

**ITEM 5****PARTIAL DEMOLITION OF THE EXISTING BUILDINGS AND EXTENSION/ALTERATIONS FOR THE CREATION OF 3 SHOP UNITS AND 6 ONE BEDROOM APARTMENTS AT FIRST AND SECOND FLOOR (REVISED PLANS SUBMITTED 26.10.2022) AT 38 HIGH STREET OLD WHITTINGTON CHESTERFIELD DERBYSHIRE S41 9JT FOR NJGC DEVELOPMENTS LTD.****1.0 CONSULTATIONS**

Ward Members	No representations received
Strategic Planning	In principle the proposed development in this location is acceptable. The proposal accords with Policy CLP1 which seeks to concentrate new development to within walking distance of a range of Key Services and regeneration areas. The proposal would also accord with criteria a-h of CLP2 owing to the proposal's compliance with the spatial strategy, utilisation of previously developed land and accessibility to active transit routes / public transport. The ground floor town centre uses and additional floorspace would comply with Policy CLP8 and CLP9. Restrictions on scope of uses within the E Class may be necessary to protect the amenity of the occupants of the residential units. Further consideration is required with regards to policies CLP13, CLP14, CLP16, CLP20 and CLP22
Environmental Health	No objections, condition recommended covering hours of construction and electric vehicle charging
Design Services Drainage	The site is not shown to be at risk of flooding, according to the Environment Agency Flood Maps. The site should be developed using separate systems for surface water and foul drainage. Both combined and surface water public sewers are shown to cross through the rear of the proposed site. Yorkshire Water must be consulted prior to full approval as to their exact location, as a Building Over Agreement or an

easement may be required. Any new connections to the public sewerage network will also require prior approval from Yorkshire Water. Any amendments to existing drainage may require prior consent from Building Control.

Yorkshire Water	No objection, conditions recommended covering separate foul/surface water drainage and details of surface water drainage to be agreed
The Coal Authority	No objection subject to pre-commencement condition requiring intrusive site investigation and submission of signed statement from suitably competent person prior to occupation
Derbyshire Wildlife Trust	Objection raised initially due to lack of a preliminary bat roost assessment. An assessment was submitted which indicated low potential for roosting bats. The DWT requested one nocturnal survey be undertaken prior to determination. A survey was undertaken and submitted in June 2023 and no bats were found to emerge from the property during the survey. The DWT confirmed that sufficient information had been submitted to enable the LPA to reach an informed decision and to discharge its duty in respect of protected species. Condition recommended covering biodiversity enhancements.
Local Highways Authority	No objections raised, comments made with respect to the size of the parking spaces and noting the location of the site in a sustainable location with extension on street parking restrictions on adjacent streets therefore an objection on the grounds of insufficient on site parking alone would be different to sustain. Conditions recommended covering widening the access, provision of parking spaces prior to occupation, bin storage and an informative note.
CIL Officer	No comments received
Conservation Officer	Site is not listed or within conservation area although is in close proximity to conservation area boundary and listed buildings. Proposal will have

a negligible impact on setting of heritage assets. The Victorian terrace is typical of type and individual properties subject to modern alterations although some elements of traditional shopfront design has been retained. The proposal will alter character of terrace as a whole these changes should be assessed in terms of design quality and policy CLP20.

Urban Design Officer Detailed comments provided – revised plans submitted by applicant

Representations 3 letters of representation received – see report for summary

## 2.0 THE SITE

2.1 The application site is located at the end of a terrace row fronting High Street adjacent to the junction with Station Lane. The building is within the defined Old Whittington local centre with a mix of retail/commercial premises on the High Street. The surrounding streetscene is varied in character with a range of residential and commercial premises.



Extract of submitted location plan ©



Aerial photo of site taken from google maps ©

2.2 The building currently comprises of two retail units at ground floor with a residential unit located centrally between the two and providing access to the first and second floor apartments. The residential accommodation across the building extends to 3 apartments in total. A car parking and service area is located to the rear of the building and accessed from Station Lane.



Terrace row fronting High Street and forming local centre



Side and rear elevations of application site

2.3

Old Whittington Conservation area is to the north of the site. Within the conservation area there are a number of listed buildings including Revolution House (Grade II\*), War memorial (Grade II) and The Old Mansion House (Grade II)



- 2.4 Consent was refused in 2021 for a larger scale scheme comprising of the complete demolition of the existing buildings, erection of contemporary building with 3 shop units and 11 one bedroom apartments (see site history below).

### 3.0 **SITE HISTORY**

- 3.1 CHE/21/00039/FUL - Demolition of the existing buildings and erection of 3 shop units with 11 one bedroom apartments above. Revised plan received 8 3 2021 – **REFUSED (07.05.2021)**

#### Reasons for refusal

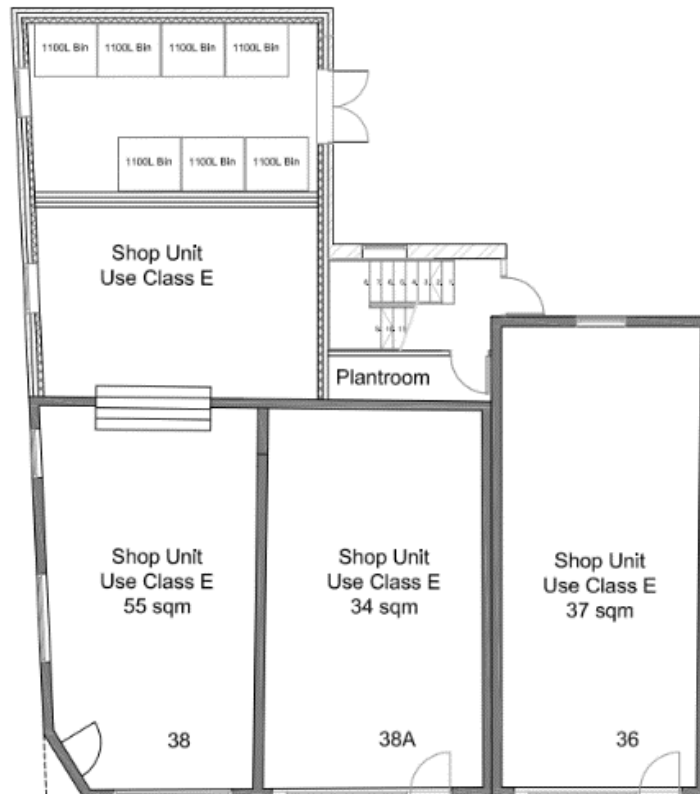
- 1. The demolition of the traditional unit at the end of the terraced row and its replacement with a contemporary flat roofed four storey building will result in a highly incongruous building which will dominate the terraced row and the surrounding area to the detriment of the character of the street scene, the setting of the conservation area and the setting of the listed buildings, in particular the Grade II\* Revolution House. This amounts to less than substantial harm to the setting of these heritage assets. The public benefits arising from the proposal do not amount to a public benefit that outweigh the harm identified in this case. The proposal fails to be acceptable in terms of policies CLP21 and CLP20 of the Local Plan and Part 16 of the NPPF.*
- 2. The small size of some of the residential units proposed being below the national space standards, the external steel stair access to the upper floor flats and minimal amount of communal amenity space; overall result in a poor level of accommodation for future occupants contrary to the requirements of Policy CLP14 of the Local Plan and paragraph 127 f) of the NPPF and the Council's Adopted Residential SPD.*
- 3. The application has failed to adequately address the potential impact on protected species and has failed to demonstrate a*

