

PLANNING COMMITTEE 14TH DECEMBER 2021
CORRESPONDENCE RECEIVED AFTER PREPARATION OF THE AGENDA

ITEM 5.1 - PROPOSED EXTENSION TO C-BAYS BUILDING TO ACCOMMODATE RELOCATED EQUIPMENT (MODIFICATIONS TO EXTENSION PREVIOUSLY APPROVED UNDER PLANNING PERMISSION 18/00919/FUL) AT DARLEY DALE SMELTER, OLDFIELD LANE, WARREN CARR.

Environmental Health Manger in response to further consultation and the request to attend committee.

Further to the above request I feel it is important to reiterate the scope and extent of the Derbyshire Dales Environmental Health Department role as regards the regulation of this site. Environmental Health are not the lead enforcement agency for the site in the majority of respects, this sits with the Environment Agency (EA). We cannot therefore respond to matters that are outside of our legal remit nor respond or commit to matters as a substitute for the EA, as that would be misleading and unhelpful, hence we shall not be attending Committee.

In lay terms approximately 98% of the operational activity sits with the EA for regulatory purposes and ourselves merely 2%. The specifics are as follows:-

The EA regulate the site under the Environmental Permitting Regulations 2016. The permit is a prescriptive document which is site specific and covers all aspects of likely polluting emissions from the site be that noise, air, water or land related. Essentially the permit should be viewed as a licence to operate which is audited against by the EA.

Derbyshire Dales Environmental Health regulatory scope is restricted to matters of light pollution (should they occur) under Statutory Nuisance, plus the consideration and inclusion of Lead Emission values from the site (as a valid point source), as part of a whole district approach to Air Quality matters, however the compliance levels for lead are prescribed within the EA site specific permit and 'policed' by the EA accordingly.

As regards the amendment application ref 21/00500/FUL - Raising of the previously approved roof height from 12 to 20m (to the ridge) in C-bay to accommodate the Cibel 6 equipment. We, as a consultee have no objections to raise. As a regulator looking in on the purpose behind the proposed works, it is our view that the installation of the new Cibel 6 bag filter and the associated streamlining of production activities must be seen as a positive improvement to the general workings of the site and accords with the general expectation placed upon all permitted processes to employ Best Available Techniques. To conclude – I trust this communication further explains our role and position on this matter.

Mr G Ward has provided three letters that have been copied to Councillors

He makes a request on behalf of several local residents that the Local Planning Authority (LPA) uses the powers available to it to investigate the scale of the intensification they argue has taken place at the Enthoven site over several years which, they submit, may

amount to a change of use. Specifically, we ask that the LPA serves a Planning Contravention Notice alleging such material change of use.

Mr M Hopkinson

Please can you also point me to any guidance regarding the deferment of an application, and at what point a deferred application can be re-appraised by the planning committee.

There were a number of actions requested by the planning committee when this application was deferred, and when reviewing the application online, there is no evidence that these actions have been completed. He is therefore unsure as to why this application would be going back to committee before the requested actions have been completed?

Mr R Ashton made the following comments:

Members are reminded of the following:

1. The Minute of the 12 October meeting resolved that further information be sought from the various regulatory bodies (Environment Agency, DDDC Environmental Health and DCC Highways) before determination.
2. It was clear from the recording of the meeting that Members were not satisfied with the 'No Objection' responses from these and other agencies during the statutory consultation process. From the latest submissions received this should still be the case.
3. Members are also reminded that both the most directly affected Parish Councils (Stanton and South Darley), as well as numerous local residents, objected to and still have major concerns about the continued unchecked intensification of activities on this site leading, in our opinion, to a material change of use over time.

