

**ITEM 4****Residential development of 26 dwellings, new access, parking and associated landscaping (revised plans received 13.06.2022) at Land To The West Of Swaddale Avenue, Tapton for MYPad2020**

Local Plan: H14 allocated for 21 units under Policy CLP3

Ward: Brimington South

Plot No: 2/2175

Committee Date: 18<sup>th</sup> July 2022**CONSULTATIONS**

CBC Environmental Health	Conditions recommended
The Coal Authority	Comment made – see report
Archaeology	Comment made – see report
CBC Tree Officer	Comment made – see report
CBC Design Services	Comment made – see report
Yorkshire Water	Initially raised concerns about building being sited over the sewerage system. Further comment made – see report
TPT	Comment made – see report
DCC Policy	Comment made – see report Also encourage NGA broadband infrastructure
Network Rail	No objection subject to advisory notes in relation to building adjacent to the railway line.
CBC Conservation Officer	I have considered the application site in relation to designated heritage assets in the locality, including Tapton House (plus the Scheduled Ancient Monument and Listed assets within its curtilage), the Chesterfield Canal and associated Listed structures. I do not consider that the development can be considered to be within the setting of a designated heritage asset, and therefore I make no further comment or objection, based on potential impact to heritage assets.
Chesterfield Cycle Campaign	No comments to make
Derbyshire Wildlife Trust	Comment made – see report

CBC Forward Planning	Comments made – see report
NHS CCG	No request for funding as the development is below our threshold.
CBC Tree Officer	Comments made – see report
Highway Authority	Comments made – see report
Lead Local Flood Authority	Conditions recommended following the submission of additional information.
Representations	10 received which are summarised under section 6 of the report below

## 2.0 THE SITE

2.1 The application site is an elongated but narrow parcel of land that sits between Swaddale Avenue to the east and the railway line to the west beyond which is an area of tree screening, the river Rother and beyond this the Trans Pennine Trail. Existing housing surrounds the site on three sides to the south, east and north with the housing to the east being elevated from the site.

2.2 At the time of the submission the application site was overgrown with mainly scrub cover, the site has since been cleared with a few specimen trees remaining close to the railway line and to the northern end of the site a Silver Birch in the location of the access into the site to the rear of the garden to no.18 Swaddale Avenue was removed. The land to the south of the site is elevated from around the point of the access route into the site. The remainder of the site is then relatively level.

2.3 The site is allocated in the local plan as a housing site under allocation H14 as set out in policy CLP3, Table 4 for 21 dwellings.

2.4 Site location:



2.5

Point of access:



From the site towards the access:



From the access route into the site:





The south eastern boundary:





From the central area looking north:



From the central area looking towards the southern elevated section:



Looking towards the elevated housing on Swaddale Avenue:



Looking along the eastern boundary from the north:





Looking to the north:



### 3.0

#### **SITE HISTORY**

### 3.1

CHE/16/00092/OUT Outline application for residential development of land to the rear of 6-58 Swaddale Avenue along with upgrading the existing site access (all matters reserved except access and layout) - drainage strategy received 9th March 2016. Conditional permission 28.06.2016

### 4.0

#### **THE PROPOSAL**

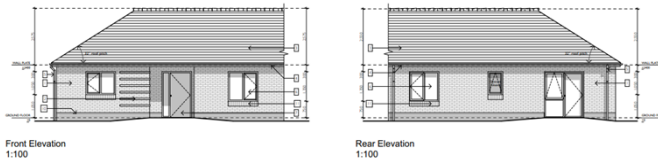
4.1

Planning permission was originally sought for the erection of 30 dwellings on the site, which is allocated for 21 dwellings. This has now been amended to 26 dwellings to address some of the concerns raised through the application process. Access is proposed from Swaddale Avenue between the existing gap between the houses. It is then intended that the road would be formed such that the proposed dwellings to the north would be positioned with the gardens back to back with the existing dwellings on Swaddale Avenue and to the south a small cul-de-sac area is formed as shown on the layout below.

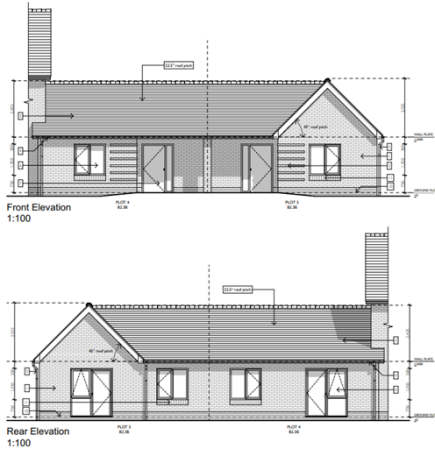


4.2

The following schedule sets out the proposed housing:  
House type: B2.3A 2B3P – 62.4m<sup>2</sup>



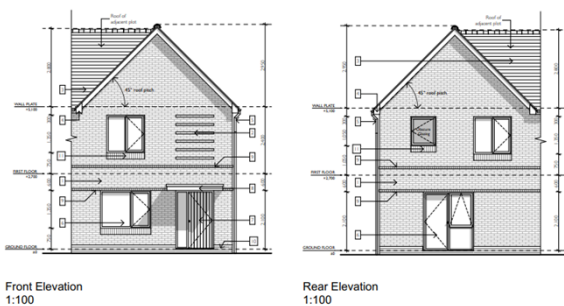
House type: B2.3B 2B3P – 63.1 m<sup>2</sup>



House type: H2.4A 2B4P – 72.6 m<sup>2</sup>



House type: H2.4B 2B4P – 72.6 m<sup>2</sup>

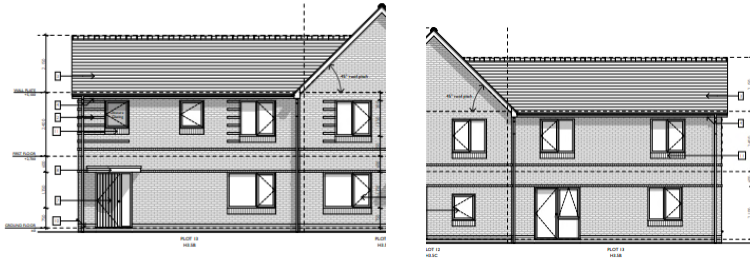


House type: H2.4C 2B4P – 72.6 m<sup>2</sup> (similar in appearance as H2.4A above)

House type: H3.5A 3B5P – 84.1 m<sup>2</sup> (similar in appearance as H2.4A above)

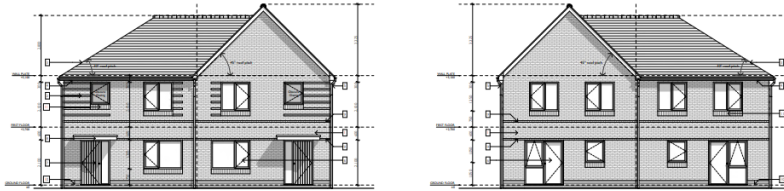
House type: H3.5B 3B5P – 90.2 m<sup>2</sup> (B, plot 13)





Front Elevation

House type: H3.5C 3B5P- 88.4 m2 C, plot 10



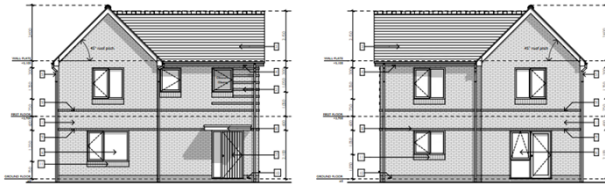
Front Elevation  
1:100

Rear Elevation  
1:100

House type: H3.5D 3B5P – 88.4 m2 D, plot 11 (shown above)

House type: H3.5E 3B5P – 88.4 m2 (similar in appearance as A, above)

House type: H3.5F 3B5P – 92m2 (measurement not provided)



Front Elevation  
1:100

Rear Elevation  
1:100

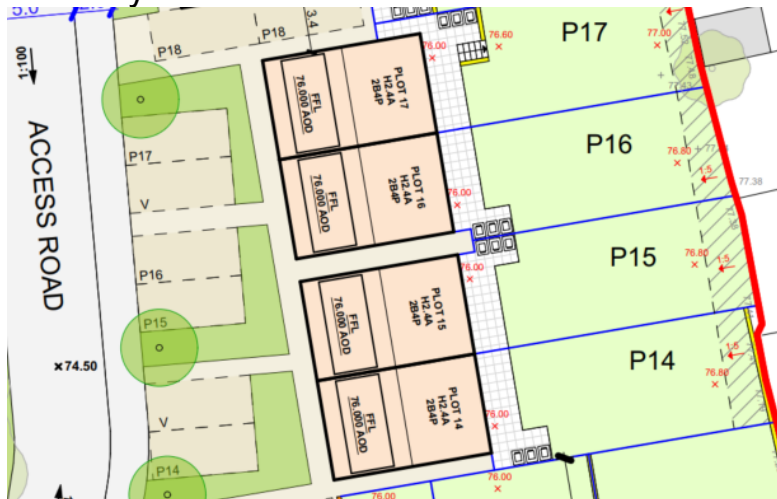
#### 4.3

Parking provision is as follows:

X 2 parking spaces for Plots: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 20, 21, 22, 23, 24, 25, 26

X 1 parking space plus visitor space Plots: 14, 15, 16, 17

This equates to 2 spaces per dwelling and is set out in a way that would in reality achieve that as can be seen from the layout of plots 14 to 17:



4.4 Access is to be formed to the south of no.18 Swaddale Avenue which is in the ownership of the applicant. The side boundary of this property will be altered to allow for the width of the access route into the site. The access leading from Swaddale Avenue is coming from the road at an elevated level then sloping down into the site. as a result of the change in levels across the site there will be re-grading of the land to accommodate the dwellings at appropriate gradients.

4.5 In terms of affordable housing the application includes a statement which notes:

*Mypad 2020 Ltd are working with Nottingham Community HA Ltd (NCHA) to deliver a mixed tenure affordable housing development on land at Swaddale Ave Chesterfield. The mix of house types has been discussed and agreed with Chesterfield Borough Council (CBC) Housing Strategy and Enabling Manager and in turn the mix has been agreed with the NCHA Ltd.*

*The tenure mix responds to NCHA's strategic funding priorities established through their Homes England Strategic Partner funding agreement to deliver mixed tenure housing solutions, of which shared ownership is a key tenure element. This reflects both Homes England and Central Governments priorities. The proposal presented will attract £1.57m grant investment from Homes England to provide affordable housing. In addition, this mix is a response to help address priority housing needs in the area specifically to help address the demand for rented homes, the proportion of affordable rented homes is 57%.*

(It should be noted that an updated tenure on the reduced housing number has not been provided.)

*In terms of standards the house types all comply with RP requirements and indeed Homes England's funding requirements. The space standards comply with the former Homes England expected standards i.e Housing Quality Indicators and meet current National Described Space Standards (NDSS). The table below sets out the comparison of the types to NDSS target floor areas. Note the key for NCHA is that the types achieve a minimum of 85% of the NDSS unit standard, this is a minimum requirement of Homes England grant funding. The units meet this standard for all bedspace definitions. NCHA have accepted the proposed house types.*

*The rented homes will be let at affordable rents as defined by Homes England funding. The affordable rent homes will be let on a standard*



*assured tenancy agreement to persons nominate to NCHA by CBC through the usual nomination arrangements.*

*In terms of processing the application, we have clearly set out proposal to deliver this scheme as affordable housing with NCHA Ltd, but given this is a previously consented site we have applied on the basis that this is an allocated / approved site so applied on basis of policy requirement for affordable housing. The basis of our application does not affect the way we will proceed and contract but if for whatever reason we did not complete contracts with NCHA we do not want this approved site limited solely to affordable housing tenures.*

- 4.6 Therefore the scheme is being considered as open market housing in terms of this planning application, however it is likely from the information provided by the applicant that the housing will be a fully affordable scheme with a mix of rented and shared ownership units.