*biodiversity net gain. The proposal is therefore contrary to Policy CLP16 and paragraph 170 d) of the NPPF.*

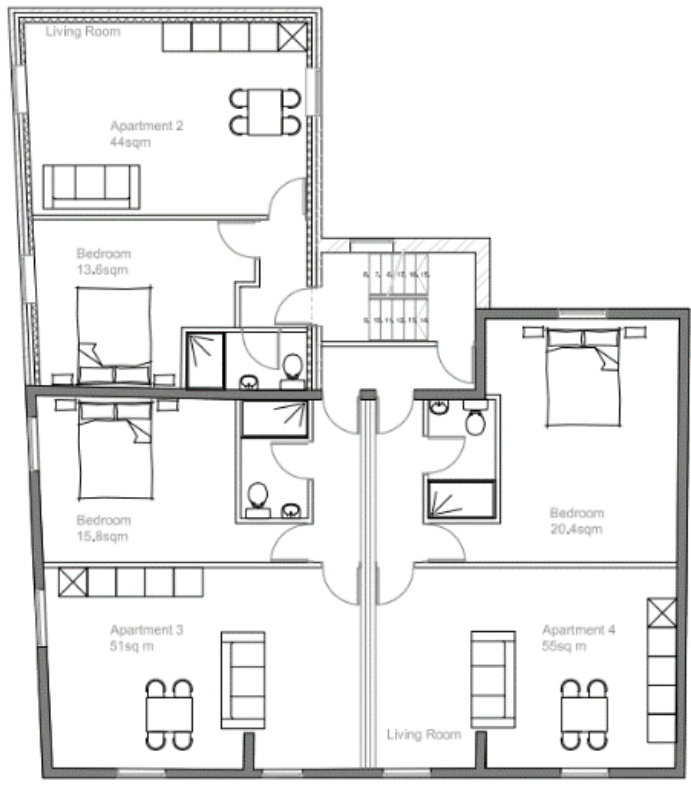
#### 4.0 **THE PROPOSAL**

4.1 The proposal now comprises of 6 one bedroom apartments and 3 class E units at ground floor. The existing building will be retained with the roof and eaves raised to create more internal floorspace and a new 2.5 storey addition to the rear of the building and new dormer windows to the front and rear.

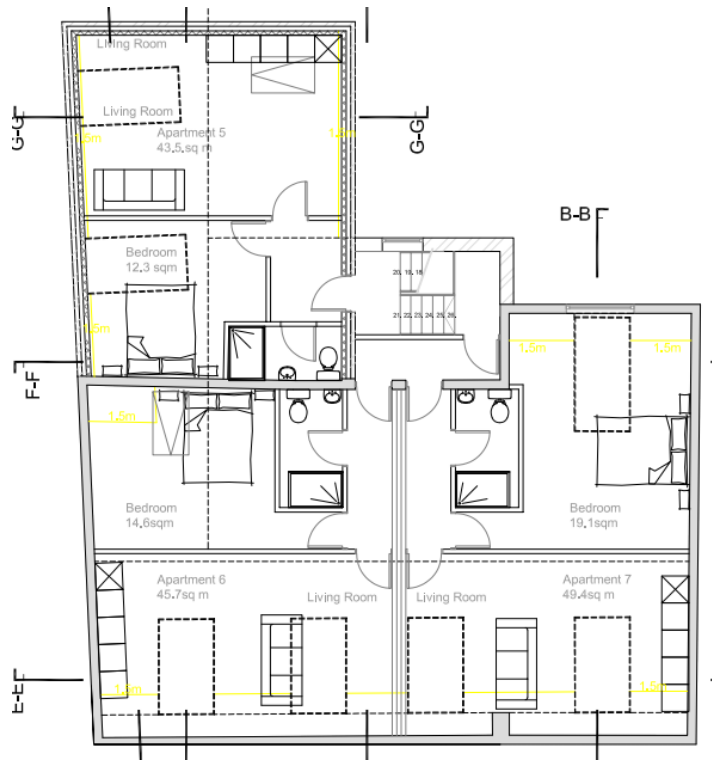
4.2 The scheme has been revised during the application process to address concerns raised by the Local Planning Authority. The original submission proposed seven flats, including one apartment at ground floor to the rear of the retail unit on the corner. Concerns were raised by the Local Planning Authority regarding this element of the scheme and the apartment was removed, creating a larger retail floorspace at ground floor and providing a space to safely store residential and commercial waste bins. The scheme will also include off-street parking for 5 vehicles, with a cycle shelter and small area of outdoor amenity space. The internal floorspace of the flats ranges from approximately 43.5sqm to 55sqm, each unit is served by an open plan living/kitchen space and one bedroom with separate bathroom.



