

# Public Document Pack

02 October 2008

Dear Councillor

A meeting of the Planning Committee will be held in the **Council Chamber, Civic Centre, Newcastle Road, Chester-le-Street, Co Durham, DH3 3UT on Monday, 13th October, 2008 at 6.00 pm**

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roy Templeman', is written over a light grey rectangular background.

**R TEMPLEMAN**

**Chief Executive**

## **AGENDA:**

1. Apologies for Absence
2. Minutes of Previous Meeting held 8th September 2008 (Pages 1 - 18)
3. To Receive Declarations of Interest from Members
4. Confirmation of Speakers
5. Planning Matters (Pages 19 - 58)  
Report Of Development and Building Control Manager

(Please note that the meeting may be recorded for clerical purposes only)

This page is intentionally left blank

## **THE DISTRICT COUNCIL OF CHESTER-LE-STREET**

Report of the meeting of Planning Committee held in the Council Chamber, Civic Centre, Newcastle Road, Chester-le-Street, Co Durham, DH3 3UT on Monday, 8 September 2008 at 6.00 pm.

### PRESENT:

Councillor R Harrison (Chairman)

### Councillors:

T J Smith	M D May
L E W Brown	P B Nathan
G K Davidson	M Sekowski
L Ebbatson	J Shiell
M Gollan	D Thompson
D M Holding	S C L Westrip
A Humes	F Wilkinson
W Laverick	

### Officers:

S Reed (Development and Building Control Manager), C Potter (Head of Legal and Democratic Services), D Chong (Planning Enforcement Officer), S Pilkington (Planning Officer), J Taylor (Senior Planning Officer), L Morina (Planning Assistant), S Pyrke (Technical Administration Officer) and D Humble (Democratic Services Assistant)

(It was noted that Councillor L Armstrong was present in a non-voting capacity)

Also in Attendance: There were 46 members of the public in attendance.

## **20. APOLOGIES FOR ABSENCE**

Apologies for absence were submitted on behalf of Councillors J W Barrett, P Ellis, A Turner, G Armstrong, S Barr, M Potts, K Potts, D L Robson, T H Harland and P H May.

## **21. MINUTES OF MEETING HELD 11 AUGUST 2008**

RESOLVED: "That the Minutes of the proceedings of the Meeting of the Committee held 11 August 2008, copies of which had previously been circulated to each Member, be confirmed as being a correct record."

The Chairman proceeded to sign the minutes.

## **22. TO RECEIVE DECLARATIONS OF INTEREST FROM MEMBERS**

Councillor Humes declared a personal and prejudicial interest in Item 4 in the report as a family member was part of the residents committee opposing this Item. He advised that he would be leaving the meeting whilst this item was considered.

Councillor M May referred to Item 5 in the report and advised that she had attended the residents association meeting but had remained impartial. It was noted that she was therefore allowed to take part in considering this item.

Councillor M Gollan referred to Item 4 and advised that the applicant had approached residents where he lived including his wife in relation to this Item however no comments had been passed in relation to the proposal, he had also been approached by an objector but had remained impartial. It was noted that he would therefore be allowed to take part in considering this item.

Councillors P Nathan, D Holding and S Westrip advised that they had attended previous Meetings in relation to Item Nos. 2 and 3 in the report, however they had remained impartial. It was noted that they would therefore be allowed to take part in considering this item.

## **23. CONFIRMATION OF SPEAKERS**

The Chairman referred to the list of speakers and confirmed their attendance.

## **24. PLANNING MATTERS**

A report from the Development and Building Control Manager was considered, copies of which had previously been circulated to each Member.

### **(A) District Matters Recommended Approval**

**Proposal: Erection of 1 no detached dwelling**

**Location: Land to rear of 9-12 Station Road / 4.-7 Woodside, Beamish**

**Applicant: G Mitchenson – reference: 08/00170/FUL**

The Development and Building Control Manager referred to photographs in relation to the proposal, which were displayed for Members' information.

He advised that since the report had been published he had received a petition from 41 residents objecting to the application and requesting that the land be offered back to the residents at Beamish so that it could be converted back into a communal green as it was originally intended.

It was proposed by Councillor Westrip and seconded by Councillor Davidson that Standing Orders in relation to public speaking be suspended for this Item to allow the speakers four minutes each to speak on the application.

**Mr Wilson, Mr Valentine and Mrs Whittaker the objectors spoke in relation to the application.**

The Development and Building Control Manager responded to the comments made by the speakers as follows:

In relation to the legal dispute of land ownership he advised that this civil matter to be resolved through the courts. He advised that the land was not within the Green Belt and that he was fully satisfied that by virtue of the fact that there had been a number of garages on that site it did fall within the definition of Brownfield land.

In relation to traffic issues he drew Members attention to the fact that Durham County Council as Highways Authority had not objected to the application on the grounds that the site had historically been used for garaging and in his view the additional traffic would be likely to be insignificant and any existing problems with delivery access would not be likely to be worsened by the proposals.

In relation to the blocking out of light he felt that the setting down of the development and the existence of the stonewall seen earlier on photographs did make the development acceptable.

Councillor Smith expressed concern on the surface water discharge and queried whether there would be any provision for drainage. It was noted that Northumbrian Water had not raised any objections at the consultation stage however the Development and Building Control manger felt that this was a valid point and suggested that an extra condition be added to require the applicant to submit and agree a scheme for dealing with the surface run off from this site.

Members raised a number of queries and comments in relation to the following issues:

- Keeping the passing bay clear
- Access to the proposal
- Overlooking issues
- Parking problems / blocking of access roads
- Highway issues/ lane being too narrow
- The Midden
- Inconsistency with previous application

The Development and Building Control Manager advised that in relation to the concerns raised on keeping the passing bay clear he suggested that an extra condition be added to the recommendation that the parking bay be left free of

traffic unless the Highway Authority adopt it to ensure that this was kept free of obstruction.

The Planning Officer clarified that the velux windows would not be facing onto residential properties and in his opinion there would be no overlooking issues for residents.

In relation to the concerns expressed in relation to the midden and highway issues he advised that Extra Condition 7 in the recommendations would control the hours of construction on site to protect the amenities of existing residents and that the midden was a civil matter. If there were problems of the blocking of access roads then the police would have powers to move on vehicles obstructing access.

With regard to the issue raised by Councillor Nathan on the inconsistency with a previous application that had been refused he confirmed that this had been for two dwellings and that this proposal was for only one dwelling and including provision of a passing bay.

It was proposed by Councillor M May and seconded by Councillor Laverick that the application be approved subject the extra conditions to require the applicant to submit a scheme for dealing with the surface discharge off the site and subject to the condition to require the passing bay to be kept free of obstruction by the applicant if it transpires that the County Council as Highways Authority are not going to adopt it.

This proposal was agreed by Members.

RESOLVED: "That the recommendation of the Development and Building Control Manager for approval in respect of the application be agreed subject the following conditions:

Extra 1.

The development must be begun not later than the expiration of three years from the date of this permission, in order to prevent the accumulation of unused planning permissions as required by Section 91 of the Town and Country Planning Act 1990 (as amended).

Extra 2.

The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice unless otherwise firstly approved in writing with the Local Planning Authority; in order to ensure the development is carried out in complete accordance with the approved plans.

Extra 3.

Notwithstanding any description of the materials in the application, no development shall be commenced until samples or precise details of the materials to be used in the construction of the external walls and / or roofs of the building(s) have been submitted to, and approved in writing by, the Local

Planning Authority in order to ensure the satisfactory appearance of the development upon completion, in the interests of visual amenity and in accordance with the provisions of Policy HP9 of the Chester-le-Street District Local Plan.

Extra 4.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) any external alterations to the dwelling (except painting and repairs) and any development within the curtilage of the dwelling (i.e. development permitted under Schedule 2, Part 1(Class A-H inc.) and Part 2 (Class A) of the Town and Country Planning (General Permitted Development) Order 1995 shall require the benefit of planning permission in order to ensure the satisfactory appearance of the development upon completion and in the interests of visual and residential amenity and to comply with Policy HP9 of the Chester-le-Street District Local Plan.

Extra 5.

No development, including demolition of buildings and structures, site clearance, engineering operations and construction shall commence until detailed drawings showing the existing and proposed site levels and the finished floor levels of the proposed new buildings and those (if any) neighbouring properties shall be submitted to and approved in writing by the Local Planning Authority. The works shall be completed entirely in accordance with these approved details. To ensure the existing ground and landscape conditions are protected from undue disturbance and to safeguard the amenity of neighbouring occupiers and to comply with Policy HP9 of the Chester-le-Street District Local Plan.

Extra 6.

Notwithstanding the details shown on the submitted drawings no development shall commence until revised drawings showing an increased width and altered design of the passing area have been submitted to and agreed in writing by the Local Planning PLANNING COMMITTEE 8 September 2008 Authority, in order to maintain highway safety and to comply with Policy T15 of the Chester-le-Street District Local Plan.

Extra 7.

Notwithstanding the submitted information, site works (including deliveries and temporary site generators) shall only be carried out during the following hours:

- Monday - Friday (08:00 to 18:00 hours)
- Saturday (09:00 to 14:00 hours)

In order to safeguard the amenity of neighbouring occupiers and to comply with Policy HP9 of the Chester-le-Street District Local Plan.

Extra 8.

The hereby approved development shall be carried out in accordance with a scheme of landscaping to be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site, and which scheme may provide for the planting of trees and / or shrubs (including

species, sizes, numbers and densities), the provision of screen fences or walls, the movement of earth, the formation of banks or slopes, the seeding of land with grass, or other works for improving the appearance of the development. The works agreed to shall be carried out within the first planting season following completion of development of the site (or of that phase of development in the case of phased development) in the interests of visual amenity, the satisfactory appearance of the development upon completion and in accordance with the provisions of Policy HP9 of the Chester-le-Street District Local Plan.

Extra 9.

Notwithstanding the details shown on the hereby approved plans and elevations, full details of all means of enclosure of the site (including any internal means of enclosure) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site in order to ensure the satisfactory appearance of the development upon completion, in the interests of visual and residential amenity and in accordance with the provisions of Policy HP9 of the Chester-le-Street District Local Plan.

Extra 10.

Notwithstanding the submitted information the proposed passing bay area shall not be used for the parking of vehicles associated with the proposed dwelling at any time. To ensure the safe passage and movement of vehicles of the public highway and to comply with the aims of policy T15 of the Chester-le-Street Local Plan.

Extra 11.

Prior to the commencement of development a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved scheme shall be installed on site prior to the occupation of the dwelling hereby approved. In the interests of ensuring the adequate disposal of surface water and prevention of flooding and to comply with Planning policy Statement 25 and Policy 24 of the Regional Spatial Strategy.

**(B) District Matters Recommended Approval - Deferred**

**(2) Proposal: Proposed erection of 14 no. houses with associated access road, driveways and landscaping**

**Location: West Farm, Waldrige Lane, Chester-le-Street**

**Applicant: Mr T McGiven – Reference 08/00227/FUL**

The Development and Building Control Manager referred to photographs in relation to the proposal, which were displayed for Members information.

The Development and Building Control Manager advised that since the report had been produced a document had been received from one of leading objectors on the following issues:



- The development would increase vehicular traffic both at the construction and the operational phase that would detract from the appearance of Waldrige Lane.
- The vehicular movement along Waldrige Lane combined with a lack of footpaths would result in the creation of a traffic hazard to pedestrians using the lane.
- Concerns on the poor horizontal and vertical alignment of the carriageway on Waldrige Lane that it is unsuitable for residential access.
- Concerns that the development would intensify and increase the number of vehicular movements taking place at the junctions at Waldrige Lane with Whitehill Way and also Waldrige Lane with Waldrige Road.
- The objectors wish to reaffirm their view that because of the poor visibility and alignment of the carriageway that this will lead to an increased traffic hazard on local roads.
- The objectors wish to reaffirm that there is no Highway evidence to substantiate that Waldrige Lane is suitable for ten residential dwellings.
- They feel that the previous granted outline consent does not set a precedent for the use of the lane for use of construction traffic into this site as well as the Waldrige Lane site.
- The objectors raise the concern that the occupants of Dovecote Farm were not consulted at the time of the original outline consent in 2002 nor the renewal of that consent in 2005.

**Mr Stanley an objector spoke in relation to the application.**

Ms Turner one of the speakers expressed her concerns in relation to the planning protocol for distributing information to Members and formally requested that the proceedings to consider the application be adjourned to allow full consideration of the objections, which she felt was not accurately reflected or addressed within the report. She advised that she would be contacting the Ombudsman to take her complaint further.

