

PLANNING COMMITTEE – 18 January 2022

REFERENCE NUMBER: 21/00627/FL Application Expiry Date: 09 August 2021
Application Type: Full Planning Permission

Proposal Description: Variation of condition 2 (approved plans) of NED/20/00221/FL to allow for changes to the road alignment and plot positions (Major Development)

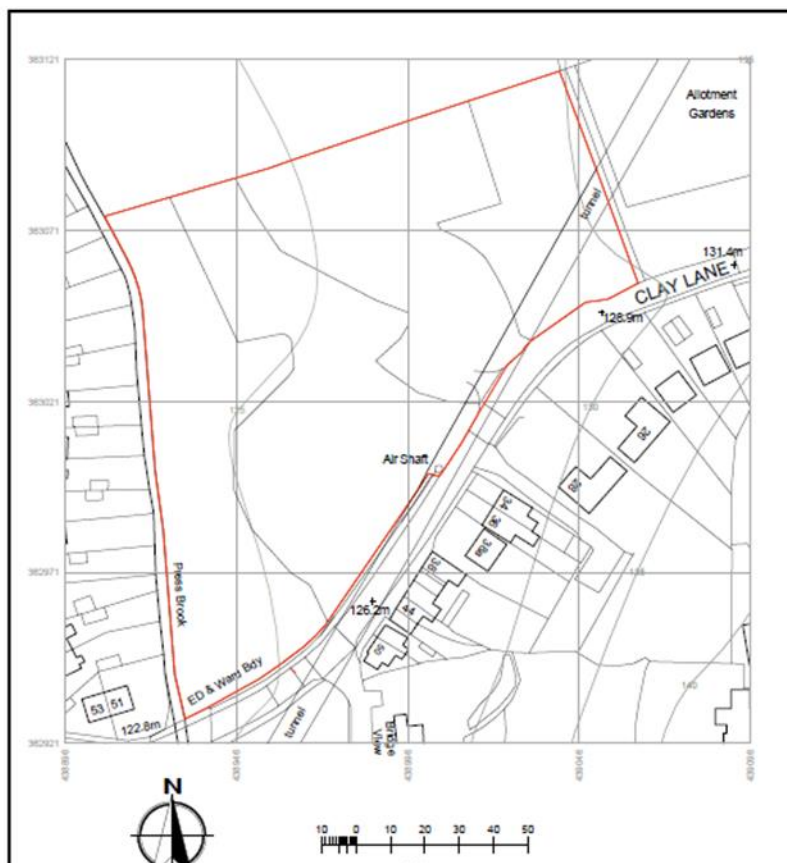
At: Land opposite 24 to 44 Clay Lane, Clay Cross

For: Woodall Homes

Third Party Reps: 16 **Parish:** Clay Cross Parish Council
Ward Name: Clay Cross North Ward

Author of Report: Phil Slater **Date of Report:** 24 November 2021

MAIN RECOMMENDATION: GRANT (subject to S.106 agreement)



1.0 Reason for Report

- 1.1 Councillor Shipman has requested that this application be determined by Planning Committee so the Planning Committee is able to scrutinise the proposal to change the layout. Officers are also of the opinion that the intense public interest in this application warrants Committee consideration before it is determined.
- 1.2 The Planning Committee is required to determine the application.

2.0 Proposal and Background

- 2.1 This application was deferred at the Committee's December meeting to seek clarity on the issue of flood risk. This was relayed to the applicant who has responded by submitting a Briefing Note to the Planning Committee. This is available to view on the planning application pages of the Council's website. Extracts from it are included in paragraphs 7.27 to 7.29 below. In addition, since December two additional letters of objection have been received. These are added to the text and bullet points of paragraph 5.3 below.
- 2.2 The application site is a 1.54 ha parcel of land to the north of Clay Lane, Clay Cross. The site is bound by Press Brook (also known as Smithy Brook) to the west and Clay Lane to the south (both with residential development beyond), with a public footpath running just outside the eastern boundary of the site. The trees along the bank of the Press Brook are subject to a Tree Preservation Order.

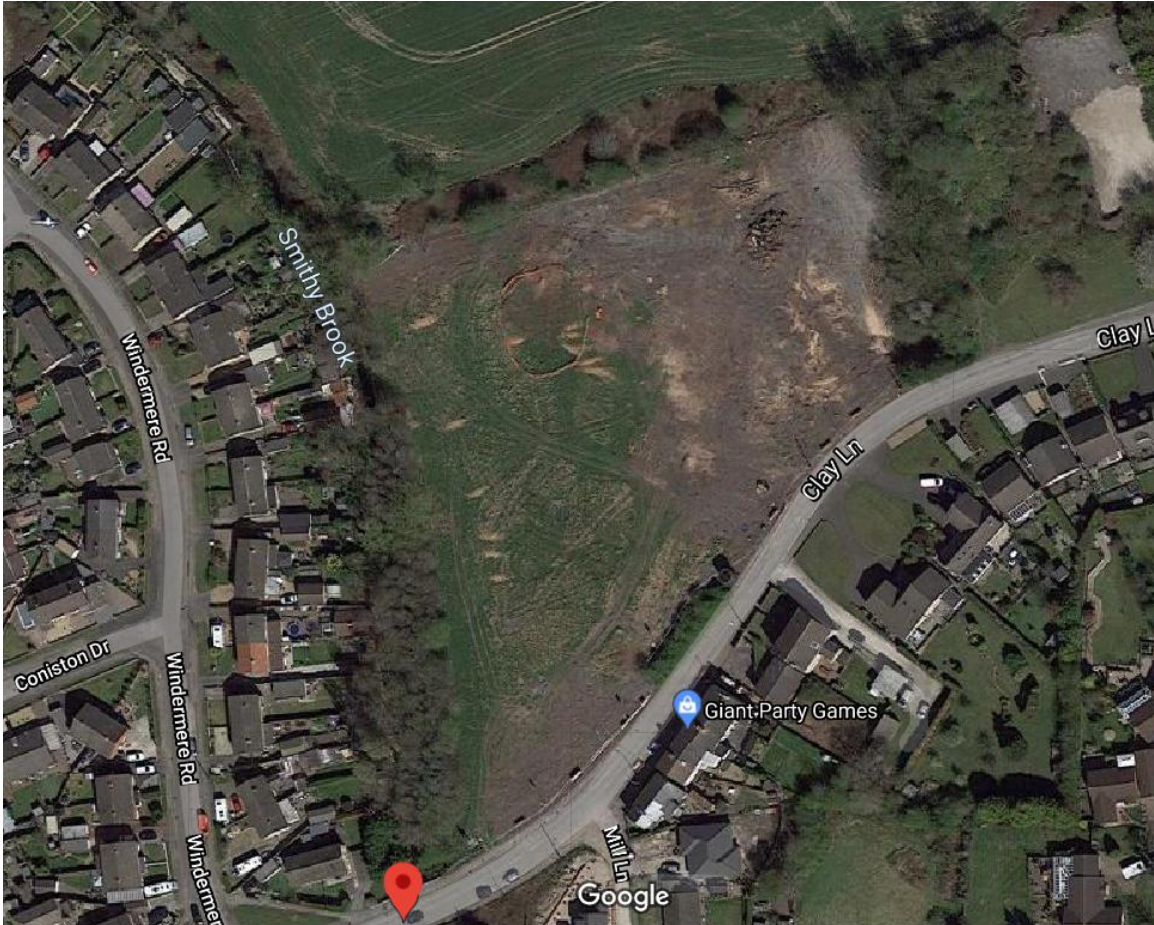


Figure 1: aerial photo of the site

- 2.3 The site benefits from an extant permission for residential development of 34 dwellings with associated infrastructure granted under NED/20/00221/FL. Relevant pre-commencement conditions have been discharged and a lawful start has been made to the development.
- 2.4 This application seeks a minor material amendment to the approved plans condition of the approved application under section 73 of the Town and Country Planning Act 1990. A Section 73 application cannot be used to change the description of the development. There is no statutory definition of 'minor material amendment' but it can include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
- 2.5 This application seeks minor changes to the road alignment and plot positions due to the line of the existing sewer varying from the asset plans. This impacts on the internal road layout and plot locations in the north west sector of the site. The proposed changes are shown below.



Figure 2: Plan showing revised plot and road alignment overlaid onto the approved layout. (approved layout is in red)



Figure 3: Proposed S73 Layout (approved layout is in red)

- 2.6 As with the extant permission the application site is predominantly located in Flood Zone 1, with a very small section of the site at the western boundary shown to fall within Flood Zone 2 and 3. All built environment would be set back from the brook and within Flood Zone 1. The existing residential properties and their gardens which bound the brook to the west are situated in Flood Zones 2 and 3.