## **CONSIDERATIONS**

### **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.

- 5.1.2 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.

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

CLP1 Spatial Strategy (Strategic Policy)  
CLP2 Principles for Location of Development (Strategic Policy)  
CLP3 Flexibility in Delivery of Housing (Strategic Policy)  
CLP4 Range of Housing  
CLP11 Infrastructure Delivery  
CLP13 Managing the Water Cycle  
CLP14 A Healthy Environment  
CLP16 Biodiversity, Geodiversity and the Ecological Network

CLP17 Open Space, Play Provision, Sports Facilities and Allotments  
CLP20 Design  
CLP21 Historic Environment  
CLP22 Influencing the Demand for Travel

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

- National Planning Policy Framework (NPPF)
- Supplementary Planning Document - 'Successful Places' Residential Design Guide

### **5.4 Key Issues**

- Principle of development
- Design and appearance of the proposal;
- Impact on potential archaeology and the setting of listed buildings
- Impact on neighbouring residential amenity;
- Highways safety and parking provision;
- Biodiversity, impact on protected species, enhancement and Trees
- Ground conditions
- Drainage
- CIL liability

### **5.5 Principle of Development**

#### **5.5.1 Policy principle:**

As set out above the requirement for the consideration of planning applications is; 'applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise'. In this case the application site is allocated in the Adopted Local Plan as housing site H14 for 21 units, with the proposal being for 26 dwellings.

5.5.2 Policy CLP3 states that: "Planning permission will be granted for residential development on the sites allocated on the Policies Map and as set out in Table 4, provided they accord with other relevant policies of the Local Plan."

5.5.3 It is clear from Policy CLP3 as set out in the Adopted Local Plan that housing development in the region of 21 units is anticipated on the



application site. It is assumed that the provision of 21 units is largely based on an earlier permission for the site which was for 21 units but which has expired. This proposal whilst for a slightly greater number of units is in line with Adopted Local Plan policy in terms of the principle of the development. It is therefore necessary to consider the detail of the submission against the other policies of the Adopted Local Plan and to consider whether the 26 units is appropriate for the site.

- 5.5.4 Whilst the site is allocated Policies CLP1 and 2 require all development to be sustainably located. In allocating the land for development the sustainability of the location is considered as a primary means to consider climate matters and ensure all development is sustainable in the long term. In this case the site is within walking distance of the local services and facilities including supermarket and play area, with the cycle network already completed in the area which gives sustainable connections to the wider town. Bus routes 74, 74A, 77 and 77A run along Brimington Road which provide access into Chesterfield centre around 4 times an hour. The proposal is therefore considered to meet the requirements of policies CLP1 and 2 in terms of being sustainably located.
- 5.5.5 Infrastructure:  
Concern has been raised by local residents that the development will impact on existing services and facilities such as schools and GP practices.
- 5.5.6 Through the provisions of the Community Infrastructure Levy monies are collected from developments such as this and are coordinated into spending on matters such as school expansion. There is also the ability to secure other matters via legal agreement and direct contributions. In this case the NHS CCG have not requested funding from the development which is at a level below the threshold at which they request contributions.
- 5.5.7 It should be noted that contributions will only secure physical improvements as funding for patients and school pupils remains via direct government funding. In this respect the contribution request for the Chesterfield Hospital is misplaced and cannot be secured via these mechanisms as central government funding of the NHS is provided for this.
- 5.5.8 DCC policy has commented on the application as follows (note the number of units has been reduced since the comments were made):

*Education:*

*The proposed development relates to the normal area of Christ Church CofE Primary School. The proposed development of 30 dwellings (excluding 2 x one bed dwellings) would generate the need to provide for an additional 7 primary pupils.*

*Christ Church CofE Primary School has a net capacity for 210 pupils, with 184 pupils currently on roll. The number of pupils on roll is projected to increase during the next five years to 217.*

*Analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications shows that the normal area primary school would not have sufficient capacity to accommodate the 7 primary pupils arising from the proposed development.*

*The proposed development relates to the normal area of Whittington Green School. The proposed development of 30 dwellings (excluding 2 x one bed dwellings) would generate the need to provide for an additional 6 secondary pupils. Whittington Green School has a net capacity for 800 pupils with 395 pupils currently on roll. The number of pupils on roll is projected to increase to 467 during the next five years.*

*An evaluation of recently approved major residential developments within the normal area of Whittington Green School shows new development totalling 852 (includes 54% of 1500 dwelling at Waterside), amounting to an additional 170 secondary pupils. Analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications shows that the normal area secondary school would have sufficient capacity to accommodate the 6 secondary pupils arising from the proposed development.*

5.5.9

*Waste:*

*In relation to Waste matters the County advise:*

*New residential development in Derbyshire can be expected to generate an increase in the overall amount of household waste and depending on the size of the development this can have a varying impact on the existing local HWRC network. Where it is expected that new housing development will generate a need for additional provision, funding through developer contributions will be expected to help provide the necessary additional capacity. Based on the capacity at Bolsover HWRC, a contribution from CIL may be requested to enable additional measures to increase capacity.*

5.5.10

Affordable housing:



In line with para's 4.5 and 4.6 above it is clear that whilst this development may be a fully affordable scheme the applicant has requested that the scheme be considered as open market housing to cover any absence of funding. This means that the normal requirements for affordable housing apply which in this location as set out by the Council's Forward Planning team is:

*The site is within a medium charging zone for Community Infrastructure Levy. The Local Plan policy CLP4 therefore requires 10% affordable housing to be split between affordable rent (90%) and affordable home ownership (10%).*

5.5.11 In order to secure this policy level affordable provision a legal agreement will be needed to ensure the proposal at the minimum secures the 10% affordable housing across the site, but makes allowance for it to be greater than this should funding and other matters as set out by the applicant allow for a fully affordable scheme. On this basis the proposal meets the requirements of Policy CLP4 of the Adopted Local Plan.

5.5.12 Adaptable and accessible housing:  
As set out in the comments of the Council's Forward Planning team, Policy CLP4 requires that 25% of the units proposed are to the higher level building regulations for adaptable and accessible homes known as M4(2) standard.

5.5.13 DCC have commented that: *We support the inclusion of the M4(2) standard bungalows and support the 100% affordable provision.*

5.5.14 The site layout plan shows that plots 4, 5, 20, 22, 24, 25, 26 are to be the M4(2) units. 25% of the units would equate to a need for 6.5 units to be to the M4(2) standard. The 7 units proposed therefore meets the policy CLP4 requirement.

5.5.15 Climate:  
The main way in which the Local Plan seeks to tackle climate change is to ensure sustainable development in locations where access to services can be via walking, cycling or via public transport.  
As set out by the Council's Forward Planning team; *Strategic objective 1 of the Local Plan is to 'Minimise greenhouse gas emissions in line with Government targets, increase the use of renewable energy and help the borough adapt to the effects of climate change.'*

*Local Plan policy CLP20 requires major development to minimise CO2 emissions during construction and occupation as far as is feasible and financially viable.*

- 5.5.16 The Design and access statement sets out that:  
*It is envisaged that all properties will be built using an open panel timber frame solution to comply with Homes England Modern Methods of Construction (MMC) category 2. It is also proposed that the new homes will have Air Source Heat Pumps (ASHP) and Photovoltaics (PV's) to remove gas from the homes, striving towards the districts green agenda. All dwellings will be fitted with energy efficient appliances and water saving features will be installed so as to maximise the energy and water efficiency of the development.*
- 5.5.17 Whilst it is acknowledged that Government has targets on climate and the Council has declared a climate emergency, there is no specific national policy other than updated building regulations to demonstrate how this will be met. This makes it difficult for LPA's to determine the extent of carbon emission reductions necessary to deliver on any targets. It is also clear from appeal decisions and called in decision by the secretary of state that without a specific policy on climate measures through build standards construction beyond the adopted building regulations would be considered unreasonable.
- 5.5.18 In this case whilst some detail is given and there is reference in the submission to the use of air source heat pumps, it is considered reasonable to impose a condition to ensure compliance with the 2022 building regulations now in force, to ensure the 12 month pre-registration does not take place to avoid this. The provision of EV charging is included in the building regulations and is therefore covered by such a condition. The submission of further information on the reduction of emissions through the construction process is also considered reasonable. On this basis matters of climate impacts have been satisfactorily considered within the remit planning policies allow.
- 5.5.19 Open space:  
As set out by the Council's Forward Planning team there is some deficiency in open space in the area and this will to some degree be exacerbated. Given the constrained site it is not feasible to include this within the development, however there is play nearby at Tipton park and the issue of additional play can be considered further under CIL provision to look at realistic opportunities to include meaningful play provision off site.



5.5.20 Conclusion:  
In considering matters of planning policy including; the sustainability of the site, affordable housing, accessible and adaptable homes, impacts of climate change and infrastructure capacity. These matters have all been considered and found to be acceptable subject to conditions, CIL provision and the signing of a S106 agreement. On this basis the principle of the development is acceptable in line with local and national planning policy and there are no material considerations which indicate any deviation from this.

## 5.6 Design and Appearance of the Proposal

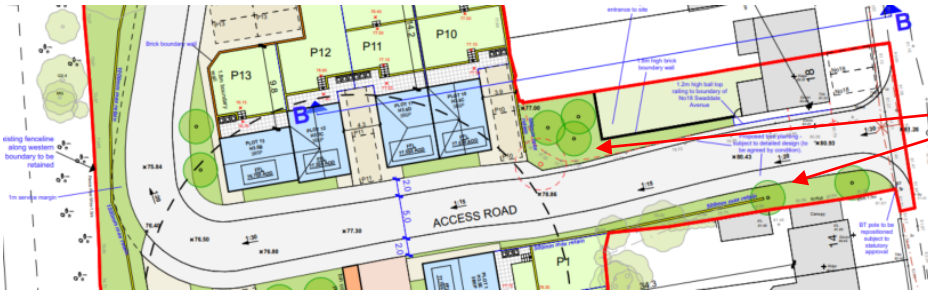
5.6.1 Local Plan policy CLP20 states in part; all development should identify and respond positively to the character of the site and surroundings and respect the local distinctiveness of its context respect the character, form and setting of the site and surrounding area by virtue of its function, appearance and architectural style, landscaping, scale, massing, detailing, height and materials.

5.6.2 The Council's Urban Design Officer initially raised concern regarding the following elements of the scheme:

- *The layout does not take account of the sewer easements.*
- *The design and access statement does not appear to refer to the council's SPD on residential development.*
- *The entrance utilising a substantial amount of close boarded fencing is not considered to be an attractive entrance, a landscaped margin would help here.*
- *Consideration of the corner units is needed.*
- *The silver birch tree should be incorporated into more of a feature.*
- *Consideration of boundary treatments is needed*
- *Where minimum separation distances are not met this is only accepted in relation to bungalow development.*
- *Garden sizes need to be appropriate.*
- *Concern regarding extent of parking bays to frontages without visual relief.*
- *Query structures in close proximity to boundary with railway.*
- *Consideration of materials is needed.*
- *Due to issues with the layout, query density.*

5.6.3 Following these comments the Urban Design Officer has taken part in substantial negotiations on the scheme to result in the final layout as

now proposed for the reduced number of houses now proposed at 26 rather than the 30 originally proposed. The final layout as now proposed is considered to have adequately addressed these issues. An area of open space is proposed to the end of the rear garden of existing no. 18 Swaddale Avenue with a verge to soften the visual impact of the fence:



Open space and verges for softening the access route.