The Development and Building Control Manager advised that these were not material planning considerations and if the objector wished to take the matter further this could be done by through the Council's complaints procedure and if satisfaction was not found it would then be referred to the Local Government Ombudsman.

He advised that procedures were changed at Planning Committee in July 2008 to prevent people being allowed to hand out material. He asked the Head of Legal and Democratic Services to clarify that there was no requirement in Local Government Law for people looking to make representations to have the right to hand out full disclosure of their case.

The Development and Building Control Manager advised that what was important through cases that had been heard through Local Government Ombudsman and judicial review into local authorities planning decisions was

that the written report that Members consider does contain an appraisal of all the relevant facts and that he was entirely satisfied that all the issues raised by the objectors to this application were thoroughly assessed in the Committee report. As such he saw no grounds for deferral of the item.

The Head of Legal and Democratic Services clarified that the key was to ensure that there was fairness in hearing applications and that was one reason why the Council reviewed its procedure in July. He advised that it was essential that Members were giving information and representations made by the appropriate deadline and thereafter that one party or the other is not seen to give additional information which the other party has not had time to review and look at. He stated that there had to be a cut off time and the Council by adopting its protocol had decided what that cut off time should be.

**Ms Turner then spoke in relation to the application.**

Councillor Humes referred to the point raised by the speakers that there were two applications to be considered and queried why these applications had not been considered as one with a total of 24 houses.

The Development and Building Control Manager explained that the landowner, consultant and architect was the same for both developments however the applicant on the advice of his planning consultant, had submitted two separate applications. He advised that as outline consent had been previously granted and renewed in 2005 to allow 10 dwellings to be served at West Farm the two applications had been allowed and he was satisfied that the process to split the application site was legally acceptable.

Councillor Ebbatson advised that it important for Members to note that it was a material consideration when two applications were put in for adjacent sites by the same developer and the same architect. She sought clarifications on the access to the site for residents, which was confirmed as being at Heathfields, and for construction traffic, which would be at Waldridge Lane.

Members raised concern that the applicant had split the applications so to avoid affordable housing requirements. The Development and Building Control Manager explained that the outline application that had been granted for ten dwellings in 2002 and renewed in 2005 and had no affordable housing requirement attached to this outline permission. As a result of that he advised that there was no legal standing to insist on affordable housing requirements for this overall site because the only element of the overall site which is a full application which allows to look at all the material considerations again is the application for 14 dwellings and the relevant policy on provision of affordable housing in local plan only applies to developments of 15 or more.

In relation to the comment made by Councillor Ebbatson on the material consideration of the sites he explained that the extent at which under same ownership is material in the issues that apply to both sites however the other issues are constrained in what we secured at the time of the outline planning permission.

Members raised comments and expressed their concerns in relation to the following issues:

- The lack of lighting and footpath provision
- Poor pedestrian access
- Suitability of the road for traffic and pedestrians
- Encouraging the sustainability of the developing relating to access other than by car.
- Inconsistency of Highway advice
- Risk of anti-social behaviour to the area

The Development and Building Control Manager advised of the need to take into account the fact that outline planning permission had been granted for the 10 dwellings twice without objections from Durham County Council Highways Authority.

Councillor Westrip referred to a previous public access point from Waldrige Lane into the Poppyfields estate, which was subsequently closed up under Section 17 of the Crime and Disorder Act because of difficulties around anti-social behaviour and expressed concerns on opening up a secure housing estate.

In relation to the points raised by Councillor Westrip on the footpath issue the Development and Building Control Manager clarified that the potential for Crime and Disorder or anti-social behaviour in any locality was a key material planning consideration and that Extra conditions 13 was designed to mitigate against that. He felt it was relevant to note that although the police had commented on this application they had not lodged a formal objection on the footpath issue. He also reminded Members that one of the reasons for refusal of the earlier application in April this year was on the grounds on no footpath being provided.

A number of Members felt that the Waldrige Lane area should be protected as a natural environment and that the biodiversity and conservation in the area needed to be taken into account.

Members discussed reasons for rejecting the scheme including the affordable housing provision, no footpath or lighting provision/ lack of pedestrian provision, inconsistency with other areas and potential crime and disorder.

The Development and Building Control Manager advised that if the application was refused on the grounds suggested that he would find it extremely difficult to defend this at public enquiry and that there may be significant cost implications which was reaffirmed by the Head of Legal and Democratic Services.

The Head of Legal and Democratic Services advised that he had listened to the debate and to the various matters of concern in relation to inconsistency on Highways Authority treats access to footways. He felt that there was

confusion due to lack of information regarding Highways and maybe a possibility that they may decide it appropriate to defer to get further clarification on the highways issue.

Councillor Davidson proposed this application be deferred so that further information could be sought from Highways to enable a decision to be taken on this proposal, which was seconded by Councillor Ebbatson.

Councillor Westrip requested that a detailed response should be sought from the police as to why they had no objections to this proposal and to comment on why an opening in the estate had been closed in previous years. He also requested a full report from the Highways Authority as to issues associated with the use of Waldrige Lane including the lack of street lights and footpaths.

The Development and Building Control Manager advised that all things considered and following the advice from the Head of Legal and Democratic Services that a deferral would be an appropriate course of action and confirmed that he would write to the relevant authorities to request information on behalf of Members. He also proposed that the Highways Officer and Police Liaison Officer be invited along to any future Committee at which this matter is debated to answer any questions arising.

The proposal to defer this application pending further information was agreed.

RESOLVED: "That this item be deferred pending further information from Durham County Council Highways and the police."

**At this point Councillor A Humes declared a personal and prejudicial interest in the following Item and left the meeting at 8.10pm.**

**(3) Proposal: Reserved matters application for the access, appearance, landscaping and scale for the erection of 10 no residential dwellings, pursuant to application 05/00440/REN**

**Location: West Farm, Waldrige Lane, Waldrige**

**Applicant: Mr T McGiven – Holmside Construction – reference 08/00228/REM**

RESOLVED: "That this item be deferred pending further information from Durham County Council Highways Authority and the Police."

**(C) District Matters Recommended Approval**

**(4) Proposal: Proposed change of use from dwelling to restaurant incorporating a two-storey side extension and a single storey rear extension**

**Location: Mayville, Picktree Lane, Chester-le-Street**

**Applicant: Mr N U Khan – Reference: 08/00314/COU**

The Development and Building Control Manager referred to photographs in relation to the proposal, which were displayed for Members' information.

The Development and Building Control Manager advised that a consultation response had been recently received from the Police offering no objections to the Development in terms of impact on Crime and Anti-Social behaviour within the area, however the Police have raised concerns that as there were parking restrictions in the form of double yellow lines at the front that this might lead to Highway Safety issues.

Since the report had been published the applicant had submitted 316 letters of support to the scheme, however a lot of those letters were from people who did not live within the catchment area. He stated however that when acknowledgement letters had been sent out to the 316 addresses he had received 14 telephone calls from people claiming that they did not sign such a letter and requested that those letters of support to be removed from the file.

Additional letters had also been received which included one from the Greenbank Social Club expressing concerns on their rights of access to their existing property, however he pointed out that these were civil matters.

He advised that there was now a total of 19 objections and 274 letters of support.

**County Councillor Mrs Bainbridge the objector spoke in relation to the application.**

The Development and Building Control Manager responded to the issues raised by Councillor Bainbridge and clarified that quite a number of letters of support were indeed from people outside of the local area, however there was clearly no control to prevent people deciding to submit those representations.

He advised that each objection had to be taken on its merits. In relation to the Town Centre issue he advised that although the relevant policy in the Local Plan does encourage the location of A3 uses in the secondary shopping frontage it does not preclude development outside of it if it is acceptable on its individual merits.

He felt that because the proposal was within a commercial background and that the environmental health team were satisfied that a combination of the

commercial surroundings and that an odour extraction scheme could be installed he was satisfied that the application should be recommended for approval.

**Mr Cook the applicant's architect spoke in relation to the application.**

The Development and Building Control Manager spoke in response to the comments made by Mr Cook and advised that the issue of the contract for the condition to require the maintenance of the extract machinery would be covered by extra condition 4 on page 73 of the report.

Councillor Smith the Local Member of this area advised of existing parking problems for the residents in this area and expressed concerns that this development would only exacerbate parking problems for these residents.

Councillor Brown also expressed concerns in relation to the parking problems experienced by the residents and advised that because of this he did not support this application.

In response to these issues the Development and Building Control Manager acknowledged that there was no on site parking proposed, however as the site was located immediately adjacent to the town centre, in a highly sustainable location, that it would be difficult to resist the proposals on these grounds.

Councillor Nathan advised that he was in support of this application as he felt that this could be an asset to the Town and proposed that the application be approved which was seconded by Councillor Laverick.

It was agreed to approve the Officer's recommendation of conditional approval.

RESOLVED: "That the recommendation of the Development and Building Control Manager for approval in respect of the application be agreed, subject to the following conditions:

Extra 1.

The development must be begun not later than the expiration of three years from the date of this permission, in order to prevent the accumulation of unused planning permissions as required by Section 91 of the Town and Country Planning Act 1990 (as amended).

Extra 2.

The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice unless otherwise firstly approved in writing with the Local Planning Authority; in order to ensure the development is carried out in complete accordance with the approved plans.

Extra 3.

Notwithstanding any description of the materials in the application, no development shall be commenced until samples or precise details of the materials to be used in the construction of the external walls and / or roofs of the building(s) have been submitted to, approved in writing by, the Local Planning Authority in order to ensure the satisfactory appearance of the development upon completion, in the interests of visual amenity and in accordance with the provisions of Policy 19 of the Chester-le-Street District Local Plan.

Extra 4.

Prior to the commencement of the development a detailed report for a scheme of odour suppression and ventilation shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the agreed scheme shall be installed prior to the development/use being implemented. The apparatus shall thereafter be operational at all times while the building is in use and shall be maintained in working order to the satisfaction of the Local Planning Authority. To achieve a satisfactory form of development to ensure that occupants of nearby properties are not adversely affected by the development and to comply with policy R19 (Food and Drink) of the Chester-le-Street Local Plan.

Extra 5.

The external doors and windows of the restaurant hereby approved shall remain closed (except in and for emergencies and access) as the times the development is in use unless otherwise agreed in writing, in order to protect the residential amenity of Neighbouring properties in accordance with the aims of policy R19 of the Chester-le-Street Local Plan.

Extra 6.

That premises shall not be open for business outside the hours of 10:00 to 23:30 on any given day. In order to ensure that adjoining properties are not adversely affected by the development and to accord with the aims of Policy R19 of the Chester-le-Street Local Plan.

Extra 7.

The hereby approved development shall be carried out in accordance with a scheme of landscaping to be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site, and which scheme may provide for the planting of trees and / or shrubs (including species, sizes, numbers and densities), the provision of screen fences or walls, the movement of earth, the formation of banks or slopes, the seeding of land with grass, or other works for improving the appearance of the development. The works agreed to shall be carried out within the first planting season following completion of development of the site (or of that phase of development in the case of phased development) in the interests of visual amenity, the satisfactory appearance of the development upon completion and in accordance with the provisions of Policy R19 of the Chester-le-Street District Local Plan.

Extra 8.

Unless otherwise agreed in writing, the submitted planting scheme shall be implemented within the first planting season following completion of the development (or of that phase of the development in the case of phased developments) and any trees, shrubs or planting which becomes dead, dying, diseased or is removed, shall be replanted to the satisfaction of the Local

Planning Authority, within the first 5 years of the planting being planted, in the interests of the satisfactory appearance of the development upon completion and to ensure a successful and robust landscaping scheme.

**(5) Proposal: Erection of various illuminated and non-illuminated signs**

**Location: GMD Car Sales, Osborne Road, Chester-le-Street**

**Applicant: GMD Car Sales – Reference 08/00328/ADV**

The Development and Building Control Manager referred to photographs in relation to the proposal, which were displayed for Members information.

He advised that this was a resubmission of application 08/00247, which was withdrawn in July 2008, and that the principal difference between this application and the withdrawn one was the height of these totem signs, where there had been a significant reduction on this proposal compared to the earlier application.