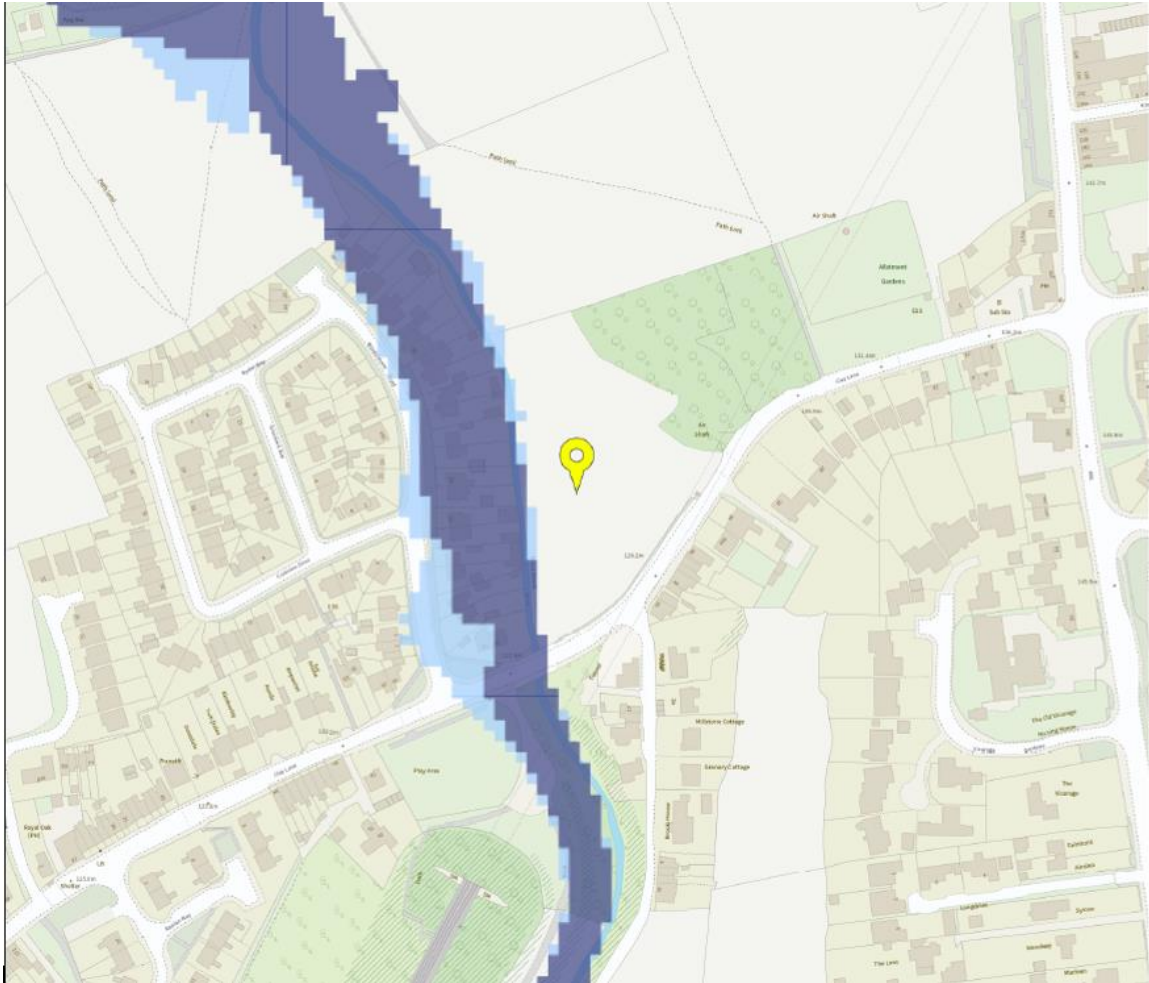


Figure 4: Extract from EA website showing Flood zones 2 and 3

- 2.7 The submitted site levels for the submitted S73 application are consistent with the approved scheme which proposes an increase in levels of around 2m in the north west corner of the site with a 1 in 3 bank down to the brook.

Amendments

- 2.8 Following discussions between officers, the LLFA, Members and the MP the applicant has submitted some additional details to address concerns relating to surface water flooding as below. These entail the introduction of a relief tank into the site.

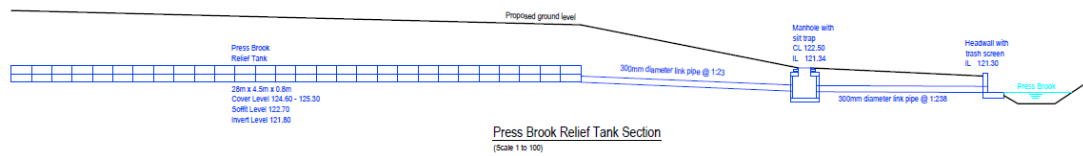


Figure 6: Relief tank section

- 2.9 There have been some minor amendments to the layout made with respect to the orientation of plots 21 to 24. The garden and orientation of plot 19 has been amended to bring it in line with the Council's Design Guidance and the detached garage set back from the boundary fencing. Updated landscaping drawings and boundary treatment plans have also been submitted.



Figure 6: Revised site layout plan

3.0 Relevant Planning History

- 3.1 NED/20/00221/FL - Residential Development of 34 dwellings with associated infrastructure (Major Development/Departure from Development Plan) (Amended Title/Amended Plans) at land opposite 24 to 44 Clay Lane. Conditionally approved subject to a S106 agreement.

- 3.2 NED/21/00659/DISCON - Discharge of Conditions 3, 5, 7, 10, 13, 14, 16, 17, 18, 19, 20, 21, 23, 26, 29, 31, 32, 34, 36, 37, 39 and 42 Pursuant to Planning Application 20/00221/FL. Conditions approved.
- 3.3 NED/21/00829/DISCON - Application to discharge Condition 23 (Remediation Strategy) and Condition 29 (Mining Survey/ Phase 2 Report) pursuant to planning application 20/00221/FL. Conditions approved.

4.0 Consultation Responses

- 4.1 The **Parish Council** have commented that in addition to the Parish Council's original objections to NED/20/00221/FL, they now have concerns regarding the developer abiding by the conditions set – for example, drainage, wildlife habitat, archaeological level issues.
- 4.2 The **County Highway Authority (HA)** initially commented that the revised internal layout is generally considered acceptable. However, there were a few issues raised.
- 4.3 Following receipt of further information, dated 14th July 2021, the HA commented that:-
- The garage set-back distance for Plot 31 does not appear to have been revised, with the setback distance still measuring approximately 5.8m. Either the garage should be set back in order to provide a 6.5m gap between the rear of the highway boundary and the garage door, or a 'roller-shutter' door should be used.
 - The submitted swept path analysis plan (ref: 600183-HEX-00-00-DR-C-9522 P02) shows manoeuvres for a refuse vehicle with an overall length of 10.52m and it is recommended that the Street Scene Services be consulted and it be confirmed that they are satisfied regarding the internal geometry of the estate roads. [*The RCV is of the similar dimensions to those used by NEDDC*]
- 4.4 Provided that the Local Planning Authority are satisfied that a satisfactory layout can be controlled by conditions, there are no highway objections to the proposal from the highway point of view, subject to conditions being included in any consent granted in the interests of highway safety.
- 4.5 The applicant has confirmed that the garage to plot 31 will have a roller shutter door.
- 4.6 The **Derbyshire County Council Flood Team (LLFA)** as Lead Local Flood Authority initially objected to the proposals as they advised it was not

possible to provide an informed comment until such a time that the applicant had submitted further information and as follows:

1. It has been brought to the LLFA's attention that the north west sector of the development (plots 11-19) is lower or level with the west bank whereas it was stated as part of the planning application that the east bank was significantly higher than the west bank. Therefore, if the north west sector of the site is level with, or lower than the west bank it is not unreasonable to expect it to be in flood zone 3 as is the case for the opposite properties along Windermere Road. If the north west sector of the site is level with, or lower than the west bank, any increase in ground levels in the north west section of the site will displace more water onto properties on the west bank during a rainfall return period that results in a flood zone 3 event, increasing flood risk off site. The LLFA require a more detailed topographical survey to be carried out along the entire west bank of Press Brook to accurately document differences in levels. If parts of the development site are found to be level with, or lower than the west bank further work needs to be undertaken to demonstrate no increase in flood risk off site as per the National Planning Policy Framework (NPPF).
2. The LLFA requires a hydraulic model of Press Brook along the west of the development to validate the true extent of the flood zones, in particular to the north west section of the site in its current condition. This will allow the developer to demonstrate empirically they are adhering to NPPF and not increasing the flood risk elsewhere.