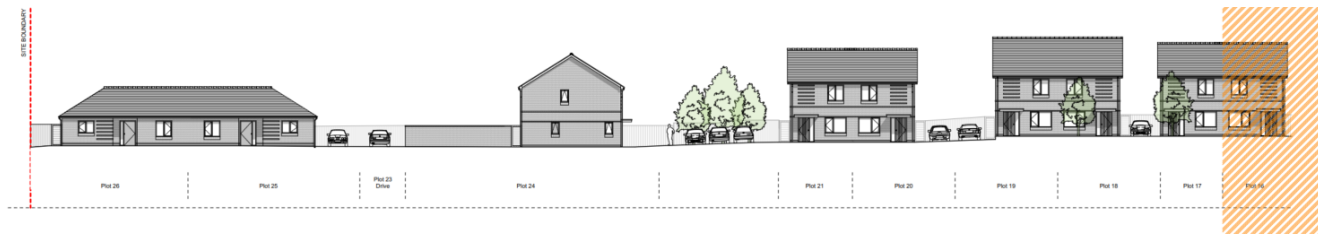


Frontage parking broken up with planting as recommended

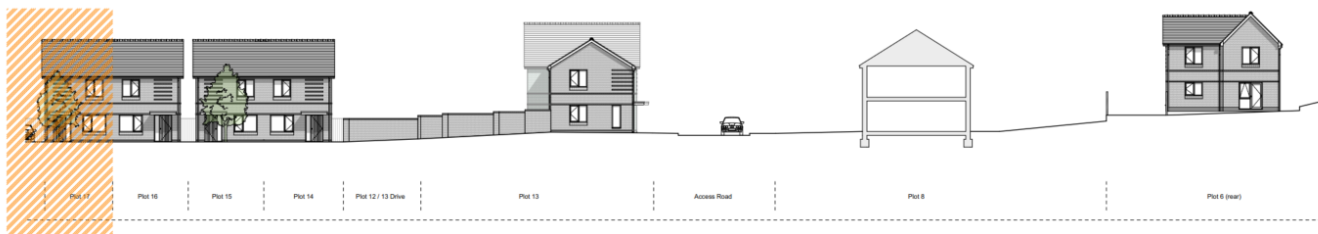


5.6.4

The design of the dwellings being of a more contemporary detailing but traditional form are considered to be appropriate to the context of the site. Whilst street scenes have not been submitted for the finalised layout, indicative street scenes have been provided which show an attractive street scene of plots 26 to 16:



And from plots 17 to 6:



- 5.6.5 The external facing materials of the development have not been finalised at the stage and will need to be considered along with consideration of all hard surfacing and boundary details, leaving existing residents boundary treatments in place. Subject to this condition the proposal is considered to meet the requirements of policy CLP20.
- 5.6.6 Concern has been raised that the proposal will adversely impact the canal and its surroundings. The Local Plan under policy CLP18 relates to the canal corridor where its states: The council will safeguard the route of Chesterfield Canal as shown on the Policies Map. Development which prejudices the existing character of and/or the future potential for the improvement and enhancement of the Chesterfield Canal, including public access, environment and recreation, will not be permitted. Policy CLP19 states that: Development which prejudices the existing biodiversity, ecological value and character of and/or the future potential for the improvement and enhancement of the environment and character of the river corridors as shown on the Policies Map, including biodiversity, habitat connectivity, public access and recreation, will not be permitted.
- 5.6.7 The application site is separated from the river corridor / canal by a wooded corridor beyond the railway line which will not be impacted by the development.





River / canal and wooded buffer beyond the railway line

It is considered that this green buffer is sufficient to ensure that the character of the water corridor will not be adversely impacted by this proposed development. The proposal therefore meets the requirements of policies CLP18 and 19 of the Adopted Local Plan.

## **5.7 Impact on archaeology and the setting of listed buildings**

- 5.7.1 The application site is relatively near to a number of heritage assets:  
Grade II Tapton Hill Bridge over Chesterfield Canal  
The scheduled fortifications, Grade II\* House and Grade II Gates at Tapton Park.
- 5.7.2 Policy CLP21 states: 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 reiterated in national policy in Part 16 of the NPPF.
- 5.7.3 The Council's Conservation Officer has considered the case and concluded there will be no harm to any heritage asset as a result of the proposal.
- 5.7.4 In relation to Archaeology Policy CLP21 states:  
The surveying and recording will be required to be carried out in a manner proportionate to the importance of the asset and the impact of the development. A report detailing the investigation should be made publicly available and deposited through Derbyshire's Historic Environment Record as a minimum.

5.7.5 Given the location of the site the Archaeologist has been consulted and has commented that:

*The site has potential for below-ground archaeological remains associated with:*

*1) Part of a probable Roman milestone (HER 3935) found in 1933 built into the roadside wall of the Chesterfield-Steveley Road (Brimington Road about 70m south-east of the proposal boundary). The HER does not describe a route for Rykneld Street running north-east out of Chesterfield, but a length of the road has been identified in the area of Hags Farm, Steveley, and it is possible that the Roman road ran on or close to the current route of Brimington Road (which formed part of an early turnpike between Chesterfield and Worksop, authorised in 1739).*

*2) Medieval settlement at or around the site of Swaddale Farm. Historic 19th century mapping shows the farm just outside the sites eastern boundary but the site name is attested as early as the 14th century and may be an example of shrunken medieval settlement. There is consequently potential for settlement archaeology of medieval date.*

*3) Activity associated with the possible castle motte known as Castle Hill (Scheduled Monument) at Tapton, 280m south of the site boundary. Archaeological survival may however have been compromised to a greater or lesser extent by the use of the site as allotment gardens during the 20th century, by construction of the Swaddale Avenue housing during the early 20th century, and by construction of the Midland Railway along its western side during the 19th century.*

*Given the small size, of the site, the nature of the archaeological potential, and the evidence for possible truncation of archaeological levels, I recommend that the archaeological interest in the site is addressed through a conditioned scheme of recording in line with NPPF para 199. This should comprise trial trenching in the first instance to establish archaeological significance, followed by targeted excavation of areas where significant remains are identified. Conditions should be attached to any planning consent.*

5.7.6 Subject to this condition it is considered that all matters of heritage impacts have been addressed and meet the requirements of Policy CLP21 and Part 16 of the NPPF.

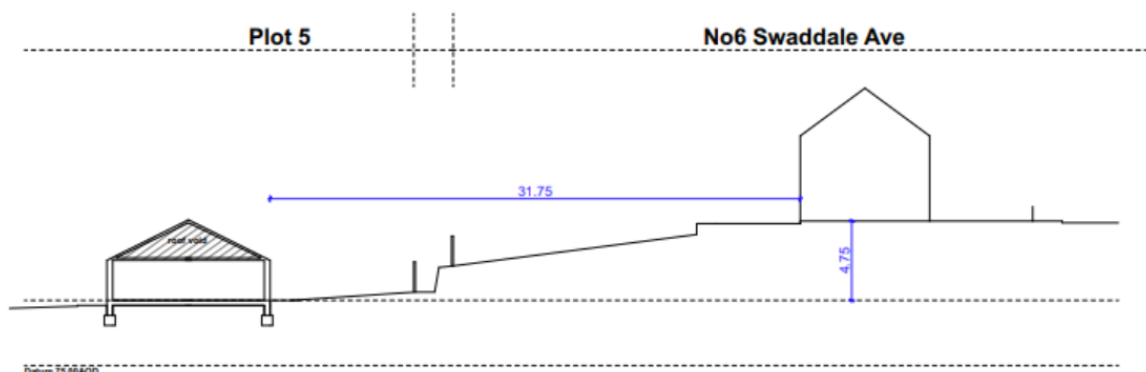
## **5.8 Impact on Neighbouring Residential Amenity**

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

5.8.2 Concern has been raised by local residents that the scheme will adversely impact on amenity in terms of loss of light and overlooking. The scheme has been considerably amended to address these concerns. The separation distances between properties are all now at an acceptable level. The only properties where a 10m garden depth has not been achieved are the 2 bungalows at plots 25 and 26 where the garden depth of 8m to plot 25 and 7m to plot 26 is considered acceptable based on the units being single storey. Also on plot 13 the rear garden is approximately 9.8m in depth, however this property is to back onto the proposed roadway and a parking area and therefore does not impact on existing residents. It should also be noted that the separation distances between existing and proposed dwellings are in the main exceeded as the dwellings backing onto the site generally have elongated gardens.

5.8.3 In terms of assessing the impacts it is noted that there are level changes on the site which also need to be considered. Sections have been provided, the layout has since changed since the submission of these, but in some circumstances the sections demonstrate the level changes on site as now proposed, these are shown as follows.

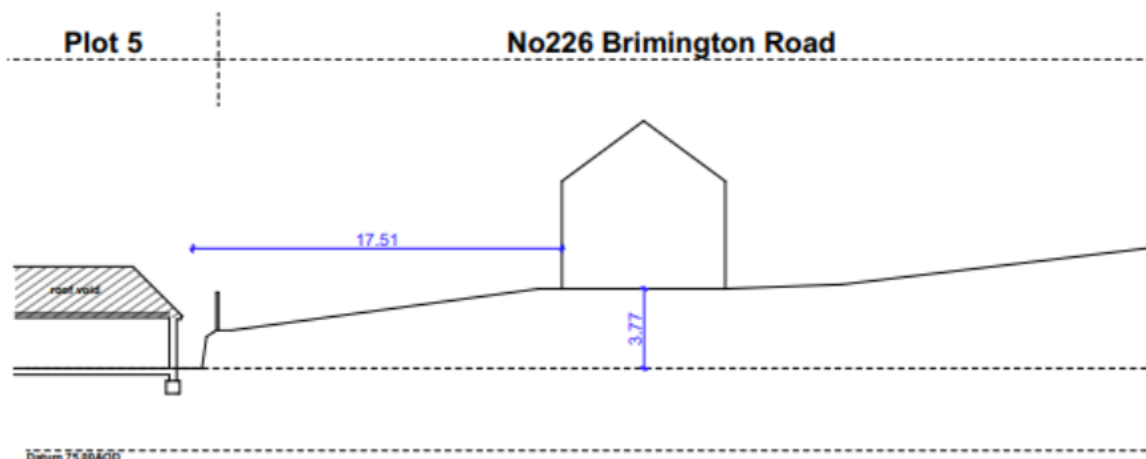
Plots 4 and 5 are also bungalows but also there is a level change and so the impact on the adjacent properties has been reduced:



Site Section C-C

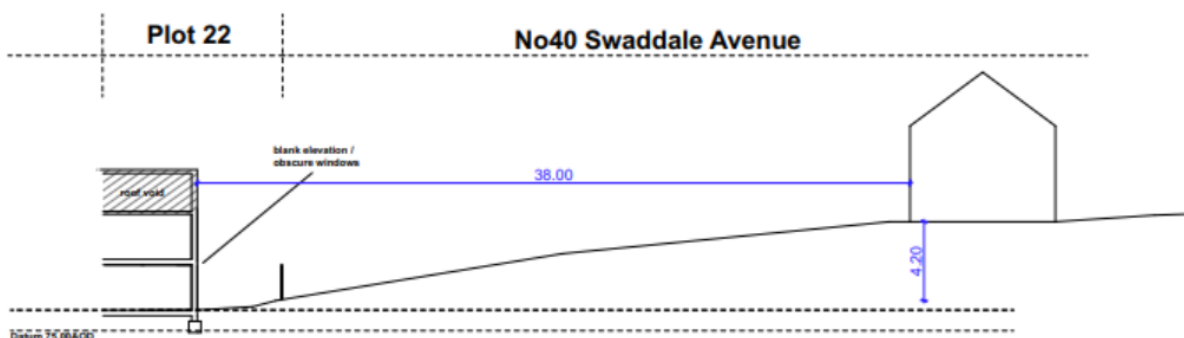
Both against the dwellings on Swaddale Avenue and the ones on Brimington Road:





**Site Section D-D**

Plot 22 has a gable end to the rear boundary of the Swaddale Avenue properties:



**Site Section E-E**

5.8.4 These sections and the garden depths demonstrate that the applicant has worked with the Authority to ensure that the impacts on neighbouring residents have been addressed and are now satisfactory, in most cases the separation distances exceed the requirements of the Council's Adopted Supplementary Planning Guidance.