The Development and Building Control Manager advised that since the report had been produced there had been an additional three letters of objection received in relation to the following issues:

- Signs A and B are considered excessive in a commercial and residential area.
- The objectors feel that GMD already have an enormous area of high level fascia signs and they consider that the location of the garage is well known in the area and therefore query the need for additional adverts.
- Concerns on the impact the signage will have on adjacent residents noting the Terrace housing to the South of the site.
- The signage will be a distraction to motorists, which will affect safety issues including for pedestrians.

**Mr Briggs the objector spoke in relation to the application.**

The Development and Building Control Manager spoke in response to the comments raised by Mr Briggs and confirmed that the application site for the signs was not in the boundary of the conservation area although it was adjacent to it.

He referred to the comment made on unauthorized advertisements and breach of the time limit conditions in the recent past and confirmed that the Enforcement Officer had investigated allegations of breaches of planning control and letters and meetings had been held with the owners of the garage to address these issues, however this could not be taken into account in the consideration of this application which needs to be assessed in its own merits.



**Mr Coxon the applicant spoke in relation to the application.**

In response to a query from Councillor May on whether the totem signs were illuminated the applicant advised that these signs were not to be illuminated.

The Development and Building Control Manager advised that notwithstanding what the applicant was saying the plans did show them to be illuminated. However he felt the level of illumination proposed was appropriate for the locality.

Councillor May expressed concern that although it was not within a conservation area there were houses nearby and whether two signs were necessary.

The Development and Building Control Manager advised that the totem signs were set well back and in his view because of the amount of cars parked outside there would be very little visibility. He referred to Extra Condition 8 which relates to the times that the signs the illumination is allowed to be displayed which would restrict them being on at night.

Councillor Westrip referred to the photographs of the proposal, which showed that the Ford signs as being already erected and whether this meant this was a retrospective application. He felt that if the applicant was offering for these not to be illuminated then we should accept this.

The Development and Building Control Manager confirmed that the fascia signs had recently appeared to be erected, however he responded that these were just replacement fascias for the previous ones.

With respect to the illumination he advised that the applicant had made the offer to accept the condition not to illuminate the signs however his advice was not to put on this condition as he felt the proposal was acceptable even if there was a level of illumination on the signs. He advised that Central Government Planning advice was that Local Planning Authority should not accept a condition that is not necessary just because an applicant might have offered it up.

Councillor Davidson proposed to accept the Officer's recommendation of conditional approval, which was seconded by Councillor Holding.

This proposal was carried by Members.

**RESOLVED:** "That the recommendation of the Development and Building Control Manager for approval in respect of the application be agreed, subject to the following conditions:

Extra 1.

The consent to display the advertisements hereby permitted is limited for a period of five years from the date of this permission. To meet the requirements of the

Town and Country Planning Act 1990 and to comply with PPG19 (Outdoor Planning Control) and Schedule 2 of circular 03/2007.

Extra 2.

The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice and as amended on the 14th August 2008 unless otherwise firstly approved in writing with the Local Planning Authority; in order to ensure the development is carried out in complete accordance with the approved plans.

Extra 3.

No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

Extra 4.

No advertisement shall be sited or displayed so as to—

- (a) endanger persons using any highway,
- (b) obscure, or hinder the ready interpretation of, any traffic sign, or
- (c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.

Extra 5.

Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

Extra 6.

Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Extra 7.

Notwithstanding the submitted information the luminance of the signage hereby permitted shall not exceed 600 cd/m unless otherwise agreeing in writing with the Local Planning Authority. In the interest of residential amenity and to satisfy the requirements of national Planning Policy Guidance Note 19.

Extra 8.

Notwithstanding the submitted information the signage hereby approved shall not be illuminated outside the hours 7am-10pm unless otherwise agreed in writing by the Local Planning Authority. Reason: In the interest of residential amenity and to satisfy the requirements of national Planning Policy Guidance Note 19.

Extra 9.

Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

**(6) Proposal: Erection of first floor extension at side of dwelling above existing garage, conversion of garage to habitable room and construction of pitched roof over existing flat roof at front of dwelling (amended description 14.8.08)**

**Location: 41 Elmway, Chester-le-Street**

**Applicant: Mr M Briscoe – reference 08/00342/FUL**

The Development and Building Control Manager referred to photographs in relation to the proposal, which were displayed for Members information.

Councillor Thompson proposed to accept the Officer's recommendation of conditional approval, which was seconded by Councillor Holding.

This proposal was agreed by Members.

**RESOLVED:** "That the recommendation of the Development and Building Control Manager for approval in respect of the application be agreed, subject to the following conditions:

Extra 1.

The development must be begun not later than the expiration of three years from the date of this permission, in order to prevent the accumulation of unused planning permissions as required by Section 91 of the Town and Country Planning Act 1990 (as amended).

Extra 2.

The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice unless otherwise firstly approved in writing with the Local Planning Authority; in order to ensure the development is carried out in complete accordance with the approved plans.

Extra 3.

That the facing materials to be used for the external walls and roofs of the development hereby approved shall match in colour and texture those materials used on the existing dwelling house to the satisfaction of this Local Planning Authority, and where such matching materials are not available samples of the materials which it is proposed to use on the development shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site. Reason - In order to ensure that the proposal does not have an adverse impact upon the scale, form, character or appearance of the building upon completion, as required by Policy HP11 of the Chester-le-Street District Local Plan.

Extra 4.

Notwithstanding the details shown on the submitted plans, no additional doors or windows should be added to the south facing elevation of the hereby approved extension facing no. 43 Elmway for so long as the development remains in existence. In the interests of residential amenity, the avoidance of any potential

overlooking and in accordance with the provisions of Policy HP11 of the Chester-le-Street District Local Plan.

Extra 5.

The existing hard standing at the front of the property shall remain in existence with the ability to accommodate two car parking spaces for so long as the development hereby approved remains in existence unless details of an alternative scheme are submitted to and approved in writing by the Local Planning Authority in order to ensure adequate off-street parking is maintained in the interests of highway safety in accordance with policy T15 of the Chester-le-Street Local Plan.

The meeting terminated at 9.06 pm

CHESTER-LE-STREET DISTRICT COUNCIL

DIRECTORATE OF DEVELOPMENT SERVICES

PLANNING COMMITTEE      13 October 2008

**REPORT OF THE DEVELOPMENT & BUILDING CONTROL MANAGER**

- ITEM 1**      District Matters Recommended Approval
- ITEM 2**      Appeals List
- ITEM 3**      Notification of outcome of appeal decision

**COPIES OF ALL PLANS, ELEVATIONS AND SUPPORTING DOCUMENTATION  
CAN BE VIEWED IN THE PLANNING SERVICES DIVISION PRIOR TO THE  
COMMITTEE MEETING**

**COPIES OF PLANS AND ELEVATIONS FOR APPLICATIONS WHERE THE  
APPLICANT / OBJECTORS / SUPPORTERS WISH TO SPEAK OR FOR OTHER  
MAJOR APPLICATIONS WILL BE DISPLAYED IN THE COUNCIL CHAMBER PRIOR  
TO AND DURING THE COMMITTEE**

**ITEM 1** District Matters Recommended Approval

1.

**Reference: 08/00310/FUL**

**Proposal** Change of use of land to include demolition of existing saw mill and erection of storage and distribution depot, and associated landscaping and hard standing

**Location** Development Site Bowes Business Park Lambton Park Chester-le-Street Durham

**Applicant** Mr K. Middleton, Cestria Community Housing

---

**Application Summary**

**Ward:** Bournmoor

**Case Officer:** James Taylor, Senior Planning Officer

**Contact Details:** 0191 387 2002

jamestaylor@chester-le-street.gov.uk

**Summary of recommendation:** The proposed storage/distribution and office development is considered acceptable. The site is located within the Green Belt and therefore the proposed development constitutes a departure from the Local Plan. However having regard to the previous commercial use as a timber saw mill, and the fact that the site is surrounded by dense mature tree planting it is considered that, justification exists to approve the development as a justified departure to the policy aims of the development plan.

The design is similar in scale to the existing building and sympathetic to the character of the surrounding area.

Accordingly it is recommended that the application be approved

---

**The Proposal**

Planning consent is sought for the demolition of an existing sawmill and replacement with a storage and distribution depot in connection with the operations of Cestria Housing and their estate maintenance team. Ancillary to the proposed depot function is a locker room, stores office, counter and electrical testing facility.

The application site is located adjacent to the Bowes Business Park, west of the existing Cestria offices across the main access road. It currently has a sawmill and an ancillary timber storage building erected on site.

The site is located within the North Durham Green Belt.

### Planning History

There is no planning history relevant to this application site.

### **Consultation Responses**

Durham County Council Highway Authority have not objected to the proposal provided that the development is accessed from the main access road which terminates to the east of the nearby garden centre.

Natural England have offered no objections to the scheme.

The Council's Environmental Health Contaminated Land Officer has commented that the submitted desktop contaminated land study is acceptable and a follow up site investigation report will be required under planning condition.

The Council's Environmental Health Department have commented on the need to notify them of the intent to demolish the existing building under the provisions of the Building Act 1984.

The application has been advertised by way of a site notice and through direct mailing to adjacent occupiers. No public representations have been received.

### **Relevant Planning Policies and Considerations**

#### National Planning Policy

Planning Policy Statement One: PPS1 sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system.

Planning Policy Guidance 2: PPG2 Green Belts - sets out that there is a general presumption against inappropriate development in the GreenBelt. New buildings in the GreenBelt are by definition inappropriate. As an exception limited infilling to major developed sites within the GreenBelt maybe allowed if designated in the Local Plan in the interests of economic development as long as they do not lead to a large increase in the developed portion of the site.

Planning Policy Statement 7: PPS7 Sustainable Development In Rural Areas - aims to raise the quality of life and the environment in rural areas, promote sustainable patterns of development and support economic development and diversification of agriculture in rural areas. The replacement of buildings in the countryside for economic use is supported especially if the development would bring about an environmental improvement in the landscape character of the surrounding area.

### Regional Spatial Strategy

The (RSS) sets out a long-term planning strategy for the spatial development of the North East Region of England. The RSS is part of the statutory Development Plan and was adopted in July 2008.

Policy 2 – Sustainable Development: Planning proposals should seek to promote sustainable development through social, economic and environmental objectives.

Policy 8 - Seeks to protect and enhance the environment. This in part should be achieved through promoting high quality design in all development which should be sympathetic to the surrounding area.

Policy 9 – Seeks to support polycentric development throughout the Tyne & Wear region in supporting regeneration, economic prosperity, sustainable communities, connectivity, environment and the protection of the GreenBelt.

Policy 33 – Promotes the protection and enhancement of protected species and the creation of habitats in the interests of biodiversity and geodiversity.

Policy 38 – Seeks to reduce energy consumption in the design of new development.

For reasons as discussed below it is considered the proposals are compliant with the aims of the relevant RSS advice.

### Chester-le-Street Local Plan

Policy IN9 is applicable as it refers to industrial development in the open countryside and GreenBelt. Development is not permitted unless it is for the re-use of an existing building, in connection with mineral exploration, farm diversification or agriculture and forestry.

Policy NE4 considers development in the Green Belt. It presumes against inappropriate development in the Green Belt unless special justification is demonstrated to outweigh the inappropriateness and harm caused.

As the site is located in the Green Belt Policy NE6 is also relevant in that consideration must be given to the impact of proposals on the visual amenity of the area.

Policies T15 and T17 seek to promote safe and accessible access to the transport network for all users including promoting pedestrian links and reducing the reliance on the use of the private vehicle.

In assessing the proposals against the requirements of these relevant policies, and having regard to all material planning considerations, including representations received, it is considered that the following represent the principle material planning considerations raised;



### Principle of Development

Planning Policy Guidance 2 (PPG2) Green Belts, presumes against inappropriate development in the Green Belt. New build industrial development is classed as inappropriate as it is not an essential facility for sport or recreation and neither is it for farm diversification or the re-use of an existing building. Therefore the development does not strictly accord with PPG2 or Policy NE4 of the Local Plan.

The site is currently vacant being the former Lambton Sawmill site and as such has been in an established General Industrial B2 use under the Use Classes Order 1987 (as amended). The proposal site area is smaller than that of the sawmill as is the newly proposed building. The existing sawmill is approximately 350m<sup>2</sup> with the proposed storage and distribution depot 301m<sup>2</sup>. The reduction in site area alongside the reduced scale of development will have less of a landscape impact. This is also taken in context of the significant landscape improvements proposed as part of the application that will replace the hard appearance of the current fenced boundary.