Proposed Ground floor plan ©



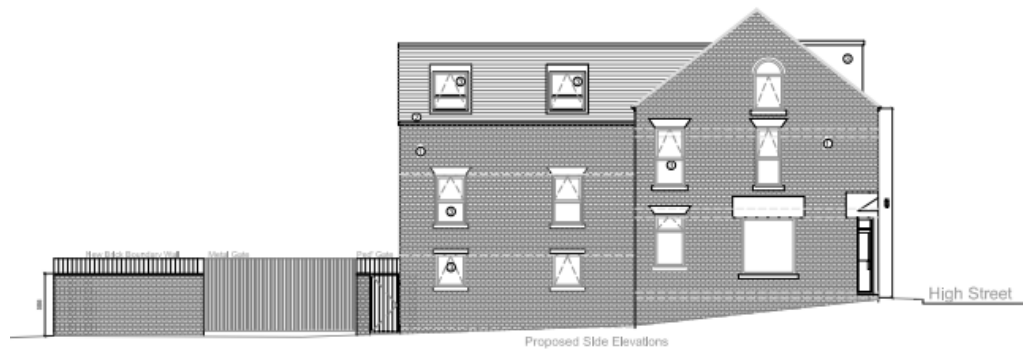
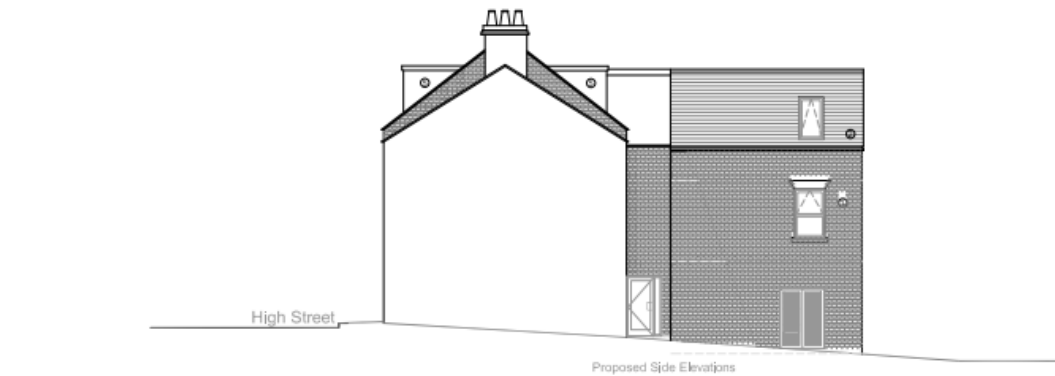
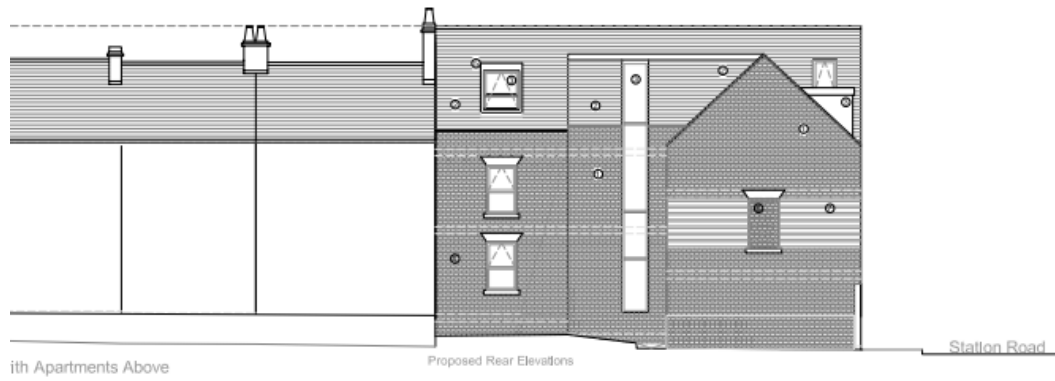
Proposed First floor plan ©



Proposed Second floor plan ©







Proposed Elevations ©

## 5.0 **CONSIDERATIONS**

### 5.1 **Planning Policy**

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that, 'applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. The relevant Development Plan for the area comprises of the Chesterfield Borough Local Plan 2018 – 2035.

5.1.2 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that; In considering whether to grant planning permission for development which affects a listed building or its

setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

- 5.1.3 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that; In the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

## **5.2 Chesterfield Borough Local Plan 2018 – 2035**

- CLP1 Spatial Strategy (Strategic Policy)
- CLP2 Principles for Location of Development
- CLP3 Flexibility in Delivery of Housing
- CLP8 Vitality and Viability of centres
- CLP9 Retail
- CLP13 Managing the water cycle
- CLP14 A Healthy Environment
- CLP15 Green Infrastructure
- CLP16 Biodiversity, Geodiversity and the Ecological Network
- CLP20 Design
- CLP21 Historic Environment
- CLP22 Influencing the Demand for Travel

## **5.3 Other Relevant Policy and Documents**

- National Planning Policy Framework (NPPF) 2021
  - 5. Delivering a sufficient supply of homes
  - 8. Promoting healthy and safe communities
  - 9. Promoting sustainable transport
  - 12. Achieving well-designed places
  - 15. Conserving and enhancing the natural Environment
  - 16. Conserving and enhancing the historic Environment
- ‘Successful Places’ Supplementary Planning Document

## **5.4 Principle of Development**

### **Relevant Policies**

- 5.4.1 The application site is located within the designated local centre of Old Whittington therefore policies CLP1, CLP2 and CLP8 are of relevance to the consideration of the principle of development.

- 5.4.2 Policy CLP1 states that *'The overall approach to growth will be to concentrate new development within walking distance of a range of Key Services as set out in policy CLP2, and to focus on areas that need regenerating, including the 'place shaping' areas set out in policies SS1 to SS6 and Regeneration Priority Areas.'*
- 5.4.3 Policy CLP2 states that when *'Planning applications for developments that are not allocated the Local Plan, will be supported according to the extent to which the proposals meet the following requirements which are set out in order of priority:*
- a) deliver the council's Spatial Strategy (policy CLP1);*
  - b) are on previously developed land that is not of high environmental value;*
  - c) deliver wider regeneration and sustainability benefits to the area;*
  - d) maximise opportunities through their location for walking access to a range of key services via safe, lit, convenient walking routes;*
  - e) maximise opportunities through their location for cycling and the use of public transport to access a range of key services;*
  - f) utilise existing capacity in social infrastructure (Policy CLP10) or are of sufficient scale to provide additional capacity, either on site or through contributions to off-site improvements;*
  - g) ensure the long term protection of safeguarded Minerals Related Infrastructure as identified in the Derbyshire and Derby Minerals Local Plan and shown on the Policies Map;*
  - h) are not on the best and most versatile agricultural land;'*
- 5.4.4 Policy CLP8 states *'The council will support the role of the town, district, local service centres and local centres in providing shops and local services in safe, accessible and sustainable locations. New development within centres shown on the Policies Map should make a positive contribution to the centre's viability and vitality, and be of an appropriate scale' and 'Residential uses (C3) will be permitted at first floor level and above (with the exception of suitable provision for access) and on appropriate redevelopment sites where it would not undermine the vitality of the centre.'*

### **Considerations**

- 5.4.5 The application site positioned with the built up area of Old Whittington in the existing local centre. The proposal therefore accords with Policy CLP1 which seeks to concentrate new development to within walking distance of a range of facilities and services. The site is proximity to public transport links and the facilities within and around the local centre, including a pharmacy and a convenience store with post office, primary and secondary school and medical centre.