- 4.7 The applicant submitted the following documents in response:-
Open Channel Conveyance Capacity Assessment
Press Brook Relief Tank Assessment
Press Brook Relief Tank Design
- 4.8 The LLFA further commented that the developer has provided the LLFA with an updated hydraulic assessment of the watercourse (Press Brook), based upon actual levels the LLFA had obtained. The updated model provided, indicates that the eastern bank (NW corner) of the watercourse overtops in less than a 1 in 100 year event, which would effectively place part of the site within Flood Zone 3.
- 4.9 To ensure that the flood risk is not increased to either existing residents or the new properties, the LLFA wanted to know what the potential flood levels and flood extents are within the development (over a range of return periods and durations), given that the updated hydraulic assessment now indicates that the watercourse overtops. The LLFA advised that through detailed hydraulic modelling of the watercourse, once a more accurate extent of flooding has been determined, a more accurate assessment can be made as to how much, or if flood compensation is required. Unfortunately, the

- current submitted hydraulic assessment and flood compensation proposals were not considered satisfactory enough by the LLFA to give sufficient confidence to the LLFA that the flood risk isn't increased and that any compensation offered is also sufficient.
- 4.10 If any further detailed hydraulic modelling indicates that flood compensation is required, guidelines set out in CIRIA C624 and by the Environment Agency need to be adhered to, for any flood compensation design. Furthermore, In light of the latest hydraulic assessment, will the outfall of the surface water drainage system have sufficient freeboard to drain the site safely when the river level is high on certain storm events.
- 4.11 The LLFA have further commented that with regards to the current application they are satisfied that the proposed works under this application has **no increase of impact when compared to the approved application, either on the management of surface water for the development, and no increase in the flood risk both on and off site.**
- 4.12 The LLFA fully acknowledge the position North East Derbyshire District Council are in, in respect of the Section 73 application, and that any issues/concerns not directly connected to this application, can't be taken into consideration. However, given the information which came to light at the time of the Section 73 consultation, from initial anecdotal evidence from residents and the further hydraulic assessment undertaken by the Developer, the LLFA feel that they must express continued concerns.
- 4.13 The LLFA still have concerns in relation to the flood risk from the Press Brook watercourse. Additionally, the hydraulic assessment undertaken by the developer on the Press Brook highlights the need for a more detailed hydraulic model to ensure that the flood risk isn't increased to either existing or new properties. The LLFA have further concerns in relation to the surface water outfall from the proposed site, being surcharged which would impact upon the effectiveness of the surface water drainage system on site, and would therefore request that further information is provided in order to allay concerns. The LLFA accept that the Developer is in no way obliged to provide the information that the LLFA have requested, as part of the current application, but would strongly encourage them to do so, in the interests of ensuring all properties are not at risk from flooding.
- 4.14 **NEDDC Engineers** have not commented.
- 4.15 The **Derbyshire Wildlife Trust (DWT)** have commented that in terms of the impacts to the buffer zone along Press Brook, there does not appear to a significant change to the width or alignment of the buffer between this layout or that previously approved. The layout of the houses immediately east of the buffer has been altered so that there are fewer, larger gardens

adjacent to the buffer. This may be more beneficial in terms of less noise and disturbance to the Brook habitats and species that use them.

- 4.16 The Trust still do not consider that the buffer zone complies with previous advice, as it appears to be measured from the channel (and possibly the western edge of the channel) when DWT advice has consistently recommended it should be measured from the bank top. The nature of a buffer zone is to 'buffer' impacts to Press Brook and the species that use it, therefore the buffer zone should not include the Brook corridor itself.
- 4.17 The agent has submitted a revised site plan which provides for a greater depth of buffer in the south west corner of the site and planting that is consistent with the approved scheme NED/20/00221/FL. DWT have confirmed that they have no further comments to make.
- 4.18 The **Council's Environmental Health Officer** has no further comments to make apart from the conditions initially recommended in the response to the application 20/00221/FL.
- 4.19 **Severn Trent Water** have not commented.
- 4.20 **Police Designing Out Crime Officer** has no objection or comments regarding the amended layout, but noticed that a footpath link to the side of plot 21 onto Clay Lane is now annotated on the site plan resubmission, whereas it was not within the approved plans. The Officer has a note of caution regarding this link and questions the rationale for its inclusion when considering the risks it brings.
- 4.21 **Derbyshire County Council Community Infrastructure** has no comments to make.
- 4.22 **NEDDC Housing Officer** has not commented.
- 4.23 **Network Rail** has no objection to the variation of the condition.
- 4.24 **NEDDC Parks Officers** have not commented.
- 4.25 **NEDDC Streetscene** have not raised an objection and have commented that access is required for a refuse collection vehicle which will not cross un-adopted roads unless an alternative solution is proposed by the developers.
- 4.26 **Coal Authority** have no objections to the amended plans however should the LPA approve this variation of condition application, it requests that Condition 29 and 30 of approved consent: NED/20/00221/FL are included within the Decision Notice.

- 4.27 The **Environment Agency** (EA) has not raised an objection and has commented that this is a difficult site as the actual application site lies mainly within flood zone 1 with a very small section of the site at the western boundary shown to fall within FZ 2 and 3. All built environment will be set back within flood zone 1.
- 4.28 It would appear that the applicant has sought to offset the loss of floodplain, which is based on anecdotal evidence from local residents at present. That being said the flood map for planning is a large strategic model and if there is concern that the flood zones are incorrect then the local residents can submit a flood map challenge. EA point out that the Smithy Brook is not a main river and therefore the EA do not hold hydraulic modelling data for this watercourse.
- 4.29 The management and maintenance of this watercourse falls under the remit of the Lead Local Flood Authority (LLFA). They may hold hydraulic modelling of this watercourse so they should be contacted for comment.
- 4.30 The EA are unsure on the potential impact from surface water flooding which again falls under the remit of the LLFA. This may be what the residents observe during heavy rainfall events and may not be due to overtopping of the river bank. Ultimately without the benefit of hydraulic modelling this is impossible to ascertain. If a flood map challenge was undertaken then this watercourse would need to be modelled at the customers own cost. I appreciate this is a very difficult site to determine but there is not much more EA can supply in terms of comments within the constraints of the NPPF.
- 4.31 The **Ramblers Association** have no objections
- 4.32 The DCC Archaeologist has commented that the site is undergoing archaeological investigation currently and an interim report on this project is awaited, before advising further on any additional recording that may be necessary. Future development layout will not be relevant to the archaeological mitigation here however, and DCC would not wish to comment further on this application.

5.0 Representations

- 5.1 **Cllr Shipman** does not believe the developer has carried out the proper assessments before the first application.
- 5.2 Cllr Shipman objects to the application for the following reasons:-
- At the time when the first application was approved, I raised at the time that there were real flooding concerns about this piece of land.

- DCC flooding dept. only ever did a desktop assessment of the area and I understand they have subsequently been out and looked at the site, and now do have concerns.
- DWT also inform me that they are not happy about the new layout of the site.
- This development if it is to go ahead needs reducing much further than has been proposed, and the affordable housing part of the site should not be reduced to allow this.

5.3 18 letters of objection have been received which can be summarized as follows:-

Flooding issues

- Previously submitted video footage and photographs clearly show the north west corner of the field flooded to a fair extent and the new plans show that the section of field that used to be allowed to flood is to be raised by approximately 2m. [*Officer note: the levels are consistent with the approved application 20/00221/FL*]
- The brook may not be able to cope during periods of heavy rain and as the developers aim to raise the east side of the stream then the existing houses on Windermere Road would almost certainly be subject to flooding.
- strongly oppose this planning application until it can be proven by someone who has actually visited the site in person that our houses will be protected from flooding by any works carried out by the developers
- Object on the grounds of flood risk. The ground where the road is proposed already floods after even a moderate amount of rain. The river rises also and would have nowhere to soak away to other than further into residents gardens.
- Object to the developer building in the northwest corner of the plot, the local flood team has identified that the northwest corner is lower than the land on Windermere Road. The developer has not given a geological survey of the west bank which will prove the land is lower. The developer is planning to raise the land by 2 metres minimum, and this will divert flood water to our neighbouring properties, which is against the riparian land ownership.
- The north west corner already acts as a floodplain in heavy rain, which prevents Windermere Road from flooding.
- Following flooding to properties on Windermere Road in 1982, substantial works were undertaken to the Brook and the development site, to prevent reoccurrence. This included straightening the Brook, strengthening the banks and ensuring the field at the far side, especially the north west corner, were lower than the properties on Windermere Road, to act as a flood plain.

