

ITEM 1**Retrospective consent for erection of fencing and permission for change of use of front of the building, (flat roof area) to sale of retail garden sundries and the front of the site for plants sales and display of garden buildings and cladding to the exterior of the building at Old Hardys builders Yard, 194-196 Newbold Road, Chesterfield for The Gardens buildings Co Ltd.**

Local Plan: Unallocated

Ward: Brockwell

Plot No:

Committee Date: 10th October 2022**CONSULTATIONS**

Highway Authority	The fenced area, the subject of the application, does not negatively affect emerging visibility from the surrounding vehicular accesses therefore, there are no objections to the proposal in principle. Additional information requested on the parking layout and numbers.
CBC Design Services Drainage	No comments to make
Cllr Hollingworth	Comments received – see report
Representations	Three received which are summarised in section 6.0 below.

2.0 THE SITE

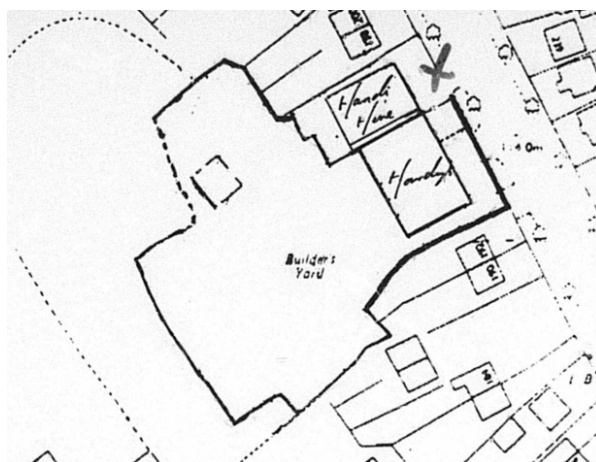
- 2.1 The application relates to the vacant Builder's Merchant premises on Newbold Road which has recently been taken over by the applicant.
- 2.2 The site is within a predominantly residential area with the Newbold local centre being located some 200m to the north of the site.
- 2.3 The building dates from the mid 20th century and has been vacant for a number of years. The former red finish to parts of the building frontage have been removed and the building re-clad in a grey colour. A sales area and display sheds are located to the front of the site which is now partially enclosed by mesh fencing.

- 2.4 The access to the site which is to the southern side of the building remains unaltered and the hard surfaced yard area to the rear remains unchanged albeit with new stock.



3.0 SITE HISTORY

- 3.1 CHE/0703/0480 Erection of timber rack (resubmission) – Conditional permission 03.10.2003
- 3.2 CHE/1298/0614 New side pedestrian access for fire escape and gas cylinder loading new roller shutter door to forecourt kiosk and use of passage behind for warehousing and change of use of petrol forecourt – Conditional permission 11.01.1999
- 3.3 The site plan from this application notes the site as a Builders Yard. The site has a longstanding use as a builders yard which it is understood predates planning control and where a mix of uses typical of builders yards existed.



4.0 THE PROPOSAL

- 4.1 Planning permission is sought to change the use of the frontage area of the building to retail use associated with the remaining use of the site, for the display of products to the frontage of the building and to have a frontage area of the building for plant sales. The plant sale area is enclosed by mesh fencing.
- 4.2 In considering the need for planning permission in this case it is important to note the planning history of the site. The building has been vacant for some time but has been used in the past as a Builders Yard/ Merchants with showroom area and this is a Sui Generis use.
- 4.3 The re-use of the premises to the rear remains as originally intended as a Builder's yard area, albeit used for landscaping supply. This is demonstrated in images of the site as it was when last in use and as now in use:

The yard as it used to be:



The yard as it is now:



There is no change of use connected to this element of the site.

