk zones 2 or 3 so a site specific flood risk assessment would not be required.

5.7.2 Notwithstanding the need for detailed flood risk assessment, the site must detail an appropriate drainage solution which considers (where feasible) sustainable drainage features in its design and the finished floor levels of the dwellings must be raised above ground level to mitigate any potential impacts from the identified surface water flood risk. Both **Yorkshire Water Services** (YWS) and the Council's own **Design Services** (DS) team were invited to review the planning application proposals; however comments were only received back from the DS team as follows:

'The EA flood maps demonstrate a low level of potential surface water flooding on the site. As a minimum, floor levels should be raised 150mm above the adjacent ground levels.'

'We would like to see proposed drainage layouts for the development. The application form indicates foul drainage is proposed to discharge to a main sewer. However, the nearest public sewer is located away from the site. Surface water should be disposed so as not to increase flood risk downstream.'

5.7.3 The application submission does indicate that the development proposals are to main connected to foul drainage, however given the comments received from the DS team it is not clear if this type of connection is available. Regardless whether a mains connection is available or not, the issue of foul drainage is not insurmountable as a package treatment solution is a clear alternative solution for this type of development and this matter can be clarified through appropriate planning condition accordingly.

5.7.4 Having full regard to the comments detailed above and the requirements of policy CS7 of the Core Strategy relating to flood risk and drainage it is considered that the development proposals

are acceptable. Appropriate pre-commencement planning conditions can be imposed to secure the necessary drainage solution detail required.

5.8 **Land Condition / Contamination / Noise**

- 5.8.1 In respect of land condition the site the subject of the application lies within a defined 'standing advice' area of the **Coal Authority** which means there is a lower risk of the site being affected by the presence of unrecorded coal mining legacy. In such areas the Coal Authority does not require a Coal Mining Risk Assessment and they simply ask that if permission is granted an advisory note be appended to any planning decision notice as follows:

'The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority'

- 5.8.2 In respect of potential land contamination and noise / nuisance issues arising from the development the Council's **Environmental Health Officer** reviewed the application proposals and aside no objections in principle to the development subject to the following:

'Should planning consent be granted, the hours of construction shall be limited to 8:30am to 5:00pm Monday to Friday and 9:30am to 4:00pm Saturday. Construction shall not take place on a Sunday or Public Holiday.

Given the location of the site, there is the possibility of soil contamination. I advise that a desk study is carried out and if necessary a site investigation.

As 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), I ask that infrastructure for electric charging points be installed as part of the build phase.'

5.8.3 Having regard to the comments detailed above from the EHO appropriate planning conditions can be imposed on any permission issued to ensure compliance with policy CS8 of the Core Strategy and the wider NPPF in respect of land condition, air quality and noise. However in respect of the timing on works this control must be consistent with the standard hours condition applied across the Borough which is set 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.

5.9 **Community Infrastructure Levy (CIL)**

5.9.1 Having regard to the nature of the application proposals the development comprises the creation of 2 no. new dwellings and the development is therefore CIL Liable.

5.9.2 The site the subject of the application lies within the medium CIL zone and therefore the CIL Liability has been calculated (using calculations of gross internal floor space [GIF]) as follows:

		A	B	C	D	E
Proposed Floorspace (GIA in Sq.m)	Less Existing (Demolition or change of use) (GIA in Sq.m)	Net Area (GIA in Sq.m)	CIL Rate	Index (permission)	Index (charging schedule)	CIL Charge
566	339	227	£50 (Medium Zone)	307	288	£12,099

Net Area (A) x CIL Rate (B) x BCIS Tender Price Index (at date of permission) (C) / BCIS Tender Price Index (at date of Charging Schedule) (D) = CIL Charge (E).

5.9.3 The applicant has however indicated that they will be making an application for CIL exemption for self build dwellings, if permission is granted.

6.0 **REPRESENTATIONS**

- 6.1 The application has been publicised by site notice posted on 27/11/2018; by advertisement placed in the local press on 13/12/2018; and by neighbour notification letters sent on 04/12/2018.
- 6.2 As a result of the applications publicity there have been twenty one letters of representation received and comments from Brimington Parish Council as follows:

Brimington Parish Council

Stance: Customer objects to the Planning Application

Comment Reasons:

- Traffic or Highways

Comment: Concern raised that the development would increase traffic on an unsuitable narrow lane.

