

PLANNING COMMITTEE – 23rd August 2022.

REFERENCE NUMBER: 21/00214/FL Application Expiry Date: 26.08.2022

Application Type: Full Planning Permission

Proposal Description: Application for retention of use of café for general café use and the retention of the existing café building as currently built (Amended Plans / Amended Title)

At: Lakeside Café, Fishing Ponds, Keepers Lane, Barlow

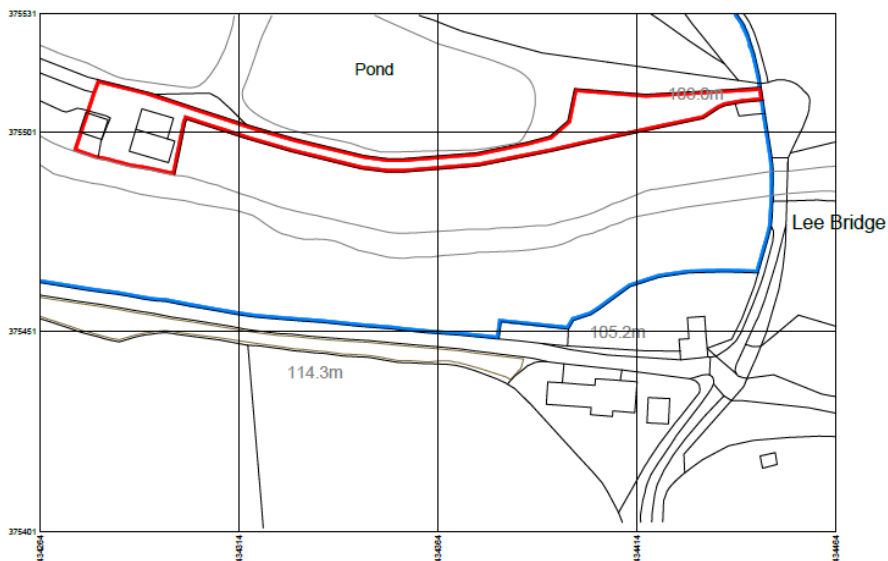
For: Lakeside Cafe C/o Agent

Third Party 74 **Parish:** Barlow Parish

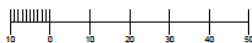
Reps: **Ward Name:** Barlow and Holmesfield Ward

Author of Colin Wilson **Date of** 11.08.2022
Report: **Report:**

MAIN RECOMMENDATION: **Approve Planning Permission**



Produced on 22 March 2021 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date.
This map shows the area bounded by 434264 375401, 434465 375404, 434466 375531, 434264 375530, 434264 375459, 434264 375401
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1.0 Reason for Report

- 1.1 The application has been referred to Planning Committee by the Planning Manager in view of the complex planning issues raised by this application.

2.0 Proposal and Background

Site Description

- 2.1 The site comprises of fishing lakes and associated land within countryside to the east of Barlow. The specific site of the application comprises a range of buildings on the southern banks of the fishing lakes. The buildings subject of this application comprise a café and attached tackle shop.
- 2.2 In terms of the site constraints, the site is situated within open countryside designated as North East Derbyshire Green Belt. The site is situated within a Designated Wildlife Site, identified as Commonsides Ponds. In addition, the site is located within a Development High Risk Area for coal mining legacy issues, and within Flood Zones 2 and 3.
- 2.3 The fishing lakes and application buildings are accessed via an existing vehicular access off the main highway network. The access is taken from a track which joins Keepers Lane and Smeltinghouse Lane. The track crosses Barlow Brook via a Grade II listed bridge known as Lee Bridge, and is a designated Public Right of Way (Barlow Bridleway 49). Keepers Lane and Smeltinghouse Lane also form Public Rights of Way (Barlow Bridleways 48 and 49 respectively).

