| Case Officer: | Rob Forrester | File No: |
|---------------|----------------------------|----------|
| Tel. No: | (01246) 345580 | Plot No: |
| Ctte Date: | 10 th June 2019 | |

File No: CHE/19/00096/REM1 Plot No: 2/0024

<u>ITEM 8</u>

Variation of condition 2 of CHE/17/00586/FUL (Erection of a two storey dwelling) to allow the use of larger (40ft) shipping containers instead of previously approved 30ft shipping containers - revised plans received 16/5/2019 – Land adjacent to 12 Cavendish Street North, Old Whittington, Chesterfield. S41 9DH

Local Plan: Unallocated Ward: Old Whittington

1.0 CONSULTATIONS

| Local Highways Authority | Comments awaited |
|--------------------------|----------------------------|
| Ward Members | No comments received |
| Site Notice / Neighbours | 8 representations received |

2.0 **<u>THE SITE</u>**

- 2.1 The site the subject of the application comprises a narrow parcel of land between No.s 12 and 14 Cavendish Street North within the residential area to the western side of Old Whittington, a short distance from the B6052 (Whittington Hill).
- 2.2 The site is on the eastern side of Cavendish Street North, close to its junction with Broomhill Road.
- 2.3 It is sited within a residential area and already has planning permission for the erection of a 2-storey container dwelling of 3 bedroomed proportions with an integral garage.
- 2.4 Cavendish Street North has a steep gradient at this point, sloping up the hill to Broomhill Road and is shown on the photographs below.
- 2.5 To the south of the site, No 12 Cavendish Street North has been recently re-furbished and planning permission has also been granted for 2 new dwellings between No.s 10 and 12.

Photo showing the 'plot' between No.s 12 and 14 Cavendish Street North



Photo to show partially completed dwelling



Photo of the rear, with No 14 Cavendish Street North to the right



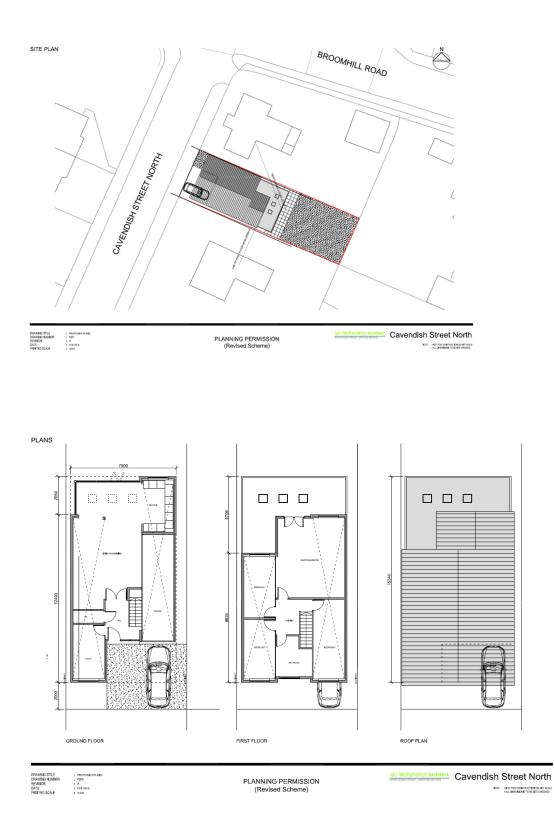
- 2.6 The surrounding land is in residential use with the immediate surroundings being of detached, semi-detached and terraced housing, some having no off-road parking.
- 2.7 The approved dwelling utilises an innovative use of stacked shipping containers (6 in total, 3 on each floor) to create the inner load bearing walls of the dwelling and the floors, and the dwelling would then be clad in conventional masonry and roof construction for the outer-skin.
- 2.8 Construction work commenced on site but has now ceased as it was discovered that the dwelling was not being built in accordance with the approved plans (utilising 40 foot long containers instead of the approved 30 foot units) and that some pre-commencement conditions remained outstanding.