1. 56 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Traffic or Highways

- Visual

Comment: Still wanting 4 units which is 1 less than before. Unit B is still outside the current footprint.

2. 44 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Traffic or Highways

- Visual

Comment: Yet more additional traffic on a totally unsuitable road. Buildings do not fit the environment.

3. 42 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise

- Traffic or Highways

- Visual

Comment: the damage to the ECO system would be catastrophic to the area its a small holding run it as that NO

4. 52 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise
- Policy
- Residential Amenity
- Traffic or Highways
- Visual

Comment: I wish to show my objection to this proposal

5. 11 Westmoor Road

I believe this plan needs to consider the narrow lane which is beyond capacity at the moment and needs to be widened before any more properties are given acceptance.

6. 12 Westmoor Road

I object to the proposed development on the grounds of:

1. Increased traffic - Westmoor Road and Crow Lane are already excessively busy at peak times when it is used as a rat run.
2. Increased noise and pollution due to the above.
3. Further load on local services (NHS) and schools.
4. Effect on wildlife etc.

7. 1 Occupation Close, Barlborough

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: I support as this replaces old outhouses with unique housing designs which complement the landscape

8. A Local Resident

1. Summary of Objection

1.1 I object to this planning application on the grounds that:

(1) The proposed two houses are an inappropriate form of development in principle in this countryside location. The existing site of the agricultural buildings proposed to be replaced by housing does not constitute 'previously developed land' (PDL). The opportunity therefore does not arise to confer PDL status on the application site to justify an exception to the policy approach of not allowing housing in the countryside except in specific circumstances. As such the proposal is contrary to Policy CS1 of the Chesterfield Local Plan Core Strategy 2011-2031, Policy EVR2 of the Local Plan 2006 and the National Planning Policy Framework (NPPF).

(2) The proposed siting, scale, massing and appearance of the proposed houses will have a materially greater impact on the rural character of the site than the existing agricultural buildings they replace thereby harming the rural character of the site and the surrounding area. As such the proposal is contrary to Policy CS1 of the Chesterfield Local Plan Core Strategy 2011-2031, Policy EVR2 of the Local Plan 2006 and the NPPF.

(3) It has not been demonstrated how the proposal will be a genuinely self-build scheme in accordance with the planning application description. As such the proposal is contrary to the NPPF.

1.2 Sections 2 to 4 of this representation address the grounds of objection in more detail.

1.3 Section 5 raises concern over the potential for a judicial review of a grant of planning permission of the proposal.

2. Ground of Objection number 1: The proposed two houses are an inappropriate form of development in principle in this countryside location

2.1 The application site is located in open countryside as designated by Policy EVR2 of the Local Plan 2006, and is located in the Strategic Gap between Brimington and Tapton as identified under Policy CS1 of the Chesterfield Local Plan Core Strategy 2011-2031. As such, the countryside policies of the development plan and the NPPF should apply to this proposal. The Local Plan and Core Strategy policies cited here and the NPPF clearly state that new housing development should not be allowed in the countryside unless specific circumstances apply. These circumstances do not include the redevelopment of farm buildings for housing, especially given that farm buildings do not constitute previously developed land.

2.2 I contend that the major part of the application site, which comprises the agricultural buildings being demolished to make way for the two new houses, does not constitute 'previously developed land'. The Glossary in Annex 2 of the NPPF 2018 specifically states that the definition of previously developed land excludes "land that is or was last occupied by agricultural or forestry buildings." This definition recognises that agricultural buildings have a fundamentally rural character which does not prejudice the essential openness of the countryside. I believe that this proposal would introduce an urbanised character into a countryside location in contravention of national and local planning policy.

2.3 I believe there are no mitigating circumstances which would justify an exception being made to this national and local policy

framework such that housing could be considered in principle in this location. Paragraph 15 of the NPPF states that “The planning system should be genuinely plan-led”. I do not see any content in the Local Plan, Core Strategy and NPPF which would allow an exception to the policy approach of resisting the redevelopment of agricultural buildings for housing.