Proposals

- 2.4 As amended, full planning permission is sought for the retention of the existing buildings, including a veranda, for the use as a general café to serve members of the public, and a tackle shop associated with the fishing lakes.
- 2.5 The proposals now seek to retain the building(s) as built. The application buildings have been subject to a planning enforcement enquiry and subsequently an application for a Lawful Development Certificate (LDC) has been submitted to the Council. The LDC application (reference 21/00944/LDC) was refused under delegated powers on 08.08.2022. A chronology of the development of the site and the findings of the LDC application are set out below in the main assessment (Section 7 of this report).
- 2.6 Full planning permission was initially sought for further extensions of the café building, in addition to what has already been constructed (Fig 1

below). Subsequently, the applicant has submitted amended plans, which omit the initially proposed extensions and, in effect, seek to retain the building as now built (see plans in Fig 2 below for details):

Fig 1: Initially Proposed Elevational Drawings with Proposed Extensions to the Existing Building (not to scale).

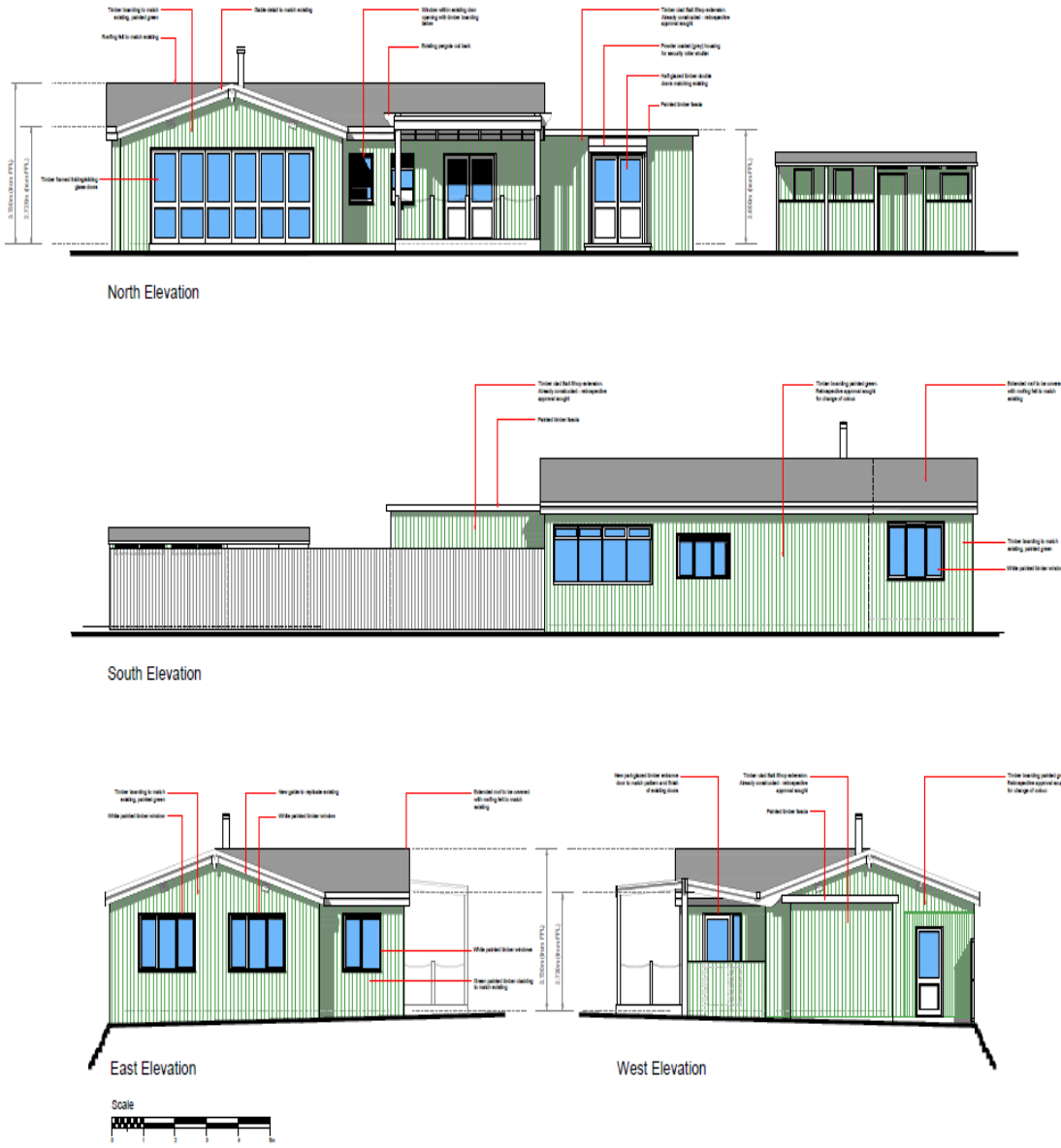
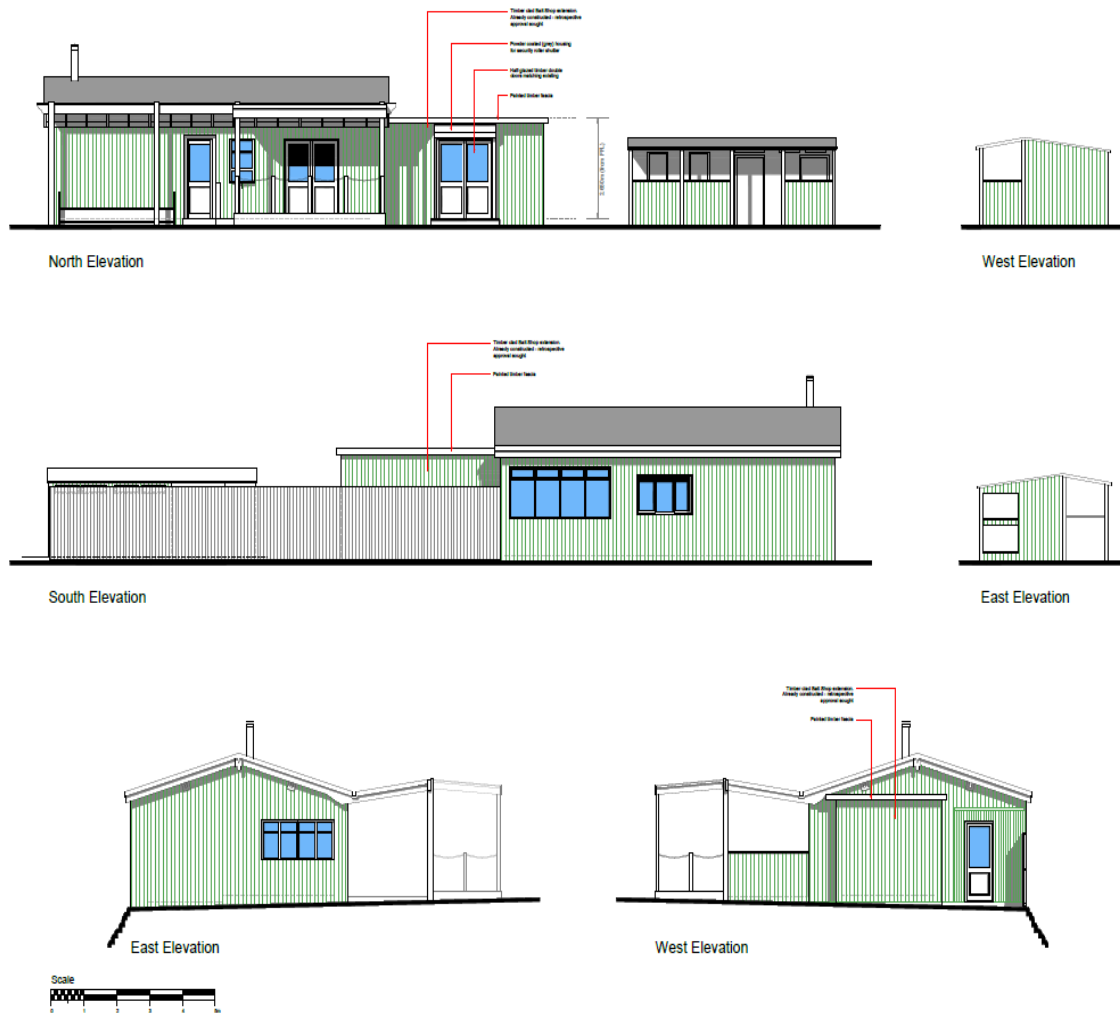


Fig 2: Revised Elevational Drawings with the Additional Extensions Omitted (Not to scale).