- 4.4 Internally the building is now being used for garden centre type sales where the fireplace showroom (as a part of the builders Yard use) was

located, this is the flat roofed area of the building. Permission is sought for this area of retail use:



4.5 Also sought is permission to use the outdoor area to the front of the building for sales and for the retention of the fence:



5.0 CONSIDERATIONS

5.1 Planning Policy

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that, 'applications for planning permission must be determined in accordance

with the development plan unless material considerations indicate otherwise'. The relevant Development Plan for the area comprises of the Chesterfield Borough Local Plan 2018 – 2035.

5.2 Chesterfield Borough Local Plan 2018 – 2035

CLP1 Spatial Strategy (Strategic Policy)

CLP2 Principles for Location of Development (Strategic Policy)

CLP6 Economic Growth (Strategic Policy)

CLP9 Retail

CLP14 A Healthy Environment

CLP16 Biodiversity, Geodiversity and the Ecological Network

CLP20 Design

CLP22 Influencing the Demand for Travel

5.3 Other Relevant Policy and Documents

National Planning Policy Framework (NPPF)

5.4 Key Issues

- Principle of development
- Design and appearance
- Impact on residential amenity
- Highways safety and parking provision
- Biodiversity

5.5 Principle of Development

5.5.1 The building has been in commercial use formerly and the proposed use is similar to the former use albeit with new retail elements. The site is in a sustainable location for development and is the re-use of vacant premises. In this regard the proposal meets the requirements of policies CLP1 and 2 of the Adopted Local Plan.

5.5.2 Policy CLP9 relates to retail development and where this should be located:

Across the borough, a sequential approach will be used to assess sites for retail and other town centre uses, to focus such development on town, district, local service centres and local centres to meet the requirements of national planning policy.

Impact assessments will be required to accompany planning applications for new retail and leisure proposals that fall outside of Chesterfield Town Centre, Staveley Town Centre, District Centres,

Local and Local Service Centres, in accordance with the locally set thresholds; in this case within 500m of a local centre the threshold is 200 sqm or above (gross internal Floorspace).

- 5.5.3 In terms of the sequential assessment the retail element is considered to be an associated and ancillary element to the main use of the building and in this regard, provided this is conditioned to remain part of the main use and not a separate element, it is considered to be sequentially appropriate in this case. The site has been used for sales as part of the wider use for many years
- 5.5.4 The floorspace to which the change of use to retail is sought amounts to approximately 187.83 sq metres, which is below the threshold for when an impact assessment is required.
- 5.5.5 On this basis it is considered that the retail element proposed is acceptable in line with policy CLP9.

5.6 Design and Appearance

- 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 re-cladding of the building that has already taken place has substantially improved the appearance of the building which is welcomed.
- 5.6.3 The site as a mid 20th century commercial building is an anomaly within the street scene of largely 1930's residential development with hedges and low stone walls to frontages. Therefore, the impact of any development here has to be considered within this context. On this basis it is considered that the sales of plants and sheds etc to the frontage of the building assimilates reasonably well within the street scene and will be more limited should permission be granted due to the need for parking on the site frontage, refer to section 5.9 below.
- 5.6.4 A more contentious matter is the appearance of the mesh fencing to the site frontage which has resulted in concern from local residents and

Ward Member as set out in the consultation section above and in section 6.0 of this report.

- 5.6.5 Whilst it is not ideal having fencing to the site frontage the fencing in this case is a lightweight mesh type fencing which due to its form has varying levels of visibility when viewed from different angles. Given the resulting improvements to the site which have occurred since re-use and re-cladding along with the context described above, it is considered that on balance with the inclusion of the fencing the appearance of the site is improved. Whilst the fence may be a different element within the street scene it is not considered to cause such visual harm that a refusal would be warranted. On this basis it is considered that the scheme accords with the requirements of Policy CLP20.