- Strongly object to any part of the land being increased further on the west side & the north west side of the development site [*officer note: the levels are not being increased over those already granted planning permission.*]
- All the land adjoining Press Brook is in Flood Zone 2 and 3.
- Surface water tank into the ground (supervised by an ecologist?) which will have a runoff into Press Brook watercourse area, (could an alternative route been found) instead of the runoff being placed behind the properties of Windermere Road, which will affect further flood risk in a flood zone 2/3 area.
- When they put in place the runoff pipe, they will uproot established trees (T.P.O) & vegetation.
- DCC Flood Team have not been to the site, as an empty field is a Covid risk. Their flood assessment was desk based and from flawed data. The site needs an independent DCC led, up to date, flood risk. Everyone who has connections to the area say it floods, there are images of it flooded submitted and yet more extreme flooding events due to global warming
- Resident has have forwarded correspondence from the EA stating that there should be a topo geological hydraulic survey to prove the height of the land and question if it should also be listed as flood zone 3. [*Officer note: the correspondence was to the resident from the EA as a response to an FOI request. The EA has not requested that any additional surveys be carried out as part of this or the original application*].
- Reference to the NPPF and questions as to why planning have allowed Woodall Homes planning permission to raise land and build on it, when it is a floodplain
- The LLFA are not happy with the figures and has advised the developer to complete a topogeological hydraulic survey, which the developer has chosen not to do.
- The now raised land will not stop the water table rising and decreasing.
- We have now proved that the land was lower than ours and was a floodplain.
- The EA advised back in March that a topogeological hydraulic survey needs to be completed if there were any concerns about flooding.
- The LPA legal document clarifies that it has put us at further risk of flooding.
- The only way to rectify this is to put a hold on this application till the correct hydraulic survey is completed.
- Why NPPF legislation on flood risk was not adhered too.

Comments in relation to the proposed tank

- Object to the planning application due the response from Simon Bond regarding the information given by the LLFA. Simon states in his reply that after re-running the calculations based on the survey result he now agrees that there will be flooding that will overtop the bank into their proposed tank. However he states that the 1 in 100 year event would

result in a water level height of 1.156m. Residents have previously submitted both video and photographic evidence showing the brook with a water level height of 1.26m.

- It has been proved by a survey that the land is lower, and should be registered as flood zone 3.
- The land has now been raised and we are now at risk of flooding in heavy rain from the diversion of the floodplain. Strongly object to a tank which should not even be considered and the land returned to its original state. The tank they propose will not take the volume of water which the floodplain takes when you look at the area of the floodplain and the dimensions of the tank, that it will fill within minutes and flood water will then make its way towards Windermere Road.
- The developer has planned to build a tank to take flood water from Press Brook in heavy rain, this tank is will not take the volume of water that the floodplain did.

Ecology

- The wildlife buffer zone is being encroached. The Derbyshire Wildlife Trust stated that the wildlife buffer should be 10 metres from the top of the brook bank. The developer has measured the buffer from the middle of the brook which is within the boundaries of the properties of Windermere Road
- The developer does not own the brook and should take the measurement from the bankside as stated by DWT. Encroaching this also is an ecological concern in respect to the brook, otters, water voles, trout, kingfishers, etc.
- Object in relation to ecological reasons, the orchard on site which has supported a vast array of wildlife has already been removed, with the remaining trees, which are currently under a Tree Protection Order at risk, due to the developers plans in relation to the boundary of the site encroaching on the wildlife buffer zone of 10 metres from the boundary being brought into question.
- The hedgerow which should have been left, the southwestern corner has been cut back to provide a better view of the massive advertising hoardings for the building plot
- The site construction compound set up and the entrance road in place on the west side of the site is in close proximity to the wildlife buffer & otter mitigation section. Heavy duty machinery is causing disturbance for the wildlife
- Request that the legal measurements for the orchard be checked & clarified, Also the measurements for the wildlife buffer be checked & clarified because we object to the developers uprooting /destroying part of the Orchard & taking their measurements for the wildlife buffer from within the Press Brook watercourse.

- The new layout will also impede on the wildlife buffer zone that was agreed and affect trees in the TPO.

Highways

- Amended drawing states that there is no visitor parking for the "affordable homes" As these properties back on to Clay Lane it means that people will use the Lane for overflow parking, an area where on street parking is already at a premium.
- There is no footpath included up the northern side of Clay Lane up to the A61, the road junction is too narrow at that point for a footpath on both sides of the carriageway or the safe passage of cyclists. There is no crossing point at that junction or lower on Clay Lane. It is too narrow for the existing traffic. This estate will exacerbate the existing traffic problems, if it goes ahead for the 35 houses planned. [officer note - the amendments do not propose any changes to the approved access]
- There are insufficient parking places for the likely cars within the plot
- As there is pedestrian access onto Clay Lane from the western edge of the site, it is highly likely that residents being unable or not bothering to park near their houses will park there instead.

Amenity

- In relation to the trees lining Press Brook, any removal of the established trees will be an invasion of privacy as the site stands on a higher elevation. This is also concerning regarding the 'Dead Head' turning point, which in darkness will see headlights from turning vehicles illuminating the rear of properties.
- Moving the new buildings around will enable more properties to overlook those on Windermere Road, having immense impact on the privacy for the existing residents on Windermere Road.

Other matters

- Housing will overwhelm school and medical places
- The development will cause disruption to an already congested A61
- The Council has seen fit to say that this land was suitable for 25 houses, but this is for 35 and does not meet the Council's own requirements for space [Officer note: the development is for 34 units and this is unchanged in the current application]
- The contractors are already working on this plot of land, before planning permission is granted.
- The contractors have created a gated entrance for road traffic at the southwestern edge of the proposed building estate
- If the Council went back to their original concept of the land being suitable for 25 houses, there would be sufficient land for the houses to be built away from any land which will require raising, to prevent flooding to them and flood existing housing instead

- Alleged that the developer gave false information about the level of the land in the northwest corner stating it was higher than Windermere Road
- Residents have shown to the LLFA that the land in the north west corner is lower than Windermere Road
- The road is limited to 7.5 tonnes, except for access. So is the bridge at risk of damage so the builders can fill their land with building supplies.
- There is now a substantial quantity of building materials stored in the area of the plot that according to the wildlife reports should be the wildlife buffer.
- Residents of Windermere Road undertook a survey of the levels in the north west corner of the site from the west side of the hedges fencing and the results are submitted. The readings taken show that the embankment on the eastern bank of Press Brook was originally lower than the west bank with the exception of the bank behind house number 22 which was 1cm higher which is negligible. However the readings of the new elevated levels taken on the 28th August show a significant rise in levels.
- The report by DLP planning has now stated that they will not be providing any further information.
- Object to the revised planning objection on the grounds that the north west corner has not been correctly surveyed.
- Would also like to know what mitigation action do the LPA plan.

6.0 Relevant Policy and Strategic Context

6.1 The Development Plan currently comprises the North East Derbyshire Local Plan.

The policies most relevant to this development are as follows:

SS1 – Sustainable Development

SS2 – Spatial Strategy and Distribution of Development

LC1 – Housing Allocations

LC2 – Affordable Housing

LC4 – Type and Mix of Housing

SDC11 – Flood Risk and Drainage

SDC12 – High Quality Design and Place-Making

ID1 – Infrastructure Delivery and Developer Contributions

ID2 – Provision and Safeguarding of Transport Infrastructure

ID3 – Sustainable Travel

National Planning Policy Framework

- 6.2 The National Planning Policy Framework is also relevant in the determination of the application. The NPPF states that decisions should apply a presumption in favour of sustainable development which means approving development proposals that accord with an up-to-date development plan without delay or where the policies which are most important for determining the application are out of date granting permission unless policies in the framework that protect areas or assets of particular importance provides a clear reason for refusal or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the framework taken as a whole.

