

ITEM 5

Case Officer A Hayes

CHE/23/00658/RET

RETENTION OF TIMBER OUTBUILDING IN REAR GARDEN, WOODEN TRELLIS TO BE MOUNTED ON TOP OF THE WALL AT THE SIDE OF THE PROPERTY AT 1 SMITH AVENUE, INKERSALL, CHESTERFIELD, S43 3SL FOR MR JACK PRIDEAUX

Planning Committee 19th February 2024

Ward: Staveley South

Local Plan: Unallocated

1.0 CONSULTATION RESPONSES

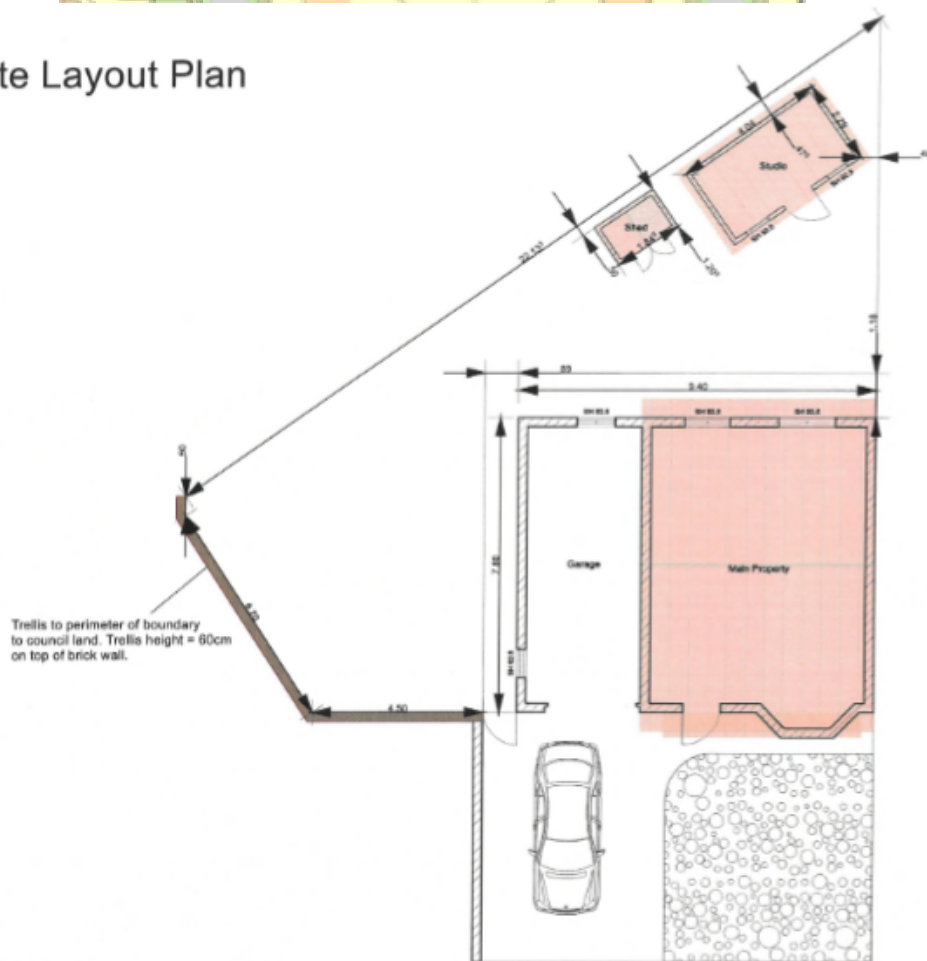
Ward Members	1 x comments received – Cllr Rhodes (Parish) objects for visual reasons, impact of shadowing and noise impacts.
Staveley Town Council	No representations received
Environmental Health	No complaints received in respect of this dwelling – see Section 6.3 of this report
Representations	No. 5 representations received from 3 different people raising concerns for the shed being less than 1 metre away from the neighbour's boundary, noise issues, loss of sunlight and creation of shadows, and removal of cherry tree branches.