2.4 I have concerns over how the planning officer’s Committee report which considered the previous application for 5 houses on this site (17/00257/FUL) in 2017 addressed this issue of principle. Paragraph 5.2.1 of the report recognised that the proposal for 5 houses did not meet the key test of Policy EVR2 of the Local Plan which states that housing in open countryside is only allowed under certain circumstances: these circumstances do not include the redevelopment of farm buildings. Paragraph 5.2.2 of the report went on to suggest that the proposal was subject to parts (c) and (f) of Policy EVR2 which referred to how the visual impact of a new dwelling should be minimised. I ask that this approach to the interpretation of Policy EVR2 be reviewed when considering the current application for 2 houses. This would be on the grounds that parts (c) and (f) only apply when residential development replaces existing residential development. This is not the case with this current proposal where residential development is replacing agricultural buildings. Similarly, paragraph 5.2.19 of the Committee report stated that “This site is a predominantly brownfield site”. As referred to above, I do not believe that this site is brownfield/previously developed land.

3. Ground of Objection number 2: The proposed siting, scale, massing and appearance of the proposed houses will have a materially greater impact on the rural character of the site than the existing agricultural buildings they replace thereby harming the rural character of the site and the surrounding area

3.1 The proposed two houses will result in built form extending over a greater length of the application site and with a greater height and massing than the existing agricultural buildings. This would have a significantly greater impact on the open character of the countryside than the existing agricultural buildings. This would be contrary to Local Plan, Core Strategy policies and the NPPF which seek to limit the visual impact of development on the countryside. In particular:

a) House A would have a height to the ridge of around 8m and a length of around 18m. This height of around 8m will be substantially greater than the height to the ridge of around 4.2m of

both the existing cow shed and stable. It will also be higher than the height to the ridge of the existing barn which extends to around 6.5m. It should be noted that the barn has no walls and only comprises a few struts and a roof being mostly made up of a void. Most views towards the barn in a westerly direction look through it towards the green fields beyond. The key conclusion here is that it is the cowshed and stables, and not the barn, which contribute the main bulk of built form and massing on this part of the site and they are significantly lower than House A.

b) House B would have a similar height of around 8m and a length of around 20m. Notably, House B would introduce this significant bulk into the northern part of the application site which is currently not occupied by buildings. Its bulk would extend built form into the countryside around 13m further north than the existing stables and 18m further north than the existing cow shed.

3.2 This increase in the height and area of built form would harm a wide range of rural views including those south-west from Barry Road and west from Wheathill Close, those north-west, north and north-east from Westmoor Road and Wetlands Lane, and those eastwards from the public footpath to the west of Oldfield Farm.

3.3 House B would extend over an area currently occupied by hardstanding. I contend that this area of hardstanding does not constitute an area of built form with a distinct massing against which the bulk of the proposed could be measured. Any building on the hardstanding would have a far greater impact on the openness of the countryside than the hardstanding and any low wall around it. I also note that the garden of House B would extend northwards into an area of pasture. This would introduce a residential character into what is clearly countryside.

3.4 The proposed two houses would have an appearance which is residential. This combined with the increase in the built envelope of the site and the height of the buildings would introduce a significantly urbanised character into the countryside.

4. Ground of Objection number 3: It has not been demonstrated how the proposal will be a genuinely self-build scheme in accordance with the planning application description

4.1 The description of the planning application refers to 2 no. 'self-build' dwellings. Nothing has been submitted as part of the documentation accompanying the application which proposes how these houses would be genuinely self-build in accordance with the definition in Annex 2 of the NPPF. This definition states that self-build is "Housing built by an individual, a group of individuals, or

persons working with or for them, to be occupied by that individual. A legal definition, for the purpose of applying the Self-build and Custom Housebuilding Act 2015 (as amended), is contained in section 1(A1) and (A2) of that Act.” The application description should be amended to remove the reference to self-build or the applicant should propose how the self-build status of the houses will be secured. If the self-build status of the proposal is not secured then the Council should take care not to attribute any weight to these houses being self-build in coming to its decision. In any event, I suggest that even if these two houses were genuinely self-build, that this should not weigh against the harm caused by the proposal to the countryside character of the site and the area.

4.2 Given the lack of transparency over whether the proposed houses are genuinely self-build, one can only surmise that the likely outcome of any grant of planning permission is that the site would be sold to the highest bidder who would, in turn, build the two houses to be sold to whoever came forward with the highest price.

