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File No: CHE/20/00484/REM1
Plot No: 2/3389

ITEM 1

VARIATION OF CONDITION 6 OF PERMISSION CHE/18/00872/FUL TO ALLOW FOR THE CONVERSION OF DWELLING TO 2 DWELLINGS, WITH REVISED VISIBILITY SPLAY OF 2.0M X 47M, AT 220A MANOR ROAD, BRIMINGTON, DERBYSHIRE. S43 1NW

Local Plan: Unallocated – within Built-up area CLP3
Ward: Brimington South

1.0 CONSULTATIONS

Local Highways Authority

Comments received 21/08/2020 – No objection.

CBC C.I.L Officer

Comments received 07/09/2020 – CIL not required on a sub-division of an existing residential property into two or more dwellings.

Brimington Parish Council

No comments received

Ward Members

No comments received

Site Notice / Neighbours

2 representations received

2.0 THE SITE

- 2.1 The site the subject of the application comprises a substantial dormer bungalow - 220A Manor Road - at Brimington Common, and its large garden curtilage.
- 2.2 The property is situated in a backland situation, located behind other bungalows/houses on Manor Road, and is served by a long access drive (with boundary fences to each side) and the drive meets Manor Road between the drives to the dwellings on each side – No.s 220 and 222.
- 2.3 Planning permission was granted by the Planning Committee for the sub-division of No 220A to create 2 smaller dwellings served

from the existing access drive, and the required visibility splays passed across the dwellings to each side (with their agreement).

- 2.4 Manor Road runs south from Brimington, across the Common towards Calow, and is largely a linear grouping of dwellings, exclusively so to the eastern side, however there are pockets of in-depth development, served by small cul-de-sacs and private drives on the western side, including No 220A Manor Road, the application site.

3.0 RELEVANT SITE HISTORY

- 3.1 There only relevant Planning History relating to the site is the previous permission as shown below:

CHE/18/00872/FUL - Conversion and extension of existing dwelling house to form two separate dwellings - Approved 24.04.2019

4.0 THE PROPOSAL

- 4.1 The proposal is for the variation of condition 6 of the above permission, to allow a lesser visibility splay than that required by the condition.
- 4.2 The application is made under Section 73 of the Town and Country Planning Act 1990, which is “to continue an approved development, without complying with a condition to which that permission was subject to”.
- 4.3 The original planning permission remains intact - establishing the principle of the development - and approval of an application under Section 73 results in the granting of a new permission, however the Act does not allow re-consideration of the principle of the development, only the issues relating to the condition applied for, can be considered.
- 4.4 In this instance, the issue is that of the requirement for a visibility splay, and it is only that matter which can be considered.
- 4.5 The 2019 permission required the provision of a 2.4m x 47m visibility splay that crossed the adjacent properties land (and their visibility crosses the application site) and the adjacent land

owners were happy to permit the splay, however investigations with the land registry revealed a small parcel of land to the front of the adjacent neighbour that was not registered and so its ownership is unknown.

- 4.6 The applicant has been unable to determine ownership, and so providing the 2.4m x 47m visibility splay as required by the 2019 permission could not be delivered in perpetuity.
- 4.7 The applicant has undertaken pre-application discussions with the Local Highway Authority, who indicated that a reduced visibility splay of 2.0m x 47m would be acceptable in Highway Safety terms, and the applicant indicates that this level of visibility splay can be achieved on land that is in his ownership, that of the neighbours or is within the highway boundary, without the use of the land in unknown ownership.
- 4.8 This application is therefore to continue the approved development (which is the change of use to 2 dwellings), but with the varied condition, requiring the provision of a visibility splay of 2.0m x 47m.
- 4.9 A plan/boundary survey has been requested from the applicant to demonstrate that this visibility splay can actually be achieved on site.
- 4.10 Section 73 of the Town and Country Planning Act 1990 states: -

“Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and -

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application”.

- 4.11 On the basis of the above, the sole issue for the Planning Committee to consider is whether the previously approved development (for the change of use from one to two dwellings) is acceptable or not with the changed visibility splay of 2.0m x 47m.
- 4.12 The issue of whether the site should be developed is not a consideration in this instance (as permission has already been granted), the application revolves around the issue of the visibility splay at the site entrance on to Manor Road and whether that splay is acceptable in highway safety terms to service the approved development.