2.0 THE SITE

- 2.1 The property, subject of the application, is a two storey semi detached dwelling finished in a red brick with a dual pitched roof. The dwelling has white upvc windows and doors. The property is located on a corner plot between Smith Avenue and Stanley Avenue.
- 2.2 The boundary between no. 1 Smith Avenue and no. 31 Stanley Avenue cuts through the corner plots at an angle from the north east through to the south west. This results in both of these properties having triangle shaped rear gardens. Number 21 Stanley Avenue is located to the north west of the application site.



Site Layout Plan



3.0 SITE HISTORY

3.1 CHE/0689/0488 – Permission for the erection of a garage and porch.
Conditional permission granted 21/08/1989

4.0 THE PROPOSAL

4.1 The application seeks retrospective planning permission for a timber outbuilding in the rear garden, as well as the proposed addition of wooden trellis to be mounted on top of the wall at the side of the property.



4.2 The timber outbuilding to be retained has a monopitched roof with a maximum height of 2.57 metres however it is placed on a raised base that has a height of 0.19 metres. The overall height of the outbuilding is therefore 2.76 metres. The outbuilding's monopitched roof slightly slopes down to the north of the site and results in a height of 2.66 metres.

- 4.3 The timber outbuilding has a footprint of 4.04 metres by 2.29 metres. Windows are included in the south facing elevation, as well as a door. No other windows or doors are proposed.
- 4.4 The timber outbuilding is finished in shiplap wooden weather board and will be retained in natural appearance. The roof will have a rubber coating on it.
- 4.5 The proposed trellis will be added to the wall around the front west corner of the application site, adjacent to the corner of Smith Avenue and Stanley Avenue. The existing wall is detailed to have a maximum height of 2.5 metres when measured from inside the garden of the application site. The minimum height of the existing boundary wall is 2.15 metres, when measured from inside the application site. The trellis is proposed to have a height of 0.6 metres on top of this wall height.

5.0 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.

5.2 Chesterfield Borough Local Plan 2018 – 2035

- CLP1 Spatial Strategy (Strategic Policy)
- CLP2 Principles for Location of Development (Strategic Policy)
- CLP14 A Healthy Environment
- CLP16 Biodiversity, Geodiversity and the Ecological Network
- CLP20 Design
- CLP22 Influencing the Demand for Travel

5.3 National Planning Policy Framework

- Part 2. Achieving sustainable development
- Part 4. Decision-making
- Part 8. Promoting healthy and safe communities
- Part 9. Promoting sustainable transport
- Part 12. Achieving well-designed places
- Part 15. Conserving and enhancing the natural environment

5.4 Supplementary Planning Documents

6.0 CONSIDERATION

6.1 Principle of Development

6.1.1 The application site is within a residential area where works to a domestic property are considered to be generally acceptable subject to policies CLP1, CLP2 and CLP20 of the Local Plan, as well as the wider objectives of the NPPF.

6.2 Design and Appearance of the Proposal

6.2.1 Local Plan policy CLP20 states in part; 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.

6.2.2 The proposed outbuilding is finished in a timber cladding and is considered to be typical for a garden outbuilding and can therefore be considered acceptable in appearance for the context of the application site.

6.2.3 It is noted that the height of the outbuilding is 2.57 metres however it is located on a base which results in an overall maximum height of 2.76 metres. This exceeds permitted development height by 0.26 metres. The LPA must therefore consider the harm of the additional 0.26 metres above the 2.5 metres allowed under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is acknowledged that the outbuilding is visually dominant at the application site however this is somewhat as a result of the boundary treatment at the application site and overall it is not considered the appearance of the outbuilding is harmful for the context of the application site.

6.2.4 The proposed trellis fencing detailed to be added to the perimeter wall around the south west corner of the application site is considered to be acceptable in design and appearance. The proposed trellis will result in the boundary wall having a maximum height of 3.1 metres when measured from inside the application site. Land levels are higher immediately adjacent to the application site which means that the wall has a maximum height of approximately 1.2 metres when viewed from the public highway. The land levels within the application site are below land levels on the

public highway side with a difference of approximately 1.8 (+/-) metres. At the time of the case officer's site visit, there were bushes that have been planted on the public highway side of the wall however these are deciduous and therefore screening to the private amenity space is lost during the winter months, as shown in the image below.