7.0 Planning Issues

- 7.1 This application seeks consent for a minor material amendment to the approved plans condition applied to application NED/21/00221/FL under section 73 of the Town and Country Planning Act 1990. A Section 73 application cannot be used to otherwise change the description of the development. There is no statutory definition of what constitutes a 'minor material amendment' but it can include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. Officers are of the view that what is sought by this application can be considered a minor material amendment to the approved scheme of works.
- 7.2 The site benefits from an extant permission for residential development of 34 dwellings (NED/20/00221/FL refers). Relevant pre-commencement conditions have been discharged and a lawful start has been made to the development. It is therefore extant.
- 7.3 This application seeks minor changes to the road alignment and plot positions due to the line of the existing sewer varying from the asset plans. This impacts on the internal road layout and plot locations in the north-west sector of the site only.
- 7.4 Following discussions between officers, the LLFA, Members and the MP the applicant has submitted some additional details to address concerns relating to surface water flooding which include the provision of an underground relief tank in the north-west corner of the site. If consent is granted that will be implemented as submitted.
- 7.5 There have been some minor amendments made to the layout with respect to the orientation of plots 21 to 24. The garden and orientation of plot 19 has been amended to bring it in line with the Council's Design Guidance and the detached garage set back from the boundary fencing. Updated landscaping drawings and boundary treatment plans have also been submitted.

- 7.6 The plots that the s73 application relate to are plots 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26.

Principle of Development

- 7.7 The site benefits from an extant permission that is currently being implemented and within the newly adopted Local Plan (LP) the application site is identified as a housing allocation (CC2) for approximately 25 dwellings. The settlement development limits for Clay Cross are redrawn to include this site.
- 7.8 As this is an application for a minor material amendment that does not seek to change the description of the development the principle of the development is acceptable and has been previously consented.

Design and Layout

- 7.9 The proposed plot types are the same as approved under the original application and the proposed finished floor levels (FFL) and proposed finished ground levels of the site are also very similar to those approved under 20/00221/FL.
- 7.10 The bungalow at Plot 11 in the north west corner of the site is now proposed to be set back 1m from the proposed boundary fence line (which is unchanged) and would have the same finished floor level (FFL) (see below).

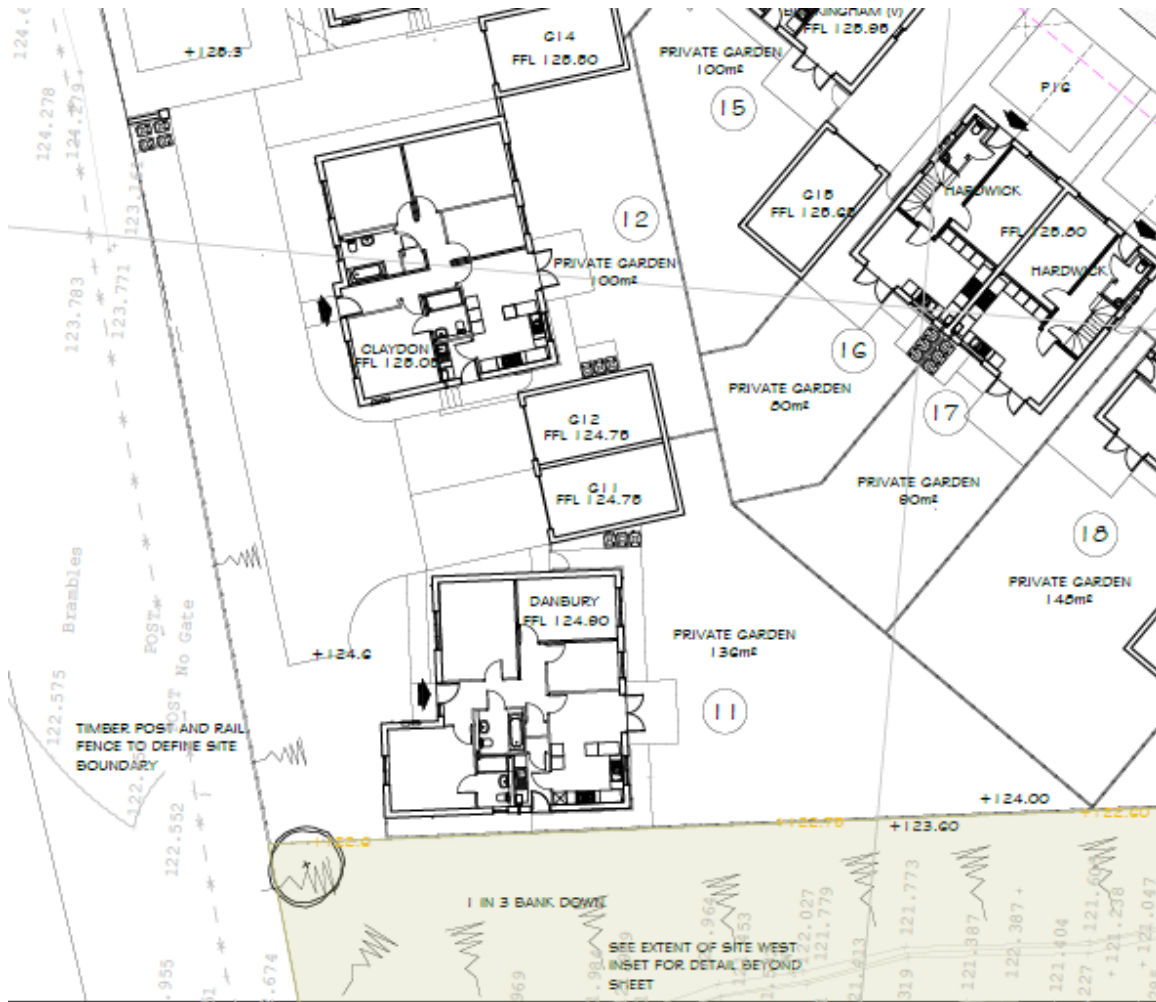


Figure 7: proposed Plot 11

- 7.11 The approved layout has plots 17 and 18 (a pair of semi-detached houses) between 7m and 13m from the boundary fence line with a FFL of 124.90, and the detached houses at plot 19 and plot 20 where the house siting is unchanged on both layouts abutting the boundary fence line with the Press Brook. Plot 19 was 6m from the boundary with a FFL of 124.75.
- 7.12 The proposed layout reduces the number of properties which directly abut the brook from 4 units to 2. Plot 19 is now proposed to be 3.5m from the boundary fence line rather than the previous 6m and would have a FFL of 124.90 which would be 15mm higher than approved.
- 7.13 Plots 16, 17 and 18 would not border the brook and be set back away from this boundary between 13m and 26m from the fence line. The proposed FFL's of the 3 units would be 1m higher than approved due to these being set further into the site and is consistent with the approved layout. (see below). An additional condition is proposed in respect of the finished floor levels and finished ground levels of plots 14 to 20 where these differ from the approved layout.

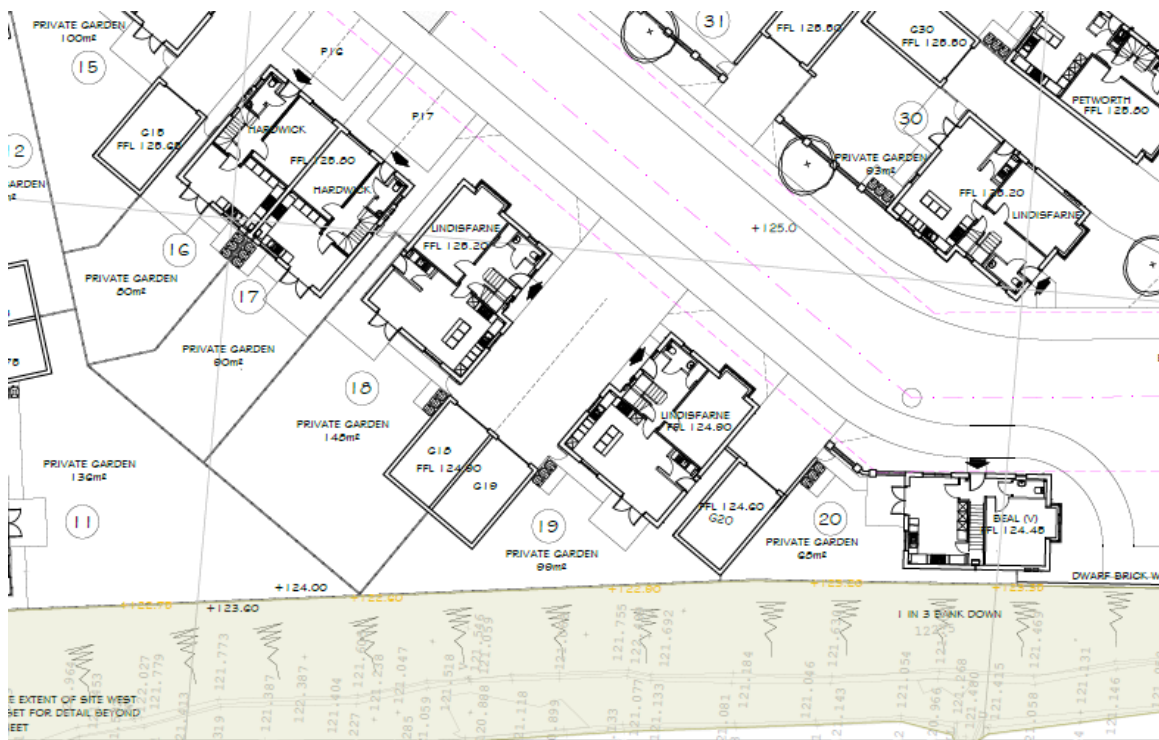


Figure 8: proposed layout for plots 16 to 20

- 7.14 The proposed amendments to the approved layout accord with the Council's Design Guidance "Successful Places" in terms of garden sizes with the exception of plot 20 which would now have a garden of 68 m² where the guidance sets out it should be 70m².
- 7.15 Whilst Officers consider it unfortunate that the siting of plot 19 is closer to the fence line and the brook, the setting back of plots 16-18 and the reduction in units directly abutting the brook offer design improvements over the extant permission which are considered beneficial. In summary, therefore, Officers consider that the amendments to the layout are acceptable in design terms.