- 5.4.6 The proposal would also accord with criteria a-h of Local Plan policy CLP2 owing to the proposal's compliance with the spatial strategy, utilisation of previously developed land and accessibility to active transit routes and public transport.
- 5.4.7 The application seeks to retain the existing two retail units (class E) at ground floor and creating a third unit. The scheme therefore complies with the requires of Local Plan policy CLP8 contributing the viability and vitality of the local centre with residential use above. In addition local plan policy CLP9 seeks to focus new retail/commercial/business uses within centres therefore the creation of additional commercial E class floor space is acceptable.
- 5.4.8 The principle of development is therefore considered to be acceptable in accordance with Local Plan policies CLP1, CLP2, CLP8 and CLP9.

## **5.5 Design the Proposal and Heritage Impact**

### **Relevant Policies**

- 5.5.1 Local Plan policy CLP20 states *'all development should identify and respond positively to the character of the site and surroundings and respect the local distinctiveness of its context respect the character, form and setting of the site and surrounding area by virtue of its function, appearance and architectural style, landscaping, scale, massing, detailing, height and materials.'*
- 5.5.2 Local Plan Policy CLP21 sets out that in assessing the impact of a proposed development on the significance of a designated heritage asset, the council will give great weight to the conservation of designated heritage assets and their setting and seek to enhance them wherever possible. This is in line with Part 16 of the NPPF where it states: When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be) (Para 193). Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (para 194). Paragraph 196 goes on to note that; where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use

## Considerations

- 5.5.3 The application proposes the alteration and extension to the existing building comprising of a 2.5 storey extension to the rear, raising the existing roof and eaves height and the introduction of dormer windows.
- 5.5.4 The application site sits in a prominent corner position being the end of a row of Victorian/Edwardian range of buildings with typical sized window openings and traditional corner shop detailing and forms a strong character to this part of High Street. The building and row within which it sits is crucial to understanding of the evolution of the area as associated with the adjacent listed buildings, conservation area and the 20th century housing estate.
- 5.5.5 The application site is within the setting of a number of listed buildings, specifically Revolution House which is a Grade II\* listed building. These listed buildings are located within the Conservation Area, the boundary of which is located to the north of the site on the opposite side of North Street. There is a clear line of sight between Revolution House and the application site, where the impact on setting needs to be considered.
- 5.5.6 The host building is located at the end of a terrace row which form the local centre. At the opposite end of the row is No 20/22 High Street currently occupied by a convenience store 'One Stop'. The row is characterised by a staggered roof form with the elevated ridge and eaves at the opposite end of the row at No 20/22.





Existing streetscene – terrace row facing north east and south west



Proposed Streetscene ©

- 5.5.7 The revised scheme has been designed to reflect the height and scale of the building at the opposite end of the row, creating ‘bookends’ to visually terminate the terrace. The scheme will raise the eaves and ridge height of the building therefore careful consideration on the facing brick will be necessary and should be controlled by condition. All remaining materials need to reflect the site context and setting of listed buildings to the north, in particular the Grade II\* Revolution House. It is therefore recommended that the detail of all external materials should be controlled by condition for written agreement with the Local Planning Authority.
- 5.5.8 The proposed 2.5 storey extension is formed of two parts and adjoins the rear elevation of the existing building. The scheme has been amended during the application process and now comprises of 2.5 storey extension formed of a dual pitched roof form with gable end to the east with an adjoining smaller 2.5 storey flat roof structure located centrally at the rear of the building for the stairwell.
- 5.5.9 The proposed vertical window proportions responds to the character of existing building and elongated windows providing light to the stairwell at the rear. Dormer roof windows are proposed which introduces a new architectural feature to the roof form of the terrace. Single dormer windows are not atypical for buildings of this age and character. The dormers provide additional floorspace for the residential units within

the upper floor whilst keeping the overall increase in massing and scale to a minimum.

- 5.5.10 The two existing shopfronts will be retained, this approach is supported. The new shopfront in the centre of the existing units will reflect the existing arrangement as indicated on the submitted drawings.
- 5.5.11 The applicant/agent has worked proactively with the Local Planning Authority to overcome the concerns raised in the previous refusal and have substantially adapted the plans to find an appropriate solution. Overall the revised scheme is considered to be acceptable in design and appearance. The proposal will not have an adverse impact on the setting and character of the area. The scheme will result in less than substantial harm to and preserve the setting of the listed buildings. Subject to conditions the proposal will therefore accord with Local Plan policies CLP20 and CLP21.

## **5.6 Impact on Residential Amenity of Surrounding and Future Occupiers**

### **Relevant Policies**

- 5.6.1 Local Plan policy CLP14 in part states that '*All developments will be required to have an acceptable impact on the amenity of users and adjoining occupiers, taking into account noise and disturbance, dust, odour, air quality, traffic, outlook, overlooking, shading (daylight and sunlight and glare and other environmental impacts*'.
- 5.6.2 Local Plan policy CLP20 expects development to '*k) have an acceptable impact on the amenity of users and neighbours;*'

### **Considerations**

- 5.6.3 The application site is bound by a mixture of residential and commercial premises. The site currently comprises of two class E commercial units at ground floor and 3 residential apartments. The application seeks to expand the current level of retail/commercial floorspace and also increase the number of dwelling units.
- 5.6.4 As the application seeks to retain and expand the Class E use at ground floor level, therefore it is necessary to consider the potential impacts on the amenity of the residents living above the commercial unit due to the range of permitted development rights under Class E. Class E includes the sale of food and drink (b) which could result in the requirement for expanded kitchen facilities with extraction

equipment, odours and noise considerations. Class E also covers indoor sport/fitness use (d) which could also lead to noise and disturbance for residents. It is therefore recommended that permitted development rights be controlled to enable further consideration of potential operations which may have an adverse impact on the amenity of residents, requiring the submission of extraction equipment and noise mitigation measures prior to any use falling with E b or d taking place.

- 5.6.5 The floorspace of the 6 residential unit varies from 43.5sqm to 55sqm, each unit is served by an open plan living/kitchen space and one bedroom with separate bathroom. The size of the units and level of accommodation is considered to be acceptable. A small amount of outdoor amenity space will be provided as part of the development, whilst the space is modest it is considered to be acceptable.
- 5.6.6 The Council's Environmental Health Officer reviewed the scheme and raised no objections with regarding to noise/fumes/odours or pollution and recommended that a construction hours condition be imposed on the decision and electric vehicle charging provision.
- 5.6.7 Subject to conditions covering the above the application is considered to accord with the requirements of policy CLP14 of the Adopted Local Plan.