5.0 CONSIDERATIONS

5.1 Planning Policy Background

- 5.1.1 The site is situated within Brimington South Ward in an area which is unallocated in the new Local Plan but which is predominantly residential in nature, and the site is surrounded by established housing, and the previous permission establishes the principle of the development, subject to conditions.
- 5.1.2 Having regard to the nature of the application proposal, policies CLP1 Spatial Strategy (Strategic Policy); CLP2 Principles for Location of Development (Strategic Policy); CLP20 Design, and CLP22 Influencing the Demand for Travel, of the Adopted Chesterfield Borough Local Plan 2018 - 2035 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

- 5.2.1 The main policy considerations relating to the principle of development have already been considered and the Section 73 application applied for cannot re-open consideration of the principle of development

- 5.2.2 As permission has already been granted, the only particularly relevant policy is CLP22 relating to highway safety, and to a lesser extent, Policy CLP2, which seeks to ensure that new development has a safe access arrangement.
- 5.2.3 The acceptability of the revised visibility splay in highway safety terms is the key issue, as the dimensions of the visibility splay has no design or amenity implications.

5.3 Highways Issues

- 5.3.1 Whilst the representations received make particular reference to highway safety and in particular, increased traffic, parking and visibility concerns, the development has already been approved, establishing that it is acceptable in terms of traffic generation and off-road parking, and the only remaining issue is that of whether adequate visibility can be achieved where the access drive meets Manor Road.
- 5.4.2 Condition 6 of the extant planning permission required visibility splays of 2.4m x 47m, although issues in relation to land ownership - over which the splay would cross - cannot be established, and therefore that visibility splay cannot be delivered.



View to right – critical direction



View to left – none critical direction

- 5.4.3 The applicant has requested that a lesser splay of 2.0m x 47m be considered as they indicate that such a splay can be provided over land that either falls within the ownership of the applicant, the adjacent neighbours (where a reciprocal agreement exists, with each drive having visibility over the adjacent neighbours land), or the public highway.
- 5.4.4 It is the purpose of this Section 73 application, to decide whether a 2.0m x 47m visibility splay is acceptable in relation to the modest scale of development proposed, in overall highway safety terms.
- 5.4.5 The size of visibility splays is calculated from the status of the road concerned within the highway network, the speed-limit of the highway and the actual speed of approaching vehicles, (based on the stopping distances for vehicles), the character of the highway and it's orientation, the existence of other structures and/or parked vehicles (that can constitute an obstruction to vision, but which can also offer a degree of traffic calming), and the nature of the development which the access serves, along with the frequency and character of the emerging traffic.

5.4.6 Guidance on this matter is given in Manual-for-Streets and other Department of Transport publications, and the Local Highway Authority (L.H.A) provide the expert advice in these matters.

5.4.7 Visibility at the access point is good, with Manor Road being reasonably straight at this point and the limiting factors are adjacent boundary treatments and the ownership of land over which the visibility splay would pass.

5.4.8 The response of the Local Highway Authority is that they have no objection, and in relation to the pre-application discussions with the applicant, they stated:-

“The proposal already has planning permission which is subject to a condition that ‘prior to commencement of development, evidence is to be provided to demonstrate that a 2.4m x 47m visibility splay can be achieved across the frontage of the property (No 222 Manor Road).

It is understood that whilst securing of land within the curtilage of the adjacent premises has been verbally agreed, it has not been possible to legally secure this.

You have indicated that from a 2.4m set-back distance, a 25m visibility sightline can be achieved in both directions, 1.0m into the carriageway. This equates to an approach speed of only 20mph and as such, is substandard to current design guidance.

From the information available, it would seem that a sightline of 47m could be achieved from a ‘one-step-below’ set-back of 2.0m. I also note that vehicular accesses to the properties to each side of the existing development site are immediately adjacent to the site boundary and would suggest ‘borrowed’ visibility, to achieve the desirable lines of 2.4m x 47m is likely to be available across the width of these.

Previously submitted details have demonstrated that an access of adequate width to enable two vehicles to travel in opposite directions can be provided as well as adequate off-street parking and manoeuvring space to serve two separate dwellings.

I have reviewed the accident records within the vicinity of the site and there have been no injury accidents within the latest recorded period.

Bearing in mind the above, the existing nature and level of use of the site and its access, together with the proposed measures to be taken in support of the development proposals, the Highway Authority considers that objection to any future application to vary the aforementioned condition visibility splay requirements would be likely to prove unsustainable”.