In regard to policy NE6 the site is well screened by dense mature tree planting which is to remain. The site is not easily viewed from outside Bowes Business Park and as it is currently developed any impact on the openness of the Green Belt has already been established. In view of this it is considered the development will not harm the visual amenity of the Green Belt and is consistent with Policy NE6.

It is considered that as the site is currently in long established industrial use, and in light of the reduced scale and significant environmental improvement, the development constitutes a justified departure from the aims of Policies IN9 and NE4 of the Local Plan.

### Design and Appearance

The scale and design have been kept similar to the existing building with a 5.6m ridge height and timber cladding. The building in terms of form is generally utilitarian such is the functional requirement of a storage and distribution depot. Externally on the north and west elevation the building will be steel clad in green powder coated sheeting to match the colour of the boundary vegetation. These elevations cannot be seen from public view and will have no impact on the appearance of the building.

The east and south elevations can be seen from public view and therefore potentially have more impact on the appearance of the area. The south elevation is least seen and will be timber clad as is the appearance of the current saw mill. The east elevation is also proposed to match with timber cladding. It is proposed to impose a condition to agree material details to ensure the material palette best integrates with the current surrounding development.

The landscaping will follow the format of the existing Bowes Business Park with large grassed areas and gravel hard standings. The east boundary fencing and gate are also fundamental to the setting of the development and the wider appearance of the business park. As such it is proposed to place a condition requiring the further agreement of these details.

In light of the above it is considered that the development maintains and enhances the character of the area and accords with Policy 8 of the Regional Spatial Strategy.

### Residential Amenity

The nearest residential dwelling is eight metres south of the entrance gates. This property is gable end on to the development and is approximately 30m from the footprint of the proposed new building. As such it is considered that there will be no detriment to residential amenity resulting from the development. In regard to other surrounding dwellings these are further away from the site to the south and as such are unlikely to be impacted upon.

### Traffic Issues

In regard to traffic impact the site access is from the main estate through road and as such it is not considered the impact will be any greater than was for the previous sawmill. The access road at the point of the development is wider than a double carriageway and the whole development is served from a new purpose built road off the A183. The County Highway Authority have not raised objection to the development subject to the main access road being used to serve the site.

### Ecology Issues

Natural England have commented that the proposals are unlikely to have an adverse effect in respect of species protected by law, subject to the attachment of a condition requiring that the mitigation measures in the submitted bat survey are adhered to.

### Conclusion

It is considered that the development is a justified departure from policies IN9, NE4 and NE6 of the Local Plan on the grounds that there is an existing industrial use on site being replaced by development of a smaller scale and better integrated into the character and appearance of the area.

There will be no harm on the visual amenity or openness of the Green Belt as the site is enclosed by mature boundary screening and the impact of development has already been established by the existing built development.

In regard to design and landscaping the proposal is consistent with Policy 8 of the Regional Spatial Strategy in that it maintains and enhances the quality of the local environment through its scale, massing and external appearance.

Accordingly it is recommended that the application be approved.

### **RECOMMENDATION** CONDITIONS:-

Approve SUBJECT TO THE FOLLOWING

01A

The development must be begun not later than the expiration of three years from the date of this permission, in order to prevent the accumulation of unused planning permissions as required by Section 91 of the Town and Country Planning Act 1990 (as amended).

01B

The development hereby approved shall be carried out wholly in accordance with the details contained in the application as submitted to the Council on the date specified in Part 1 of this decision notice unless otherwise firstly approved in writing with the Local Planning Authority; in order to ensure the development is carried out in complete accordance with the approved plans.

Extra 1.

Notwithstanding any description of the materials in the application, no development shall be commenced until samples or precise details of the materials to be used in the construction of the external walls, roofs and hard standings/access roads of the development have been submitted to, and approved in writing by, the Local Planning Authority in order to ensure the satisfactory appearance of the development upon completion, in the interests of visual amenity and in accordance with the provisions of Policy NE6 of the Chester-le-Street District Local Plan & Policy 8 of the Regional Spatial Strategy.

Extra 2.

Notwithstanding the details shown on the hereby approved plans and elevations, full details of all means of enclosure of the site (including any internal means of enclosure to sub-divide individual plots and entrance gates) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site in order to ensure the satisfactory appearance of the development upon completion, in the interests of visual and residential amenity and in accordance with the provisions of Policy NE6 of the Chester-le-Street District Local Plan & Policy 8 of the Regional Spatial Strategy.

Extra 3.

The hereby approved development shall be carried out in accordance with a scheme of landscaping to be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of any development on site, and which scheme may provide for the planting of trees and / or shrubs (including species, sizes, numbers and densities), the provision of screen fences or walls, the movement of earth, the formation of banks or slopes, the seeding of land with grass, or other works for improving the appearance of the development. The works agreed to shall be carried out within the first planting season following completion of development of the site (or of that phase of development in the case of phased development) and shall thereafter be maintained for a period of 5 yrs following planting; in the interests of visual amenity, the satisfactory appearance of the development upon completion and in accordance with Policy NE6 of the Chester-le-Street District Local Plan & Policy 8 of the Regional Spatial Strategy.

Extra 4.

No development approved by this permission shall be commenced until:

- a) the application site has been subjected to a detailed site investigation report for the investigation and recording of contamination and has been submitted to and approved by the LPA;
- b) should contamination be found, detailed proposals for the removal, containment or otherwise rendering harmless such contamination (the 'contamination proposals') have been submitted to and approved by the LPA;
- c) for each part of the development, contamination proposals relevant to that part (or any part that would be affected by the development) shall be carried out either before or during such development;
- d) if during development works any contamination should be encountered which was not previously identified and is derived from a different source and/or of a different type to those included in the contamination proposals then revised contamination proposals shall be submitted to the LPA; and
- e) if during development work, site contaminants are found in areas previously expected to be clean, then their remediation shall be carried out in line with the agreed contamination proposals.

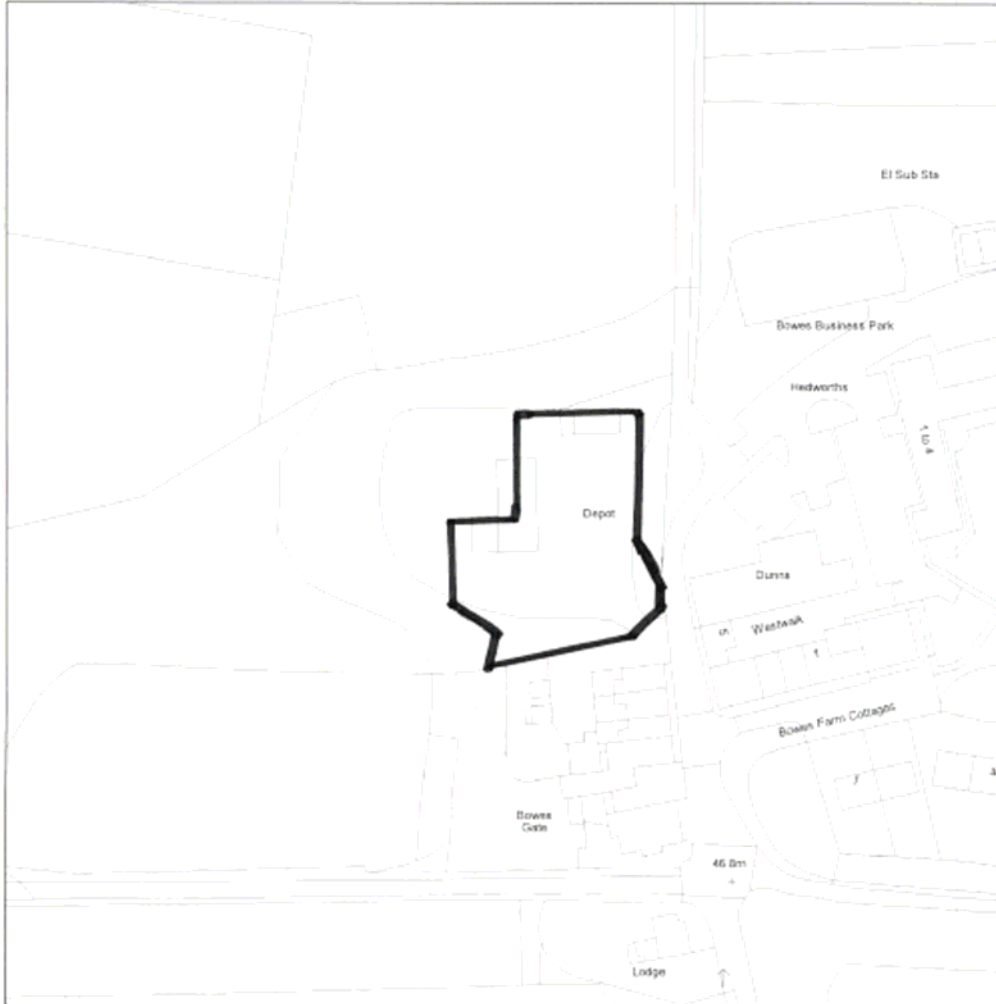
In accordance with Planning Policy Statement 23: 2004.

Extra 5.

The development hereby approved shall be carried out in accordance with the mitigation detailed within the protective species report "Cestria Lambton Estate, County Durham – Bat Survey Interim Report, dated 15th September 2008 unless otherwise agreed in writing with the Local Planning Authority in the interest of preserving protected species in accordance with Planning Policy Statement 9 and policy 33 of the Regional Spatial Strategy.