6.2.5 The trellis is proposed to be close boarded and therefore is considered to provide privacy when the vegetation screening does not. Overall, it is considered that the proposed trellis is acceptable in design and appearance. The trellis will have a limited impact on the character of the area and will provide privacy to the private amenity space of the residential property.

6.2.6 The colour of the trellis has been specified to be "chartwell green". It is not considered the colour is most appropriate for the proposed trellis given it will be adjacent to a brick wall and vegetation that is brown during the winter months – when the trellis will be most visible. It is considered a shade of brown (e.g walnut brown / harvest gold) or red shade (e.g. mahogany / cedar) would have been more befitting for the context of the trellis. Notwithstanding this however, given the trellis fencing will be obscured from public view when the shrubbery is in full foliage it is not considered the colour will be significantly harmful such that a refusal would be warranted. The shrubbery is on highway land and therefore owned by the Council and could not be removed by the applicant.

6.2.7 It is therefore considered that the proposal is appropriate to the existing building and its surroundings and would not cause significant adverse impacts on the visual amenity and character of the area. The proposal therefore accords with the provisions of policy Local Plan policy CLP20.

6.3 Residential Amenity

6.3.1 Local Plan policy CLP14 states that development will be expected to have an acceptable impact on the amenity of users and neighbours.

6.3.2 The outbuilding is located adjacent to the north of the application site and therefore it is acknowledged that some impact on the neighbouring dwelling located to the north will be experienced. Owing to the size and location of the outbuilding however this overshadowing impact is not considered to be harmful such that a refusal is considered necessary. Any overshadowing will typically impact a small area of the lawned area of the neighbouring dwelling and will not cause shadowing on the patio area which is adjacent to the rear elevation of no. 31 Stanley Avenue. It is also considered that shadowing will most likely be an issue during the months when the sun is lower in the sky.

6.3.3 The outbuilding is sited adjacent to the boundary that runs from north east to south west, separating the application site with no. 31 Stanley Avenue. This boundary is currently defined by a low height picket fence (approximately 1 metre in height). It is accepted that the outbuilding appears as a tall feature adjacent to the boundary however it is not considered that this is significantly harmful to warrant a refusal of the application. It is highlighted that occupiers of residential dwellings are (in most cases) permitted to erect a 2 metre high boundary treatment to enclose land. (This is different when land is adjacent to a public highway or if the land is subject to an Article 4 Directive, Conservation Area or has a planning condition restricting such development). None of these apply in this case and therefore a boundary treatment could be erected with a height of 2 metres. This would result in the outbuilding having less visual impact for the neighbouring dwellings.

6.3.4 Representations have been received which indicate the outbuilding is used as a music studio and as a result neighbouring dwellings can hear music coming from the outbuilding. This disturbance is noted however, the use of the outbuilding as a music studio is considered to be within the suitable use as an ancillary outbuilding to serve a residential dwelling. The **Environmental Health Officer** was approached to provide comments in respect of this proposal and requested to provide any information in

respect of noise complaints relating to this address. The EHO reported that there were no complaints received in respect of this property.

6.3.4 If the outbuilding is granted permission, the matter of noise and disturbance that arises from the use of the outbuilding will be a matter for consideration by the Environmental Health department under the Environmental Protection Act. Concerns would therefore need to be directed to the Environmental Health department.

6.3.5 On this basis the proposal is considered to accord with the provisions of policy CLP14 of the Local Plan.

6.4 Highway Safety

6.4.1 Local Plan policy CLP20 and CLP22 require consideration of parking provision and highway safety.

6.4.2 The proposed development does not impact the existing off street parking at the application site and the proposal does not increase the demand for off street parking. It is therefore considered that the proposed parking provision is acceptable.

6.4.3 On this basis the proposal is considered to accord with the provisions of policies CLP20 and CLP22 of the Local Plan.