4.3 I also find the use of inverted commas around the term ‘self-build’ in the planning application description rather curious. Are these commas highlighting the genuine (but unproven and unsecured) self-build status of the houses? Or are these commas an ironic and confusing admission that these houses are, indeed, not truly self-build?

5. Concern over the potential for the judicial review of any grant of planning permission of the proposal

5.1 I am concerned that a decision by the Council to grant planning permission for this proposal may run a significant risk of being subject to a judicial review in the courts if the application is not considered and determined with due care. A number of potential scenarios arise which may give rise to a case for judicial review. A judicial review could consider whether the planning permission should be quashed on the following grounds:

a) That the Council, as local planning authority, had failed to take into account all material considerations, or had alternatively committed a mistake of fact, in the event that it did not recognise that the site of the agricultural buildings being replaced is not previously developed land.

b) That the Council, as local planning authority, had made an irrational decision (sometimes known as Wednesbury unreasonableness) in the event that it did recognise that the site is not previously developed land but then attached an irrationally low level of weight to that observation in coming to its decision.

c) That the Council, as local planning authority, had committed procedural unfairness due to its public consultation on the planning application including a misleading and prejudicial description of the proposal which referred to the site being 'previously developed' and 'self-build'.

5.2 Concerns (a) and (b) are self explanatory. I would also draw attention here to the points made in paragraph 2.4 of this representation where I note the arguments made in the planning officer's report on the previous scheme for 5 houses (17/00257/FUL). I have grave concerns that any repetition of some of the arguments made in that report would leave the council open to judicial review. In particular, I note the curious step to apply parts (c) and (f) of Local Plan Policy EVR2 to the redevelopment of non-residential buildings with residential uses which I consider could be a mistake of fact or irrational given that the policy expressly only addresses the redevelopment of existing residential uses with residential uses. I also note the reference in the report to the site being predominantly brownfield which I consider could be a mistake of fact or irrational as discussed above.

5.3 I now turn to concern (c) which relates to the potential for procedural unfairness given how the description of the planning application refers to 'a previously developed site'. The description of a planning application should be limited to simple statements of fact about the use, type and quantum of development. I contend that the description's reference to 'a previously developed site' is highly misleading and prejudicial to the proper consideration of the application. The term 'previously developed site' is very similar to the term 'previously developed land', the latter having a specific meaning in planning terms with significant implications for the potential for development. It would be an understandable, but erroneous, step to assume that a 'previously developed site' has the same status in planning terms as 'previously developed land'.

5.4 I suggest that a member of the public with no expertise in town and country planning (or even many professionals in the fields of development, the environment and planning for that matter), could be misled into thinking that the term 'previously developed site' in the description meant the same as 'previously developed land'. If a member of the public had investigated the significance of 'previously developed land' in planning terms, then they could be forgiven for thinking that the Council itself had already come to a view about the existing status of the site. They could be misled into thinking that the Council was of the view that this was a 'previously developed site' and was 'previously developed land'. Such a view

is especially understandable when it is recognised that it is the Council which has advertised and consulted on the planning application and, indeed, formally conferred that description upon the application. Such a description, with its inherently premature judgement upon the planning status of the site, can only serve to mislead the public on the planning merits of the case and prejudice the proper consideration of the application.

5.5 An alternative scenario arises where it is determined that the use of the term 'previously developed site' has always been intended, for practical purposes, by the applicant and the Council to mean 'previously developed land'. In this case, I suggest that the same arguments apply: that it would be an inherently premature judgement by the Council to confer this PDL status on the site. This would result in a misleading and prejudicial consultation exercise on the application.

5.6 Similar confusion, and prejudice to the proper consideration of the application, arises with the use of the term 'self-build' in the planning application description when no proposal has been put forward as to how the self-build status of the houses is justified or is to be secured.

5.7 I suggest that the application description is amended to omit any references to 'a previously developed site' or 'self-build' and that a new public consultation exercise be undertaken on this basis. If this step is not undertaken, I would ask the Council to very carefully consider whether a claim to quash any planning permission on the grounds of procedural unfairness could be pursued given the misleading and prejudicial nature of the description.