5.4.9 Given the view of the Local Highway Authority, it is considered that the proposal is acceptable in highway safety terms, and the N.P.P.F indicates - at paragraph 109 - that “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”

5.4.10 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 CLP2 and CLP22 of the Local Plan in respect of highway safety matters, and there is no sound reason in highway safety terms to refuse permission for the reduced visibility splay.

5.5 Neighbouring Impact/Amenity

5.5.1 The changed visibility splay would have no additional impact in relation to the amenity levels for the neighbours, as the access drive and volume of traffic is unchanged.

5.5.2 The impact of the proposal and use of the access, and any subsequent impact on the amenity of the neighbours, has already been considered in relation to the earlier application and permission for the development has been approved.

5.5.5 The change to the visibility splay dimensions as allowed by this application would not harm the amenities of nearby residents, and the development, which therefore complies with the provisions of policies CLB2 and CLB20 of the Local Plan.

5.6 Other Considerations

- 5.6.1 Bio-diversity - The recently adopted Local Plan, requires new development to demonstrate a net-gain in bio-diversity, and any detailed conditions can incorporate landscaping/habitat creation to secure this. This however relates to a matter of principle already addressed by the previous approval.
- 5.6.2 Ground Conditions – The site falls within the lower-risk area for Coal Mining Legacy, that is generally dealt with via standing advice, and through the Building Regulations. It relates to a matter of principle already addressed by the previous approval.

5.7 Community Infrastructure Levy (C.I.L)

- 5.7.1 Having regard to the nature of the application proposals and the C.I.L Officers comments, the development is not CIL Liable.

6.0 REPRESENTATIONS

- 6.1 The application has been publicised by means of a site notice (expired 16.09.2020) and neighbour letters (publicity period expired 16.09.2020).
- 6.2 As a result of the applications publicity, 2 letters of objection have been received from nearby neighbours, which make the following points:-
- 6.3 Comments from 218 Manor Road:-
- More dwellings will make our gardens more enclosed
 - The privacy of our houses will be limited
 - There is a constant traffic problem on Manor Road
 - There has been enough building on this road already, with new-builds making it a busier place
- 6.4 ***Comments - The above points relate to the principle of development – i.e. whether the development should occur. This has already been established by the extant planning permission. As Section 73 of the Town and Country Planning Act 1990 only allows consideration of the condition applied for, the only issue is whether the new visibility splay as proposed is appropriate in highway safety terms. As the objection does not refer specifically to the visibility splay the***

points raised are not material considerations in relation to this application

6.5 Comments from un-addressed source:-

- The elements that this condition relate to have not been adequately described or designed within the plans submitted, it can be quite clearly seen if the planning officers cared to visit the property that a 2.4mx47m visibility splay cannot be maintained as drawn across elements of land they do not own or have any legal right to include
- The boundaries to neighbouring properties are incorrect on the plan (this was mentioned on a previous objection to the original application) if distance is maintained 2.4m from the back of pavement (as required as the pavement is considered public highway) to the left of the entrance is an existing fence line of approx 1200mm height (over the maximum height required by the condition) and a well established hedgerow to the front of 220 Manor Road
- If a view is then taken to the right of the property towards the Miners Arms Public House the fence line which borders the property is over the 1100mm maximum height for obstructions allowed within the condition along with the occupants parked cars within their curtilage, as you proceed to travel down Manor Road the brickwork boundary walls to neighbouring properties (222, 224, 226 & 228) are more than the allowed obstruction height of 1100mm and are pre-existing and have been there for many years
- I still feel that for this development to proceed far more thought and design is required to fully evaluate if safe access & egress is achievable from this small narrow private access
- Access to this site is clearly unsafe, the designed access is far too narrow to allow two cars to comfortably pass which will lead to occupants having to wait on the main busy highway if another occupant is leaving the development

6.6 Comments – (taking the points in the order stated above):-

The objectors first point merely states the current situation. The current submission for a 2.0m x 47m splay is because of the legal issues related to the approved 2.4m x 47m splay.

The second point suggests that the boundaries are incorrect and that a splay taken 2.4m back from the footpath edge would conflict with other boundary features such as walls and fences

above 1m in height. Whilst the objector is correct in that a footpath forms part of the highway boundary, the comment indicates a lack of knowledge regarding visibility splays, which are always taken from the back edge of the carriageway, and the location of the footway edge is irrelevant.