Impact on Heritage Assets

- 7.16 The original application was accompanied by a Heritage Impact Assessment which assessed the impact on the nearby designated heritage assets, specifically the Clay Cross Conservation Area, the Grade II listed St Bartholomew's Church and the Grade II listed Clay Cross Tunnel Southern Portal.
- 7.17 Officers do not consider that the proposed changes submitted under this minor material amendment would have any greater impact on the identified heritage assets than the approved scheme.

Flood Risk

- 7.18 The current, section 73, application as originally submitted proposed only to substitute the alternative layout drawings for those previously approved, none of which proposed any revisions to the bank of the brook or indeed to the site levels. The original application was accompanied by a Flood Risk Assessment and all associated details were approved under the original permission and by the discharge of the pre-commencement conditions attached thereto. Members will recall that the Lead Local Flood Authority (LLFA) raised no objections from a flood risk perspective to that application.
- 7.19 There have been a number of objections raised to the current application from residents who live on Windermere Road and whose properties lie within the Environment Agency (EA) Flood Zones 2 and 3.
- 7.20 Since the grant of planning permission, it has been discovered that part of the site which is to be developed is at risk of flooding and, further, that a consequence of the development permitted might be to increase the risk of flooding to properties on Windermere Road, on the opposite side of the Press Brook. Prior to the grant of planning permission originally the developer made a factual representation that the bank of the Press Brook on the development side was higher than the opposite bank and so that there was no additional risk of flooding arising from the development. The LLFA, as statutory consultee and expert advisor to the Council, raised no objections to the application based on all the information available to it at that time. As matters have progressed, it has become apparent that the developer's representation was incorrect.
- 7.21 The EA has been consulted on the current application and have commented that this is a difficult site as the actual application site lies mainly within flood zone 1 with a very small section of the site at the western boundary shown to fall within flood zones 2 and 3 and all the built elements will be set back within flood zone 1. It also comments that the applicant has sought to offset the loss of any floodplain, which is based on anecdotal evidence from local residents at present.
- 7.22 The EA have further commented that the flood map for planning is a large strategic model and if there is concern that the flood zones are incorrect then the local residents can submit a flood map challenge pointing out that the Smithy Brook is not a main river and therefore the EA do not hold hydraulic modelling data for this watercourse. The management and maintenance of the watercourse falls under the remit of the Lead Local Flood Authority (LLFA).
- 7.23 The LLFA have been consulted on the current application and initially objected to the proposals on the grounds that it was not possible to provide

an informed comment until such a time that the applicant has submitted further information as set out above. The developer did then submit further information

- 7.24 The LLFA then further commented that the developer had provided the LLFA with an updated hydraulic assessment of the watercourse (Press Brook), based upon actual levels the LLFA had obtained and this indicated that the eastern bank (NW corner of the site) of the watercourse overtops in less than a 1 in 100 year event, which would effectively place part of the site within a Flood Zone 3 designation.
- 7.25 The LLFA further commented that to ensure that the flood risk is not increased to either existing residents or the new properties, it needed to know what the potential flood levels and flood extents are within the development (over a range of return periods and durations), given that the updated hydraulic assessment indicated that the watercourse overtops. Through detailed hydraulic modelling of the watercourse, once a more accurate extent of flooding has been determined, a more accurate assessment could then be made as to how much, or if, flood compensation was required. The LLFA considered that the current submitted hydraulic assessment and flood compensation proposals are not satisfactory enough to give sufficient confidence that the flood risk isn't increased and that any compensation offered is also sufficient.
- 7.26 The applicant has stated that discussions on this issue cannot continue to be raised as part of the present application as they fall outside its scope and terms, which seeks only to substitute the alternative layout drawings for those previously approved, none of which propose any revisions to the bank of Press Brook. The FRA and all associated details were approved under the original permission and have been further substantiated by the discharge of the pre-commencement conditions.
- 7.27 The Briefing Note submitted by the applicant since the last meeting states that the, *“current application seeks only to amend the plans approved under condition 2 of the original permission (which required the development to be built out in accordance with those approved plans). This application is only necessary because when works commenced on site it became clear that a sewer was not in the expected /recorded location.”*
- 7.28 In respect of the perceived flood risk, the agent states that *“the applicant, LPA and the LLFA, are very clear that the alternative layout proposed would not result in an increased impact when compared to the approved application, both in terms of the management of surface water for the development, and with regards to the flood risk both on and off site. Moreover, all of the works within the current application are within Flood Zone 1 (the lowest risk area). Given this, and as stated clearly and*

consistently by ourselves and officers (supported by a legal opinion) in the report to committee on the 14th of December, flood risk is not a material consideration that can be given weight in this application.

7.29 *Despite it not being necessary, or relevant to the application, as a local housebuilder, we have already committed time and expense, offering additional measures to address local concerns, such as the provision of a water storage tank to bolster the capacity of the Brook in this location. However, we now consider this has only served to confuse the issues, with the issues of the original application (which was approved) and the current application merging together. Accordingly, we consider further work and evidence will not support a better understanding of the decision that needs to be made and will only further compound the confusion and misunderstanding that already exists. It is on this basis that we have notified officers that no further information will be provided on this application, a stance that we consider to be lawful, balanced and reasonable given the issues explained.”¹*

7.30 On the issue of flood risk the Council has sought the advice of independent Counsel who has advised that the amendments to be made to the approved layouts pursuant to the current application involve works all of which are to be done in Environment Agency Flood Zone 1, i.e. on land where there is no risk of flooding. In such circumstances it would not be usual to ask for any flood risk modelling. As it has not been demonstrated that the section 73 application works pose any additional risk of flooding to that arising from the planning permission already granted, which is the fallback position, no proper request can be made for flood risk modelling nor can the absence of such modelling properly be relied upon to refuse the application. Further, it is advised that in the event that the LLFA cannot identify how and to what extent the section 73 application increases the risk of flooding over and above that which already exists arising from the permission granted, the decision maker can and should place no weight on any objection made by the LLFA. Counsel reminds the Council that weight is a matter entirely for the decision maker and that provided that the decision maker properly takes into account all relevant matters and does not take account of irrelevant matters, no court will interfere with any decision as to weight given to a particular matter unless there has been perversity. However, to give weight to an objection which is irrelevant to the works being proposed would be perverse.

7.31 In the circumstances of this case Officers note that the LLFA are satisfied that there is not a greater flood risk from the scheme proposed by the current application over those of the extant permission to which it raised no objections. In such a case, Officers advise any objection by the LLFA can and should be accorded no weight. Accordingly, there are no planning

¹ Planning Committee Members Briefing Note submitted by DLP on 23.12.2021

reasons evident to Officers on which to refuse the application on grounds of flooding or flood risk.