6. The Way Forward

6.1 I am confident that if the redevelopment of the site was limited to one large house on the site of the existing farmhouse, and with a sizeable garage block, then this would be acceptable in planning terms and would generate sufficient funds to enable the restoration of the rest of the site.

9. 58 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise
- Policy
- Residential Amenity
- Traffic or Highways
- Visual

Comment: Extra traffic on a road without pavements. outside the existing footprint impact on landscape

10. 58 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise
- Policy
- Residential Amenity
- Traffic or Highways
- Visual

Comment: Extra traffic on unsuitable rd buildings outside existing footprint visual impact on countryside

11 and 12. 50 Barry Road (x2)

Stance: Customer objects to the Planning Application

Comment Reasons:

- Policy
- Visual

Comment: I object to the application on the grounds that:

(1)The proposed two houses are an inappropriate form of development in principle in this countryside location, and especially given that the site is not previously developed land.

(2)The proposed siting, scale, massing and appearance of the proposed houses will have a greater impact on the rural character of the site than the existing agricultural buildings they replace thereby harming the rural character of the site and the surrounding area.

(3)It has not been demonstrated how the proposal will be genuinely self-build.

13. 43 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Policy
- Traffic or Highways

Comment: Development outside current footprint, access onto narrow lane

14. 35 Barry Road

Stance: Customer objects to the Planning Application

Comment Reasons:

- Traffic or Highways

- Visual

Comment: Traffic: Narrow road, no pavements. Dangerous for pedestrians. Visual: Won't fit into surroundings.

15, 16 and 17. 37 Barry Road (x3)

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise
- Policy
- Residential Amenity
- Traffic or Highways
- Visual

Comment: Plans are outside existing footprint encroaching upon strategic gap. Highway too narrow for more cars

18, 19, 20 and 21. 282 Manor Road and 41 Barry Road

I wish to strongly object based on the following:

- The houses will harm the countryside character of the site and surrounding area;
- The proposed siting, scale, massing and appearance of the proposed houses will have a greater impact on the rural character of the site than the existing agricultural building they replace thereby harming the rural character of the site and surrounding;
- This southern end of Brimington Common is not a suitable or sustainable location for development having few shop and facilities;
- There will be dangers to road safety as a result of more traffic coming out onto a hazardous stretch of lane;
- More pressure will be placed on already stretched schools, doctors, dentists and other facilities;
- It has not been demonstrated how the proposal will be genuinely self build; and
- One other important issue to consider is the effect of the development on local wildlife (bats, foxes, badgers, herons, pheasants, rabbits and wild birds).

6.3 ***Officer Response: See section 5.0 above and all material planning considerations set out.***

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 objector, 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 paragraph 38 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 proposals have been considered against the principles of policy EVR2 of the 2006 Local Plan; policies CS1 (Spatial Strategy), CS2 (Location of Development), CS3 (Presumption in favour of Sustainable Development), CS4 (Infrastructure Delivery), CS6 (Sustainable Design), CS7 (Management of the Water Cycle), CS8 (Environmental Quality), CS9 (Green Infrastructure and Biodiversity), CS18 (Design), CS19 (Historic Environment) and CS20 (Demand for Travel) of the Core Strategy. In addition consideration has been given to the wider National Planning Policy Framework (NPPF) and the Councils Supplementary Planning Document on Housing Layout and Design 'Successful Places'.
- 9.2 It is considered that although some conflicts have been identified with policy EVR2; the proposed development can be considered in broad compliance with policies CS1, CS2, CS3 and CS4 of the Core Strategy in so far as its connection to social, economic and environmental infrastructure and the key benefits of supporting the development are such that it meets the definitions of sustainable development and there is a presumption in favour of its approval.
- 9.3 The application submission is supported by the preparation of assessment and reports which illustrates the proposed developments ability to comply with the provisions of policies CS6, CS7, CS8, CS9, CS11, CS13, CS18, CS19 and CS20 of the Core Strategy and where necessary it is considered that any outstanding issues can be mitigated and addressed in any appropriate planning conditions being imposed.

10.0 **RECOMMENDATION**

- 10.1 That a CIL Liability notice be issued as per section 5.9 above.
- 10.2 That the application be **GRANTED** subject to the following conditions / notes:

Conditions

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

Reason - The condition is imposed in accordance with section 51 of the Planning and Compensation Act 2004.