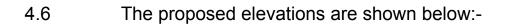
3.0 **RELEVANT SITE HISTORY**

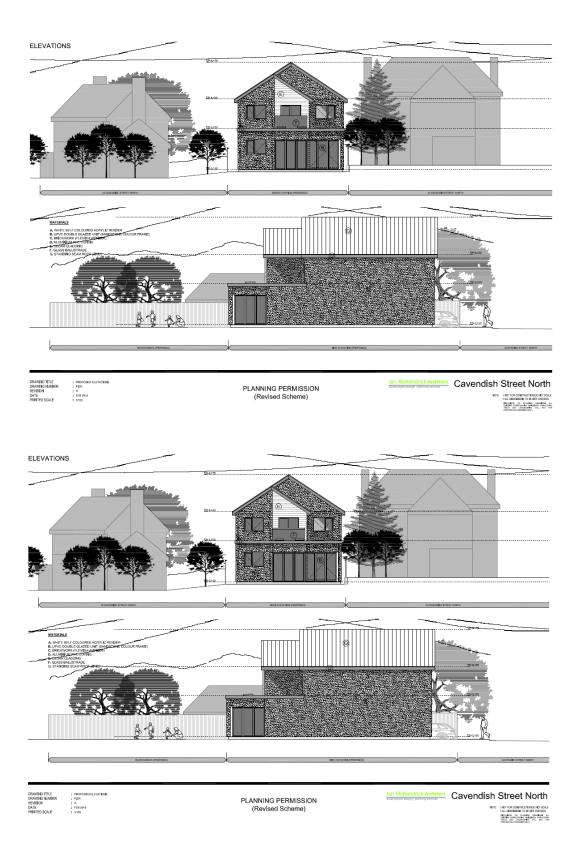
3.1 The only relevant Planning History is the previous permission for the erection of a dwelling - CHE/17/00586/FUL - Approved 06.12.2017. 3.2 An application for the discharge of conditions in relation to the above has been made - CHE/18/00732/DOC – currently remains un-determined.

4.0 **THE PROPOSAL**

- 4.1 The application is made under Section 73 of the Town and Country Planning Act 1990 (As Amended) for the variation of condition 2 of permission CHE/17/00586/FUL (which lists the 'approved plans') to allow a change of the approved plans list, to facilitate the changes carried out.
- 4.2 The application is therefore a retrospective one to retain the dwelling in its 'as built' form, the key change being the additional 10 feet (approx. 3m) in length arising from the use of the longer containers as the basis of the dwelling.
- 4.3 Due to officer concerns in relation to the impact of the development, particularly at first floor level on the amenities enjoyed by the neighbouring property at No 14, amended plans have been received that propose the reduction in length (back to the approved size of 30 feet) of the upper first floor container that is situated on the boundary with no 14.
- 4.5 The Site Layout and floor plans as now proposed are shown below:-







4.7 The application submission is accompanied by a statement which states:-

- As you know my client has been granted planning permission for the construction of a dwelling using shipping containers as the internal structural base.
- This method construction uses shipping containers which are then faced up in traditional building materials.
- The original container in its recognisable form (corrugated steel) will not be visible once the project is completed.
- In undertaking this method of construction, my client was intending to obtain 30ft containers in accordance with the original planning permission (CHE/17/00586/FUL), however these were not available and instead 40ft containers are presently on site.
- In order to reduce these to 30ft, several weeks of work are required to cut these back on site therefore given the fact that the containers are in place already my client wishes to seek an amendment to the existing scheme under a section 73 submission.
- The containers are already on site and it is our opinion that the addition 10ft in length does not cause an overbearing impact on neighbouring properties. The facing materials and design will not change as this is purely an issue relating to the structure behind.

5.0 **CONSIDERATIONS**

5.1 Planning Policy Background

- 5.1.1 The site is situated within Old Whittington ward in an area which is unallocated in the Local Plan and is predominantly residential in nature.
- 5.1.2 Having regard to the nature of the application proposals 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), CS10 (Flexibility in delivery of Housing), CS18 (Design) and CS20 (Demand for Travel) of the Core Strategy and the wider National Planning Policy Framework (NPPF) apply. In addition the Councils Supplementary Planning Document on Housing Layout and Design 'Successful Places' is also a material consideration.

5.2 **Principle of Development**

Local Plan Spatial Strategy

- 5.2.1 The principle of development was established by the earlier permission (which concluded that the development was sustainable) and in considering a Section 73 submission, the Planning Act only allows the Local Planning Authority to consider the issue of the condition. It cannot re-open the principle of the development, although a Section 73 application does result in the requirement to issue a new planning permission.
- 5.2.2 The sole issue in relation to this application is therefore to consider the implications of the condition variation i.e. whether the extended length of the dwelling is acceptable in visual terms and whether it would unduly impact on the amenities enjoyed by the neighbours.
- 5.2.3 As the principle of development of the site, and highway safety have already been determined, the main policy considerations relating to the above matters are Core Strategy policies CS2, CS6 (Sustainable Design and Construction), CS18 (Design) and in particular, CS18 (k) have an acceptable impact on the amenity of users and neighbours.
- 5.2.4 These policies are viewed to be in date and relevant to the proposal and are discussed in detail below.