Impact on Ecology

- 7.32 Concerns have been raised regarding the impact of the development on the ecology of the Press Brook and in particular to the lack of a suitable wild buffer for otters.
- 7.33 Comments from residents state the buffer has been reduced; however the buffer is consistent with what was approved under the original application and is not proposed to be reduced as part of this application.
- 7.34 For clarity with regards to the buffer the DWT originally requested an average width of the buffer of 10m. However there is a difference of opinion between the DWT and the applicants' ecologist as to where the buffer should be measured from.
- 7.35 The Derbyshire Wildlife Trust have been consulted on the current application and have not raised an objection commenting that in terms of the impacts to the buffer zone along Press Brook, there does not appear to be a significant change to the width or alignment of the buffer between this layout and that previously approved. Indeed, DWT note that the layout of the houses immediately east of the buffer has been altered so that there are fewer, larger gardens adjacent to the buffer and this may be more beneficial in terms of less noise and disturbance to the Brook habitats and species that use them.
- 7.36 Notwithstanding this, DWT do not consider that the buffer zone complies with its previous advice, as it appears to be measured from the channel (and possibly the western edge of the channel) when the advice given has consistently recommended it should be measured from the bank top.
- 7.37 On this issue, Officers conclude that the application does not propose any changes to the buffer that has been agreed and approved. Officers are of the view that the amendments proposed may actually benefit ecology and so are acceptable in respect of that issue.

Impact on Trees

- 7.38 The trees along Press Brook are now protected by a Tree Preservation Order. An application has been submitted for works to these trees in order to allow for the erection of the boundary fence on the site boundary. Officers do not consider that the current application has any greater impact on the trees than the original layout.

Highways and Other Matters

- 7.39 The Police Designing out Crime Officer has made comments in respect of a footpath link; however this was included in the approved layout and is not proposed to be amended.
- 7.40 The Highway Authority has not raised any objections to the amendment to the internal road layout. The access from Clay Lane would be unaltered to that which has already been granted approval. The applicant has demonstrated swept paths for a refuse vehicle of the dimensions used by NEDDC Streetscene.
- 7.41 Residents have raised concerns in respect of the parking provision; however the number of parking spaces is the same on both the approved and the current application.

8.0 Summary and Conclusion

- 8.1 This is an application that proposes a minor material amendment to the layout of an approved housing development. The development remains acceptable in principle and accords with the overall objectives of the Local Plan.
- 8.2 As a result of concerns raised by residents and the LLFA, the applicant is proposing to install an additional underground tank in an attempt to address these concerns. Notwithstanding these amendments, the legal advice to the Council is clear, that in consideration of the original application the Council properly consulted the LLFA prior to granting permission. The LLFA did not object or request detailed modelling be done, as it could have done, and planning permission was correctly granted.
- 8.3 The LLFA has not identified how and to what extent the current, proposed works increase the risk of flooding over and above that which already exists arising from the permission granted, and therefore Officers consider no weight can be attached to the objection received from the LLFA.
- 8.4 On the issue of ecology and trees, the proposed amendments have no greater impact on either issue than the approved scheme and are considered to be acceptable.
- 8.5 The S106 agreement which requires biodiversity off setting is carried over to the new permission and the applicant has agreed to this.
- 8.6 Accordingly, Officers consider the amendment proposed are minor and non-material and that no new issues are raised that outweigh this conclusion. It is recommended that permission be granted and subject to conditions.

9.0 Recommendation

9.1 GRANT Full Planning Permission subject to the following conditions (and the carryover of the extant section 106 agreement) with the final wording and content of the conditions delegated to the Planning Manager (Development Management).

1. The development hereby approved shall be carried out in accordance with the details shown on the following plans:-

- 19-03-P01 Rev H – Site Plan
- 600183-HEX-00-00-DR-C-9522 P02 S38 Vehicle Swept Paths
- 19-03-P02 PLOT 1 BEAL
- 19-03-P03 PLOT 3 BEAL
- 19-03-P04-A PLOT 7 and 31 BEAL (A1)
- 19-03-P05-A PLOT 20 BEAL (A1)
- 19-03-P06 PLOTS 2 AND 29 PETWORTH (A1)
- 19-03-P07- A PLOT 4 LINDISFARNE
- 19-03-P08- A PLOT 18 LINDISFARNE (A1)
- 19-03-P11- B PLOT 19 LINDISFARNE (A1)
- 19-03-P13- A PLOT 8 SUDBURY (A1)
- 19-03-P14- A PLOT 9 SUDBURY (A1)
- 19-03-P15- B PLOT 12 CLAYDON (A1)
- 19-03-P16- A PLOT 10 CLAYDON (A1)
- 19-03-P17- A PLOT 14 CLAYDON (A1)
- 19-03-P18 REV B PLOT 11 DANBURY (A1)
- 19-03-P19- A PLOTS 21-22, 23-24, 25-26 2 BED AFFORDABLES
- 19-03-P20 PLOT 28 ROSEDENE
- 19-03-P21 PLOT 34 ROSEDENE
- 19-03-P22-A PLOT 15 BUCKINGHAM (A1)
- 19-03-P23- A PLOTS 5-6 HARDWICK (A1)
- 19-03-P24 PL
- OTS 17, 18, 32, 33 HARDWICK
- 19-03-P25 GARAGES (A1)
- 19-03-P26 REV D SITE SECTIONS (A1)
- 19-03-P27- A PLOT MATERIALS SCHEDULE
- 19-03-P29 REV B BOUNDARY DETAILS (A1)

- Otter Mitigation Strategy
- 600183-HEX-00-00-DR-C-9511 P02 S38 GENERAL ARRANGEMENT
- 600183-HEX-00-00-DR-C-9512 P03 S38 CONSTRUCTION LAYOUT

- 600183-HEX-00-00-DR-C-9515 P03 S38 SETTING OUT
- 600183-HEX-00-00-DR-C-9519 P02 S38 LEGAL PLAN
- 600183-HEX-00-00-DR-C-9522 P02 S38 VEHICLE SWEPT PATHS
- 600183-HEX-00-00-DR-C-9531 P01 DRAINAGE AREAS PLAN
- 19-03-W01 F SITE PLAN
- CLCC-BSP-ZZ-XX-DR-C-0003 P01 PRESS BROOK RELIEF TANK
- OPEN CHANNEL CONVEYANCE CAPACITY ASSESSMENT received 01/10/2021
- PRESS BROOK RELIEF TANK ASSESSMENT received 01/10/2021
- MANNING CHANNEL FLOW REPORT RECEIVED 22/10/2021
- 09610-FPCR-XX-XX-DR-L-0001 D REVISED LANDSCAPING DRAWING
- 09610-FPCR-XX-XX-DR-L-0002 D REVISED LANDSCAPING DRAWING
- W29C REVISED BOUNDARY TREATMENT PLAN

Unless otherwise subsequently agreed through a formal submission under the non-material amendment procedures and unless otherwise required by any condition in this decision notice.

Reason: For Clarity and the avoidance of doubt.

Employment and Training

2. The scheme to enhance and maximise employment and training opportunities during the construction stage of the project, including a timetable for implementation, shall then be implemented in full in accordance with the timetable approved under application NED/21/00659/DISCON

Reason: In the interests of creating sustainable development in accordance with policy GS1 of the North East Derbyshire Local Plan.

On-site Public Spaces

3. Prior to the first occupation of any dwelling a scheme for the delivery and future maintenance of all on site public open space, and a timetable for implementation relative to the completion of dwellings hereby approved. Thereafter any approved scheme of open space shall be implemented in full in accordance with the approved timetable and shall be maintained in accordance with the approved scheme thereafter.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan

Sustainable Design, Character and Appearance

4. The scheme of landscaping shall be carried out in accordance with drawing 09610-FPCR-XX-XX-DR-L-001 revision D: Soft Landscaping Proposals, and 09610-FPCR-XX-XX-DR-L-0002 revision D.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan.

5. All planting, seeding or turfing in the approved scheme of landscaping shall be carried out in the first planting and seeding season following the occupation of buildings or the completion of the development, whichever is the sooner. Any plants or trees which within a period of 5 years from the completion of development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan

6. The boundary treatments shall be implemented in accordance with drawing 19-03-W29 revision C prior to the occupation of the relative plot numbers and retained as such thereafter.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan.

7. The proposed finished floor levels of the dwellings and the proposed finished ground levels of the site shall be implemented in accordance with drawing 19-03-W01 revision F.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan

8. Prior to first occupation of any dwelling, a scheme for the provision of public art on the site including a timetable for implementation shall be submitted to and approved in writing by the Local Planning Authority. The public art shall be implemented in full in accordance with the approved timetable and retained as such thereafter.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan.

9. The scheme for mitigating climate change through sustainable design and construction of the dwellings shall be implemented in accordance with details approved under NED/21/00659/DISCON.

Reason: In the interests of creating sustainable development in accordance with policy GS1 of the North East Derbyshire Local Plan.

