

Case Officer: Chris Wright

Application No: CHE/21/00297/FUL

**Item 2**

**PROPOSAL: Vehicle Access and Driveway at 195 Broomhill Road, Old Whittington, Chesterfield for Mr Mariusz Karpinski.**

Ward Old Whittington

Local Plan Unallocated Urban Area

**1.0 CONSULTATIONS**

Derbyshire County Council Highways                      Comments received – See report

Neighbours and Site Notice                      No comments received

Ward Members                      No representations received.

**2.0 THE SITE**

2.1 This application relates to a terraced two storey dwelling which is one of four modern dwellings sited on the southern side of Broomhill Road which is a popular vehicular route linking Old Whittington through to Sheepbridge. It is also an alternative route for high vehicles to avoid the bridge on Station Road at the bottom of Whittington Hill. Broomhill Road is a 30mph classified road which rises towards the east from its junction with the B6075 and where 195 is situated on the inside of a sweeping right hand bend. It is a residential area with housing to the south, east and west and which is generally of late c19 origins. A care home is located opposite the site to the north.

2.2 The property currently has a hard standing area to the front of the dwelling with metal railing gate to the front highway boundary however there is not a dropped curb. The frontage pavement is 2.0 metres in width. The dwelling to the west (no.197) has a complete hard-surfaced area of the front garden area with astro-turf and which

also has a dropped curb however there is no history of a planning application for these works.

2.3

A search on Google Streetview suggests that the former frontage wall was removed sometime between 2008 and 2009 at which point the frontage was surfaced with a supporting grid shell system and infilled with aggregate.



July 2008 showing commencement of demolition of front wall



June 2009 showing completed works



May 2021 showing gates having being added

### **3.0 APPLICATION SITE PLANNING HISTORY**

3.1 CHE/0500/0323 – Vehicle hardstanding and access for off road parking at 195 Broomhill Road was Refused on 23<sup>rd</sup> June 2000 for the following reason:

*“Visibility at the proposed access is substandard in the westerly direction. The dimensions of the available space are inadequate to satisfactorily accommodate a parked vehicle. It is considered that an access at the application site and the resultant necessity for vehicles to manoeuvre within the classified highway would be detrimental to highway safety.”*

3.2 A subsequent appeal was dismissed on 5<sup>th</sup> October 2000 (APP/A1015/A/00/1046800) with the inspector concluding that it was inappropriate to depart from visibility guidelines which required 2 metre by 90 metre splays. Only a 2 metre by 35 metre splay to the west could be achieved.

### **4.0 THE PROPOSAL**

- 4.1 Planning approval is sought to utilise the front garden area as a driveway involving the dropping of the kerb to the front of the site. The applicant has requested permission from DCC as highway authority to lower the kerb however they will not authorise this until the local planning authority has confirmed that permission has either been granted or is not required. The applicant intends to park a vehicle on the frontage for the purpose of charging it (electric vehicle).
- 4.2 The existing frontage arrangement remains unaltered. The parking area measures 3 metres in width by 4.1 metres plus 0.6 metres in depth (4.7m to front building line) of additional hardstanding and has been largely surfaced with a reinforced grid system and chippings to withstand the weight of a parked vehicle.

## **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.

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

- CLP2 Principles for Location of Development
- 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 (2021)**

- Chapter 2 Achieving sustainable development
- Chapter 8 Promoting healthy and safe communities
- Chapter 9 Promoting sustainable transport
- Chapter 12 Achieving well-designed places

#### 5.4 **Key Issues**

- Principle of Development;
- Design and Appearance;
- Residential Amenity;
- Highways safety;
- Flood risk and drainage;
- Biodiversity

#### 5.5 **Principle of development;**

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

#### 5.6 **Design and Appearance**

5.6.1 Local Plan policy CLP20 states in part that all development should identify and respond positively to the character of the site and surroundings and respect the local distinctiveness of its context. The policy goes on to state that all development will be expected to (g) provide adequate and safe vehicle access and parking and (n) be able to withstand any long-term impacts on climate change.