5.3 **Design and Appearance**

- 5.3.1 In respect of design and appearance, the proposal provides as previously approved, a 3-bedroomed family house of 2-storey proportions, the change being an increase in length, with the development projecting further back in to the site.
- 5.3.2 The fact that the dwelling has as its base, 6 shipping containers, with 3 containers sitting side-by-side across the site and stacked 2 high, is somewhat a distraction, as they would not be visible once the dwelling is completed. The dwelling will be clad in a conventional manner on the outside, with a render and cedarboarding finish.

- 5.3.3 The dwelling would have a contemporary, but not unattractive appearance, and the only appreciable change from the approved plan is that the 'new' element at the rear, would be only 2 containers wide and as a result, the roof has a lesser span and thus the ridge is lower at the rear.
- 5.3.4 The appearance from the front would be unchanged and apart from the 'step' in the ridgeline, the side elevation would be unchanged apart from the additional length.
- 5.3.5 The revised appearance in the street scene is considered to be acceptable and would not appear out of place given the numerous building styles in the immediate area.
- 5.3.6 There are no design matters related to the application which would materially affect crime, disorder or policing,
- 5.3.7 It is considered that the siting, design and scale of the development proposals are acceptable having regard to the provisions of policies CS2, and CS18 of the Core Strategy.

5.4 Highways Issues

- 5.4.1 The use of the access and level of parking has been agreed by virtue of the extant permission, and the proposal raises no additional issues in relation to access/parking or highway safety and the development provides adequate visibility splays at the access.
- 5.4.2 On this basis, and having regard to the other matters considered above, the development proposals are considered to be acceptable in terms of Highway Safety and accord with the provisions of policies CS2, CS18 and CS20 of the Core Strategy in respect of highway safety matters.

5.5 Flood Risk & Drainage

5.5.1 In respect of matters of drainage and potential flood risk, the site does not fall within a flood-risk zone, and the run-off from the site during rainy conditions can be controlled, and the proposal will not impact on drainage or off-site flooding.

5.5.2 Drainage was previously controlled by condition requiring submission of details, and the development complies with the provisions of policies CS2 and CS7 of the Core Strategy.

5.6 Land Condition/Noise (Inc. Neighbouring Impact / Amenity)

- 5.6.1 The site benefits from a previous permission that concluded that the site was appropriate to develop in terms of contamination, mining and ground conditions and noise impact and disturbance for the neighbours. The Council's Environmental Health Officer (EHO) previously raised no objection subject to a working-hours condition for the construction.
- 5.6.2 In terms of amenity of the neighbours, the sole issue is whether the additional 10ft length of the building would adversely affect the amenity of the neighbours at the rear, or to the side (No 14 Cavendish Street North) by virtue of a loss of light, outlook or privacy.
- 5.6.3 The proposed dwelling, even with the additional 10ft (3m approx.) at the rear is still some 12-13m from the rear boundary, and the nearest neighbour is a further 16m away from the boundary and at 28m between dwellings, no loss of privacy would result for the neighbours at the rear, to the extent that planning permission could be resisted.
- 5.6.4 The key concern was the impact that the proposed additional 3m at the rear would have on the occupants of No 14 Cavendish Street North to the north of the proposed dwelling, as that dwelling has windows on their rear elevation that could be compromised by the proposal.
- 5.6.5 It is considered that the scheme as originally approved, due to the proximity to the boundary, and the projection in relation to the neighbour at No 14, represented the absolute maximum size that was tolerable.
- 5.6.6 The proposed dwelling is at a considerably lower level than the existing dwelling at No 14, and the increased length as proposed would not have an impact at ground floor level, and indeed, that neighbour has confirmed that their sole concerns in relation to the development currently under construction, is the increased projection at first floor level.