# Development Site, Bowes Business Park

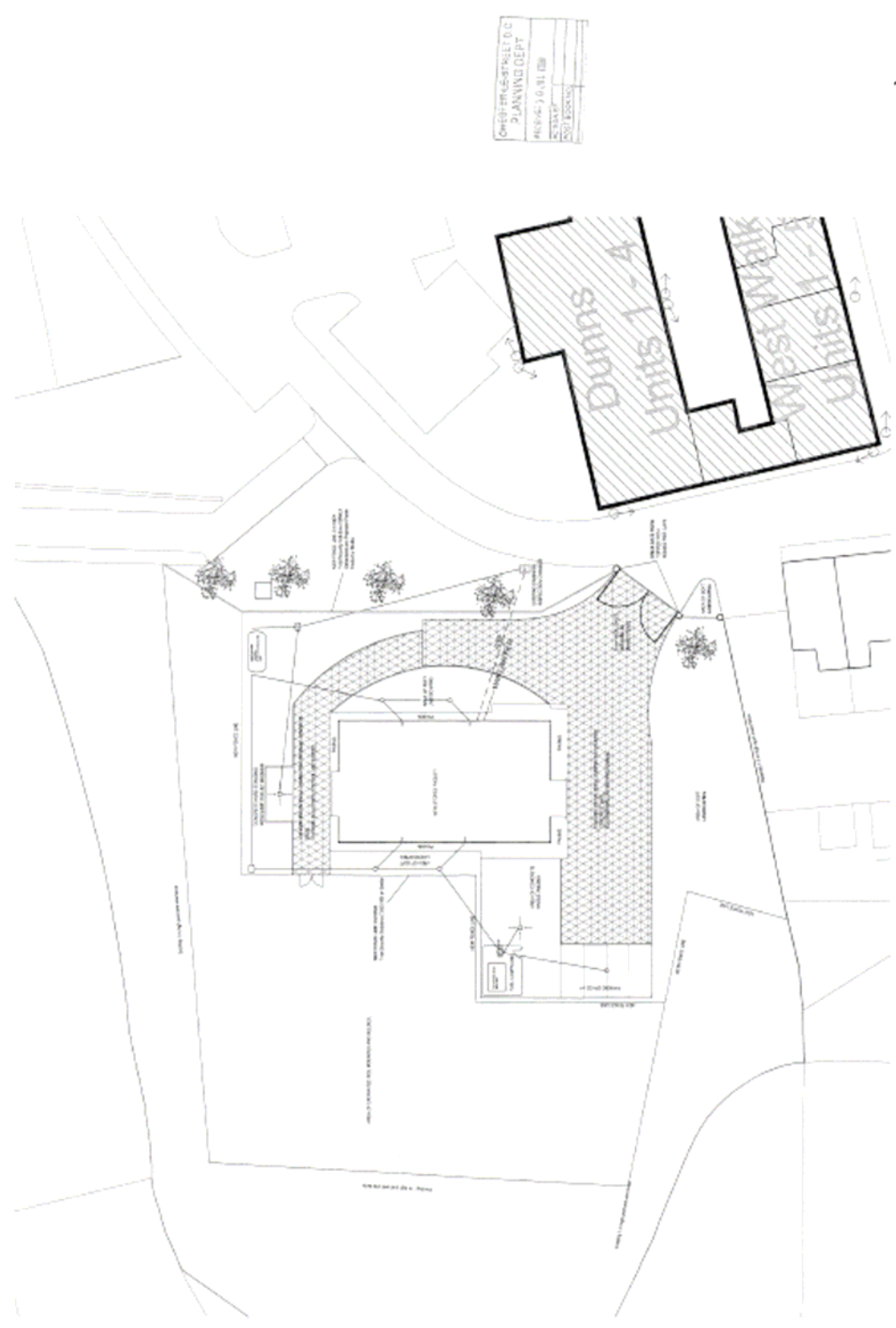
Lambton Park



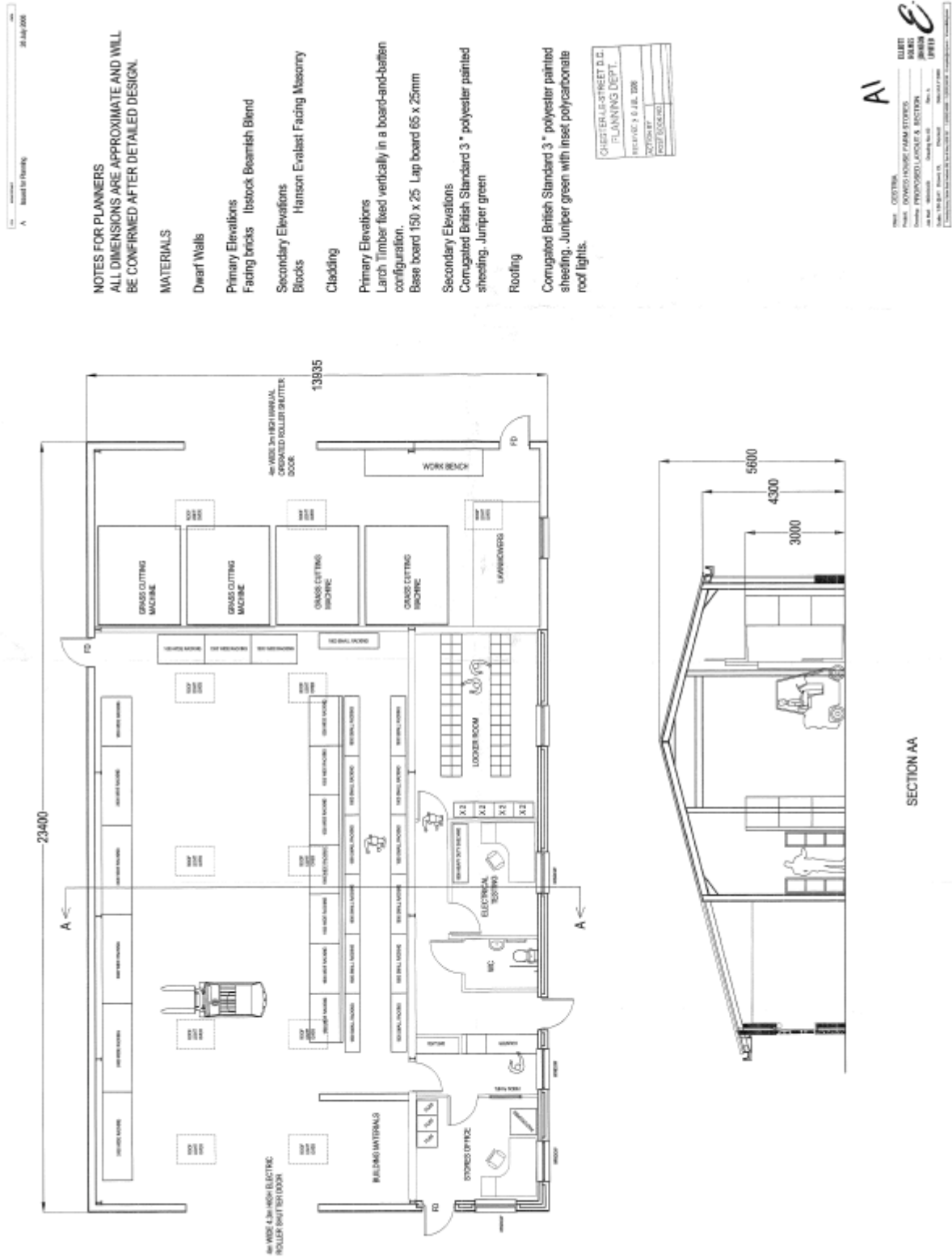
Scale : 1:1250

**CHESTER-LE-STREET DISTRICT COUNCIL**  
**DIRECTORATE OF DEVELOPMENT SERVICES**  
**PLANNING COMMITTEE 13 October 2008**

10/08/08  
 A. Board for Planning  
 13 July 2008

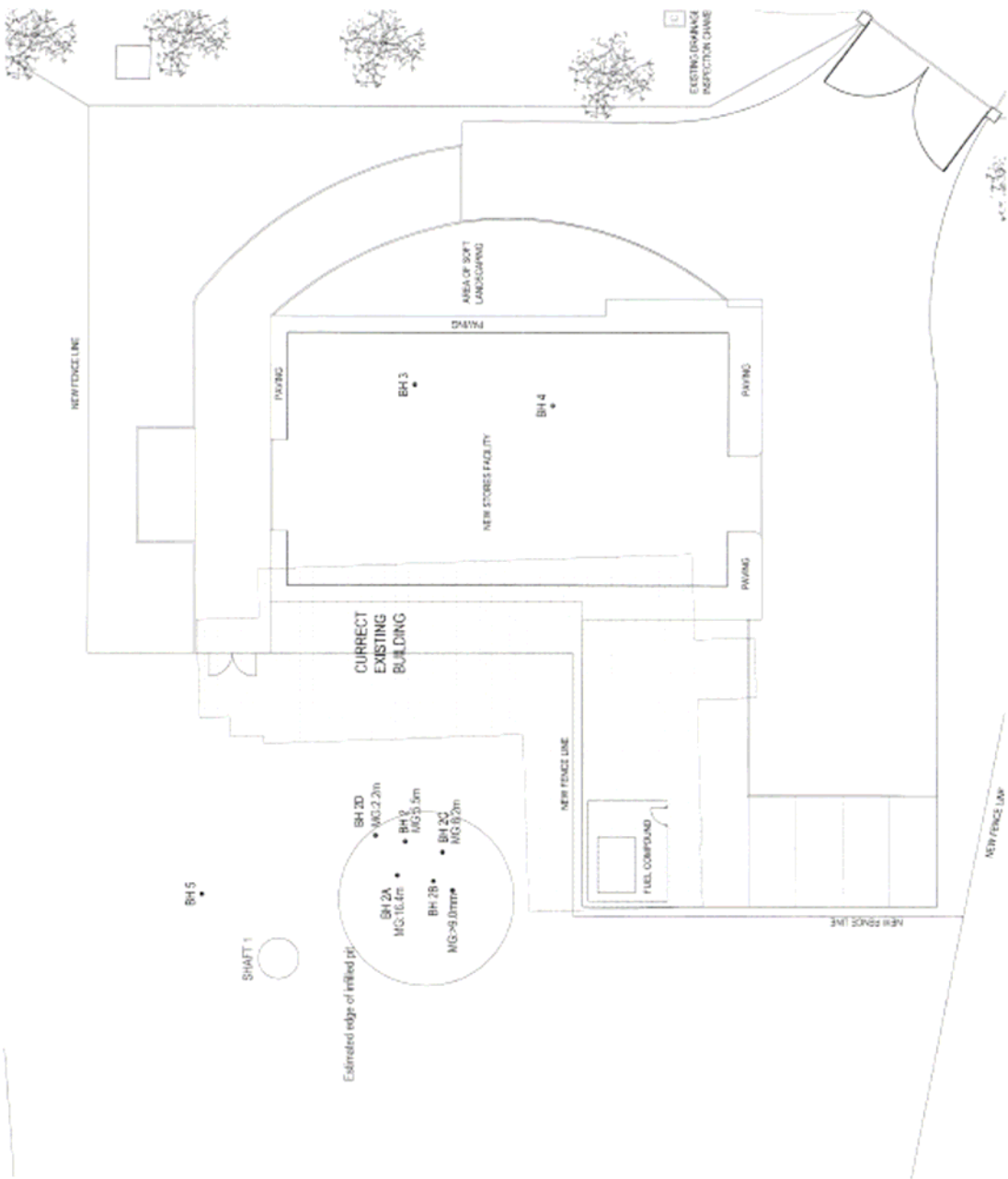


10/08/08  
 A. Board for Planning  
 13 July 2008



27 July 2007

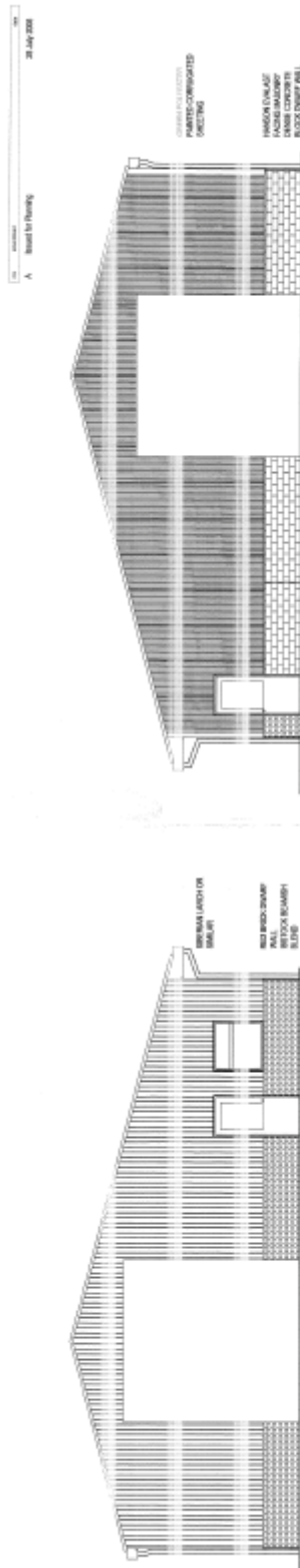
For information on Shaft 1, Infill pit and bore holes (BH) see WSP Ground Investigation Report



CHESTERLE STREET D.O.C.	
PLANNING DEPT.	
PROJECT I.I. AL 300	
DATE	
DESIGNED BY	
CHECKED BY	

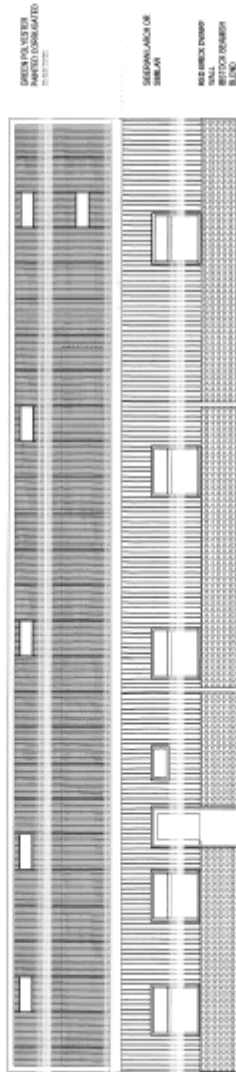
AI  
 CLIENT: DOWNS HOUSE/CHAM STOKES  
 PROJECT: EXISTING AND PROPOSED DEVELOPMENTS  
 DRAWN: [Signature]  
 DATE: 27 JULY 2007





SIDE ELEVATION FACING HOUSES

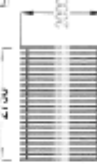
SIDE ELEVATION FACING OPEN COUNTRY SIDE



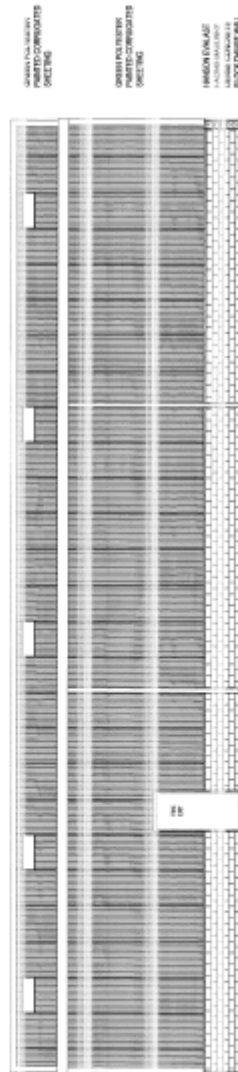
OFFICE ELEVATION FACING BOWMS OFFICES

CRESTEKLE STREET DC PLANNING DEPT.  
 ROOM 10 8 AVE 2008  
 ACTIVITY 1000  
 REF: 1000

MAIN GATES



TYPICAL FRONT FENCE SECTION  
 Total Security Solutions DIMEX  
 Galvanised and Polyester Power Coated  
 or Similar



REAR ELEVATION

AI  
 Project: BOWMS HOUSE FARM STORES  
 Drawing: PROPOSED ELEVATIONS  
 Date: 1008.04.10  
 Scale: 1:100  
 Drawn: J. J. J. J.  
 Checked: J. J. J. J.  
 Date: 28 JUL 2008



**CHESTER-LE-STREET DISTRICT COUNCIL**  
**DIRECTORATE OF DEVELOPMENT SERVICES**  
**PLANNING COMMITTEE**      **13 October 2008**

2.