5.8.5 The matters raised by local residents including concerns of overlooking, loss of light, and location of the bin store are considered to have been satisfactorily addressed. On this basis the proposal meets the requirements of Policy CLP14 of the Adopted Local Plan.

## 5.9 Highways Safety and Parking Provision

- 5.9.1 Concern has been raised that the development will impact adversely on parking in the locality and may result in Swaddale Avenue being blocked for emergency vehicles as well as increasing the capacity at junctions.
- 5.9.2 Local Plan policy CLP20 and CLP22 require consideration of parking provision and highway safety.
- 5.9.3 Following negotiations on detail between the highway authority and the applicant the following final comments were received from the Highway Authority as follows:  
*I note the applicant has chosen to provide a 5m wide access road for a design speed of 20mph, but no speed restraint shown. However, I am mindful a highway response is urgently needed, so I will add an appropriate Condition/informative to enable the applicant to add the speed restraint at a later date when going through the technically approval process. Therefore, if you are minded to approve the proposals, it is recommended that Conditions are included within the Consent.*
- 5.9.4 Based on these comments and given that the applicant has addressed all earlier queries raised by the Highway Authority there are no grounds for refusal upon highway safety matters. Some of the conditions suggested by the Highway Authority are not considered to meet the tests for planning conditions as details have already been supplied for example bin space provision. Therefore, only those conditions which meet the required tests for planning conditions are to be included in the recommendation.
- 5.9.5 The application as set out in para 4.3 above includes only 1 parking space and 1 visitor space per dwelling for plots 14 to 17, nevertheless this still equates across the site to 2 parking spaces for each dwelling which considering the sustainable location is satisfactory.
- 5.9.6 The application includes a plan showing a swept path analysis to ensure that waste vehicles can enter and leave the site within the confines of the highway. Whilst this does include some of the full width of Swaddale Avenue it is not considered that this is significantly different to accessing the adjacent roads Tapton Vale and the Swaddale Avenue Cul-de-sac.
- 5.9.7 Network Rail has been consulted on the case due to the proximity of the railway line. Whilst they have raised no objections they have advised on a number of Informatives to be added to any decision to set out the rules regarding development work in close proximity to railway lines.

5.9.8 On this basis it is considered that the development is acceptable in terms of highway safety and meets the requirements of Policies CLP20 and 22 of the Adopted Local Plan.

## 5.10 **Biodiversity, impact on protected species, enhancement and Trees**

### 5.10.1 Biodiversity:

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”.

5.10.2 DWT were consulted on the case and commented that they have reviewed the Habitat and Protected Species Report (Paul Hicking Associates, August 2021). The Trust have some technical criticisms of the report, however confirmed that in regard to bat roosts no features were recorded in association with the onsite trees that could be used by roosting bats and therefore it is unlikely to make a difference to the conclusions reached.

The Trust go on to comment:

*We are pleased to see that the report references the previous ecological survey work at the site (associated with planning application CHE/16/00092/OUT) and compares the current habitats and protected species interests to those recorded in 2015. The site has been disturbed in the interim and now comprises overgrown scrub and tall ruderal vegetation. No evidence of badger activity was recorded despite the presence of setts in the wider area. The main species interests at the site are likely to be nesting birds and hedgehogs. Grass snake are known to use the habitats along the nearby Chesterfield Canal and River Rother and it is possible that they may use the adjacent railway line and the application site itself, although it is now rather overgrown with little open ground potentially reducing the suitability for reptiles.*

*Development of this site will result in the loss of habitat for local wildlife and a small reduction in the green corridor present along the railway and river/canal. The adjacent rail line should be buffered with native planting and there should be no lightspill onto the planting or rail line. This can be secured through conditions for lighting and landscaping.*



*Furthermore the site will require clearance under a detailed Method Statement to safeguard reptiles, amphibians, hedgehogs and birds. Features such as bat and bird boxes within new dwellings and hedgehog gaps in fencing will be expected and again can be secured through a condition. However, there is currently no assessment of the overall biodiversity losses or gains and this should be calculated using the DEFRA metric 3.0 prior to determination, to ensure the council can assess proposals against local and national net gain policies. Every effort should be made to achieve net gain on site, however if there is a residual net loss after thorough consideration of the scheme, an offsetting strategy should be submitted with the application.*

- 5.10.3 Following these initial comments the site was cleared without following the advice of their ecologist. In such circumstances it is obviously difficult to assess the lost habitat therefore an assumption is made that the conditions were good, which is a high bar in terms of retained habitat to work from in terms of calculating adverse impacts.
- 5.10.4 Further information was then submitted to which the Trust commented: *A Biodiversity Metric Report has now been submitted (Paul Hicking Associates, April 2022). The assessment appears reasonable and predicts a net loss of -1.74 habitat units (-34.82 %). As the report states, this does not comply with local and national planning policy aims for developments to achieve a net biodiversity gain and therefore a strategy should be submitted for offsetting this loss, prior to determination. We are pleased to see that the proposed site layout incorporates a landscaping buffer along the adjacent railway line, as per our previous comments. Conditions for a Sensitive Lighting Plan, a Method Statement for site clearance to safeguard reptiles, amphibians, hedgehogs and birds, and an Ecological Enhancement Plan are still recommended.*
- 5.10.5 In partnership with Derbyshire Wildlife Trust and as part of the consideration of Policy CLP16 and the anticipated detail of the Environment Act the Strategic Planning Policy team have been looking into how biodiversity net gains can be off set within the Borough on areas of land controlled by the Council. These areas of land can be planted and differently managed to secure biodiversity gains where the extent of gain required cannot be achieved on development sites. This will come forward as Supplementary Planning Guidance in due course however that process has started and has initially sifted a number of sites within the Borough. A piece of work has also been carried out by the Council's leisure services to provide a detailed assessment of the

cost of providing such habitat units on land already used as open space within and controlled by the Council, this has taken place alongside a detailed ecological proposal for a receptor site giving appropriate accuracy to the assessment. This has concluded that the cost per habitat unit for management, replanting and monitoring biodiversity receptor sites is £20,000 per habitat unit.

5.10.6 In this case as set out in the comments of the Trust, there remains a net loss of habitat from the development of the site despite the proposed landscaping maximising on site provision. The submitted metric (report dated April 2022) shows the baseline of the undeveloped site to have +4.98 habitat units, 0 hedgerows units and 0 river units. The result following development will be +3.25 habitat units, 0 Hedgerow units. Therefore, the minus habitat units (4.98 - 3.25= 1.73 unit habitat loss) needs to be off set on another site within the Borough. This will be secured by the applicant providing a contribution to compensate +2 units (gain of +0.27 units overall) which at a cost of £20,000 per unit equates to a contribution of £40,000. This contribution will then be used to provide the biodiversity net gains over a 30 year period on sites within the Borough.

5.10.7 It is acknowledged that this is a gain but not a 10% gain. However, given that the Supplementary Planning Guidance to require a 10% net gain is not yet adopted and we are still awaiting the secondary legislation of the Environment Act it is not considered reasonable to insist upon a 10% gain at this time, although this will be the case once the guidance or legislation has progressed. A condition will secure the on site net gain proposed through landscaping and long term management. The report details on site habitat creation to be:

**Baseline habitat creation**

Modified Grassland (Garden Lawn)	0.187ha
Urban street tree	0.1099ha (27 retained trees)
Urban street tree	0.15ha (28 new trees)
Tall herb communities (Public Landscaping)	0.0656ha
Meadow Flower Planting (Banking rear Gardens)	0.025ha
Meadow Flower Planting (Retained Land)	0.106ha
Modified Grassland (No.18)	0.03ha

On this basis, subject to conditions and a legal agreement it is considered that the proposed development secures a net gain as required by policy CLP16 thereby addressing the concerns of the Trust.

5.10.8 Trees:

The tree officer has commented on the proposal as follows:

*A tree survey and report has been submitted with the application reference 2156- PHA by Paul Hicking Associates dated August 2021. It is stated within the report that the majority of trees on the site have been removed since the last survey by Wildlife Discovery Ecology in 2015. It is also stated that there are currently 30 individual trees or tree groups within close proximity to the proposed development, however there are only 16 individual trees or groups recorded which comprise mainly of Leylandii conifers, 3 Birch trees and Spruce. It is proposed that 9 of the 16 trees/groups are removed to facilitate the development.*

*It is agreed that there are no existing trees of notable merit on the site, but it is proposed that 7 trees/groups are retained in the scheme reference TG5, TG6, TG10, T11, T13, T15 & T16. The retained trees within the vicinity of the proposed works should therefore be protected in accordance with the recommendations in the tree report and in accordance with BS 5837: 2012. Some general tree protection measures have been included in the tree report; however a more detailed Tree Protection Plan is required. I therefore have no objection to the proposals and if consent is granted to the Application, conditions should be attached.*

5.10.9 Further comment received from the Tree Officer following the clearance of the site:

*In addition to my previously recommended conditions a landscaping condition should also be attached in mitigation if consent is granted to the scheme and specific attention should be made to the Tree Protection condition J) Methods to improve the rooting environment for retained and proposed trees and landscaping' due to the use of heavy machinery around the retained trees and the compaction to the rooting environment that this may have caused.*

5.10.10 Whilst the site clearance did not necessarily follow ecological best practice there was no breach of planning control associated with this. This has altered how the quality of the habitat was considered which has been duly raised in quality and this has fed into the metric analysis set out above. The tree removal carried out as part of the site clearance was not a breach of planning control as none of the trees were protected and with a suitable landscaping scheme it is considered that the impacts

on trees is acceptable. Therefore, subject to conditions the proposal is considered to be acceptable in terms of policy CLP16 of the Adopted Local Plan.