02. All external dimensions and elevational treatments shall be as shown on the approved plans (listed below) with the exception of any approved non material amendment.

18.272.01 – Location Plan
18.272.02A – Existing Layout Plan
P12_A – Existing Elevations Sheet 1
P13_A – Existing Elevations Sheet 2
18.272.03A – Site Layout Plan
18.272.04A – Unit A Proposed Plans and Elevations
18.272.05A – Unit B Proposed Plans and Elevations
18.272.06A – Garages Timber
18.272.07A – Garages Stone
19.272.07 – Notional Streetscene
Design and Access Statement
Arboricultural Survey Report & Method Statement (John Booth)
Ecology Appraisal and Bat Survey (Baker Consultants)
Geo-Environmental Assessment – Phase 1 (Idom Merebrook)
Coal Mining Risk Assessment (Idom Merebrook)
Speed Survey and Topographical Survey for Visibility

Reason - In order to clarify the extent of the planning permission in the light of guidance set out in "Greater Flexibility for planning permissions" by CLG November 2009.

Drainage

03. The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason - In the interest of satisfactory and sustainable drainage.

04. 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 by the local planning authority. Furthermore, unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

Reason - To ensure that the development is appropriately drained and no surface water discharges take place until proper provision has been made for its disposal.

Environmental

05. A. Development shall not commence until details as specified in this condition have been submitted to the Local Planning Authority for consideration and those details, or any amendments to those details as may be required, have received the written approval of the Local Planning Authority.
- I. A desktop study/Phase 1 report documenting the previous land use history of the site.
 - II. A site investigation/Phase 2 report where the previous use of the site indicates contaminative use(s). The site investigation/Phase 2 report shall document the ground conditions of the site. The site investigation shall establish the full extent, depth and cross-section, nature and composition of the contamination. Ground gas, groundwater and chemical analysis, identified as being appropriate by the desktop study, shall be carried out in accordance with current guidance using UKAS accredited methods. All technical data must be submitted to the Local Planning Authority.
 - III. A detailed scheme of remedial works should the investigation reveal the presence of ground gas or other contamination. The scheme shall include a Remediation Method Statement and Risk Assessment Strategy to avoid any risk arising when the site is developed or occupied.
- B. If, during remediation works any contamination is identified that has not been considered in the Remediation Method Statement, then additional remediation proposals for this material shall be submitted to the Local Planning

Authority for written approval. Any approved proposals shall thereafter form part of the Remediation Method Statement.

C. The development hereby approved shall not be occupied until a written Validation Report (pursuant to A II and A III only) has been submitted to and approved in writing by the Local Planning Authority. A Validation Report is required to confirm that all remedial works have been completed and validated in accordance with the agreed Remediation Method Statement.

Reason - To protect the environment and ensure that the redeveloped site is reclaimed to an appropriate standard.

06. Demolition and construction work 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.

Reason - In the interests of residential amenities.

Ecology

07. No removal of trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority.

Reason – In the interests of biodiversity and to accord with policy CS9 of the Local Plan: Core Strategy 2011-2031 and the National Planning Policy Framework.

08. Prior to the commencement of development a detailed lighting strategy shall be submitted to and approved in writing by the LPA. Such approved measures must be implemented in full and maintained thereafter.

This is to ensure that a sensitive lighting is designed in line with guidance within Paragraph 125 of the NPPF.

Reason – To ensure that any ecological interest on site is appropriately addressed and can be mitigated against, prior to any development taking place, in accordance with policy CS9 and the wider NPPF.

09. Prior to the commencement of development a detailed enhancement strategy that provides details of enhancement measures for roosting bats and nesting birds shall be submitted to and approved in writing by the LPA. Such approved measures must be implemented in full and maintained thereafter.

Please note that it is expected that provision is made within the new dwellings (as integral boxes) rather than in retained trees to ensure that the roost and nest boxes cannot be tampered with and are secure in the long-term.

Reason – To ensure that any ecological interest on site is appropriately addressed and can be mitigated against, prior to any development taking place, in accordance with policy CS9 and the wider NPPF.