5.7 Impact on Residential Amenity

- 5.7.1 Local Plan policy CLP14 states that development will be expected to have an acceptable impact on the amenity of users and neighbours.
- 5.7.2 Given that the use of the site is very similar in terms of the operation to the extant use of the site with the ancillary retail element added it is considered that the overall use as proposed will not adversely impact on the amenity of neighbouring residents in terms of noise and nuisance.
- 5.7.3 The hours of operation are noted to be 9am until 6pm Monday to Saturday and 10am until 4pm on Sundays. This is considered reasonable for this residential location and a condition can be imposed to ensure this.
- 5.7.4 Subject to the condition noted above it is considered that the development is acceptable in terms of amenity impacts in line with policy CLP14 of the Adopted Local Plan.

5.8 Highways Safety and Parking Provision

- 5.8.1 Local Plan Policy CLP20 which notes: *development should provide adequate and safe vehicle access and parking*; and CLP22 which notes: *Development proposals will not be permitted where they would have an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

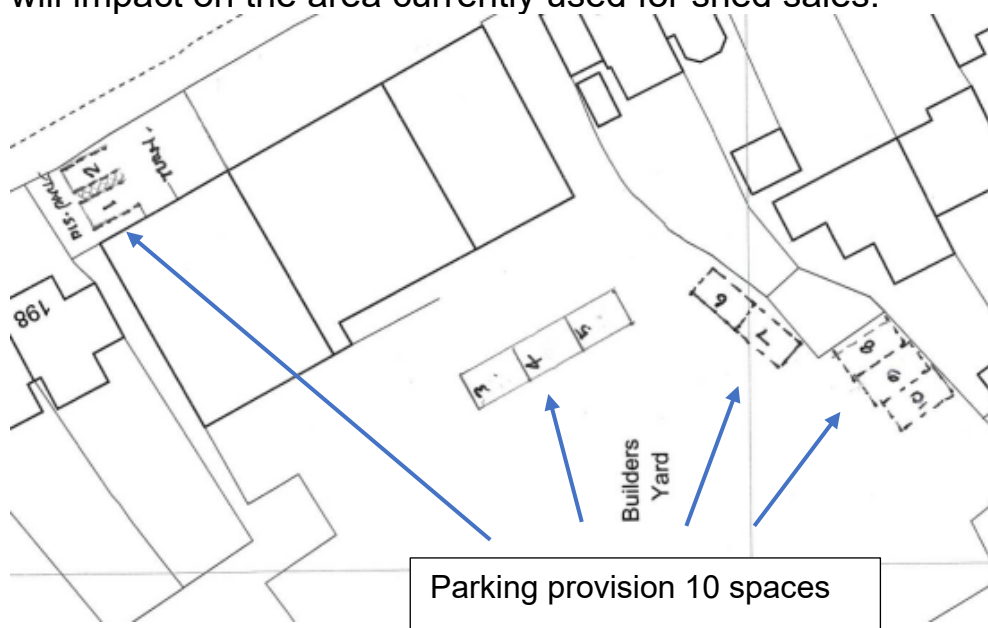
5.8.2 The application has raised concern in terms of parking limitations at the site and the impact this will have upon highway safety. The initial submission noted 30 parking spaces at the site which was not demonstrated on a plan or provided on site. Given this was clearly incorrect information further clarity was required regarding the proposed parking.

5.8.2 At the site at present there are around 4 parking spaces to the rear of the site used for loading and unloading. The applicant has provided further information on the need for parking at the site based on the recent use noting:

When I originally applied for planning permission I suggested 30 parking spaces but that was based on my experience at Riverside garden centre. However it is now clear that the customer numbers are nothing like we had at Riverside and never will be – as we don't have the variety of stock available as space is always going to be limited to the front area. Please see attached customer numbers screenshot from our computer system.

Given that the builders merchant has a very quick customer turnaround and the maximum number of customers for the garden centre has been 6. The vast amount of business in the builders merchant is telephone or internet. In my experience I would say that the maximum number of car parking spaces is somewhere around 10 – even in the very busiest periods.

5.8.3 A parking plan has now been provided which shows 10 parking spaces on existing hard surfacing, including two to the front of the site which will impact on the area currently used for shed sales.