In summary - a reminder of the issues

- The accelerating increase in production capacity at the Site from 100,000t in 2006 to 130,000t in 2017 (a 30,000t increase in eleven years) to 165,000t in 2019 (a further 35,000t increase in just three more years)
- The proximity of the site to a National Park, Local Conservation Area and Scheduled Ancient Monument – all of which suggest that a degree of protection from any further expansion should be imposed
- The proximity of the site to local residential communities (see the numerous objections referred to above) as well as its impact on local wildlife
- Environmental pollution from a 24hour operation – Noise; Acrid Smells; Intrusive Lighting; Vibration; Water Run-Off into the River Derwent.
- The absence of a full Environmental Impact Assessment (EIA), which might address some of these concerns
- The totally inadequate highway network access to the site considering the size and frequency of HGV movements (resulting in a danger to other road users, regular local infrastructure damage and frequent congestion).
- The absence of any controls on the number of HGV's visiting the site and any other local traffic management measures
- HGV vehicles using the highway outside the site for overnight parking
- The inadequacy of communication by the Company with the local community
- The striking inconsistencies of the application itself, as well as the "new" additional information they provided

Members are urged to REFUSE the planning application and insist upon a comprehensive investigation and review of H J Enthoven's operations and their impact, as long sought by local residents and their representatives. They propose that a Planning Contravention Notice be issued alleging a material change of use whilst the above process takes place.

If Members are inclined to grant permission to the development it is suggested that, in order to avoid the proposal contributing to the incremental intensification which we are opposed to, a CONDITION be applied requiring the removal of A Bay within two months of the proposed development being brought into use.

RESPONSE:

Paragraphs 5.3, 5.4 and 5.7 report the comments from the EA, Highways Authority and Environmental Health both in relation to the application and request for attendance at committee. Paragraphs 7.1 and 7.2 provide an update on the additional information and consultation carried out in compliance with the reason for deferral at committee on the 11th October 2021.

The Council cannot serve a Planning Contravention Notice for matters outside of its control. The premises has an established general industrial use (Use Class B2) which can operate without restriction in planning / land use terms. The EA regulate the site under the Environmental Permitting Regulations 2016. The permit is a prescriptive document which is site specific and covers all aspects of likely polluting emissions from the site be that noise, air, water or land related. The application on the agenda for committee relates to a change to a building previously granted permission in 2018.

ITEM 5.2 - RESERVED MATTERS APPLICATION FOR THE ERECTION OF 46NO. DWELLINGHOUSES (OUTLINE PLANNING CONSENT 15/00570/OUT) AT LAND ADJACENT CAVENDISH COTTAGE, DERBY ROAD, DOVERIDGE

The applicant stated the following:-

I am however sorry to hear that you consider there to be fundamental issues with the layout, but as I see it that there's nothing that has been raised in your report that couldn't be resolved now as part of this application, and if you recall I requested your comments on the design and layout some time ago so we could hear your thoughts and resolve any issues at a much early stage.. But if you are not prepared for the item to be withdrawn from next weeks agenda, allowing us an opportunity to discuss the proposal in more detail, then there are a couple of points of correction that I think need to be made brought to members attention, and I would also like to use this opportunity to respond to the consultation responses you sent through this morning.

Firstly, the masterplan that accompanied the outline showed 43% 4 beds, 35% 4 beds and 22% 5 beds with a total coverage of 5,948 sqm. Our current proposal, which is more aligned with the Council's preferred housing mix (Policy HC 11), has a total coverage of 4,120 sqm. This is a considerable reduction (31%) in built development compared with that shown on the indicative masterplan at the outline stage. It is therefore not correct to state that the density or amount of development has increased, as it hasn't. Furthermore,

in terms of dwellings numbers, this remains below 28 dph (i.e. the SHLAA average density) whether you use the outline red line, or the reserved matters red edge.

With regards to POS, the layout shows circa 0.36 ha of open space, which by my calculations exceeds the requirements of Policy HC14 (Table 6). We have no problem looking to at way this could be reconfigured, and accommodating a children's play area, but on the latter, we were hoping/expecting to get some feedback from Sports /Recreation Services in terms of what their expectations were for this as there's nothing to advise in the S.106. I have not seen any response from them on this matter, but I believe a request for comments was made during the original consultation?

I agree that the scheme does include a reduction in the size of the dwellings compared with the indicative masterplan, but as discussed previously, HC 11 promotes smaller dwellings, and we have sought to respond accordingly.