10. No part of the development shall be occupied until details of arrangements for the storage of bins and collection of waste have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

Reason: In the interests of highway safety and in accordance with policies T2, T9 and H12 of the North East Derbyshire Local Plan

Ecology

11. No vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

12. The Otter Mitigation Strategy shall be implemented in accordance with details approved under NED/21/00659/DISCON and retained as such thereafter.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

13. The Badger Mitigation Strategy shall be implemented in accordance with details approved under NED/21/00659/DISCON and retained as such thereafter.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

14. Prior to the installation of services, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard the Press Brook corridor and the eastern orchard and maintain their value to nocturnal wildlife. The Strategy should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Such approved measures will be implemented in full.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

15. The Biodiversity Enhancement Plan shall be implemented in accordance to details approved under NED/21/00659/DISCON and retained as such thereafter.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

16. The scheme to mitigate and compensate the net loss in biodiversity shall be implemented in accordance to details approved under NED/21/00659/DISCON. The scheme shall thereafter be provided in accordance with the approved details and timescales or before 90% of the dwellings are occupied whichever is sooner.

Reason: To safeguard the ecology of the site and ensure ecological interest is conserved in accordance with Policy NE6 of the North East Derbyshire Local Plan.

Drainage

17. Within 28 days of the date of this decision, a scheme for the provision of foul drainage works shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented in full before the first occupation of the dwellings and retained as such thereafter.

Reason: In the interests of ensuring proper drainage of the site in accordance with policy CSU4 of the North East Derbyshire Local Plan.

18. Within 28 days of the date of this decision a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- a. Flood Risk Assessment & Drainage Strategy, Clay Lane, Clay Cross for Woodall Homes Ltd by BSP Consulting Referenced CLCC-BSP-ZZ-XX-RP-C-0001-P02 dated June 2020 Revision P02 and also including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team,

b. And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015),
c. and including any additional details submitted relating to maintenance and accessing of the watercourse for the lifetime of the development
have been submitted to and approved in writing by the Local Planning Authority.

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

19. Within 28 days of the date of this decision a detailed assessment shall be provided to the Local Planning Authority for written approval, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy.

- I. into the ground (infiltration);
- II. to a surface water body;
- III. to a surface water sewer, highway drain, or another drainage system;
- IV. to a combined sewer

20. Within 28 days from the date of this decision a detailed assessment shall be submitted to the Local Planning Authority for written approval, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.

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

21. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the

national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

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

Ground Conditions

22. The development shall be carried out in accordance with the remediation strategy approved under NED/21/00829/DISCON.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework.

23. Prior to any part of the permitted development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 170 of the NPPF.

24. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the NPPF.

25. The development shall be undertaken in accordance with the Written Scheme of Investigation for archaeological work approved under NED/21/00659/DISCON.

Reason: So as to record and advance understanding of a heritage asset in accordance with The National Planning Policy Framework and Policy GS7 of the North East Derbyshire

26. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 26.

Reason: So as to record and advance understanding of a heritage asset in accordance with The National Planning Policy Framework and Policy GS7 of the North East Derbyshire

27. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 26 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: So as to record and advance understanding of a heritage asset in accordance with The National Planning Policy Framework and Policy GS7 of the North East Derbyshire

28. Where the findings of the intrusive site investigations (required by the condition above) identify that coal mining legacy on the site poses a risk to surface stability, no development shall commence until a detailed remediation scheme to protect the development from the effects of such land instability has been submitted to the Local Planning Authority for consideration and approval in writing, including the submission of a layout plan which identifies appropriate zones of influence for the mine entry on site, and the definition of suitable 'no-build' zones. Following approval, the remedial works shall be implemented on site in complete accordance with the approved details.

Reason: To protect the environment and address any coal mining legacy issues and in accordance with Policy CSU6 of the North East Derbyshire Local Plan.

29. Details of any development works within 15m, measured horizontally, from the outside face of the Tunnel extrados shall be implemented in accordance with details approved under NED/21/00659/DISCON.

Reason: In the interests of the safety, operational needs and integrity of the railway.

30. Excavations and earthworks carried out near the railway undertakers boundary fence shall be in accordance with NED/21/00659/DISCON.

Reason: In the interests of the safety, operational needs and integrity of the railway.

31. Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement.

Reason: In the interests of the safety, operational needs and integrity of the railway.

32. The development shall be carried out in accordance with the Method Statement in relation to works around the tunnel air shaft approved under NED/21/00659/DISCON.

Reason: In the interests of the safety, operational needs and integrity of the railway.

Amenity

33. Construction works on site and deliveries to the site shall be undertaken only between the hours of 7:30am to 6pm Monday to Friday and 7:30am to 12pm on Saturday. There shall be no work undertaken on site or deliveries to the site undertaken on Sundays or public holidays.

Reason: To protect the amenity of nearby property occupiers and users in accordance with policy H12 of the North East Derbyshire Local Plan.

Highways

34. The scheme of highway improvement works in connection with the potential relocation of an existing speed hump fronting the site, together with a programme for the implementation and completion of the works shall be implemented in accordance with NED/21/00659/DISCON. No part of the development shall be brought into use until the required highway improvement works have been constructed in accordance with the approved details.

REASON: In the interest of highway safety and in accordance with policies T2 and T9 of the North East Derbyshire Local Plan.

35. The construction operations shall be carried out in accordance with the construction management plan approved under NED/21/00659/DISCON

36. Throughout the period of development, vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
37. The temporary access for construction purposes shall be implemented in accordance to details approved under NED/21/00659/DISCON.
38. No part of the development shall be occupied until a new estate street junction has been formed to Clay Lane (and appropriate frontage footway and tactile crossing) in accordance with the revised application drawings that shall be submitted to and approved in writing by the local planning authority. The access shall also be provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centreline of the junction, for a distance of 43m in each direction, measured up to 1m into the nearside carriageway at the extremity of the splay. The land in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.
39. Within 28 days, or other such period of time as may be agreed with the Local Planning Authority, of the permanent access being constructed all other means of access to Clay Lane (existing or temporary) shall be permanently closed and the existing vehicle crossover(s) reinstated with full height kerbs and appropriate footway / verge construction in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
40. Within 28 days of the date of this decision construction details of the residential estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior in accordance with the approved timetable. The applicant is advised to obtain construction approval from the Highway Authority prior to submission of any details in connection with this condition.
41. The carriageways and footways shall be constructed in accordance with the details approved under condition 36 above, up to and including binder course surfacing, to ensure that each dwelling, prior to occupation, has a properly consolidated and surfaced carriageway and footway between the dwelling and the existing public highway. Until final surfacing is completed, the footway binder course shall be provided in a manner to avoid any upstands to gullies, covers or other such obstructions within or abutting the footway. The carriageways and footways in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling.

42. The gradient of the new estate street access shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and 1:20 thereafter.
43. The dwellings, the subject of the application, shall not be occupied until the estate street has been provided with suitable turning arrangements to enable service and delivery vehicles to turn. In the case where interim turning arrangements are constructed these must remain available until any permanent estate street turning is available, in accordance with the approved estate street designs.
44. All private and shared driveways, and parking spaces within the site shall not be taken into use until provided with 2.4m x 25m, or other such dimensions as may be agreed with the Local Planning Authority, visibility splays, the area in advance maintained free from any obstruction exceeding 1m (600mm if vegetation) relative to the adjacent carriageway channel level and 2m x 2m x 45° pedestrian intervisibility splays on either side of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.
45. No part of the development shall be occupied until details have been submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of water from private areas/driveways onto the adoptable highway. The approved scheme shall be undertaken and completed prior to the first use of private areas/accesses and retained as such thereafter.
46. The dwellings the subject of the application, shall not be occupied until space has been provided within the site curtilage for parking (including cycle parking), located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.
47. The garages hereby permitted / car spaces to be provided, shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and/or re-enacting that Order) the garage / car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the property without the grant of further specific planning permission from the Local Planning Authority.
48. The first 5m of the proposed access driveways shall not be surfaced with a loose material (i.e. unbound chippings or gravel etc).

49. No gates, chains or other barriers (or any part of their opening arc) shall be permitted to open outwards over the adjacent street - any gates, chain or barriers shall open inwards/ onto the site only.
50. Prior to the first occupation of any dwelling, details of the proposed arrangements for future management and maintenance of the streets shall be submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details or until such time as an agreement has been entered into under section 38 of the Highways Act 1980, if appropriate.
51. Within 28 days of the date of this decision, and notwithstanding the submitted details, details of the existing ground levels, proposed finished floor levels of Plots 14 to 20 and the proposed finished ground levels of those plots, relative to a datum point which is to remain undisturbed during the development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details and the levels shall be retained as such thereafter.

Reason: In the interest of the appearance of the area and in accordance with policies GS1 and H12 of the North East Derbyshire Local Plan