5.8.4 The Highway Authority in their initial comments noted that there was no objection in principle subject to appropriate parking provision. In their latest comments they note:

The application form states that the site benefitted from 10no. existing off-street parking bays which were presumably located in front of the building where the fenced area is now located, therefore, it is considered the off-street parking provision demonstrated on the revised plan (22 878 REV A) is acceptable to replace previous levels of off-street parking to the front of the building(s) which have been displaced by the proposal. Therefore, the Highway Authority has no objections to the proposal, subject to the inclusion of a condition to secure the parking as shown.

5.8.5 On this basis and subject to these spaces being made available on site the proposal is not considered to result in such harm to highway safety that a refusal would be warranted in line with policies CLP20 and 22 as set out above, and para 110 of the NPPF which refers to; Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.9 **Biodiversity**

5.9.1 Local Plan policy CLP16 states that all development will “protect, enhance, and contribute to the management of the boroughs ecological network of habitats... 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”.

5.9.2 The application site is the building and hard surfaced areas which have no biodiversity value. Therefore, there has been no need in this case to provide a survey of ecological impacts. In order to enhance biodiversity at the site is it possible to provide bat and bird boxes on the building or outside areas and therefore a condition to secure this is reasonable as ecological enhancement of the site. on this basis the proposal meets the requirements of policy CLP16 of the Adopted local Plan.

5.10 **Development Contributions and CIL Liability.**

5.10.1 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 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:

$$\frac{\text{Net Area (A)} \times \text{CIL Rate (B)} \times \text{BCIS Tender Price Index (at date of permission) (C)}}{\text{BCIS Tender Price Index (at date of Charging Schedule) (D)}} = \text{CIL Charge (E)}$$

Development Type	Proposed Floorspace (GIA in Sq.m)	Less Existing (Demolition or change of use) (GIA in Sq.m)	A Net Area (GIA in Sq.m)	B CIL Rate	C Index (permi-ssion)	D Index (char-ging sche-dule)	E CIL Charge
Class E/Retail (former A1-A5)	188	188	0	£80 index linked – medium zone	332	288	£17,337

6.0 REPRESENTATIONS

6.1 Three comments have been received from two parties (235 and 239 Newbold Road:

6.2 I wish to object to the application for the following reasons:

1. The forecourt to the premises, which has been used for customer and staff parking for many years, is now being used as a compound for retail sales of garden ornaments, paving, plants and sheds. This means that customer's vehicles for retail sales and staff cars are now parking on Newbold Road which is a busy classified B road and is residential in nature, except for this historically non conforming use.

Immediately outside the site is a bus stop and cycle lane, both of which are now regularly impeded by vehicles using the site. Across the road and either side of the site vehicles are parking for retail sales making it difficult and more dangerous for cars leaving driveways of nearby residential properties onto the busy road where the 30mph speed limit is frequently ignored by speeding vehicles.

Therefore, as in previous years parking for the business should take place both on the forecourt and at the rear of the premises, which now appears to be fully occupied by the storage of materials.

On the application form the applicant states that 30 parking spaces are proposed, however the plans do not show any on-site parking.

2. To create the retail compound in front of the building line a 2m high, unsightly steel fence has been erected right up to the edge of the pavement. This high, galvanised, grey metal fence appears as a hard, unattractive industrial/commercial feature, with the stacks of items for sale being at odds with the attractive stone walls and residential and verdant front gardens of the residential properties that characterise the area.

It is therefore totally out of place and seriously detrimental to the amenities of the area.

3. The relevant planning policies include Policy CLP Design of the Local Plan which is the most relevant. This policy promotes good design that positively contributes to the distinctive character of the Borough, provides for adequate and safe vehicular access and parking and has an acceptable impact on the amenity, neighbours and users. National Planning Policy Framework section 12 also seeks to provide high quality places. This application has a negative effect against these objectives and therefore fails.

4. The previous use as a wholesale/trade builders merchants suggests that the site has a "sui generis" use (a use on its own and not in a use class) so that a change to a retail use of the whole site in planning law may well require planning permission, not just for the front part of the building, forecourt and fence, but for the whole site. This would then need to be assessed as a non conforming substantial retail use being introduced into a wholly residential area and unrelated to any other retail uses.