With regards to the consultation responses sent through this morning, starting with those of the Rural Housing Enabler, I can confirm that the house types sent through accord with the Nationally Described Space Standards apart from the Type 7 which is 1 sqm below standard. The affordable bungalows now meet Part M4(2), so I would hope the latest information would satisfy their comments. In terms with highways, you will have seen from email exchanges with Kevin Barton that they are satisfied with the 5.5m carriageway as now shown. Clearly their requirements for adoption have influenced the size of carriageway and turning heads. And finally, with regards the Tree and Landscape officers comments, I can see that the Landscape Strategy details are not as clear as they could be, and this hasn't been helped by the pdf file being compressed. But we can supply additional landscape details, and in a format that is more legible. Furthermore, had we known about these comments earlier, we could've provided an Arboricultural Impact Assessment, if not considered a matter that could be conditioned.

In light of the above, I would ask again for this item to be deferred to a later committee date so that a proper discussion can take place regarding the detail of this application, but if this is not possible then we will have to make our case to members next week.

RESPONSE:

It is considered that the issues outlined in the committee report are fundamental and as such there isn't scope to negotiate on this scheme to address the reasons for refusal. There was no pre-app on the reserved matters submission and a successful scheme would require an expansion of the site and very substantial re-design. It was therefore advised that the application can either be withdrawn or the applicant can make their case to members at committee. If additional information prior to committee is submitted committee shall be updated either in the late reps document or verbally at the meeting.

The applicant has provided amended plans in relation to:-

- the design of some housetypes to include different headers and cills and porches;
- an amended layout indicating a 5.5m width on streets 1 and 2 order to achieve adoption of the road by the Highways Authority; and

- further drainage plans, storm design calculations, soakaway testing with a technical note requested by the LLFA.

One letter of support from Mr J Apew-Selley was received which stated:

I have seen nothing else done with this land in a long time. I believe it is worth expanding the village in an attempt to promote more business to the area as no doubt with more villagers there will be demand for more shopping and leisure activities.

ITEM 5.3 - VARIATION OF CONDITION 2 (APPROVED PLANS) OF PLANNING PERMISSION 17/00850/FUL TO ALLOW FOR THE SUBSTITUTION OF HOUSE TYPES AT LAND OFF WHITELEA LANE, TANSLEY

Further to the publication of the agenda, the applicant has submitted a revised set of drawings which are largely amended with regard to window specifications being added. This provides a consistent detail of plans to a single date and it is recommended that condition 1 and footnote 6 be amended as follows:

Condition 1

Notwithstanding the initial documents and specifications submitted with the application, the development hereby approved shall be undertaken only in accordance with the following drawings except insofar as may otherwise be required by other conditions to which this permission is subject:

Amended Drawing Nos. 21-02- P01 Rev. J, 02 Rev. E, P03 Rev. F, P04 Rev. E, P05 Rev. E, P06 Rev. D, P07 Rev. C, P08 Rev. D, P09 Rev. D, P10 Rev. D, P11 Rev. F, P12 Rev. C, P13 Rev. C, P14 Rev. E, P15 Rev. E, P16 Rev. E, P17 Rev. B, P18 Rev. C, P19 Rev. C, P20 Rev. D, P21 Rev. A, P22 Rev. B, P23 Rev. C, P24 Rev. D, P25 Rev. A, P26 Rev. A, P27 Rev. B, P28 Rev. C and P29 Rev. A dated 7th December 2021.

Reason:

To define the permission for the avoidance of doubt and to ensure the satisfactory appearance of the development to comply with policies S1, S3, PD1 and PD5 of the Adopted Derbyshire Dales Local Plan (2017).

Footnote 6 (referred to incorrectly as footnote 4.) be amended to:

This decision notice relates to the following documents:

Amended Drawing Nos. 21-02- P01 Rev. J, 02 Rev. E, P03 Rev. F, P04 Rev. E, P05 Rev. E, P06 Rev. D, P07 Rev. C, P08 Rev. D, P09 Rev. D, P10 Rev. D, P11 Rev. F, P12 Rev. C, P13 Rev. C, P14 Rev. E, P15 Rev. E, P16 Rev. E, P17 Rev. B, P18 Rev. C, P19 Rev. C, P20 Rev. D, P21 Rev. A, P22 Rev. B, P23 Rev. C, P24 Rev. D, P25 Rev. A, P26 Rev. A, P27 Rev. B, P28 Rev. C and P29 Rev. A dated 7th December 2021.