## **5.7 Highways Safety, Vehicle and Cycle Provision and Air Quality**

### **Relevant Policies**

- 5.7.1 Local Plan policy CLP20 expects development to '*g) provide adequate and safe vehicle access and parking;*' and '*h) provide safe, convenient and attractive environment for pedestrians and cyclists*'.
- 5.7.2 Local Plan policy CLP22 details the requires '*To reduce congestion, improve environmental quality and encourage more active and healthy lifestyles, the Council will seek to maximise walking, cycling and the use of public transport through the location and design of development and parking provision*' and seeks '*e) provision of opportunities for charging electric vehicles where appropriate.*'

### **Considerations**

- 5.7.3 The Local Highway Authority were consulted on the scheme and provided comments on the proposal. The Highways Officer confirmed that widening the access onto Station Road to 5m is acceptable and



noted that the parking spaces are indicated to be 4.8m x 2.4m. Larger parking spaces of 5m x 2.5m are recommended and reconfiguration of the layout to ensure all spaces are accessible. On the basis of the site being in a sustainable location, in a centre with extensive on street parking restrictions already in place on adjacent streets, it is considered an objection on the grounds of insufficient on site parking alone would be difficult to sustain. No highway objections subject to conditions covering the creation of the widened access, parking provision prior to occupation and bin/waste storage.

- 5.7.4 The revised scheme proposes off-street parking for 5 vehicles with a widened access to Station Road and separate pedestrian access. The size of 3 of the spaces has been increased to 2.4m x 5.5m with space for turning within the site. The remaining 2 spaces measures 2.4m x 4.8m which accords with the requirements of the adopted SPD Successful Places. The boundary wall has been reduced in height with open trellis/railings above to enable visibility for pedestrians and vehicles, full details to be controlled by landscaping condition.
- 5.7.5 A designated area for bike storage is proposed, further details of the storage area should be controlled and provided by condition.
- 5.7.6 The revised plans propose a dedicated internal bin store accessed from the car park. The bin storage area will provide space for approximately 8 commercial sized bins which will enable all waste to be appropriately stored for both the residential and commercial operations.
- 5.7.7 It is no longer necessary to control the provision of electric vehicle charging by condition as building regulations require the installation of electric charging points.
- 5.7.8 Subject to conditions as set out above the proposal will accord with the provisions of local Plan policy CLP20 and CLP22.

## **5.8 Flood risk, Drainage and Water Efficiency**

### **Relevant Policies**

- 5.8.1 Local Plan policy CLP13 states that *'The council will require flood risk to be managed for all development commensurate with the scale and impact of the proposed development so that developments are made safe for their lifetime without increasing flood risk elsewhere. Development proposals and site allocations will:*
- a) *be directed to locations with the lowest probability of flooding as*

*required by the flood risk sequential test;*  
*b) be directed to locations with the lowest impact on water resources;*  
*c) be assessed for their contribution to reducing overall flood risk,*  
*taking into account climate change.*

- 5.8.2 Local Plan policy CLP13 states that *‘Development proposals will be expected to demonstrate that water is available to support the development proposed and that they will meet the optional Building Regulation water efficiency standard of 110 litres per occupier per day.’*

### **Considerations**

- 5.8.3 The application site is located in ‘Flood Zone 1’ as defined by the Environment Agency and is therefore considered to be at low risk of flooding. Having regards to the provisions of CLP13 and the wider NPPF the application was referred to the Council’s Design Services (Drainage) Team and Yorkshire Water for comments in respect of flood risk and drainage/waste water
- 5.8.4 The Design Services (Drainage) Team reviewed the submission and confirmed that the site is not shown to be at risk of flooding, according to the Environment Agency Flood Maps. The site should be developed using separate systems for surface water and foul drainage and highlighted the presence of both combined and surface water public sewers are shown to cross through the rear of the proposed site.
- 5.8.5 Yorkshire Water reviewed the scheme and raised no objection subject to conditions covering separate foul and surface drainage and full detail of proposed surface water drainage to be submitted to the LPA for approval. The presence of combined and surface water sewer was noted by Yorkshire Water and clarified that this will be addressed through H4 Building regulations building over agreement.
- 5.8.5 It is recommended that a condition be imposed on the decision requiring the development to comply with water efficiency standards as set out in part G of Building Regulations.
- 5.8.6 Subject to the imposition of relevant conditions set out above the proposal will accord with the provisions of CLP13 and the wider NPPF.

### **5.9 Ground Conditions, Land contamination and Land Stability**

## Relevant Policies

- 5.9.1 Local Plan Policy CLP14 states that *'Unstable and Contaminated Land Proposals for development on land that is, or is suspected of being, contaminated or unstable will only be permitted if mitigation and/or remediation are feasible to make the land fit for the proposed use and shall include:*
- a) a phase I land contamination report, including where necessary a land stability risk assessment with the planning application; and*
  - b) a phase II land contamination report where the phase I report (a) indicates it is necessary, and*
  - c) a strategy for any necessary mitigation and/or remediation and final validation.*
- A programme of mitigation, remediation and validation must be agreed before the implementation of any planning permission on contaminated and/or unstable land. The requirement to undertake this programme will be secured using planning conditions. For full wording of policy see the Chesterfield Borough Local Plan 2018 – 2035.*
- 5.9.2 Paragraph 183 of the NPPF states that *'Planning policies and decisions should ensure that:*
- Planning policies and decisions should ensure that:*
- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);*
  - b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
  - c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.*

## Considerations

- 5.9.3 The application site is located in an area considered to be at 'high risk' of former Coal Mining Legacy. Having regards to the provisions of CLP14 and the NPPF the application was referred to The Coal Authority and the Council's Environmental Health Officer for comments.
- 5.9.4 The application is supported by a Coal Mining Risk Assessment (CMRA) which concluded that there is a potential risk posed to the

development by past coal mining activity and therefore recommends intrusive site investigations. The CMRA was reviewed by the Coal Authority who raised no objections subject to the inclusion of a pre-commencement condition covering intrusive site investigations and a further condition requiring a signed statement/declaration from a suitable competent person confirming the site is or has been made safe and stable for the approved development. The statement shall include details of the methods and findings of the investigations and completion of any remediation/mitigation works.

5.9.5 The Council's Environmental Health Officer reviewed the scheme and raised no concerns regarding land contamination.

5.9.6 Subject to conditions as recommended by the Coal Authority the proposal is considered to accord with the requirements of Local Plan policy CLP14.