**Reference: 08/00340/CLU**

**Proposal**      Certificate of Lawfulness for an existing use of land as private garden area.

**Location**      Land Adjacent to 35 Westhills Close Sacriston Durham

**Applicant**      Mrs K. Embleton

---

**Application Summary**

**Ward:**                  Sacriston

**Case Officer:**      Lisa Morina, Planning Assistant

**Contact Details:**    0191 387 2146

lisamorina@chester-le-street.gov.uk

**Summary of recommendation:** It is considered, based on the information provided, that the applicant's claim should be supported and that a Certificate of Lawfulness should be issued in this instance.

Accordingly it is recommended that the application be granted.

---

**The Proposal**

This report relates to an application for a Certificate of Lawfulness for an Existing Use (CLEU) which has been submitted under section 191(C) of the Town and Country Planning Act 1990 (as amended) by Mrs Embleton for land adjacent to 35 Westhills Close, Sacriston.

Specifically Mrs Embleton is seeking conformation from the Council that the use of the land adjacent to her property as private garden area is lawful, and immune from enforcement action, by virtue of the fact that it has been ongoing continuously for a period of more than 10 years from the date of this application.

The land in question is owned by Cestria Housing and is classed as open amenity land in planning terms on the grounds that it was never historically acknowledged as being part of the curtilage of the property. It currently is open plan and is maintained by Mrs Embleton as an extension to her garden area.

The application is being reported to the Planning Committee as Mrs Embleton is an employee of Chester-le-Street District Council.

### **Consultation Responses**

As the application relates to a Certificate of Lawfulness for an Existing Use, the planning merits of the proposal are not open for discussion (see further commentary below) and consultation on the application has therefore, been limited to those persons who it is considered may be in a position to provide evidence to substantiate or refute the applicant's claim. Accordingly, consultations have only been carried out with surrounding occupiers.

In response to this consultation, no letters of objection have been received to date.

However, in support of the Certificate, the applicant has submitted a petition from 4 residents within the estate to say that the area has been maintained by Mrs Embleton for as long as they have lived within the area (being between 6 and 14 years).

The Council's Operations Manager has confirmed that the land has never been maintained by the Council and or Cestria Housing (recently transferred to) for the period of at least 13 years 11 months.

### **Relevant Planning Policies and Considerations**

As the application relates to a Certificate of Lawfulness for an Existing Use Application there are no Local Plan Policies relevant to the proposal.

The most relevant Central Government advice on the subject of CLEU applications is contained in Circular 10/97; Enforcing Planning Control. This Circular provides advice on the relevant area of legislation applicable to the proposal.

In affect the applicant is seeking a Certificate from the Council to confirm that the prescribed activities, i.e. in this case the use of land as private garden area, is lawful within the meaning of the Act as no enforcement action may be taken against it due to the fact that the use began more than 10 years from the date of the application and has been in place continually since.

Circular 10/97 advises that the onus of proof is on the applicant to prove her case that the use is lawful. The Circular goes onto advise that the relevant test for the decision maker to bear in mind is on the "balance of probability", having regard to the evidence provided. In particular the Circular advises that the Local Planning Authority should not refuse a Certificate because the applicant has failed to discharge the stricter, criminal burden of proof, of "beyond reasonable doubt". The Circular advises that applicants (and indeed objectors) evidence does not need to be corroborated and are to be accepted on face value. Furthermore it advises that if the Local Planning Authority has no evidence of their own to contradict the applicant's version of events, this is no good reason to refuse an application.

Having regard to the relevant tests, as briefly discussed above, the applicant has sought to prove this case, that the use of land as private garden area commenced in excess of 10

years ago and is therefore now immune from any enforcement action. In support of the application a 4 named petition has been received as well as a memorandum from the Operations Manager of Chester-le-Street Council regarding maintenance of this land.

### Assessment of Proposal

In terms of assessing the application, as discussed above, Members will need to consider having regard to the available evidence whether or not, on the balance of probabilities, the applicant's claim should be accepted.

In terms of the representations received in support of the proposal, it should be borne in mind that they have been submitted from a variety of people. These include the owners of neighbouring properties of the land in question as well as Council Employees who would have a material interest in this land due to its use as public open space.

In addition to considering the evidence submitted Officers have carried out their own investigations into the applicant's claim. Available evidence which provides intelligence on the subject is aerial photography contained on the Council's GIS System taken in 2001 and also a website – Live Search Maps from 2007/2008 which shows a bird eye view of the area. This photography supports the applicant's claim as it does show the area of land in question as appearing to be part of the applicant's own garden area.

It is considered that this information represents evidence to which significant weight should be attached. Accordingly it is considered that with the benefit of this evidence to hand that the applicant has succeeded in proving this case and that the application should be recommended for approval as being lawful.

### Conclusion

In conclusion and having regard to the available evidence including the comments received from the Operations Manager for Chester-le-Street District Council and neighbouring residents, it is considered, on the balance and probability, that the applicant's claim should be supported and that a Certificate of Lawfulness should be issued in this instance.

### RECOMMENDATION CONDITIONS:-

Approve SUBJECT TO THE FOLLOWING

Extra 1.

The applicant has succeeded to prove, on the balance of probabilities, that the existing use of the land as private garden area is lawful, within the meaning of Section 191 (C) of the Town and Country Planning Act 1990 (as amended).

# Land adj to 35 Westhills Close

Sacriston



Scale : 1:1250

3.

**Reference: 08/00354/FUL**

**Proposal** Erection of canopy in children's play area at rear of nursery (retrospective application).

**Location** Eden Garden Nursery St Benet's Way Ouston Chester-le-Street Durham DH2 1QN

**Applicant** Mr G. Errington

---

**Application Summary**

**Ward:** Ouston

**Case Officer:** Lisa Morina, Planning Assistant

**Contact Details:** 0191 387 2146

lisamorina@chester-le-street.gov.uk

**Summary of recommendation:** The development hereby proposed will provide for an acceptable form of development which is not considered to have a negative impact on the visual amenity of the streetscene or be detrimental to the residential amenity of neighbouring properties.

Accordingly it is recommended that the application be approved.

---

**The Proposal**

This report relates to the erection of a detached canopy structure situated in the play area at the rear of Eden Garden Nursery situated within the grounds St Benets Roman Catholic Primary School based on St Benets Way, Ouston.

This proposal is being sought on a retrospective basis as a result of an enforcement complaint and subsequent investigations by Officers.

**Site History**

06/00582/FUL - Nursery to provide full day care facility. Approved 14/3/07.

## **Consultation Responses**

The application has been advertised by way of site notice and direct mailing to adjacent occupiers. As a result of this exercise, three letters of public objection have been received to date with the following concerns:

- The proposal is for a canopy which has been put in place without planning consent.
- There is a long running complaint by residents to the building that this canopy is adjoining. The original planning consent was set out with conditions and the applicant has ignored a number of these until threatened with legal action.
- The structure dramatically reduces the appeal of the quiet cul-de-sac.
- The canopy is an ugly eyesore adjoining an even uglier portacabin business premises that is totally out of keeping with the street and Residents advise that they would not have chosen to live in the area if it was here before they bought their properties.
- The silver coloured support poles are totally out of keeping within the surrounding area and stand out clearly - The poles should be changed for something more in keeping or a screen should be erected to be in keeping with the surrounding area.
- Complaints have already been made to the Local MP regarding the structure, Local Government Ombudsman on the lack of action of the planning department and Environmental Health because rats have been seen around the rubbish from the site.
- The Council should take notice of resident's objections and complaints and refuse this application and any further applications by this applicant.
- The canopy is too large and out of place within the residential street.

## **Relevant Planning Policies and Considerations**

The Chester le Street Local Plan does not include any Policies specifically relating to children's nurseries and additions to such buildings. However, this proposal can be assessed against policy 8 of the Regional Spatial Strategy (RSS).

The (RSS) sets out a long-term planning strategy for the spatial development of the North East Region of England. The RSS is part of the statutory Development Plan. The Regional Spatial Strategy was adopted in July 2008.

Policy 8 - Seeks to protect and enhance the environment. This in part should be achieved through promoting high quality design in all development that should be sympathetic to the surrounding area.

In determining this application the main issues to be considered are the design of the proposal in relation to the host property as well as the streetscene, the impact the proposal may have on the residential amenity of the neighbouring properties as well as other issues which have been raised as part of the consultation process.

### **Siting and Design of Development**

The canopy is sited to the rear of an existing nursery which is set within the grounds of an established school site based on St Benets Way. The proposal due to its location is not visible from St Benets Way however, is visible to the neighbouring housing estate known



as Penhill Close. The canopy is located at the head of a cul-de-sac serving the southern section of this estate. The common boundary which runs between the school site and the cul-de-sac consists of mature hedging and bushes as well as two existing fences one being an approximately 2m high palisade style fence with a smaller close boarded wooden fence situated in front.

The proposal which is for a canopy style structure mounted on poles with a varying height of between 2.5m and 4m is not considered to cause a negative impact on the visual amenity of the streetscene when viewed from Penhill Close due to the existing screening in place. Although the proposed boundary treatment does not fully mask the proposal from the street, there are trees to the rear of the proposal which when viewed from Penhill Close act as a back drop for this proposal. Given these comments and the site circumstances, it is considered that the proposal would not have an adverse impact on the visual amenity of the streetscene.

It is not considered appropriate to impose additional screening or masking to this proposal as it is not considered to cause serious harm to the visual amenity of the streetscene.

### Residential Amenity

The location of the structure is sited more than 15m away from the nearest elevations of the adjacent residential properties and is of an open plan nature. Given this as well as the side elevations of these properties having blank gable elevations, in addition to being set at an angle from this structure, it is considered that the residential amenity of these neighbours would not be adversely affected as there would be no overshadowing, overbearing or overlooking issues to these properties.

Objectors have raised issues with regards to noise and the proposal essentially reducing the appeal of a quiet residential cul-de-sac. However, the canopy structure is not considered to create any additional noise issues as the area in which the canopy is situated is an established play area for children.

### Other Issues

Objectors have raised issues with regards to previous applications that have been approved by the Council as well as concerns over alleged non compliance with conditions from this approval. Issues have also been raised with regards to any future applications which may be submitted. These issues however are not relevant as part of this planning application and have been dealt with under separate issues therefore, can not be considered as material planning considerations when determining this application.

Objectors have also raised the issue of the canopy being in place (for some time) before an application has been submitted. However, Members will be aware that carrying out development without planning permission is not illegal as Regulations allow for applications to be submitted on a retrospective basis. Therefore, a development being carried out prior to planning approval being gained can not be considered as a material planning consideration and is therefore, not considered an appropriate reason to warrant refusal of an application.

**Conclusion**

Taking all relevant issues into account, it is considered that planning permission should be granted as the proposal is considered to provide an acceptable form of development within the streetscene which would not impact negatively on the visual amenity of the streetscene or the residential amenity of the neighbouring properties.