6.5 Biodiversity

6.5.1 Local Plan policy CLP16 states that all development will “protect, enhance, and contribute to the management of the boroughs ecological network of habitats, protected and priority species ... and avoid or minimise adverse impacts on biodiversity and geodiversity and provide a net measurable gain in biodiversity.” The NPPF in paragraph 170 requires decisions to protect and enhance sites of biodiversity and paragraph 174 also requires plans to “pursue opportunities for securing measurable net gains for biodiversity”.

6.5.2 The application site is considered to be of low biodiversity value and therefore the impact on the biodiversity is considered to be limited. The application site is considered to be able to demonstrate a biodiversity net gain in the form of; landscaping, a bat or bird roosting box located on an appropriate elevation of the dwellinghouse, or the inclusion of bee / insect bricks within the proposed extension elevation. A condition will secure a suitable gain in biodiversity.

6.5.3 On this basis the proposal is considered to accord with the provisions of policy CLP16 of the Local Plan.

7.0 REPRESENTATIONS

7.1 The standard period of consultation has been carried out for this application and 5no. representations have been received as a result. The representations are received from three different people and one Parish Councillor raising concerns for the shed being less than 1 metre away from the neighbour's boundary, overall location of the outbuilding, noise issues, loss of sunlight and creation of shadows, and removal of cherry tree branches.

7.2 It is considered the concerns regarding the location of the shed, loss of sunlight and creation of shadows has been addressed in Section 6.2 and 6.3 of this report. The concerns regarding noise matters have been addressed in Section 6.3 of this report.

7.3 In terms of the concerns regarding removal of the cherry tree branches, the cherry trees are not subject of a Tree Preservation Order and therefore there is no control over their pruning, this issue is therefore a civil matter between the owner of the trees and the person who removed/worked on them.

8.0 HUMAN RIGHTS ACT 1998

8.1 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

8.2 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.

9.0 STATEMENT OF POSITIVE AND PROACTIVE WORKING WITH APPLICANT

- 9.1 In accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015 and paragraph 38 of 2023 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.
- 9.2 The Local Planning Authority have considered this application in a positive and proactive way in order to achieve a positive outcome for the application.

10.0 CONCLUSION

- 10.1 Overall the proposal is considered to be acceptable in accordance with the above outlined policies of the Local Plan. The development proposed to be retained has been assessed on its planning merits and it is considered that the impact that arises as a result of the proposed development is not harmful to such an extent that a refusal is warranted. It is accepted that the proposal results in some shadowing on the neighbouring dwelling's lawned area however as this is not the immediate private amenity space and it is not considered significantly harmful. Furthermore, the development is considered to be exacerbated in appearance due to the existing low boundary treatment at the application site. The LPA is mindful that a 2 metre high boundary treatment could be erected under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at the application site which would screen much of the development from neighbouring views. Overall, the development is considered to be acceptable and within the realm of what is expected at a residential dwelling.

11.0 RECOMMENDATION

- 11.1 It is therefore recommended that the application be **GRANTED** subject to the following conditions:

11.2 Conditions

1. The development hereby approved shall only be carried out in full accordance with the approved plans (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 front and left studio elevation – scale 1:20 @ A4 – Dated 24/10/2023
- Proposed rear and right studio elevation – scale 1:20 @ A4 – Dated 24/10/2023
- Proposed trellis elevation and site plan – scale 1:50 @ A4 – Dated 24/10/2023

Reason - In order to clarify the extent of the planning permission.

2. Within 2 months of the planning permission date, a scheme for biodiversity and ecological enhancement measures shall be installed/integrated into the development site in accordance with a scheme previously agreed in writing by the local planning authority. The ecological enhancement measures shall thereafter be retained and maintained throughout the life of the development.

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 175 of the National Planning Policy Framework

11.3 Informative Notes

1. The Local Planning Authority have considered this application in a positive and proactive way in order to achieve a positive outcome for the application.
2. 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.
3. The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Regulations approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

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

4. When you carry out the work, you must avoid taking, damaging or destroying the nest of any wild bird while it is being built or used, and avoid taking or destroying the egg of any wild bird. These would be offences (with certain exceptions) under the Wildlife and Countryside Act 1981, the Habitats Regulations 1994 and the Countryside and Rights of Way Act 2000.
5. 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.

6. In accordance with condition 3, 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