10. No works shall commence on site, including demolition or site clearance, until a copy of the Natural England Licence has been submitted to and acknowledged by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason - To safeguard the ecological interest of the site and to accord with policy CS9 of the Local Plan: Core Strategy.

11. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority.

Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.

- b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
 - c) Details of construction within the RPA or that may impact on the retained trees.
 - d) a full specification for the installation of boundary treatment works.
 - e) a full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
 - f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
 - g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
 - h) a specification for scaffolding and ground protection within tree protection zones.
 - i) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
 - j) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires
 - k) Boundary treatments within the RPA
- The development thereafter shall be implemented in strict accordance with the approved details.

Reason – In the interests of protecting the rooting environment of any retained and protected trees; maintaining their health and wellbeing in accordance with policy CS9 of the Core Strategy and wider NPPF; and to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality.

12. 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.

Reason - 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.

13. Notwithstanding the provision of the Town and Country Planning (General Permitted) Development Order 1995 (as amended) there shall be no extensions, outbuildings or garages constructed (other than garden sheds or greenhouses of a volume less than 10 cubic metre) or additional windows erected or installed at or in the dwelling hereby approved without the prior written agreement of the Local Planning Authority.

Reason - In the interests of the amenities of occupants of adjoining dwellings.

14. Within 2 months of commencement of development, unless otherwise agreed in writing by the Local Planning Authority, full details of hard and soft landscape works for the approved development shall be submitted to the Local Planning Authority for consideration. The hard landscaping scheme shall take account of any established root protection areas to retained trees on site and may require alternative measures of construction and finishes to be considered. Hard landscaping includes proposed finished land levels or contours; means of enclosure; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.) retained historic landscape features and proposals for restoration, where relevant. These works shall be carried out as approved prior to the occupation of the dwelling.

Reason - The condition is imposed in order to enhance the appearance of the development and in the interests of the area as a whole.

Highways

15. Before any other operations are commenced a new vehicular and pedestrian access shall be formed to Westmoor Road / Wetland Lanes in accordance with the revised drawing RBS-17/0888/001 and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centre line of the access for a distance of 90 metres in the critical direction and 105 metres in the non-critical direction. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1 metre in height (0.6 metre in the case of vegetation) above ground level.

Reason – In the interests of highway safety.

16. Before any other operations are commenced (with the exception of the condition above), space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason – In the interests of highway safety.

17. The premises the subject of the application shall not be occupied 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.

18. No part of the development shall be occupied until details of arrangements for storage of bins and collection of waste have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the agreed details and the facilities retained for the designated purposes at all times thereafter.

Reason – In the interests of highway safety.

19. A residential charging point shall be provided for the additional dwelling with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. The socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be approved in writing, by the local planning authority. The electric vehicle charging points shall be provided in accordance with the stated criteria prior to occupation and shall be maintained for the life of the approved development.

Reason - In the interests of reducing emissions in line with policies CS20 and CS8 of the Core Strategy.

Notes

01. If work is carried out other than in complete accordance with the approved plans, the whole development may be rendered unauthorised, as it will not have the benefit of the original planning permission. Any proposed amendments to that which is approved will require the submission of a further application.
02. This approval contains condition/s which make requirements prior to development commencing. Failure to comply with such conditions will render the development unauthorised in its entirety, liable to enforcement action and will require the submission of a further application for planning permission in full.

Coal Authority

03. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards.

If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Highways

04. Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and / or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council for Highway, Developer and Street Works. Works that involve road closures and / or are for a duration of more than 11 days require a three months notice. Developer's Works will generally require a three months notice. Developers and Utilities (for associated services) should prepare programmes for all works that are required for the development by all parties such that these can be approved through the coordination, noticing and licensing processes. This will require utilities and developers to work to agreed programmes and booked slots for each part of the works. Developers considering all scales of development are advised to enter into dialogue with Derbyshire County Council's Highway Noticing Section at the earliest stage possible and this includes prior to final planning consents.
05. The Highway Authority recommends that the first 6m of the proposed access driveway(s) 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 landowner.
06. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back

edge of the highway, discharging to a drain or soakaway within the site.

07. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Strategic Director of Economy Transport and Community at County Hall, Matlock (tel: 01629 538658). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

Drainage

08. Attention is drawn to the attached notes on the Council's 'Minimum Standards for Drainage'.