## **5.10 Biodiversity including protected species and Landscaping**

### **Relevant Policies**

5.10.1 Local Plan policy CLP16 states that *'The council will expect development proposals to:*

- *avoid or minimise adverse impacts on biodiversity and geodiversity; and*
- *provide a net measurable gain in biodiversity'*

5.10.2 The NPPF also requires net gains in biodiversity (paragraph 180 d).

### **Considerations**

5.10.3 The application currently comprises of built form and hard landscaping. The proposal involves substantial works to the roof space and as such the Derbyshire Wildlife Trust (DWT) requested a preliminary bat roost assessment. A preliminary assessment was undertaken by ML-Ecology which found low potential for roosting bats. The DWT requested one nocturnal survey be completed prior to determination. A survey was conducted by ML-Ecology and submitted in June 2023, no bats were found to emerge from the property during the survey. The DWT confirmed that sufficient information had now been submitted to enable the LPA to reach an informed decision and to discharge its duty in respect of protected species.

- 5.10.4 To provide a net gain in biodiversity simple measures can be included within the development in the form of bird and bat boxes and soft landscaping.
- 5.10.5 A small area of landscaping is indicated on the submitted site plan surrounding the amenity space and it is recommended that full details should be controlled by condition.
- 5.10.6 Subject to conditions as recommended above the development accords with the requirements of CLP16 and the NPPF.

## 5.11 Developer Contributions and Community Infrastructure Levy

- 5.11.1 Having regard to the nature of the application proposals the development comprises the creation of a new dwellings and retail floorspace and is therefore CIL Liable.
- 5.11.2 The site the subject of the application lies within the low CIL zone and therefore the CIL Liability is calculated (using gross internal floor space and is index linked).

		A		B	C	D	E
Development type	Proposed floor space (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 2020	CIL Charge
Residential (C3)	292.2 (include bin store 19.5 = 311.7)	220.6	71.6	£50 (Medium Zone)	355	288	£4412
Retail (E class)	131.9	70.1	61.8	£80 (retail)	388	288	£6094

### Calculation:

CIL Charge (E) is calculated as outlined below:

$$\frac{\text{Net Area (A)} \times \text{CIL Rate} \times \text{BCIS Tender Price Index (at date of permission) (C)}}{\text{BCIS Tender Price Index (at date of charging schedule) (D)}}$$

Therefore, the CIL charge liable for this application is as follows:

$$\frac{\text{Residential (C3)} \quad 71.6 \times \text{£}50 \times 355}{288} = \text{£}4412 \quad \text{Retail} \quad \frac{61.8 \times \text{£}80 \times 355}{288} = \text{£}6094$$

## 6.0 **REPRESENTATIONS**

6.1 The application has been publicised by neighbour notification letters site notice, 3 letter of representation have been received from two local residents. A summary of the main points raised is set out below;

### **Highway safety/access/parking issues**

- development encroaches on the access road and right of way which runs between the proposed development and No 2 Station Lane. Access road is currently only wide enough for a single vehicle, serves multiple driveways and gardens therefore any reduction in width of this access would render the access road and driveway turning inaccessible
- if access width is reduced the ability for emergency vehicles to access the rear of High Street would be compromised, a fire engine would find it impossible to pass through
- restrictions of the driveways would impact occupiers and property values, leading to more parking on Station Lane and High Street causing further restrictions
- concerns regarding amount of parking not been addressed. Six apartments may well require six parking spaces let alone retail owners, staff and customers. Parking is already a major issue in the area. The development will add to this issue and force drivers to park on the very busy main road.
- Long term resident of Station Lane has witnessed accidents and near misses due to inappropriate parking
- Road is also very busy due to heavy goods vehicles accessing the industrial estates which can only be accessed via Station Lane. Further increase in parking in the area could cause a danger to drivers, pedestrians, cyclists and emergency services
- The access lane behind the properties is also in a poor state of repair and is constantly used as a dumping ground. The increased number of occupancy is not going to relieve this situation.

### **Fear of crime and anti-social behaviour**

- Fear of crime and anti-social behaviour. Small one bed apartments will add to this problem

### **Refuse and bin storage**

- The high number of flats in addition to the replaced 3 shop units will cause chaos and obstructions on Station Lane with the number of refuse and recycling bins. The existing arrangements on Station Lane allow the accumulation of these bins on the pavement.
- The lack of access of the shops to the rear space is only going to complicate the bin storage on Station lane on collection days and even on all days as they are usually left out all the time.

### **Coal mining risk/subsidence**

- Concerns raised regarding the coal report and the possibility of subsidence and release of gases whilst the foundations for the increased building size are being developed.

### **Impacts during construction**

- concern that access/right of way could be blocked during construction work
- wall separating the yard to 38 High Street is deteriorating and could be safety issue if building work commences on site
- concern regarding construction hours and noise/disturbance

## **6.2**

***Officer comments – the above comments have been noted***

- ***Highway safety/access/parking issues – The application includes the service yard to the rear of the building and does not extend to the private access/right of way. The Local Highways Authority Derbyshire County Council were consulted on the scheme and raise no objections. The number of residential units have been reduced overall and as the site is in a local centre with access to public transport and services it would not be reasonable for the LPA to require a high level of off-street parking.***
- ***Fear of crime and anti-social behaviour – noted it is unreasonable to suggest that the provision of one bedroom flats will result in anti-social behaviour and crime.***
- ***Refuse and bin storage – the application has been amended during the submission process to provide a large area for waste/refuse to be safely stored within the site with access taken from the service yard.***
- ***Coal mining risk/subsidence – The Coal Authority reviewed the scheme and raised no objections requiring conditions covering pre-commencement intrusive site investigations and declaration***
- ***Impacts during construction – disturbance arising during the construction period is a non-material planning consideration. A condition will be imposed on the decision restricting construction hours. The maintenance and safety of any structures would be a private matter.***

## **7.0**

### **HUMAN RIGHTS ACT 1998**

## **7.1**

Under the Human Rights Act 1998, which came into force on 2<sup>nd</sup> 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 The action in considering the application is in accordance with clearly established Planning law and the Council's Delegation scheme. It is considered that the recommendation accords with the above requirements in all respects.

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

8.1 In accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and paragraph 38 of 2021 National Planning Policy Framework (NPPF) as the proposed development does not conflict with the NPPF or with 'up-to-date' policies of the Local Plan, it is considered to be 'sustainable development' to which the presumption in favour of the development applies.

8.2 The Local Planning Authority have worked with the applicant during the consideration of this application to amend the scheme through a positive and proactive dialogue in order to achieve a positive outcome for the application.