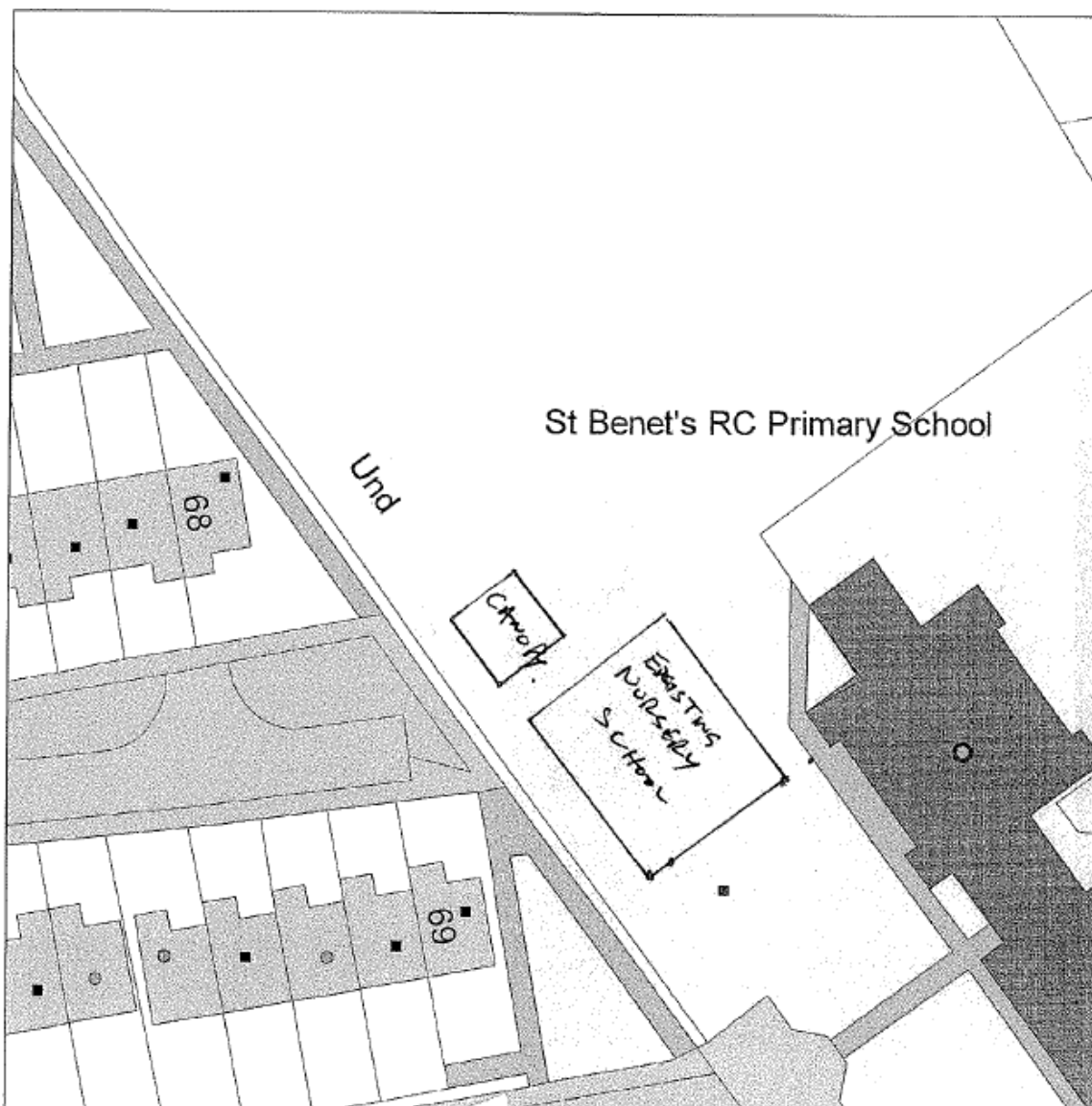
**RECOMMENDATION**

Approve

Extra 1.

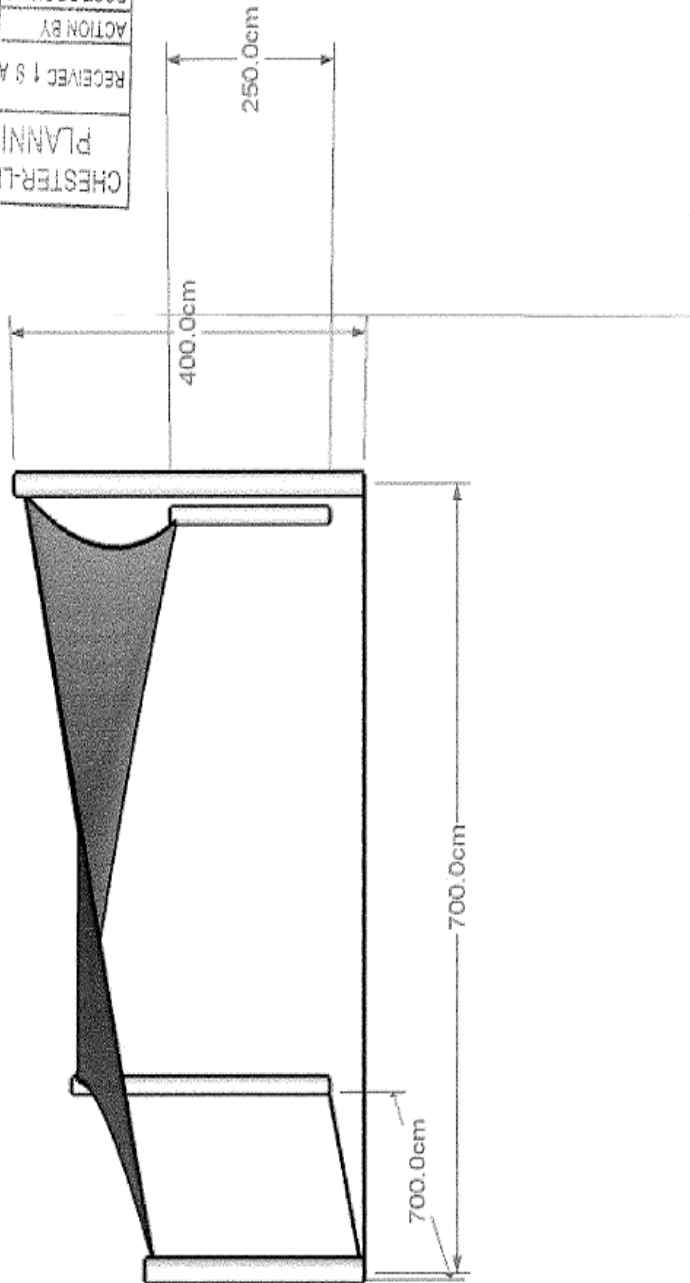
As the proposal is being sought on a retrospective basis no conditions are relevant in this instance.





CHESTER-LE-STREET DISTRICT COUNCIL  
DIRECTORATE OF DEVELOPMENT SERVICES  
PLANNING COMMITTEE 13 October 2008

CHESTER-LE-STREET D.C. PLANNING DEPT.	
RECEIVED 19 AUG 2008	
ACTION BY	
POST BOOK NO	



**CHESTER-LE-STREET DISTRICT COUNCIL**  
**DIRECTORATE OF DEVELOPMENT SERVICES**  
**PLANNING COMMITTEE**      **13 October 2008**

4.

**Reference: 08/00361/FUL**

**Proposal**      Erection of timber decking and paved areas to existing rear garden.

**Location**      Garden Farm Public House Carlingford Road Chester-le-Street Durham DH2  
3EH

**Applicant**      Enterprise Inns

---

**Application Summary**

**Ward:**                      Chester South

**Case Officer:**          Steven Pilkington, Planning Officer

**Contact Details:**      0191 387 2145  
  
   stevenpilkington@chester-le-street.gov.uk

**Summary of recommendation:** Subject to the attached conditions, the decking provides for an acceptable form of development, which would not impact negatively on the visual amenity of the surrounding area or the residential amenity of neighbouring properties and as such complies with the relevant policies of the Development Plan.

Accordingly the application is recommended for approval.

---

**The Proposal**

Retrospective planning permission is sought for the erection of a raised decking and patio area located to the rear of Garden Farm Public House. The decking has been erected approximately 6 months ago and replaces a landscaped area. The decking encompasses the perimeter of the site providing a grassed area to the centre and measures a maximum of 0.9m in height from the exiting ground level.

**Relevant Planning History**

There is no relevant recent planning history to the site

## **Consultation Responses**

Neighbouring residents have been notified of the development by individual notification letters and by site notice. To date three letters of objection have been received.

The objections can be summarised to the issues below:-

- Loss of privacy,
- Increase in noise,
- Increase in lighting,
- Loss of trees,
- The decking area has encouraged the wrong type of clientele to attend the premises,
- Increase in vermin

Environmental Health - No Objections

Economic Development – No Response received

## **Relevant Planning Policies and Considerations**

Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plans are the adopted Chester-le-Street District Local Plan and the Regional Spatial Strategy for the North East (RSS). The following policies are considered relevant:-

### Regional Spatial Strategy

Policy 8 of the RSS - Protecting and Enhancing the Environment –sets out that planning proposals should seek to promote a high quality of design and promote development that is sympathetic to its surroundings.

### Local Plan

R19 – Food and Drink – Sets out that food and drink uses will be considered appropriate in principle within existing retailing centres where the development would not impact on the amenity of the occupants of residential properties from noise, fumes, smell, lighting and activity levels at the site, including highway issues and waste management issues.

### Impact on surrounding land users

Objections have been raised regarding the increase in noise generated from the premises. However as established in case law (Lewisham LB22/12/94) a pub and its garden form one planning unit. Therefore it is considered that the land to the rear of the pub could be used as a beer garden without the need for planning permission. On this basis it is considered that any noise generated from the decking is not significantly greater than would be generated under the permitted use of the area as beer garden. It should also be

noted that the councils Environmental Health Department have raised no objections to the development.

Residential properties are located to the east and south of the application site. As the decking and patio have effectively increased the height of the ground by a maximum of 0.9m a loss of privacy arises for neighbouring residents. This is primarily due to the presence of the boundary treatments (1.6m in height from the maximum height of the decking), which allow patrons of the pub to look directly into neighbouring gardens and windows. In addition to this a section of boundary fence is open boarded further reducing the privacy of neighbouring residents.

In order to address these issues it is recommended that a condition be attached to the application, requiring that the boundary treatments are increased in height to 1.8m and close boarded. It is considered that this increase in height will prevent ready views to neighbouring properties.

Views may however, still be achievable to the rear windows of the properties of 2-8 St Mary's Close, especially from the eastern most elevation of the site. However this will be at a minimum distance of approximately 32m, which is deemed acceptable based on separation guidelines outlined in Appendix 1 of the Local Plan.

#### Character of the Area / Visual Amenity

The decking is not visible from outside the site and therefore does not impact directly on the character of the area. However the decking encloses a number of semi mature trees, which do contribute to the character of the area. In addition to this, objections have been raised regarding previous trees that have been removed on the site. However after assessing the proposal, it is considered that due to the construction methods of the decking, the health of the trees should remain unaffected, protecting the amenity of the area. In addition to this the trees in question are not protected by Tree Preservation Orders.

#### Other Issues Raised

Objections have been raised regarding the possible increase of rats present in the premises, due to food falling between the decking. However it is considered that this is a matter for the Environmental Health Department to regulate and does not form a material planning consideration in this application.

Objections have also been raised regarding the increase in lighting of the area. However planning permission is not required to illuminate the garden by means of lighting additional to the existing public house. Lighting nuisance this is considered an issue for the Environmental Health Department to regulate.

Further objections have also been raised regarding the 'type of person' that is attracted to the pub and the noise they generate. However again this is not a material planning consideration as the use of the premises has been established.



**Conclusion**

The proposed scheme has been considered against the policies identified above; it is considered that the proposal conforms to these policies as the scheme does not impact on the character of the surrounding area or the amenity of neighbouring land users. There are no material planning considerations that indicate a decision should be otherwise and therefore the application is recommended for approval.

**RECOMMENDATION**  
CONDITIONS:-

Approve SUBJECT TO THE FOLLOWING

Extra 1.

Notwithstanding the submitted information, within one month of the date of the permission hereby granted, a scheme identifying:-

- The increase in height of the boundary treatments to the eastern and southern boundaries of the site to 1.8m from the maximum height of the decking, and
- The replacement of the open boarded fence to the eastern boundary of the site with a closed boarded fence,

Shall be submitted to and agreed in writing by the Local Planning Authority. The agreed scheme shall be implemented to the satisfaction of the Local Planning Authority within two months of the date of this permission. To protect the privacy and amenity of neighbouring residents and to conform to policy R19 of the Chester-le-Street Local Plan.