Tansley Parish Council raised concern and advise that the Officers Report is of interest, in particular the mention of the 106 Agreement and that it would appear this is to remain as the original. It is presumed to try and change it may be difficult from a legal perspective and Tansley Parish Council would certainly challenge any proposed change.

However the Officers report refers to Section 106 payments being made for Health, Social Housing and Recreation. The 106 Agreement 8th July 2019 between DDDC, Mr & Mrs Wilson and William Davis Homes, state:-

Healthcare Contribution - £10,347

Contribution to up grading play area and recreation facilities in Tansley - £13,000 (additional play equipment is required to meet the need of older children in the village - DDDC will remember Tansley PC upgraded the play area, at their own expense, but were unable to afford all the equipment and, therefore, this 106 money will enable completion of the project)

Recreation Ground Contribution - £16,640 towards upgrading The Fete Field Recreation Ground

The Legal Document states 2.3 'the covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with Section 106 of the TCPA 1990'

Note these 106 monies are due at the commencement of the development? and yet the Officers Report says payment can be made on completion. What authority does the writer have to alter this legal document?

If the developer is 'late ' with payment there is a clause to index link the payments there is no mention of this accrued money. This developer has gone ahead and erected homes with no planning permission in place. Surely before planning permission is granted the legalities need to be sorted. A 106 is subject to planning being approved, it would appear this 106 document needs to be amended prior to permission being given?

It is blatantly obvious to all that Conditions and Building Regs are of little consequence, as the developer knows DDDC will not take Enforcement action.

Please can the Officers Report be corrected prior to the meeting to reflect the true content of the 106 Legal Agreement, in particular the contributions, and the legal validity of the document when related to this new developer.

RESPONSE:

As the Parish Council has correctly pointed out, there is an error in the Officer's report in paragraph 7.21 referring to Social Housing contribution and this should instead refer to the contribution to up grading play area and recreation facilities in Tansley of £13,000.

With regard to the legal agreement, the developer is aware of the Section 106 Agreement and that a Deed of Variation will be required to bring the Section 106 Agreement in line with the revised scheme. It is the developer's preference that the payments become due on completion of the Deed of Variation, should this revised application be approved in principle.

The recommendation to the Planning Committee remains the same, in that authority to grant permission for the variation of Condition 2 of planning permission 17/00850/FUL be delegated to the Development Manager on completion of a Deed of Variation of the Section 106 Agreement attached to planning permission 17/00850/FUL. It would be for

the applicant to provide a Deed of Variation of the Section 106 agreement, and the monies required therein to be submitted, prior to the issuing any revised permission.

In relation to the breach of the requirements of the Section 106 Agreement, as Officers are supporting the revised scheme, it would not be in the public interest to issue an enforcement notice, or pursue a breach of the legal agreement, where the District Council has the mechanism to secure the funding at the release of a revised permission. In the meantime, the applicant is aware that any further works carried out are at their own risk, but they clearly have a common objective of resolving matters successfully and in line with any revised permission and obligation as, otherwise, they will not be able to sell the properties.

During the Planning Committee site visit, concerns were raised with regards to the condition of the roads and Councillor Sue Burfoot has since raised this in writing with Officers.

RESPONSE:

The safety of roads is a matter that needs to be addressed principally by the Local Highway Authority. It has been advised by the local Highway Authority that a highways inspector attended the site on 12th November 2021 and so they are aware that the development is taking place and they will need to monitor the works being undertaken in accordance with Highway Regulations.

The site has no occupation as yet and Officers do not know the timings by which the Local Highway Authority would require certain works to be completed, both prior to works commencing on the site, prior to occupancy and on completion. If there are any issues of concern, these can be identified by the Local Highway Authority to the Local Planning Authority for assessment as to whether there has been a breach of condition(s) requested by the Local Highway Authority and what action the District Council would be expected to take to seek to rectify such matters.