## 9.0 **CONCLUSION**

9.1 The proposal is considered to accord with the planning policies as set out in the report above.

## 10.0 **RECOMMENDATION**

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

### **Conditions**

#### Standard time frame

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

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

#### Approved plans and documents



2. The development hereby approved shall only be carried out in full accordance with the approved plans and documents (listed below) with the exception of any approved non material amendment. All external dimensions and elevational treatments shall be as shown on the approved plan/s (listed below).
  - Proposed ground and first floor layout plans, drawing number 02 Revision B
  - Proposed 2<sup>nd</sup> floor layout plans and sections, drawing number 03 Revision D
  - Check heights, elevations and streetscene, drawing number 04 Revision B
  - Proposed front, side and rear elevations, drawing number 05 Revision B
  - Proposed site plan with ground floor shops, drawing number 06 Revision B
  - Additional sections through buildings, drawing number 07

**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.

Pre-commencement – intrusive site investigations

3. No development shall commence until;
  - a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity; and
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

**Reason** - To protect the environment and ensure that the redeveloped site is reclaimed to an appropriate standard in accordance with the requirements of CLP14 and the NPPF.

Land stability – declaration

4. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the

intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

**Reason** – In accordance with the requirements of CLP14 and the NPPF.

Highways –at commencement site storage/compound

5. At the commencement of operations on site (excluding demolition/site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

**Reason** – To ensure adequate space is retained for site storage during the construction period in accordance with CLP22.

Highways - Creation of widened access prior to occupation

6. The existing access to Station Lane shall be increased in width to a minimum of 5m and creation of pedestrian access in accordance with the submitted application drawings prior to the occupation of the development.

**Reason** - To ensure that a suitable form of access is made available to serve the development in accordance with Policies CLP20 and 22 of the Adopted Local Plan.

Highways - Parking provision prior to occupation

7. The development, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the approved application drawings for the parking and manoeuvring of residents 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 providing adequate off-street parking provision in accordance with CLP20 and CLP22.

Highways – Waste/refuse storage prior to occupation

8. The development, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the approved application drawings for the for the storage and collection of waste and refuse within the curtilage of

the site and shall thereafter be maintained throughout the life of the development free from any impediment to its designated use.

**Reason** - In the interests of residential amenity and highway safety, and policies CLP14 and CLP20.

Highways – cycle parking installed and agreed prior to occupation

9. the development, the subject of the application, shall not be occupied until space has been provided within the application site in accordance for the storage bicycles, details of which shall be submitted to the Local Planning Authority for written agreement prior to installation and thereafter maintained throughout the life of the development free from any impediment to its designated use.

**Reason** - In the interests of providing adequate cycle parking provision in accordance with CLP20 and CLP22.

Hours of construction

10. No construction or demolition works, movement of construction traffic, or deliveries to and from the premises, shall occur other than between 0800 and 1800 hours weekdays, and 0800 and 1700 hours on Saturdays, and at no time on Sundays or Public Holidays. The term 'construction work' shall include mobile and fixed plant/machinery, (e.g. generators) radios and the delivery of construction materials.

**Reason** - To safeguard the privacy and amenities of the occupiers of adjoining properties in accordance with CLP20 and CLP14

E Class Use

11. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting these Orders with or without modifications), the ground floor premises shall not be used for Classes E b and d until details as set out below are first submitted to and agreed in writing by the local planning authority and those agreed details are fully installed on site;

For Class E (b) – details of extraction and cooking facilities and noise assessment and mitigation measures

For Class E (d) – noise assessment and mitigation measures

**Reason** - In the interests of residential amenity of the occupants in accordance with policies CLP14 and CLP20.

#### Drainage - surface water

12. There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to:-
- A. Evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical;
  - B. Evidence of existing positive drainage to public sewer and the current points of connection; and
  - C. The means of restricting the discharge to public sewer to the existing rate less a minimum of 30% reduction, based on the existing peak discharge rate during a 1 in 1 year storm event, to allow for climate change.

**Reason** - To ensure that no surface water discharges take place until proper provision has been made for its disposal and in the interest of sustainable drainage in accordance with CLP13.

#### Drainage – separate foul and surface

13. The site shall be developed with separate systems of drainage for foul and surface water on and off site. The separate systems shall extend to the points of discharge to be agreed.

**Reason** - In the interest of satisfactory and sustainable drainage and in accordance with CLP13

#### Approval of Materials

14. Precise specifications or samples of all materials to be used in the construction of the development including walling materials, roofing, windows and doors shall be submitted to and approved in writing by the Local Planning Authority before any work to any external surface is carried out. The development shall thereafter be constructed in accordance with the approved details.

**Reason** - To ensure a satisfactory external appearance of the development in accordance with CLP20 and CLP22 of the Local Plan

#### Biodiversity

15. No development above floor-slab/D.P.C level shall take place until A landscape and biodiversity enhancement and management plan (LBEMP) shall be submitted to and approved in writing by the

Local Planning Authority. The LBEMP should combine both the ecology and landscape disciplines and include the following:-

- a) Description and location of features to be created, planted, enhanced and managed.
- b) Aims and objectives of management.
- d) Appropriate management methods and practices to achieve aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a ten-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring visits, targets and remedial measures when conservation aims and objectives of the plan are not being met.
- i) Details of internal bird and bat boxes, (including swift boxes, specifications, installation guidance and numbers)

The approved plan will be implemented in accordance with the approved details and maintained thereafter.

Reason: In the interests of achieving a net measurable gain in biodiversity in accordance with policy CLP16 of the adopted Chesterfield Borough Local Plan and to accord with paragraph 190 of the National Planning Policy Framework.

#### Landscaping

16. Prior to completion or first occupation of the development hereby approved, whichever is the sooner; details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. Details shall include:

- a) location, type and materials to be used for hard landscaping
- b) boundary treatments
- c) a schedule detailing sizes and numbers/densities of all proposed trees/plants;
- d) specifications for operations associated with plant establishment and maintenance that are compliant with best practise;

The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner.

All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the

development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

**Reason** - Required to safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality in accordance with Local Plan policies CLP20 and CLP16.

#### Retention of soft landscaping

17. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

**Reason-** To ensure a satisfactory standard of landscaping in the interests of amenity in accordance with CLP20 and CLP16

#### Water efficiency

18. No individual dwelling hereby approved shall be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling.

**Reason** - To protect the water environment in accordance with policy CLP13 of the of the adopted Chesterfield Borough Local Plan and to accord with paragraph 153 of the National Planning Policy Framework.

### **Informative Notes**

1. 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.