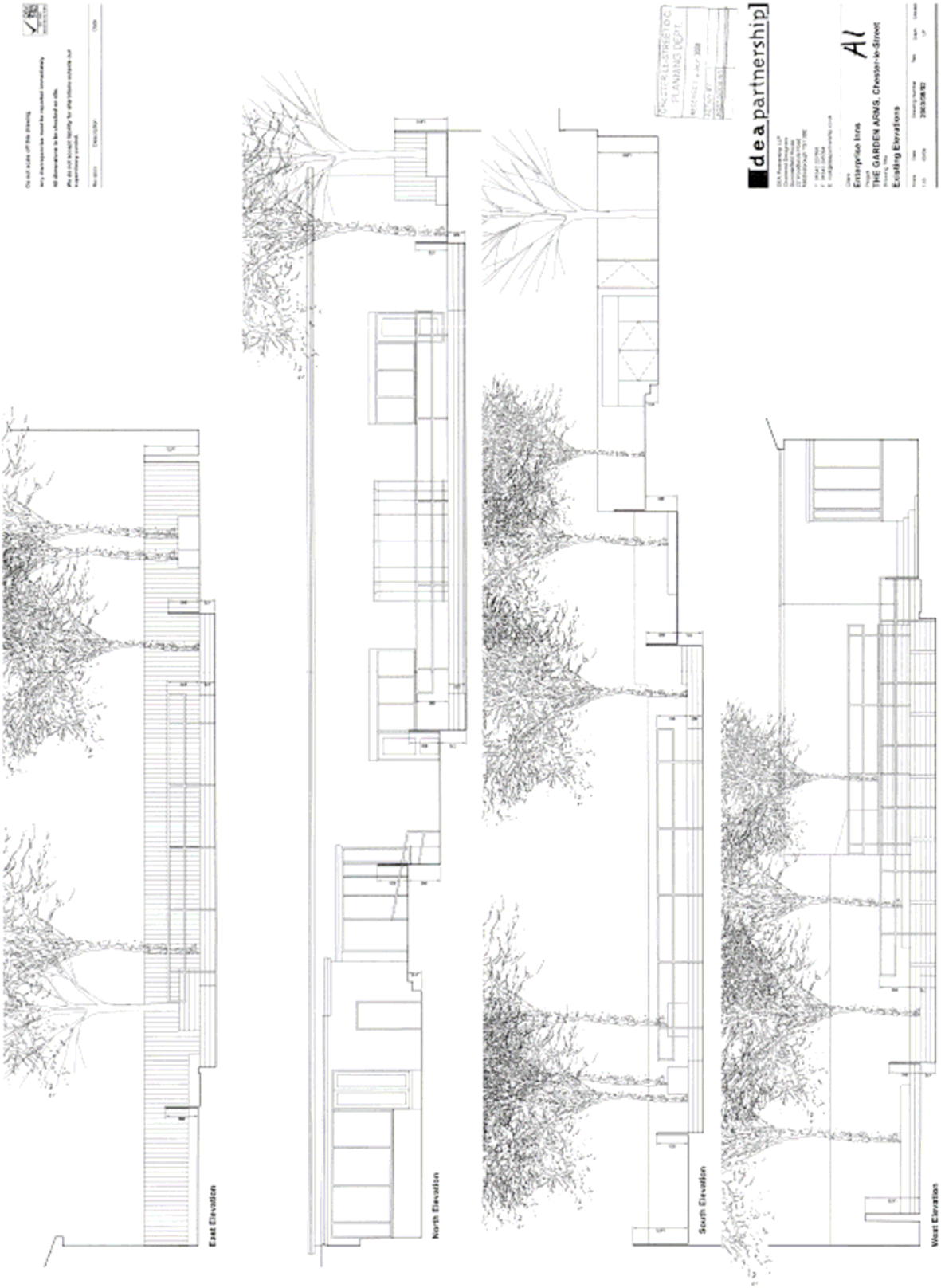
# Garden Farm

Carlingford Road, Chester-le-Street



Scale : 1:1250





**ITEM 2** Appeals Update

**1 October 2008**

**List of Planning Appeals and Current Status**

The Planning Applications listed below have been, or are currently, the subject of appeals against the decision reached by the Planning Committee. Planning Appeals are considered by a Planning Inspector from the Planning Inspectorate, a body which is independent of Chester-le-Street District Council.

Key to Appeal Type Code

- W - Written Representations
- I - Hearing
- P - Public Inquiry

If you wish to view a copy of an Inspector's decision letter regarding any one of the appeals listed below please contact the Planning Division on 0191 387 2172 or 0191 387 2173 in order to arrange this.

Application Number / ODPM reference number	Applicant	Appeal Site	Proposal	Appeal Type / Appeal Start Date	OS Grid Reference	Status / Date of Appeal Decision
07/00115/FUL /	Mr A.J. Laverick	4 Station Lane Pelton Fell Chester-le-Street Durham DH2 2RL	Single storey ground floor extension to kitchen and replacement sun lounge for conservatory	W / 29.10.2007	E:425239 N:552103	Appeal Withdrawn / 11.01.2008

Application Number / ODPM reference number	Applicant	Appeal Site	Proposal	Appeal Type / Appeal Start Date	OS Grid Reference	Status / Date of Appeal Decision
07/00276/FUL /	Mr Thomas	New Dwelling Adjacent to Willowbrook Woodburn Close Bournmoor Chester-le-Street Durham DH4 6DH	Erection of conservatory to rear, creation of new window opening to side elevation and installation of additional roof light to rear	W / 24.01.2008	E:431238 N:550971	Appeal Allowed / 01.05.2008
07/00285/FUL /	Mr D. Kumar	53 Longdean Park Chester-le-Street Durham DH3 4DG	Conversion of garage to office, single storey extension to rear to provide sun lounge and extension above garage to provide additional bedroom and extended kitchen area plus widening of driveway.	W / 14.02.2008	E:427588 N:552791	Appeal Allowed / 15.07.2008
07/00438/FUL /	McCarrick Construction	1 - 4 Chalmers View Newcastle Road Chester-le-Street Durham DH3 3TE	Retrospective application to allow glass panels between bay windows instead of previously approved timber panels in application 06/00016/FUL	W / 30.05.2008	E:427422 N:551915	Appeal Allowed / 02.09.2008

Application Number / ODPM reference number	Applicant	Appeal Site	Proposal	Appeal Type / Appeal Start Date	OS Grid Reference	Status / Date of Appeal Decision
07/00495/FUL /	Mr J. Johnson	Johnsons Garage 3 Newcastle Road Chester-le-Street Durham DH3 3TJ	Demolition of car showroom & workshop and erection of 10 no apartments & associated works (Amended description)	W / 05.03.2008	E:427405 N:551809	Appeal Allowed / 20.06.2008
07/00497/FUL /	Mr & Mrs Fletcher	Land to The West of The Poplars Arcadia Avenue Chester-le-Street Durham	Proposed erection of 1 no dormer bungalow and detached garage	W / 25.01.2008	E:427290 N:552194	Appeal Withdrawn / 
07/00502/ADV /	JC Decaux	AP Developments 28 - 29 Front Street Pelton Chester-le-Street Durham DH2 1LU	Display of externally illuminated free-standing 48 sheet advertisement hoarding, size 3.048 metres x 6.096 metres, along east elevation of front of site (retrospective application).	W / 01.02.2008	E:424956 N:553078	Appeal Dismissed / 06.05.2008

Application Number / ODPM reference number	Applicant	Appeal Site	Proposal	Appeal Type / Appeal Start Date	OS Grid Reference	Status / Date of Appeal Decision
07/00544/FUL /	Mr & Mrs Cree	3 Kingsmere Chester-le-Street Durham DH3 4DB	Erection of single storey extension at side of dwelling and erection of detached garage in garden area at side/front (amended plans received 18 February 2008).	W / 11.06.2008	E:427309 N:553411	Appeal In Progress /
08/00089/FUL /	Mr P. Blaydon	Land at Entrance to Valley View Sacriston Durham	Erection of one detached bungalow and means of access	W / 09.07.2008	E:423797 N:546791	Appeal In Progress /



**CHESTER-LE-STREET DISTRICT COUNCIL**

**DIRECTORATE OF DEVELOPMENT SERVICES**

**PLANNING COMMITTEE**      **13 October 2008**

**ITEM 3**                      Notification of Outcome of Appeal Decision

**Proposal:**                      **Retrospective application to allow glass panels between bay windows instead of previously approved timber panels in application 06/00016/FUL**

**Site Location:**                **1-4 Chalmers View, Chester-le-Street, DH3 3TE**

**Decision:**                      **The Appeal was allowed**

Notification has recently been received from the Planning Inspectorate of a decision reached in an appeal lodged by McCarrick Construction against the planning refusal for the above development.

Members may recall that this application was presented to the Planning Committee in December 2007 with a recommendation for refusal which was accepted by Members. The refusal reason was based on a perceived poor design quality resulting in a development which was considered to have a negative impact on the streetscene.

The key considerations for the Inspector were the impact on the visual amenity of the street scene and how the proposal would impact on the appearance of the area.

The Inspector in summarising the design issues stated the following:-

“The glass panels are an unusual feature, but do not look out-of-place or incongruous on the building. I am not persuaded that they “jar” as referred to by the Council.

The vicinity of Chalmers View, Newcastle Road contains a variety of buildings, including traditional two-storey housing and the large, modern Civic Centre opposite. The block of apartments, incorporating the glass panels, does not harm the streetscene, relating well to its surroundings and respecting the predominant character of the area.

I note the general support for this view in written representations of local residents. It follows that the provision of the glass panels is not out of accord with the aims of policy HP9 of the Local Plan”.

Accordingly, the appeal was allowed. A copy of the appeal decision is appended to this report for Member’s consideration.

---

**Appeal Summary**

**Ward:**                              Chester North

**Case Officer:**                 Lisa Morina, Planning Assistant

**Contact Details:**    0191 387 2146      [lisamorina@Chester-le-street.gov.uk](mailto:lisamorina@Chester-le-street.gov.uk)

---



# Appeal Decision

Site visit made on 18 August 2008

by **J D Waldron MCD BArch Architect**

**an Inspector appointed by the Secretary of State  
for Communities and Local Government**

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:  
2 September 2008**

---

## **Appeal Ref: APP/G1305/A/08/2075478**

### **1-4 Chalmers View, Newcastle Road, Chester-le-Street DH3 3TE.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by McCarrick Construction Co Ltd against the decision of Chester-le-Street District Council.
- The application Ref: 07/00438/FUL dated 28 September 2007 was refused by notice dated 12 December 2007.
- The retrospective application is for glass panels between bay windows instead of timber panels approved under planning permission: 06/00016/FUL.

- 
1. Policy HP9 of the Chester-le-Street District Local Plan adopted in 2003 sets out the criteria which need to be fulfilled for residential development to be acceptable. Under criteria (i) residential development needs to relate well to the surrounding area and respect its predominant character.
  2. Chalmers View is a block of 4 apartments in a prominent corner position on Newcastle Road. The block is 2-storey, brick-built with a pitched roof covered in tiles. It is of simple, generally traditional design. The front elevation is symmetrical and incorporates two bay windows on the ground floor and two above on the first floor. The glass panels are between the heads of the ground floor bay windows and the cills of the first floor bay windows.
  3. A feature of the design is that each bay is framed in UPVC. Thus the glass panels are incorporated within the overall UPVC framing. They are of very dark green glass and relate well to the white UPVC framing, appearing quite different from the clear glazing of the windows above and below. The glass panels are an unusual feature, but do not look out-of-place or incongruous on the building. I am not persuaded that they "jar" as referred to by the Council.
  4. In the vicinity of Chalmers View, Newcastle Road contains a variety of buildings, including traditional two-storey housing and the large, modern Civic Centre opposite. The block of apartments, incorporating the glass panels, does not harm the streetscene, relating well to its surroundings and respecting the predominant character of the area. I note the general support for this view in the written representations of local residents. It follows that the provision of the glass panels is not out-of-accord with the aims of Policy HP9.
  5. For the reasons given above I conclude that the appeal should be allowed.
-

### **Formal Decision**

6. I allow the appeal, and grant planning permission for the development already carried out, namely **the provision of glass panels between bay windows instead of timber panels approved under planning permission: 06/00016/FUL** at 1-4 Chalmers View, Newcastle Road, Chester-le-Street DH3 3TE in accordance with the terms of the application, Ref: 07/00438/FUL dated 28 September 2007 and the plans submitted with it.

*John Waldron*

Inspector

**Stephen Reed**  
**Development and Building Control Manager**  
**2 October 2008**