The conditions on the original application which can be enforced by the Local Planning Authority can only be undertaken on the basis of this being requested by the Local Highway Authority, as being in breach of those requirements. If such a request was received, the Local Planning Authority would first question why it was not capable of being addressed by the Local Highway Authority, under its own powers and, if it was a matter that could only be addressed through a breach of condition, then the Local Planning Authority would address this. As far as Officers are aware, the Local Highway Authority has not contacted the District Council as to requiring any intervention by the Local Planning Authority with regard to the standard of the roads on site or works which appear to be being undertaken in the public highway.

There is concern with regard to mud on the road and a condition was attached to the original planning permission to put a wheel cleaning facility on the site. This has been put in and Officers have photographs of its usage. However, it is evident that this is not satisfactory. As such, Officers will ask that the highway inspector, who has previously visited the site, revisits it and, if they cannot themselves require the applicant to provide a wheel wash to meet their requirements, that they advise the Local Planning Authority of those requirements in order that the District Council can seek to address the matter.

During the Planning Committee site visit, concerns were raised with regards to the height of the dwelling at Plot 1 and its proximity to the existing bungalow opposite (Little Whitelea).

RESPONSE:

As set out in the Officer's report, in paragraph 7.11, the distance between the dwellings is 18m; the dwelling approved with planning permission 17/00850/FUL was 21m away. The dwelling erected on site is also 8.8m high whereas the approved dwelling was 7.3m high.

ITEM 5.5 ERECTION OF PORCH AT 21 POLLARD WAY, 21 POLLARD WAY ST. ELPHIN'S PARK, DARLEY DALE

Planning permission was refused for a timber entrance canopy on Devonshire Court in 2017. Pre-application advice was sought on this proposal prior to its submission.

The architect has written in response to the objections that have been received, which can be summarised as follows:

The current proposal is smaller than the original scheme. The decorative moulding around the parapet has been designed so that it ties in with the existing building, so that the porch is read as an integral part of the main building.

Porches already exist and this one has been scaled to fit within the context of the existing buildings.

Other options were considered, but the porch was the only solution.

The porch will offer a buffer to the prevailing wind. Moving the door to the side of the porch would be too close to the neighbour and would also be different to the existing porch entrances and thus clash with the overall architecture of the village.

Pre-Application advice was sought, but this does not suggest that the application has already been approved.

The porch was designed to be in keeping with existing buildings, such that it blends in visually, adding relief to the flat façade. The siting and design are neither incongruous, nor out of scale with the existing surrounding buildings.

ITEM 5.6 ERECTION OF DWELLINGHOUSE AT LAND NORTH OF SPRINGFIELD, RIBER ROAD, STARKHOLMES, MATLOCK

During the Planning Committee site visit, concerns were raised with regards to the height of the proposed dwelling. A subsequent letter has been received from a family member with regard to the impact on the occupier of Rusty Ridge, which raises the matters with regard to the roof height and whether there are windows in back of the property.

RESPONSE:

The height of the dwelling is 7.0m high when measured on the front elevation (albeit the highest point is measured as 7.3m, taking account of levels, on the side elevation facing Springfield, as detailed in paragraph 2.2 of the Officer's report)

The ground floor level of the proposed dwelling would be 2.4m lower than the garden height at Rusty Ridge. Therefore, what would appear above the garden level of Rusty Ridge would be essentially the first floor level, to eaves height, and then the sloping roof to the proposed dwelling.

The first floor elevation would be some 2.3m high above the Rusty Ridge garden ground level and the mass of the elevation would be directly visible, as would the balcony screen. The roof ridge would be some 2.3m above the eaves height. However, the ridge is set some 5.2m away from the property boundary and thus lowering the perspective relative the elevation when viewed from Rusty Ridge.

There are no windows on the elevation facing Rusty Ridge.

Notwithstanding the above, and the submitted drawings, Officers consider it reasonable to attach a further condition to any grant of planning permission as follows:

Notwithstanding the submitted drawings, prior to the dwelling being constructed, a detailed cross section of the dwelling contextually with the garden level of Rusty Ridge, at a scale of 1:50, shall be submitted to and approved in writing by the Local Planning Authority and the dwelling shall thereafter be constructed fully in accordance with the approved details.

Reason:

To ensure that the dwellinghouse is constructed in accordance with the details submitted with the planning application in the interests of amenity to comply with policies S1, S3 and PD1 of the Adopted Derbyshire Dales Local Plan (2017).