2. 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.
3. You are notified that you will be liable to pay the Community Infrastructure Levy (CIL) to Chesterfield Borough Council as CIL collecting authority on commencement of development. This charge will be levied under the Chesterfield Borough Council CIL charging schedule and s211 of the Planning Act 2008. A CIL Liability Notice will be issued at the time of a detailed planning permission which first permits development, in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).
4. 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 - Place 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 Councils website <https://www.derbyshire.gov.uk/transportroads/roads-traffic/licences-enforcements/vehicular-access/vehicle-accesses-crossoversand-dropped-kerbs.aspx> e-mail [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 5331
5. Connection to the public sewerage system requires prior consent from Yorkshire Water. Connections to the existing drainage may require Building Control approval.
6. 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.
7. The Highway Authority recommends that the first 5m of the proposed access/driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.

8. To ensure that breeding birds are protected from harm we advise that a condition should be imposed requiring that “No removal of hedgerows, trees, shrubs or brambles 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. If any active nests are discovered, then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest
9. When you carry out the work, you must not intentionally kill, injure or take a bat, or intentionally or recklessly damage, destroy or block access to any structure or place that a bat uses for shelter. These would be offences under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000. Planning consent for a development does not provide a defence against prosecution under European and UK wildlife protection legislation.
10. In line with conditions requested by Yorkshire Water –
  1. As a last resort, and upon receipt of satisfactory evidence to confirm the reasons for rejection of other methods of surface water disposal, curtilage surface water may discharge to public sewer. Surface water discharges to the public sewer must have a minimum of 30% reduction based on the existing peak discharge rate during a 1 in 1 year storm event. The developer will be required to provide evidence of existing positive drainage to a public sewer from the site to the satisfaction of Yorkshire Water and the Local Planning Authority by means of physical investigation. On-site attenuation, taking into account climate change, will be required before any discharge to the public sewer network is permitted.
  2. On the Statutory Sewer Map, there is a small diameter public combined water sewer and a public surface water sewer recorded to cross the site. It is essential that the presence of this infrastructure is taken into account in the design of the scheme. It may not be acceptable to raise or lower ground levels over the sewer and we will not accept any inspection chambers on the sewer to be built over. In this instance, Yorkshire Water would look for this matter to be controlled under Requirement H4 of the Building Regulations 2010.
  3. If the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water (under



Section 104 of the Water Industry Act 1991), he should contact our Developer Services Team (telephone 0345 120 84 82, email: [technical.sewerage@yorkshirewater.co.uk](mailto:technical.sewerage@yorkshirewater.co.uk)) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Sewers for Adoption - a design and construction guide for developers' 6<sup>th</sup> Edition as supplemented by Yorkshire Water's requirements.

11. In accordance with condition 15 above appropriate ecological/biodiversity enhancement measures shall include but shall not be limited to:

- Bird/owl/bat boxes
  - (Locating your nestbox: Whether fixed to a tree or a wall, the height above ground is not critical to most species of bird as long as the box is clear of inquisitive humans and prowling cats. If there is no natural shelter, it is best to mount a box facing somewhere between south-east and north to avoid strong direct sunlight and the heaviest rain. The box should be tilted slightly forwards so that the roof may deflect the rain from the entrance.
  - You can use nails to attach the box directly to a tree trunk or branch; or you can use rope or wire wrapped right around the box and trunk (remembering to protect the trunk from the wire cutting into it by using a piece of rubber underneath it). Both methods are satisfactory, but annual maintenance is easier if the box is wired and can be taken down easily for cleaning.
  - The number of nestboxes which can be placed in a garden depends on the species you wish to attract. Many species are fiercely territorial, such as blue tits, and will not tolerate another pair close by; about 2 to 3 pairs per acre is the normal density for blue tits. Other species, such as the tree sparrow, which is a colonial nester, will happily nest side-by-side.
  - Do not place your nestbox close to a birdtable or feeding area, as the regular comings and goings of other birds are likely to prevent breeding in the box.)
  - (Locating your bat box: Bat boxes should be positioned at least 3 metres above the ground (5 metres for noctules) in a position that receives some direct sun for part of the day, with a clear flight path to the box, but preferably also with some tree cover nearby as

protection from the wind. In the roof eaves, on a wall or fixed to a tree are all suitable sites.)

- Biodiversity enhancing planting and landscaping including trees, hedges and native species, wildflower planting and nectar rich planting for bees and night scented flowers for bats.
- Measures to enhance opportunities for invertebrates including bug hotels/log piles, stone walls including a programme of implementation and maintenance.
- Holes in fences and boundary treatment to allow species such as hedgehog to move across the site.
- Bee bricks.

Species	Potential Enhancement Measure	Notes
<b>Wildflowers</b>	<p><b>Native wildflower meadow areas:</b> as an alternative to amenity grassland.</p> <p><b>Wildflower verges.</b></p>	<p>Wildflower meadow can be added where there is grassed verge / communal garden space as well as within residential gardens or as part of wider landscaping schemes. Advice for creating and maintaining a wild patch is available on the <a href="#">Wildlife Trust website</a> and through <a href="#">Flora Locale</a>.</p>
<b>Birds</b>	<p><b>Bird Boxes and other nesting features:</b> (such as stone ledges and wooden cladding).</p> <p><b>Native species planting and boundary features:</b> Berry and seed producing shrubs are particularly beneficial for wildlife and include: Barberry, Blackthorn, Common Dogwood, Guelder</p>	<p>Particularly where adjoining natural areas such as woodland, areas of priority habitat and the river and canal environment. For guidance on installing bird boxes including minimum height see: <a href="https://www.bto.org/how-you-can-help/providing-birds/putting-nest-boxes-birds/putting-nest-box">https://www.bto.org/how-you-can-help/providing-birds/putting-nest-boxes-birds/putting-nest-box</a></p> <p>Generally, boxes should be sheltered from</p>

	Rose Hawthorn and Spindle berry.	prevailing wind, rain and strong sunlight. Check local records (Magic portal and DWT advice) for target species.
Invertebrates	<p><b>Bug hotels and log piles with stones:</b> particularly near ponds.</p> <p><b>South facing banks:</b> with some bare ground.</p> <p><b>Rough or natural stone walls with holes</b> for invertebrates to use.</p> <p><b>Brown roofs with a range of substrates</b> these are particularly recommended on brownfield sites where open mosaic habitat may have been lost. The substrate does not have to cover the entire roof.</p>	<p>Examples of living roof projects are available on the Buglife web page: <a href="https://www.buglife.org.uk/our-work/living-roof-projects/">https://www.buglife.org.uk/our-work/living-roof-projects/</a></p>