5.6.2 Whilst the impact of the proposal on highway safety is considered below it is considered that the proposal will have no adverse visual impact on the appearance of the site or local area. The works to the site have already been completed in terms of the removal of the frontage wall and hard surfacing of the forecourt area. The site previously had a front wall to the front of the site, but this was removed over 12 years ago. The hard-surfaced area has also been

present for over 12 years. It is therefore solely the matter of the dropped kerb which would be the visual change and given that such works would not be inappropriate in a residential area and that they will be insignificant in visual impact terms, then the impact of the dropped kerb would be acceptable in regards policy CLP20.

## **5.7 Residential amenity**

5.7.1 Local Plan policy CLP14 states that development will be expected to have an acceptable impact on the amenity of users and neighbours. The Council's SPD 'Successful Places' provides further guidance in respect of privacy, day light and sunlight, overshadowing and external amenity space.

5.7.2 In regards residential amenity the proposal is not considered to lead to a significant impact on neighbours and would be acceptable when considering the requirements of policies CLP14 and CLP20.

## **5.8 Highways Safety, Parking Provision and Cycle Storage**

5.8.1 Local Plan policies CLP20 and CLP22 require consideration of parking provision and highway safety as referred to above and this is the main issue when considering the application submitted. The Highways Authority has responded to the proposal with the following comment.

5.8.2 *From google street view, it would appear that the works within the site curtilage have been carried out for some time i.e. since 2009. It is unclear whether parking has taken place although there are no dropped kerbs for vehicular access. It is also noted that there is an almost identical arrangement at the neighbouring property, again which has been there for some considerable time and this would not appear to have given rise to any highway safety concerns. Whilst the proposal may be slightly deficient in safe minimum criteria and dimensions, removal of a parked vehicle from the carriageway edge on a designated HGV Route adds some weight in favour of the proposal.*

*Ultimately, however, it is considered unlikely that the Highway Authority would be in a position to demonstrate that the proposal would result in a severe impact on the highway network to justify and sustain a highway reason for refusal.*

*It should be noted though that the Highway Authority would not wish to see gates on the vehicular access and the parking area should be hard surfaced not loose material. Subject to the above it is recommended that the following conditions are included in any consent.*

*1. Prior to the parking space being taken into use, a new vehicular access shall be formed to Broomhill Road in accordance with the application drawing and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, to the extremities of the site frontage abutting the highway in both directions. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.*

*2. The parking space shall be provided, and once provided shall be maintained free from any impediment to its designated use.*

*3. There shall be no gates or other barriers on the access/driveway.*

*4. The access/drive to Broomhill Road shall be no steeper than 1:14.*

5.8.3 On face value the proposal would in normal circumstances be recommended for refusal given the substandard size of the space for a vehicle to park and the concerns regarding visibility as referenced in the previous application and subsequent appeal decision.

5.8.4 With regard to the size of parking spaces, the guidance in the Council's Residential Design SPD (2013) for the minimum size of a parking space is 2.4m by 4.8m however the County Council Highway Authority requires larger parking spaces which are at least 2.4m by 5.5m. In this case the space provided by the proposal is deficient in that it is just 4.3m in length and which has the potential consequence of a vehicle parked on the frontage overhanging the

pavement to the front and therefore causing an obstruction to the public highway. This would not be in the best interests of pedestrian safety or highway safety.

5.8.5 Notwithstanding the concerns expressed above, in this case it is not considered expedient or appropriate to refuse planning permission because of the following reasoning.

- There is no support for a refusal on highway grounds from DCC Highways;
- The vehicle access was provided post the appeal decision between 2008 and 2009 over 12 years ago and in this respect is now immune from enforcement action;
- The Council has taken no action against the property owner since the works were carried out;
- There is a similar depth access but with a dropped kerb immediately next door and which has existed for at least the same length of time and which has also not been the subject of any planning action;
- There has been no accident record in relation to the use of the vehicle access or the one next door;
- The proposal brings with it the opportunity to charge a plug in vehicle with climate change advantages;
- The proposal allows for a vehicle to be parked off Broomhill Road which is a designated HGV / tall vehicle route;
- Whilst the depth of the parking space is substandard it still allows for a small vehicle to park without overhanging the highway. The photograph below shows the applicants Mini Countryman Hybrid which is 4.3 metres in length: The neighbours vehicle shown in photographs is a Honda HR which is 4.33 metres in length.