## **5.11 Ground conditions and air quality**

5.11.1 Policy CLP14 requires that; 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.

5.11.2 The Coal Authority have commented that:  
*I have reviewed the proposals and confirm that the application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. Our records indicate that the site is in an area of likely historic unrecorded coal workings at shallow depth. The planning application is supported by a Phase 1 Desk Study Site Investigation Report, dated 23 April 2021 and prepared by Geoinvestigate Ltd. This report recommends that intrusive site investigations are carried out on site in order to establish the exact situation in respect of coal mining legacy issues.*

*The submission is also supported by a Phase 2 Site Investigation Report, dated 7 May 2021 and prepared by Geoinvestigate Ltd. This report sets out details of the intrusive site investigations carried out on site and their findings. The report states that six boreholes have been drilled on site to depths of 30m and that these encountered no voids or broken ground indicative of shallow coal workings. Based on these findings the report authors conclude that there is no risk to the development posed by historical coal mining.*

*On the basis of the information submitted, and the professional opinions of the report authors set out therein, the Planning team at the Coal Authority have no objection to this planning application. It should be noted that where SUDs are proposed as part of the development scheme consideration will need to be given to the implications of this in relation to the stability and public safety risks posed by coal mining legacy. The developer should seek their own advice from a technically competent person to ensure that a proper assessment has been made of the potential interaction between hydrology, the proposed drainage*



*system and ground stability, including the implications this may have for any mine workings which may be present beneath the site.*

#### **Mine Gas**

*It should be noted that wherever coal resources or coal mine features exist at shallow depth or at the surface, there is the potential for mine gases to exist. These risks should always be considered by the LPA. The Planning & Development team at the Coal Authority, in its role of statutory consultee in the planning process, only comments on gas issues if our data indicates that gas emissions have been recorded on the site. However, the absence of such a comment should not be interpreted to imply that there are no gas risks present. Whether or not specific emissions have been noted by the Coal Authority, local planning authorities should seek their own technical advice on the gas hazards that may exist, and appropriate measures to be implemented, from technically competent personnel. The Coal Authority's records indicate that surface coal resource is present on the site, although this should not be taken to imply that mineral extraction would be economically viable, technically feasible or environmentally acceptable. As you will be aware those authorities with responsibility for minerals planning and safeguarding will have identified where they consider minerals of national importance are present in your area and related policy considerations. As part of the planning application consideration should be given to such advice in respect of the indicated surface coal resource.*

- 5.11.3 As a result of the investigative works already undertaken there is no need to impose any further conditions in respect of potential coal mining impacts.
- 5.11.4 The Council's Environmental Health team have noted that the submitted assessments have found no indication of historical contamination on the site. On this basis there is no need to condition any further investigations.
- 5.11.5 The Environmental Health team has requested that EV charging and hours of operation for construction works are conditioned appropriately, this is included within the recommended conditions.
- 5.11.6 The matter of ground conditions and air quality matters has therefore been appropriately considered and meets the requirements of Policy CLP14 of the Adopted Local Plan.

## **5.12 Drainage**

5.12.1 Policy CLP13 requires 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. Sustainable Drainage Systems (SuDS) and clear arrangements for their ongoing maintenance over the lifetime of the development should be incorporated into all major development, unless it can be demonstrated that this is not appropriate in a specific location. The council will seek the maximum possible reduction in surface water run-off rates based on the SFRA or most recent national guidance. 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.

5.12.2 CBC design services has commented as follows:

The site is shown to be entirely in flood zone 1 indicating it is not at risk from river flooding on the Environment Agency flood maps. A small portion of the site is shown to be at risk from surface water flooding due to the natural topography of the site. This has been addressed in the FRA, with reference made to altering levels and providing an overland flood path on the highway which may mitigate this risk.

The FRA suggests that the ground conditions are likely to be unsuitable for the use of soakaways however percolation tests should be carried out in accordance with BRE Digest 365 to confirm this is the case in line with hierarchy of surface water disposal. Sustainable Drainage Systems should be primarily considered for the management of surface water. If soakaways/infiltration drainage are suitable, percolation tests and sizing calculations should be provided. If infiltration drainage is unsuitable the drainage proposals in the strategy submitted are satisfactory in principal and in accordance with CBCs Flood & Surface Water Management guidance.

The drainage strategy plan submitted indicates that there are to be a number of diversions on YWS public sewer, permission will need to be sought from YWS prior to undertaking any works on site. There is also usually an easement to be observed when constructing in the vicinity of public sewers, again this will need to be discussed and agreed with YWS.

Please note: all drainage plans submitted refer to STW standards, Yorkshire Water are responsible for drainage in the Chesterfield area so the developer/designer should liaise with YWS on all drainage matters.

### 5.12.3

Yorkshire Water has commented:

*It appears from the submitted site layout that buildings will be sited over the public sewerage system located within the site. This could seriously jeopardise Yorkshire Water's ability to maintain the public sewerage network and is not acceptable. We therefore OBJECT to the development layout as currently shown. I strongly advise that, prior to determination of this application, the site layout is amended to allow for adequate protection of the sewers.*

*1.) The drainage details submitted on drawing 'Proposed Site Layout - Overall 21015-70-001\_P1 dated 13/08/2021 that has been prepared by Player Roberts Bell is not acceptable. The following point(s) should be addressed:*

*a.) the submitted drawing appears to show a building proposed to be built-over the line of public sewer crossing the site*

*b.) the submitted drawing should show the site-surveyed position of the public sewer crossing the site*

*c.) the submitted drawing should show the required building stand-off from public sewer -- or an agreed alternative scheme*

*2.) On the Statutory Sewer Map, there are the following sewers recorded to cross the site. It is essential that the presence of this infrastructure is taken into account in the design of the scheme*

*a.) Two separate lengths of 225mm public combined sewer, a 150mm combined public sewer, a 225mm foul sewer and a 225mm surface water sewer*

*b.) 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.*

*c.) In this instance, Yorkshire Water would look for this matter to be controlled (by Requirement H4 of the Building Regulations 2000).*

*d.) A proposal by the developer to alter/divert a public sewer will be subject to Yorkshire Water's requirements and formal procedure in accordance with Section 185 Water Industry Act 1991.*

*e.) A 375mm public surface water sewer*

*f.) 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.*

*g.) In this instance, a stand-off distance of 3 (three) metres is required at each side of the sewer centre-line and it may not be acceptable to raise or lower ground levels over the sewer, nor to restrict access to the manholes on the sewer.*

*h.) A proposal by the developer to alter/divert a public sewer will be subject to Yorkshire Water's requirements and formal procedure in accordance with Section 185 Water Industry Act 1991.*

- 5.12.4 Whilst the development does not specifically impact the TPT nevertheless the following comments were received:  
*The alignment to the west is for walkers and cyclists. The alignment to the east also accommodates horse riders. It is noted that the current application does not have any direct impact on the Trans Pennine Trail but it is understood from our colleagues at Derbyshire County Council, who are responsible for maintenance of the Trans Pennine Trail, that there are issues regarding a sewer chamber that should be maintained by Yorkshire Water. This sewer chamber is located within the TPT, along the canal towpath, and after periods of heavy rain the sewer chamber blows, discharging foul water onto the TPT, impacting Trail users. The proposed development will be connecting to the existing foul sewer which could exacerbate the existing issue. There are 6 incidents recorded over the last 24 months that have been reported to Yorkshire Water where heavy rainfall has lifted the chamber cover and foul water has been discharged onto the Trans Pennine Trail and therefore causing major safety issues to Trail users. This planning application should be used to stress to Yorkshire Water the urgent need to rectify this issue.*
- 5.12.5 DCC policy have commented similarly:  
*It is also noted that the development proposes to connect foul water in to an existing sewer that runs west underneath the canal. This sewer has a chamber located within the canal towpath. There are 6 incidents over the past 24 months, reported to Yorkshire Water where the chamber cover has been lifted at times of heavy rainfall, discharging foul water into both Chesterfield Canal and the River Rother. The subsequent open chamber within the cycleway poses a significant safety issue for users. The Countryside Service seeks reassurance that the development will not exacerbate this problem.*
- 5.12.6 As major development the Lead Local Flood Authority have also commented:  
*We are unable to provide an informed comment until the applicant has provided further information:*
- *How would maintenance of the proposed underground attenuation tank within the private gardens be ensured in perpetuity?*
  - *The LLFA has concerns regarding the surface water flood risk, as indicated in Section 3.3 of the Hexa Consulting (August 2021). Flood Risk Assessment and Drainage Strategy Statement, Revision V01. There appears to be an overland flow route from Swaddale Avenue and higher land to the east, through the development site towards what*

*appears to be a tunnel or culvert under the railway line. How will this flow route be managed without increasing flood risk to existing properties?*

Then further queries were raised:

*The LLFA still has concerns that the overland surface water flood flow route is indicated to go through the gardens of the existing properties 20 & 22 Swaddale Avenue and then through the proposed gardens of plots 10 to 13. The applicant should demonstrate how this flow route would be safeguarded without posing a risk to the proposed buildings.*

- 5.12.7 To address these concerns additional and amended drainage information has been submitted; the amended plan and layout accommodates easements within the road or rear garden areas where they will be accessible. The additional information clarifies that the surface water storage will be managed by a private drainage maintenance company through a housing association with a regular maintenance regime. The formation of the highway through the site will redirect most overland flows away from residential properties with the new drainage system designed to accommodate a 1 in 100 year storm with 40% for climate change allowance. The submission notes the overland flow route to gardens to proposed units does not pose further risk due to the level changes and no change to boundary treatments (fencing) proposed. It is also noted that A brick wall has been proposed around rear gardens of Plot 12 and 13. It is also recommended in the submission that the portion of the wall around Plot 12 be removed, or the construction methodology amended to not impede the overland flow route and that an upstand be created at Plots 14 and 15 or the levels along the overland flow route shown in Figure 1 are further lowered by 150mm to ensure that these properties are not affected.
- 5.12.8 In response to this Yorkshire Water have removed their objection and have recommended conditions. Whilst this Authority cannot resolve the matters raised in regard to the TPT as Yorkshire Water have removed their objection it would appear that they as Statutory Undertaker who ultimately allow for any new connections are satisfied with the potential impacts.
- 5.12.9 In response to the final submission of additional information the LLFA have recommended conditions which are included in the recommendation below. On this basis the impact of surface water and drainage is considered to be appropriate in line with Policy CLP13 of the Adopted Local Plan.



## 5.13 Development Contributions and CIL Liability.

5.13.1 The proposed development is liable for the Community Infrastructure Levy (CIL), subject to any exemptions that may be applied for. The site is located within the medium (£50) CIL charging Zone as set out in the Council's Charging Schedule ([Community Infrastructure Levy \(CIL\) \(chesterfield.gov.uk\)](http://chesterfield.gov.uk)). The CIL charge is calculated as follows:

Net Area (A) x CIL Rate (B) x BCIS Tender Price Index (at date of permission) (C) = CIL Charge (E)  
BCIS Tender Price Index (at date of Charging Schedule) (D)

			A	B	C	D	E
Development Type	Proposed Floorspace (GIA in Sq.m)	Less Existing (Demolition or change of use) (GIA in Sq.m)	Net Area (GIA in Sq.m)	CIL Rate	Index (permission)	Index (charging schedule)	CIL Charge
Residential (C3)	2231 (Based on form submitted Nov 2021)	0	2231	£50 Medium area	332	288	<b>£128,592</b>

## 6.0 REPRESENTATIONS

6.1 Ten comments have been received and are summarised below (the majority of which were received prior to the final amendments on the scheme):

Request from the Hospital for £76,000 towards the impacts of the development – refer to para 5.5.7

### **Infrastructure/Principle:**

- Infrastructure impacts – school place capacity
- The number of dwellings has increased from 21 to 30.
- There is enough housing being built in the area.
- There will be environmental impacts.
- Visually this will have a negative impact
- The canal is to have housing built up on all sides which is not conducive to making the canal a place to visit.
- The plans are not sympathetic to the area.