5. When the fence was first being erected the staff doing the work were asked if planning permission was being sought as it would probably require it and it was requested that the owner be made aware of this and to check with the Council. This appeared to be ignored and all the work was carried out and trading commenced many months ago in breach of planning control until the Council was contacted by neighbours and eventually a retrospective application was submitted. This is therefore a wilful disregard of planning law and regulations.

6.3

We are pleased to see the site, which has been in a poor state of repair for some years, being restored. We wish the business well in its endeavours to become a financial success.

Our concern is that planning permission is being sought retrospectively. If proper procedures, that all of us are required to abide by, had been followed then the negative aspects of this development may have been addressed:

- Serious lack of parking spaces to the rear and no signage.
- The front forecourt, that was used for parking in the past, has had a compound fence erected that is not aesthetically pleasing and not in keeping with the street scene.
- Staff parking on the road is sensitively managed, which is appreciated, but customer parking is troublesome as there is a bus stop directly in front of the business and Newbold Road is very busy and potentially dangerous for customers crossing with purchased goods.

I should like to endorse the point made by the Highway Authority in its reply to the consultation, that the vehicular access to get to the storage areas at the rear of the buildings is very unsuitable for the large articulated lorries delivering materials to be sold there. There are no visibility splays into the narrow entrance which means the lorries have to carry out several manoeuvres on Newbold Road to reverse in creating a danger to other traffic trying to get past. There is no space in the site for the lorries to turn round.

6.4 Officer response – The issues raised are considered in the report above.

6.5 Cllr Hollingworth has commented that she recognises that occupying and transforming the site is beneficial to the residents of Newbold Road and its street scene but feel that having a high fencing to the front is not in keeping with the area. A better view would be sympathetic planting, visible signage bearing the name of the business and a few well-placed demonstration shed and the rest of the front being used for parking would be more in keeping with a residential area and its street scene. Having parking on the front would deter cars from parking on a busy road with a bus stop close by.

Parking is the other concern. There are no drawings to support the 30 parking spaces or their location. On my visit I was very concerned over the lack of room available for parking spaces in the yard at the rear. At present there are 4 parallel parking spots the rest of the yard is full of gardening supplies. Space for further parking at the rear is not available at present which further supports the need for parking to the front. For

these reasons I give my objections to the retrospective planning application for fencing and plant sales to the front of the premises.

7.0 HUMAN RIGHTS ACT 1998

7.1 Under the Human Rights Act 1998, which came into force on 2nd October 2000, an authority must be in a position to show:

- Its action is in accordance with clearly established law
- The objective is sufficiently important to justify the action taken
- The decisions taken are objective and not irrational or arbitrary
- The methods used are no more than are necessary to accomplish the legitimate objective
- The interference impairs as little as possible the right or freedom

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

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 2021 National Planning Policy Framework (NPPF).

8.2 Given that the proposed development does not conflict with the NPPF or with 'up-to-date' Development Plan policies, it is considered to be 'sustainable development' and there is a presumption on the LPA to seek to approve the application. The LPA has used conditions to deal with outstanding issues with the development and has been sufficiently proactive and positive in proportion to the nature and scale of the development applied for.

8.3 The applicant /agent and any 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 proposed ancillary retail use of the premises is considered to be acceptable in line with policies CLP1, 2 and 9 as set out above. The visual impacts are considered to be appropriate given the site is an anomaly within the street scene but that overall the scheme results in an enhancement to the street scene. The parking provision has now been clarified and the 10 parking space provision is considered acceptable by the highway Authority.
- 9.2 the proposal meets all local plan requirements and is therefore recommended for approval subject to conditions.

10.0 **RECOMMENDATION**

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

Conditions

1. The development hereby approved shall only be carried out in full accordance with the approved plans (listed below) with the exception of any approved non-material amendment or conditional requirement below. All external dimensions and elevational treatments shall be as shown on the approved plan/s (listed below).