- 5.6.7 The development as built is considered to have both an oppressive impact on the neighbours amenity at No 14, as well as falling within the 45 degree angle as noted in the BRE Digest on the loss of sunlight/daylight, to the extent that permission ought to be refused.
- 5.6.8 The amended plans have revised the proposal leaving the ground floor projection as a flat roof element (that would not impact on the neighbour) and in relation to the first floor, has returned the proposal to that originally approved in respect of the shipping container (and hence the finished development) that adjoins the neighbour at No 14. The existing container is to be cut back to achieve this.
- 5.6.9 The changes will ensure that the projection of the dwelling that is close to the boundary is now no longer than that originally approved, although the remaining 2 containers, that are further from the boundary, would remain at their greater length, however due to their position in relation to the neighbours window, they would not cause any appreciable loss of light or be oppressive, to the extent that permission could be withheld.
- 5.6.10 The amended plans would result in the extended rear element falling outside the zone of influence (as noted in the BRE guidance) and as a result, the position and revised design of the dwelling is such that no unacceptable impact on the amenities of the neighbours arising from a loss of light or privacy, nor would the proposal be unduly oppressive.
- 5.6.11 No objections have been received to date in relation to reconsultation on the amended plans (expires 03/06/2019) and the proposal would not harm the amenities of nearby residents, and the development complies with the provisions of policies CS2 and CS8 of the Core Strategy.

5.7 Other Considerations

5.7.1 The only other issue relates to the outstanding conditions (levels, landscaping and drainage), although this is being addressed by the applicant, and it is considered that the revised details will be acceptable and will provide appropriate replacement wildlife habitat/retention of trees.

- 5.7.2 Subject to the imposition of similar conditions as the previous approval, it is not considered that any ecology or wildlife be harmed by the proposal which therefore complies with the provisions of policies CS2 and CS9 of the Core Strategy.
- 5.8 <u>Community Infrastructure Levy (C.I.L)</u>
- 5.8.1 Having regard to the nature of the development proposal comprises the creation of new dwellings and the development is therefore CIL Liable, although as the scheme relates to a self-build proposal, it might be exempt C.I.L.
- 5.8.2 The site the subject of the application lies within the medium CIL zone and therefore the CIL Liability will be calculated (using calculations of gross internal floor space as follows):

| | | Α | В | С | 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 |
| 31.5 addition | 0 | 32 | £50 (Medium Zone) | 317 | 288 | £2751.73 |

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).

6.0 **REPRESENTATIONS**

- 6.1 The application has been publicised by means of neighbour letters (original publicity period expired 28 March 2019 revised publicity expires 03 June 2019).
- 6.2 As a result of the applications publicity, 8 letters of objection have been received from 3 nearby residents (addresses not given) and the occupants of No 14 making the following points:-

- The builder is not sticking to the plans, and Council has not kept us informed and 40ft instead of 30ft containers have been erected – I hope you are going to make him take it down.
- We have objected before as the house is too big and the balcony will look straight in to our bathroom and patio giving us no privacy at all.
- The application is on the basis that 30ft containers couldn't be sourced, however they are over-egging this issue as a simple internet search reveals numerous 30 ft containers for sale an firms readily amend them to size.
- The containers are relatively easy to amend in a few hours with basic tools.
- We disagree with the architect that the extra length causes no amenity issues it does, as the roof will be both higher and project further.
- The previous Committee considered that the use of 40ft containers were too big and they were reduced to 30ft for the permission.
- If the larger containers were unacceptable before, then nothing has changed other than the applicant has used the wrong size of container.
- Photos are attached that show how oppressive and how much light will be lost by the extended containers, although I have no objection to the use of 40ft containers at ground floor level.
- The use of the larger containers causes a loss of light to or windows and as the building is no longer flush with the rear of our property, it is an unacceptable intrusion it was previously considered critical that the dwelling be no larger than the approval.
- I will now have to use blinds at the rear of my dwelling to get any privacy because the roofs so high and it is highly visible from my rear garden.
- The use of containers may be an innovative idea, but only in the right place and the green gardens of Old Whittington is not the place if this is passed, others are likely to copy as it is clearly cheaper than bricks and mortar.
- The applicant has flouted the rules and needs stopping in his tracks.
- The materials used in the construction is irrelevant if the building is too large and it is too large a footprint and dominates the surroundings, making a massive statement and it spoils the view on all levels.

- Residents along the road were not consulted and the impact of this development should have been more widely known for transparency.
- The parking is inadequate and the builder uses half the road as his own parking it should have been considered cumulatively with the other development at No 12 (2 houses).
- There has been building work going on for over a year and we have had to endure rubbish, fires, lack of parking and we are concerned that health and safety regulations are not being adhered to.
- Industrial containers are not an appropriate material for domestic housing.

6.3 The above comments are responded to in the main part of the report above. The application has to be considered on its individual planning merits. The fact that the works have commenced is a risk for the developer but is not against any rule or regulation since retrospective application can be submitted. All residents sharing a common boundary with the site were sent letters regarding the proposal and a site notice was posted on the frontage of the site.