### **Amenity:**

- The plans show a road and parking immediately behind our fence which is not acceptable, our privacy is impacted.
- We will be overlooked.
- The existing housing will also overlook the proposed.
- The houses are too close we will lose all our privacy.
- There will be loss of sunlight into our garden.
- The location of the bin store will impact on our decking area.

#### **Ecology:**

- The land was torn up with a digger and did not following the advice of their own ecologist.
- Detrimental impact on wildlife
- There were bats in the area, these are no longer there.

#### **Highway safety and parking:**

- An additional 30 dwellings brings an additional 60 cars onto Swaddale Road which is already overused.
- Will there be road cleaning due to mud?
- Parking in the area is already difficult.
- What will happen with large vehicles in icy weather where the road is in shadow.
- Construction lorries will not be able to access the site.
- This will overwhelm the junction onto Brimington Road.
- Access into the site would be a danger due to parked vehicle blocking views.
- Access for emergency vehicles would not be sufficient.
- The application will impact access to the railway.
- The density is too much, there will be too many cars.
- Limited additional visitor spaces on site.

#### **Crime:**

- Concerned about security.
- This will likely lead to more vehicle crime in the area due to the lack of garages and allocated spaces being remote from the proposed properties. Isolated parking is also unacceptable for unaccompanied women where blocking noise from the railway may hinder cries for help.

#### **Other issues:**

- The previous outline had restricted easements for drainage, why is this no longer the case?
- Some houses are noted as affordable but the houses here are not unaffordable anyway.

- Building council owned rented housing will lower the status of the area.
- Access to the shared drainage on Swaddale Avenue should not be impacted.
- What will happen to the existing boundary fencing?

Responses:

- 6.2 These matters are addressed in the report above, with additional matters covered below:
- 6.3 In terms of the comment relating to affordable housing lowering the status of the area, whilst this may be a view held by local residents this is not a matter upon which it would be appropriate to refuse the development, rather the potentially affordable nature of the development results in a more favourable consideration given the social benefits arising from this.
- 6.4 In terms of the housing being 'affordable' the definition of this is set out in national planning policy and does not mean that the houses merely cost less to buy or are available for rent. The NPPF Annex 2: Glossary states: *Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions;* the definitions are then set out in some detail.

**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 2019 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 invited to speak, and this report informing them of the application considerations and recommendation /conclusion is available on the website.

## **9.0 CONCLUSION**

9.1 The application site is an allocated housing site as set out in policy CLP3 of the Adopted Local Plan for 21 units. This application is for 26 units but given that issues of parking, access, amenity and appearance have been satisfied there is no reason to withhold permission for the greater number of units beyond that specified in the allocation. Having assessed all of the matters in the report above it is considered that the proposal meets policy requirements subject to conditions and a S106 agreement and on this basis the matter is recommended for approval.

## **10.0 RECOMMENDATION**

10.1 It is therefore recommended that a s106 legal agreement be negotiated to secure the following:

- Affordable housing as submitted at 10% provision across the site providing 3 units (2.6 rounded up to a whole unit) with a 90/10 split on tenure (rent and shared ownership)
- Biodiversity net gain 2 habitat units at £20,000 per unit to CBC = £40,000

10.2 That the planning application be APPROVED subject to the following conditions and which should be issued on completion of the s106 agreement.

**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 (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 site layout 21015-70-001\_P13 received 30.06.22
- Swept Path analysis 600357-HEX-00-00-DR-TP-0104 P02 received 13.06.22
- House types:
  - B2.3 A 21015-020-004\_P2 received 20.04.22
  - B2.3 B 21015-020-013 received 20.04.22
  - H2.4 A 21015-020-002\_P2 received 20.04.22
  - H2.4 B 21015-020-007 received 20.04.22
  - H2.4 C 21015-020-008 received 20.04.22
  - H3.5 A 21015-020-003\_P2 received 20.04.22
  - H3.5 B and H3.5 C 21015-020-010 received 20.04.22
  - H3.5 C and H3.5 D 21015-020-009 received 20.04.22
  - H3.5 E 21015-020-011 received 20.04.22
  - H3.5 F 21015-020-01 received 20.04.22

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



3. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
  1. The programme and methodology of site investigation and recording
  2. The programme for post investigation assessment
  3. Provision to be made for analysis of the site investigation and recording
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  5. Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To ensure appropriate consideration of potential below ground archaeology in accordance with policy CLP21 of the Adopted Local Plan.

4. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:
  - a) Location and installation of services/ utilities/ drainage.
  - b) Details of construction within the RPA or that may impact on the retained trees.

- c) a full specification for the installation of boundary treatment works within the designated root protection areas.
- d) a full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
- e) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- f) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- g) a specification for scaffolding and ground protection within tree protection zones.
- h) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- i) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires
- j) Methods to improve the rooting environment for retained and proposed trees and landscaping, due to the use of heavy machinery around the retained trees and the compaction to the rooting environment that this may have caused.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality pursuant to policy CLP16 of the Adopted Local Plan and section 197 of the Town and Country Planning Act 1990

5. 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. 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. Details shall include:

- a) a scaled plan showing vegetation to be retained and trees and plants to be planted;
- b) proposed hardstanding and boundary treatments that shall be suitable for hedgehog routes (with existing residents boundaries retained and enhanced)
- c) a schedule detailing sizes and numbers of all proposed trees/plants
- d) Sufficient specification to ensure successful establishment and survival of new planting.

Any new tree(s) that die(s), are/is removed, become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Replacement planting shall be in accordance with the approved details (unless the Local Planning Authority gives its written consent to any variation).

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 policy CLP16 of the Adopted Local Plan.

6. A Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The LEMP shall cover all retained and created habitats, as identified in the agreed Biodiversity Net Gain Feasibility Assessment report to meet the habitat gains set out in the Biodiversity metric calculation and landscaping of the site agreed under condition 5 above.

The content of the LEMP shall include the following;

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving 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 thirty-year period);

- g) Details of the body or organization responsible for implementation of the plan;
- h) Ongoing monitoring and remedial measures,
- i) Details of the company to be set up to manage the any private highways areas and the landscaped areas of the site in perpetuity, The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term (30 Years +) implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

Reason: To ensure the long term management of the site including highways and open spaces and the protection of wildlife and habitat objectives, to secure opportunities for enhancing the site's biodiversity value in the long term in accordance policy CLP16 of the Adopted Local Plan.

- 6. Space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles. The facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

- 7. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

- 8. No development shall take place until full construction details of the residential estate road and footways including layout (generally in

accordance with approved application drawings), levels, gradients, surfacing and means of surface water drainage, have been submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter be constructed in accordance with the approved details unless otherwise agree in writing by the Local Planning Authority.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

9. The carriageway and footways agreed under condition 8 above, shall be constructed up to and including base course surfacing to ensure that each dwelling has a properly consolidated and surfaced carriageway and footway, between the dwelling and the existing highway prior to occupation. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

10. Prior to the commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of water from the drives/accesses/shared drives onto the proposed adopted highway. The approved scheme shall be undertaken and completed prior to the first use of the access and retained as such thereafter.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

11. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an



agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established as appropriate.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

12. No dwelling shall be occupied until access has been formed to the new estate street, unless otherwise agreed in writing by the Local Planning Authority, provided with 2m x 25m visibility sightlines, the areas in advance maintained free from any objects exceeding 1m in height (600mm if vegetation) relative to the adjacent carriageway channel level.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

13. No dwelling shall be occupied until space has been laid out within the site in accordance with the approved application drawings for parking and manoeuvring of residents/ visitors/ service and delivery vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure shall be erected along the highway frontage of any dwelling without the prior written approval of the Local Planning Authority upon an application submitted to it.

Reason: In the interests of visual amenity and highway safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

15. The proposed driveways shall be no steeper than 1:12 and shall be constructed of a solid bound material.

Reason: In the interest of Highway Safety in accordance with policies CLP20 and 22 of the Adopted Local Plan.

16. 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 149 of the National Planning Policy Framework.

17. Prior to development commencing, an Employment and Training Scheme shall be submitted to the Local Planning Authority for consideration and written approval. The Scheme shall include a strategy to promote local supply chain, employment and training opportunities throughout the construction of the development.

Reason: This is a pre commencement condition in order to support the regeneration and prosperity of the Borough, in accordance with the provisions of Policy CLP6 of the Adopted Local Plan.

18. Prior to any demolition, construction or contaminated land remediation works commence in connection with each identified phase, a Construction Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by, the Local Planning Authority detailing the provisions to be made for the monitoring and control of:

a) Operating hours: No demolition, construction or contaminated land remediation activities, movement of traffic, or deliveries to and from the premises, shall occur other

Monday to Friday: 08:00 – 18:00

Saturday: 08:00 – 13:00

Sundays and bank Holidays - No working

b) Noise and vibration: To demonstrate compliance with the guidance in British Standard BS5228 Noise and vibration control on construction and open sites; including the proposed measurement methodology, the location of monitoring locations and noise-sensitive premises, the maximum permitted facade noise levels. No piling, blasting, dynamic compaction or use of vibrating rollers shall occur without the written approval of the Local Planning Authority;

c) Dust/Particulate emissions: To include the prevention of dust/particulates being blown off-site. At such times as the prevention of dust/particulate nuisance by the agreed means is not

possible, the movement of vehicles, soils or dusty materials must temporarily cease until such time as weather conditions improve;

d) Waste: To include suitable and sufficient provisions for the collection, storage and disposal of waste materials. No unwanted materials shall be disposed of on site by burning without the prior written approval of the Local Planning Authority;

e) Lighting: To include a site plan showing the proposed types, locations and heights of the lamps, vertical illuminance levels (Lux) to the facades of agreed light-sensitive premises and operating times.

All works shall be fully implemented in accordance with the approved CEMP. The CEMP shall be reviewed at least at the start of each phase of the development or where there are changes to relevant legislation or where changes are made to the agreed CEMP.

Reason: This pre commencement condition is required to safeguard the privacy and amenities of the occupiers of adjoining properties in accordance with policy CLP14 of the Adopted Local Plan.

19. Prior to the commencement of development a statement shall be submitted to and agreed in writing by the Local Planning Authority detailing; demonstration (without pre-registration) of compliance with the June 2022 building regulations in terms of internal heating systems, solar PV provision and EV charging facilities, and a statement on how emissions will be reduced through the construction process. Works shall be completed in accordance with the agreed statement.

Reason: To seek to make the development suitable for renewable technologies and to seek to reduce emissions from development in accordance with Policy CLP20 of the Adopted Local Plan.

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

Reason: In the interest of satisfactory and sustainable drainage in accordance with policy CLP13 of the Adopted Local Plan.

21. 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:

i) the means of discharging to the public sewer network at a rate not to exceed 3.5 litres per second

Reason: To ensure that no surface water discharges take place until proper provision has been made for its disposal in accordance with policy CLP13 of the Adopted Local Plan.

22. No building or other obstruction including landscape features shall be located over or within 3 metres either side of the centre line of the public sewer i.e. a protected strip width of 6 metres, that crosses the site. Furthermore, no construction works in the relevant area(s) of the site shall commence until measures to protect the public sewerage infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times. If the required stand-off or protection measures are to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that, prior to construction in the affected area, the approved works have been undertaken.

Reason: In the interest of public health and maintaining the public sewer network in accordance with policy CLP13 of the Adopted Local Plan.