- 5.8.6 On balance a decision to approve this particular scheme would not set a precedent for accepting other such substandard sized parking spaces because of the particular circumstances which are referred to in paragraph 5.8.5 above. A refusal would not achieve removal of the access since it is now immune from enforcement action due to the passage of time. An appeal is likely to be successful given that the access has existed for so long without any action by the Council and the fact that there is an almost identical arrangement immediately next door.
- 5.8.7 Whilst a previous appeal inspector had dismissed an appeal, standards have changed since that date as a typical visibility splay onto a 3 mph road from a domestic property is now 2.4m by 37m and which is similar to what is actually available and which was referred to in the appeal case (2m by 35m).
- 5.8.8. The County Highway Officer has suggested 4 No conditions be imposed. The first requires that before first use of the parking space that it be provided with 2.4 metre by optimum visibility splays in both

directions. It is clear that the parking space has existed for in excess of 12 years and the condition wording from the Highway Authority would therefore be unreasonable. The frontage within the control of the applicant comprises of a brick wall and an open metal gate and railing however the walls are no more than 1.0 metres in height and the gates are of an open design (up to 1.18 metres high) but do not obstruct visibility for an emerging driver.

The second suggested condition is requires the parking area to be maintained free from any impediment to its designated use and this can be imposed as a reasonable requirement.

The third condition requires that there should be no gates or other barriers on the access/driveway however there are currently gates present. The gates are of a very open character and are between 0.94 and 1.18 metres high and do not obstruct visibility. It is not necessary to impose this condition.

The fourth condition requires the access/drive to Broomhill Road to be no steeper than 1:14. It already exists and is generally level and this condition is therefore unnecessary.

- 5.8.9 The National Planning Policy Framework sets out that proposals should only be refused on highway safety grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. (Paragraph 111) In this case it is clear that the impacts are not severe and having regard to all material planning considerations that on balance the proposal can be argued to be acceptable and not in conflict with policy CLP20.

## 5.9 **Flood Risk and Drainage**

- 5.9.1 On the basis that the frontage area has been surfaced for over 12 years and is not to be changed as part of the proposal and on the basis that it is constructed from a permeable material, it is the case that the proposal does not materially impact the existing situation on site and is therefore in accordance with policy CLP13 of the Local Plan.

## 5.10 **Biodiversity**

5.10.1 Local Plan policy CLP16 states that all development will “protect, enhance, and contribute to the management of the borough’s 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”.

5.10.2 No information has been provided in regard to biodiversity on site. The proposed development is considered to be so minor (just lowering of kerbs) and does not result in the loss of an existing biodiversity value.

## 6.0 **REPRESENTATIONS**

6.1 No comments received

## 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 It is considered that the recommendation is objective and in accordance with clearly established law.

7.3 The recommended conditions are considered to be no more than necessary to control details of the development in the interests of amenity and public safety and which interfere as little as possible with the rights of the applicant.

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

- 8.1 The following is a statement on how the Local Planning Authority (LPA) has adhered to the requirements of the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 in respect of decision making in line with paragraph 38 of the February 2021 National Planning Policy Framework (NPPF).
- 8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.
- 8.3 The applicant / agent and any objector will be provided with copy of this report informing them of the application considerations and recommendation / conclusion.

## **9.0 CONCLUSION**

- 9.1 Whilst on face value the proposal appears to represent substandard development it is considered that a refusal could not be sustained having regard to the length of time the access has existed, the lack of any support from the Highway Authority and the presence of a matching arrangement next door. As such the local planning authority should on balance grant planning permission.

## **10.0 RECOMMENDATION**

- 10.1 That the application be **GRANTED** subject to the following conditions / notes:

### **Conditions**

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

***Reason*** - *The condition is imposed in accordance with section 51 of the Planning and Compulsory Purchase Act 2004*

2. The development hereby approved shall only be carried out in full accordance with the approved plans accompanying the application with the exception of any approved non material amendment.

***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.*

3. The parking area shall hereafter be maintained clear of any obstruction to its designated use.

***Reason*** – In the interests of highway safety

### **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.