The objectors third point about obstructions to the right restricting visibility is based on the previous incorrect assumption that the splay should be measured from the footway edge. The majority of the visibility splay will be within the public footway, with only a modest element being within the grounds of the adjacent dwellings, 220 and 222 Manor Road, and would be unaffected by the other property stated in the objection

The objectors fourth and fifth points about the narrowness of the access being unsafe, and that vehicles would have to wait on the public highway, is not a material planning issue relating to this application to vary the condition regarding visibility. The use of this access to serve a further dwelling has already been agreed by the earlier extant permission, and a Section 73 application to vary a condition, can only consider the merits of the condition under consideration, in this instance, visibility.

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 condition is 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 THE APPLICANT

- 8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the National Planning Policy Framework (NPPF).
- 8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.
- 8.3 The applicant /agent and any objectors/supporter will be notified of the Committee date and provided with an opportunity to address the committee, and this report informing them of the application considerations and recommendation /conclusion is available on the web-site.

9.0 CONCLUSION

- 9.1 The principle of the proposed development has already been considered and in relation to this application, the only issue is the acceptability of the condition relating to visibility. The Local Highway Authority considers the variation to the condition to require a 2.0m x 47m visibility splay to be acceptable in Highway Safety terms, and the site is considered to be an appropriate and logical infill within a residential area and the build-up limits of the settlement, and the development has been sited, detailed and designed such that the development proposals comply with the provisions of Adopted Chesterfield Local Plan Policies CLP1, CLP2, CLP3, CLP13, LP14, CLP16, CLP20 and CLP22; the wider National Planning Policy Framework (NPPF), and the Councils Supplementary Planning Document on Housing Layout and Design 'Successful Places'.
- 9.2 Previously-imposed planning conditions to address any outstanding matters will need to be re-imposed, 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:

01. The development hereby permitted shall be begun before 24 April 2022
02. The development hereby approved shall be implemented in complete accordance with the approved plans as listed below, with the exception of any approved non-material amendment.

Approved Plans:-

Drawing Number - 17-167-07 - GROUND FLOOR PLAN AS PROPOSED

Drawing Number - 17-167-08 - FIRST FLOOR PLAN AS PROPOSED

Drawing Number - 17-167-09 - GARAGE AS PROPOSED

Drawing Number - 17-167-11 - LOCATION PLAN

Drawing Number - 17-167-10 REVISION A - REVISED SITE PLAN

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 no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
04. 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.
05. A residential charging point shall be provided for the additional dwelling with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. The socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be approved in writing, by the local planning authority. The electric vehicle charging points shall be provided in accordance with the

stated criteria prior to occupation and shall be maintained for the life of the approved development.

06. Prior to commencement of the development hereby approved, evidence shall have been provided to and approved in writing by the local planning authority demonstrating the inclusion in the property deeds of 222 Manor Road a 2.0 metre by 47 metre visibility splay across the frontage of the property. The development shall thereafter proceed in accordance with the application drawing and the land in advance of the visibility sightline 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.
07. Prior to occupation of the additional dwelling hereby approved the access driveway shall be widened in accordance with the approved drawing 17-167-10A and which shall be retained as such thereafter
08. The proposed additional dwelling shall not be occupied until space has been laid out within the site in accordance with the application drawing 17-167-10A for vehicles to be parked and manoeuvred. Thereafter, the parking and associated manoeuvring areas shall be maintained free from any impediment to their designated use for the life of the development.
09. Details of a 1.8 metre high screen fence or wall to be installed along the boundary of the site with 220 Manor Road, between points A and B shown on the attached plan, shall be submitted to the local planning authority for consideration. The details subsequently agreed in writing by the local planning authority shall have been installed on site prior to occupation of the additional dwelling and which shall be retained thereafter for the life of the development.

Reasons for Conditions

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

02. 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.
03. To ensure that no foul or surface water discharges take place until proper provision has been made for their disposal.
04. In the interests of the residential amenity of the occupants of nearby dwellings.
05. In the interests of air quality.
06. In the interests of highway safety
07. In the interests of highway safety.
08. In the interests of highway safety.
09. In the interests of the amenity of the residential neighbour at 220 Manor Road

Notes

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