23. Prior to the commencement of development a detailed methodology for site clearance shall be submitted to and agreed in writing by the Local Planning Authority. The agreed methodology shall be followed through all site clearance works.

Reason: To ensure no further harm to potential biodiversity or habitat in accordance with policy CLP16 of the Adopted Local Plan.

24. Prior any external lighting installation a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority to ensure that wildlife implications are fully taken into account (including the need for reduced or no lighting in the more sensitive

locations and directions; specifically, towards the railway line). The agreed lighting scheme shall be fully installed in accordance with the approved scheme prior to last occupation.

Reason: To minimise impacts on biodiversity and allow for enhancements in line with policy CLP16 of the Adopted Local Plan.

25. Prior to works commencing above slab level a scheme for the incorporation of bat and bird boxes within the development shall be submitted to and agreed in writing by the Local Planning Authority. Such a scheme shall provide precise details of the number, range and location of boxes. The boxes shall be fully installed and maintained thereafter in accordance with the agreed scheme.

Reason: To seek to enhance biodiversity in line with policy CLP16 of the Adopted Local Plan.

26. Details including samples where necessary of all materials to be used in the construction of the external surfaces of the proposed development 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 policy CLP20 of the Adopted Local Plan.

27. Following completion of 50% of the dwellings and secondly at the stage of the final completion of the remaining 50% of the dwellings, a post construction Accessible Housing Certification Table containing the full details of the following matters shall be submitted to and approved in writing by the Local Planning Authority;
- Which and how many dwellings within the development have satisfied M4 (2)\* accessible and adaptable dwellings standards
  - Which and how many dwellings within the development have satisfied M4 (3)\* wheelchair adaptable dwellings standards
  - Which and how many dwellings within the development have satisfied M4 (3)\* wheelchair accessible dwellings standard.
- (\*contained within Part M Volume 1 (Approved Document) of The Building Regulations 2010, or any such Approved Document or Regulations for the time being in force, including any modification, extension or re-enactment of the same and including all instruments,



orders, regulations and directions for the time being made, issued or given under the Approved Document or Regulations (or deriving validity from the same.))

The accessible dwellings shall be provided in accordance with the agreed details and shall be retained as provided for thereafter.

Reason: In the interests of disabled people and access for all to comply with policy CLP4 of the Adopted Local Plan.

28. Prior to works commencing beyond the entrance access works, a scheme detailing all proposed finished floor and land levels shall be submitted to and approved in writing by the Local Planning Authority prior to any importation of earth to site or excavation works commencing. The development shall be carried out in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure a satisfactory landform in the interests of visual amenity in accordance with policy CLP20 of the Adopted Local Plan.

29. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:

- a. Drawings Hexa Consulting (21/12/2021). Drainage Layout Sheet 1, 600357-HEX-XXZZ-DR-C-9201, Revision P02 and Hexa Consulting (21/12/2021). Drainage Layout Sheet 2, 600357-HEX-XX-ZZ-DR-C-9202, Revision P02; and letters Wojnowska, A. 2022. Letter to Jo Crawshaw-Moore, 600357/AW, 27 June and Wojnowska, A. 2022. Letter to Jo Crawshaw-Moore, 600357/AW, 6 July; including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team
- b. And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015), have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

30. Prior to commencement of the development, the applicant shall submit for approval to the LPA details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the LPA, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

31. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Non-statutory technical standards for sustainable drainage and CIRIA standards C753.

### **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. 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. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous 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 development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be 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 safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including 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](http://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, digging of 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.

Property-specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com) or a similar service provider.

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](http://www.gov.uk/government/organisations/the-coal-authority)

3. 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.

4. In line with conditions 29 to 31, the LLFA have advised:

Measures should be put in place to ensure that the overland surface water flood route through the development from the east is safeguarded and that surface water flood risk is mitigated to existing and proposed properties.

5. In regard to tree condition 4:

The following British Standards should be referred to:

- a) BS: 3998:2010 Tree work – Recommendations
- b) BS: 5837 (2012) Trees in relation to demolition, design and construction – Recommendations

6. In regard to tree condition 4

The following British Standards should be referred to:

- a) BS: 3882:2015 Specification for topsoil
- b) BS: 3936-1:1992 Nursery Stock - Part 1: Specification for trees and shrubs
- c) BS: 3998:2010 Tree work – Recommendations
- d) BS: 4428:1989 Code of practice for general landscaping operations (excluding hard surfaces)
- e) BS: 4043:1989 Recommendations for Transplanting root-balled trees
- f) BS: 5837 (2012) Trees in relation to demolition, design and construction - Recommendations
- g) BS: 7370-4:1993 Grounds maintenance part 4. Recommendations for maintenance of soft landscape (other than amenity turf).
- h) BS: 8545:2014 Trees: from nursery to independence in the landscape – Recommendations
- i) BS: 8601:2013 Specification for subsoil and requirements for use

7. In line with condition 5 above:

In mitigation for the loss of trees and vegetation, addition planting to the west boundary shall be included on any landscaping drawing to increase the biodiversity on the site and improve the existing vegetation along the rail line boundary. Species shall include any of the following species Birch (Betula), Crab Apple (Malus Sylvestris), Field Maple (Acer Campestre), Bird Cherry (Prunus Padus), Wild Pear (Pyrus Communis), Hawthorn (Cretaegus), Mountain Ash, Whitebeams (Sorbus) as recommended in the Network Rail comments dated 21st October 2021.

8. Highways:

a. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway of Alders Meadow. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available by email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk), telephone Call Derbyshire on 01629 533190 or via the County Council's website

[http://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp)

b. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

c. 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.

d. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate road should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Executive Director Economy, Transport and Environment at County Hall, Matlock (tel: 01629 538658).

e. Highway surface water shall be disposed of via a positive, gravity fed system (i.e; not pumped) discharging to an approved point of outfall (e.g; existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively.

f. Car parking spaces should measure 2.4m x 5.5m with an additional 0.5m of width to any side adjacent to a physical barrier e.g. wall, hedge, fence, etc. and adequate space behind each space for manoeuvring.

g. Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway, at least 6 weeks prior notification should be given to the Executive Director Economy, Transport and Environment at County Hall, Matlock (tel: 01629 533190 and ask for the New Roads and Streetworks Section).

h. The applicant is advised that to discharge Condition 6 that the Local Planning Authority requires a copy of a completed Agreement between the applicant and the Local Highway Authority under Section 38 of the Highways Act 1980 for the proposed road to be maintained in future at public expense and the constitution and

details of a Private Management and Maintenance Company confirming funding, management and maintenance regimes for the proposed private shared driveways.

i. The applicant will need to demonstrate all aspects relating to layout, levels, gradients, surfacing, lighting and means of surface water drainage, but the attached plans do not indicate the extent of the land that is currently under the developer's ownership and control or if there are small pockets of land that sit outside the existing unadopted highway boundary to secure a Section 38 agreement, all affected landowners must be prepared to dedicate their land for highway purposes and enter into a Highways Act 1980 Section 72 agreement.

j. Due to the lack of any speed restraint shown, the applicant should refer to Council's document Delivering Streets and Places which states that 'In such cases, horizontal calming measures are preferred to vertical calming measures (eg. Speed cushions, road humps, raised tables etc.)'.

k. Any structure built in, under, or over the highway.

• Any retaining wall built within 3.65m of the highway boundary where the retained height above the adjacent highway is 1.4m or more. Any retaining wall or structure which supports the highway and where the distance between the highway boundary and the rear face of the wall or structure is less than twice the difference in level between the ground at the front of the wall and the highest level of the adjacent highway at any point along the length of the wall or structure. Highway-related structures, as considered within the 6Cs area, normally include:

- Bridges.
- Fences (including safety fences).
- Retaining walls.
- Corrugated-steel buried structures.
- Reinforced soil and anchored earth structures.
- Reinforced clay brickwork retaining walls of pocket-type and grouted-cavity construction.
- Crib wall retaining walls of concrete or timber construction.
- Environmental barriers (including noise fencing ).
- All drains, pipes and box culverts, sewers and drainage structures, other than bridges, that have a diameter or clear span of more than 900mm. All highway-related structures, whether to be adopted or not, shall be designed and constructed in accordance with current relevant Highways England standards, codes of practice and technical memoranda unless agreed otherwise. Design is normally subject to the technical approval procedure set out in BD 2/12 within DMRB and in the context of this design guide, the technical approval authority is the relevant LHA. The applicant must employ a qualified civil or structural engineer with experience in highway structures, with approval from the relevant LHA, to carry out design and oversee construction. Prior to construction, the applicant shall provide the LHA with



a programme of supervision for approval. This programme shall give details of the level and amount of supervision provided and contain proposals for materials testing. The works will then be audited by the LHA at regular intervals for compliance with the construction programme.

#### 9. Yorkshire Water:

1.) The submitted Drainage Strategy (ref ADC-157-01-DS-001) prepared by Inspire, dated October 2021 requires amendments, but if planning permission is granted, the matter can be dealt with via condition. In summary, the report states that

a.) Foul water will discharge to public combined water sewer

b.) Sub-soil conditions likely do not support the use of soakaways due to the presence of coal deposits, however infiltration testing have yet to be carried out. c.)

A watercourse exists near to the site however is not accessible due to levels. d.)

Surface water will discharge to public surface water sewer via storage with restricted discharge 5 litres/second - this is based on a generally assumed minimum discharge rate of surface water discharge, however Yorkshire Water consider the minimum rate to be 3.5 litres per second. We would also consider this site to be greenfield rather than brown as satellite imagery shows the site to not have been developed for some considerable time - at least since 2009.

e.) The means of surface water management has not been properly considered within the drainage report. Yorkshire Water requires further information regarding the means of draining surface water from the development.

2.) The developer is proposing to discharge surface water to public sewer however, sustainable development requires appropriate surface water disposal.

a.) Yorkshire Water promote the surface water disposal hierarchy and the developer must provide evidence to demonstrate that surface water disposal via infiltration is not reasonably practical before considering disposal to public sewer.

b.) The developer and LPA are strongly advised to seek comments on surface water disposal from other drainage bodies as further restrictions may be imposed.

c.) As the proposal site is currently undeveloped, no positive surface water is known to have previously discharged to the public sewer network. Surface water discharge to the existing public sewer network must only be as a last resort and the developer is required to eliminate other means of surface water disposal.

d.) 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 surface water network at a restricted rate not to exceed 3.5 litres per second.

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 03451 208 482, 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 'Codes for Adoption - a design and construction guide for developers' as supplemented by Yorkshire Water's requirements

10. Lead Local Flood Authority:

Advisory/Informative Notes (It should be noted that the information detailed below (where applicable), will be required as an absolute minimum in order to discharge any of the drainage conditions set by the LPA):

A. The County Council does not adopt any SuDS schemes at present (although may consider ones which are served by highway drainage only). As such, it should be confirmed prior to commencement of works who will be responsible for SuDS maintenance/management once the development is completed.

B. Any works in or nearby an ordinary watercourse may require consent under the Land Drainage Act (1991) from the County Council. For further advice, or to make an application please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).

C. No part of the proposed development shall be constructed within 5-8m of an ordinary watercourse and a minimum 3 m for a culverted watercourse (increases with size of culvert). It should be noted that DCC have an anti-culverting policy.

D. The applicant should be mindful to obtain all the relevant information pertaining to proposed discharge in land that is not within their control, which is fundamental to allow the drainage of the proposed development site.

E. The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water discharge, in line with Table 4.3 of the CIRIA SuDS Manual C753.