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 noted above.
- 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.

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 Following changes to the size and rear projection of the proposal as a result of neighbour's amenity concerns, and given that the proposed development does not conflict with the NPPF or with 'upto-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 objectors will be notified of the Committee date and invited to speak, and this report informing them of the application considerations and recommendation /conclusion is available on the web-site.

9.0 CONCLUSION

- 9.1 The proposed development is considered to be an appropriate use of this infill site, which already has the benefit of permission, and the development has been sited, detailed and re-designed such that the development proposals comply with the provisions of policies CS1, CS2, CS8, CS9, CS18, and CS20 of the Chesterfield Local Plan: Core Strategy 2011 2031.
- 9.2 Planning conditions have been recommended to address any outstanding matters and ensure compliance with policies CS2, CS8, CS9, CS18 and CS20 of the Chesterfield Local Plan: Core Strategy 2011 2031 and therefore the application proposals are considered to be sustainable and acceptable.

10.0 **RECOMMENDATION**

10.1 It is therefore recommended that the application be GRANTED subject to the following conditions:

CONDITIONS

01. The development hereby approved shall be constructed in complete accordance with the approved plans as listed below. All external dimensions and elevational treatments shall be as shown on the approved plans with the exception of any approved non material amendment:-

Drawing No P201 Rev A - Proposed Site Plan; Drawing No P202 Rev A - Proposed Floor Plans; Drawing No P203 Rev A - Proposed Elevations, and Drawing No P204 Rev A - Proposed Elevations.

- 02. Within 3 months of the date of this permission, details of the proposed means of disposal of foul and surface water drainage, including details of any balancing works and off-site works, shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage scheme shall be implemented in its entirety, prior to the occupation of the dwelling.
- 03. There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and the dwelling shall be occupied prior to completion of the approved foul drainage works.
- 04. 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.
- 05. Work shall only be carried out on site between 8:00am and 6:00pm in any one day on 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.
- 06. Notwithstanding the provision of the Town and Country Planning (General Permitted Development)(England) Order 2015 (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 permission of the Local Planning Authority.

- 07. No development shall take place until full details of both hard and soft landscape works, bin storage and boundary treatments have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved.
- 08. Before any other operations are commenced a new vehicular and pedestrian access shall be formed to Cavendish Street North and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 43 metres in both directions measured along the nearside carriageway edge in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 09. The access, the subject of Condition 8 above, shall not be brought into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided to the north, and 2m to the limit of the site frontage to the south of the access at the back of the footway, the splay areas being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.
- 10. The proposed dwelling shall not be occupied until space has been laid out within the site curtilage for cars to be parked in accordance with a scheme to be submitted to and approved in writing the Local Planning Authority within 3 months of the date of this permission. Thereafter the spaces shall be maintained free from any impediment to their designated use for the life of the development.
- 11. There shall be no gates or other barriers on the access/driveway

Reasons for Conditions (If applicable)

01. 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.

- 02. To ensure that the development can be properly drained and In the interest of satisfactory and sustainable drainage.
- 03. To ensure that no foul or surface water discharges take place until proper provision has been made for their disposal.
- 04. 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.
- 05. In the interests of residential amenities.
- 06. In the interests of the amenities of occupants of adjoining dwellings.
- 07. The condition is imposed in order to enhance the appearance of the development and in the interests of the area as a whole.
- 08. In the interests of highway safety and parking
- 09. In the interests of highway safety and parking
- 10. In the interests of highway safety and parking
- 11. In the interests of highway safety and parking

<u>Notes</u>

- 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. The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

- 03. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Environment at County Hall, Matlock regarding access works within the highway. Information and relevant application forms regarding the undertaking of access works within highway limits is available via the County Council's websitehttp://www.derbyshire.gov.uk/transport_roads/roads_traffic/develop ment_control/vehicular_access/default.asp E-mail highways.hub@derbyshire.gov.uk or Telephone Call Derbyshire on 01629 533190
- 04. The Highway Authority recommends that the first 5m of the proposed access/driveway should not be surfaced with a loose material (i.e. unbound chipping or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.
- 05. Pursuant to Sections 149 and 151 of the Highways Act 1980, steps shall be taken to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- 06. Any new drainage for the proposed building and any amendments to the existing building drainage may require Building Control approval. The applicant will need to contact Yorkshire Water for any additional connections to the public sewer.