Floor plans, elevations and site plan 22 878 Rev A received 13.09.22
Fencing detail 1006600 received 01.06.2022
Location plan received 01.06.2022
Site plan received 25.04.2022

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

2. The area of the premises to which this permission relates shall be open to customers only during the hours: 9am until 6pm Monday to Saturday and 10am until 4pm on Sundays and Bank Holidays.

Reason: To safeguard the amenities of the occupiers of nearby properties in accordance with policy CLP14 of the Adopted Local Plan.

4. Notwithstanding the provisions of the Town and Country Planning (Uses Classes) Order 1987, (or any Order revoking or re-enacting that Order

with or without modifications), the area of the premises to which this permission relates shall only be used for retail sales ancillary to and in association with the main use of the premises and for no other purpose, including any other activity within the same class of the schedule to that Order.

Reason: In order to ensure the retail use of the premises is sequentially appropriate in accordance with policy CLP9 of the Adopted Local Plan.

5. Within 2 months of the date of this permission a scheme for biodiversity and ecological enhancement measures shall be installed/integrated into the development. The ecological enhancement measures shall thereafter be retained and maintained throughout the life of the development.

Reason: In the interests of achieving a net measurable gain in biodiversity in accordance with policy CLP16 of the adopted Chesterfield Borough Local Plan and to accord with paragraph 175 of the National Planning Policy Framework

6. Within 2 months of the date of this permission space shall be provided on the site for the parking of visitors/customers/employees vehicles in accordance with the revised application drawing – 22 878 REV A. Thereafter the onsite parking provision and manoeuvring area shall be maintained available for the designated use in perpetuity.

Reason: To ensure appropriate parking provision in line with policies CLP20 and 22 of the Adopted Local Plan.

Informatives:

1. The Local Planning Authority have during and prior to the consideration of this application engaged in a positive and proactive dialogue with the applicant with regard to parking in order to achieve a positive outcome for the application.
2. In accordance with condition 5 above appropriate ecological/biodiversity enhancement measures shall include but shall not be limited to:
Bird/owl/bat boxes
(Locating your nestbox:
Whether fixed to a tree or a wall, the height above ground is not critical to most species of bird as long as the box is clear of inquisitive humans and prowling cats. If there is no natural shelter, it is best to mount a box

facing somewhere between south-east and north to avoid strong direct sunlight and the heaviest rain. The box should be tilted slightly forwards so that the roof may deflect the rain from the entrance.

You can use nails to attach the box directly to a tree trunk or branch; or you can use rope or wire wrapped right around the box and trunk (remembering to protect the trunk from the wire cutting into it by using a piece of rubber underneath it). Both methods are satisfactory, but annual maintenance is easier if the box is wired and can be taken down easily for cleaning.

The number of nestboxes which can be placed in a garden depends on the species you wish to attract. Many species are fiercely territorial, such as blue tits, and will not tolerate another pair close by; about 2 to 3 pairs per acre is the normal density for blue tits. Other species, such as the tree sparrow, which is a colonial nester, will happily nest side-by-side.

Do not place your nestbox close to a birdtable or feeding area, as the regular comings and goings of other birds are likely to prevent breeding in the box.)

(Locating your bat box: Bat boxes should be positioned at least 3 metres above the ground (5 metres for noctules) in a position that receives some direct sun for part of the day, with a clear flight path to the box, but preferably also with some tree cover nearby as protection from the wind. In the roof eaves, on a wall or fixed to a tree are all suitable sites.)

Biodiversity enhancing planting and landscaping including trees, hedges and native species, wildflower planting and nectar rich planting for bees and night scented flowers for bats.

Measures to enhance opportunities for invertebrates including bug hotels/log piles, stone walls including a programme of implementation and maintenance.

Holes in fences and boundary treatment to allow species such as hedgehog to move across the site.

Bee bricks.