F. The County Council would prefer the applicant to utilise existing landform to manage surface water in mini/sub-catchments. The applicant is advised to contact the County Council's Flood Risk Management team should any guidance on the drainage strategy for the proposed development be required.

G. Surface water drainage plans should include the following:

- Rainwater pipes, gullies and drainage channels including cover levels.
- Inspection chambers, manholes and silt traps including cover and invert levels.
- Pipe sizes, pipe materials, gradients, flow directions and pipe numbers.
- Soakaways, including size and material.
- Typical inspection chamber / soakaway / silt trap and SW attenuation details.
- Site ground levels and finished floor levels.

H. On Site Surface Water Management;

- The site is required to accommodate rainfall volumes up to the 1% probability annual rainfall event (plus climate change) whilst ensuring no flooding to buildings or adjacent land.
- The applicant will need to provide details and calculations including any below ground storage, overflow paths (flood routes), surface detention and infiltration areas, etc, to demonstrate how the 100 year + 40% Climate Change rainfall volumes will be controlled and accommodated. In addition, an appropriate allowance should be made for urban creep throughout the lifetime of the development as per 'BS 8582:2013 Code of Practice for Surface Water Management for Developed Sites' (to be agreed with the LLFA).
- Production of a plan showing above ground flood pathways (where relevant) for events in excess of the 1% probability annual rainfall event, to ensure exceedance routes can be safely managed.
- A plan detailing the impermeable area attributed to each drainage asset (pipes, swales, etc), attenuation basins/balancing ponds are to be treated as an impermeable area.

### **Peak Flow Control**

- For greenfield developments, the peak run-off rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event, should never exceed the peak greenfield run-off rate for the same event.
- For developments which were previously developed, the peak run-off rate from the development to any drain, sewer or surface water body for the 100% probability annual rainfall event and the 1% probability annual rainfall event must be as close as reasonably practicable to the greenfield run-off rate from the development for the same rainfall event, but should never exceed the rate of discharge from the development, prior to redevelopment for that event.

### **Volume Control**

- For greenfield developments, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must not exceed the greenfield runoff volume for the same event.
- For developments which have been previously developed, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must be constrained to a value as close as is reasonably practicable to the greenfield runoff volume for the same event, but must not exceed the runoff volume for the development site prior to redevelopment for that event. *Note:- If the greenfield run-off for a site is calculated at less than 2 l/s, then a minimum of 2 l/s could be used (subject to approval from the LLFA).*
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.

- Where cellular storage is proposed and is within areas where it may be susceptible to damage by excavation by other utility contractors, warning signage should be provided to inform of its presence. Cellular storage and infiltration systems should not be positioned within the highway.

- Guidance on flood pathways can be found in BS EN 752.

- The Greenfield runoff rate which is to be used for assessing the requirements for limiting discharge flow rates and attenuation storage for a site should be calculated for the whole development area (paved and pervious surfaces - houses, gardens, roads, and other open space) that is within the area served by the drainage network, whatever the size of the site and type of drainage system. Significant green areas such as recreation parks, general public open space, etc., which are not served by the drainage system and do not play a part in the runoff management for the site, and which can be assumed to have a runoff response which is similar to that prior to the development taking place, may be excluded from the greenfield analysis.

I. All Micro Drainage calculations and results must be submitted in .MDX format, to the LPA. (Other methods of drainage calculations are acceptable.)

J. The applicant should submit a comprehensive management plan detailing how surface water shall be managed on site during the construction phase of the development ensuring there is no increase in flood risk off site or to occupied buildings within the development.

## 11. Network rail:

Works in Proximity to the Operational Railway Environment.

Development Construction Phase and Asset Protection

Due to the proximity of the proposed development to the operational railway boundary, it will be imperative that the developer liaise with our Asset Protection Team (contact details below) prior to any work taking place on site to ensure that the development can be undertaken safely and without impact to operational railway safety.

Details to be discussed and agreed will include construction methodology, earthworks and excavations, use of crane, plant and machinery, drainage and boundary treatments. It may be necessary for the developer to enter into a Basic Asset Protection Agreement (BAPA) with Network Rail to ensure the safety of the operational railway during these works.

Condition Development shall not commence until a construction methodology has been submitted to and approved in writing by the Local Authority.

The construction methodology shall demonstrate consultation with the Asset Protection Project Manager at Network Rail. The development shall thereafter be carried out in accordance with the approved construction methodology unless

otherwise agreed in writing by the Local Planning Authority. Contact details for Asset Protection are supplied below and we would draw the developers attention to the attached guidance on Network Rail requirements. Boundary Treatments, Landscaping and Lighting Trespass Proof Fencing Trespass onto the railway is a criminal offence. It can result in costly delays to rail traffic, damage to the railway infrastructure and in the worst instances, injury and loss of life. Due to the nature of the proposed development we consider that there will be an increased risk of trespass onto the railway.

**Condition** The developer must provide a suitable trespass proof fence adjacent to Network Rails boundary (approx. 1.8m high) and make provision for its future renewal and maintenance. Network Rails existing fencing/wall must not be removed or damaged. **Vehicle Incursion Measures** An Armco or similar barrier should be located in positions where vehicles may be in a position to drive into or roll onto the railway or damage the lineside fencing. Network Rails existing fencing / wall must not be removed or damaged. Given the considerable number of vehicle movements likely provision should be made at each turning area/roadway/car parking area adjacent to the railway. This is in accord with the new guidance for road/rail vehicle incursion NR/LV/CIV/00012 following on from DfT advice issued in 2003, now updated to include risk of incursion from private land/roadways. **Condition** Given the nature of the proposals and location of turning areas/car parking, we would expect that a condition securing the design and installation of suitable vehicle incursion measures by the developer is included in any consent. This is for the safety, operational needs and integrity of the railway.

#### Landscaping

It is imperative that planting and landscaping schemes near the railway boundary do not impact on operational railway safety. Where trees and shrubs are to be planted adjacent to boundary, they should be positioned at a minimum distance greater than their height at maturity from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. Any hedge planted adjacent to the railway boundary fencing for screening purposes should be placed so that when fully grown it does not damage the fencing, provide a means of scaling it, or prevent Network Rail from maintaining its boundary fencing. Below is a list of species that are acceptable and unacceptable for planting in proximity to the railway boundary; **Acceptable:** Birch (*Betula*), Crab Apple (*Malus Sylvestris*), Field Maple (*Acer Campestre*), Bird Cherry (*Prunus Padus*), Wild Pear (*Pyrus Communis*), Fir Trees Pines (*Pinus*), Hawthorn (*Crataegus*), Mountain Ash Whitebeams (*Sorbus*), False Acacia (*Robinia*), Willow Shrubs (*Shrubby Salix*), Thuja Plicatata Zebra Not Acceptable: Acer (*Acer pseudoplatanus*), Aspen Poplar (*Populus*), Small-leaved Lime (*Tilia Cordata*), Sycamore Norway Maple (*Acer*), Horse Chestnut (*Aesculus Hippocastanum*), Sweet Chestnut (*Castanea Sativa*), Ash (*Fraxinus excelsior*), Black poplar (*Populus nigra var, betulifolia*), Lombardy Poplar (*Populus nigra var, italica*), Large-leaved lime (*Tilia platyphyllos*), Common lime (*Tilia x europea*)

Condition Landscaping detail should be submitted to the Local Planning Authority and approved in conjunction with Network Rail. Li61 Where lighting is to be erected adjacent to the operational railway, the potential for train drivers to be dazzled must be eliminated. In addition, the location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway. Condition Detail of any external lighting should be provided to the Local Planning Authority to be approved in conjunction with Network Rail.

#### Additional Requirements Railway Noise Mitigation

The Developer should be aware that any development for residential or noise sensitive use adjacent to an operational railway may result in neighbour issues arising. Consequently, every endeavour should be made by the developer to provide adequate soundproofing for each dwelling. Please note that in a worst-case scenario there could be trains running 24 hours a day and the soundproofing should take this into account. Reason for above conditions: The safety, operational needs and integrity of the railway.

Informatives: Please see attached standard railway requirements to be included as informatives.

We trust that the above will be given due consideration in determining the application and if you have any enquiries in relation to the above, please contact us at [townplanninglne@networkrail.co.uk](mailto:townplanninglne@networkrail.co.uk). Useful Network Rail contacts; Asset Protection Eastern For enquiries, advice and agreements relating to construction methodology, works in proximity to the railway boundary, drainage works, or schemes in proximity to railway tunnels (including tunnel shafts) please email [assetprotectioneastern@networkrail.co.uk](mailto:assetprotectioneastern@networkrail.co.uk). Land Information For enquiries relating to land ownership enquiries, please email [landinformation@networkrail.co.uk](mailto:landinformation@networkrail.co.uk). Property Services For enquiries relating to agreements to use, purchase or rent Network Rail land, please email [propertyserviceslneem@networkrail.co.uk](mailto:propertyserviceslneem@networkrail.co.uk).

#### Network Rail Standard Informatives:

Please note, not all of these requirements may be applicable to this development

**Fail Safe Use of Crane and Plant** All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports. With a development of a certain height that may/will require use of a crane, the developer must bear in mind the following. Crane usage adjacent to railway infrastructure is subject to stipulations on size, capacity etc. which needs to be agreed by the Asset Protection Project Manager prior to implementation.

**Excavations/Earthworks** All excavations/ earthworks carried out in the vicinity of Network Rail property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational



railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rail's infrastructure or railway land. Security of Mutual Boundary Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rail's Asset Protection Project Manager. Demolition Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence. Vibro-impact Machinery Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement. Scaffolding Any scaffold which is to be constructed within 10 metres of the railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed. Bridge Strikes Applications that are likely to generate an increase in trips under railway bridges may be of concern to Network Rail where there is potential for an increase in 'Bridge strikes'. Vehicles hitting railway bridges cause significant disruption and delay to rail users. Consultation with the Asset Protection

#### OFFICIAL

Project Manager is necessary to understand if there is a problem. If required there may be a need to fit bridge protection barriers which may be at the developer's expense. Abnormal Loads From the information supplied, it is not clear if any abnormal loads will be using routes that include any Network Rail assets (e.g. bridges and level crossings). We would have serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets. Network Rail would request that the applicant contact our Asset Protection Project Manager to confirm that any proposed route is viable and to agree a strategy to protect our asset(s) from any potential damage caused by

abnormal loads. I would also like to advise that where any damage, injury or delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability. Two Metre Boundary Consideration should be given to ensure that the construction and subsequent maintenance can be carried out to any proposed buildings or structures without adversely affecting the safety of, or encroaching upon Network Rail's adjacent land, and therefore all/any building should be situated at least 2 metres from Network Rail's boundary. This will allow construction and future maintenance to be carried out from the applicant's land, thus reducing the probability of provision and costs of railway look-out protection, supervision and other facilities necessary when working from or on railway land.

#### ENCROACHMENT

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto Network Rail land, no over-sailing into Network Rail airspace and no encroachment of foundations onto Network Rail land and soil. There must be no physical encroachment of any foundations onto Network Rail land. Any future maintenance must be conducted solely within the applicant's land ownership. Should the applicant require access to Network Rail land then must seek approval from the Network Rail Asset Protection Team. Any unauthorised access to Network Rail land or airspace is an act of trespass and we would remind the council that this is a criminal offence (s55 British Transport Commission Act 1949). Should the applicant be granted access to Network Rail land then they will be liable for all costs incurred in facilitating the proposal. Access to the Railway All roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development.