2.6 For clarity and the avoidance of doubt, the application is to be assessed on the basis of the amended plans listed below (which were uploaded to the Council’s website on 04.08.2022):

- Existing and Proposed Floor Plans (P100 Rev 4)
- Proposed Elevations (P200 Rev 5)
- Location Plan (P400 Rev 3)
- Site Plan (P500 Rev 2)

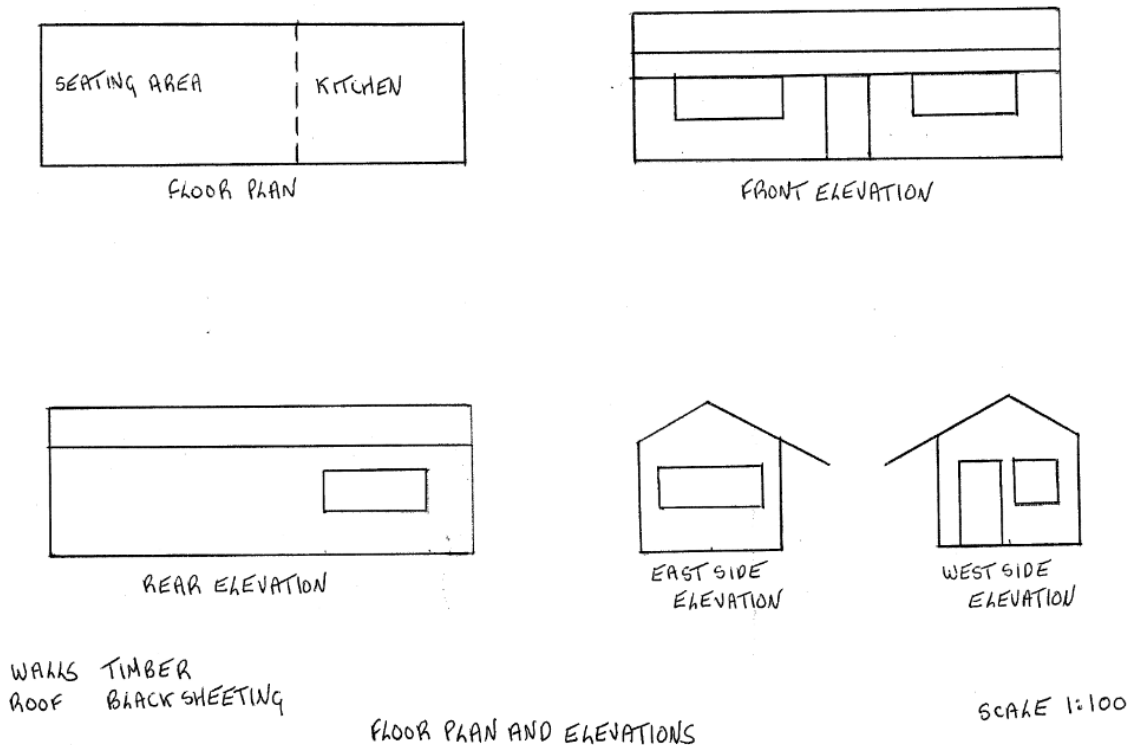
3.0 Relevant Planning History

3.1 There are two additional applications relating to the site that are of particular relevance in the assessment of this application:

3.2 Application reference number 12/00468/FL, for the construction of a replacement snack cabin in association with the existing fishing ponds

which was conditionally approved in 2012. One of the conditions of approval restricted the use of the snack cabin to members of the fishing lake only, setting out a requirement that the snack cabin shall not be used by members of the general public. The plans in Fig 3 below detail the structure approved under 12/00468/FL.

Fig 3: NED/12/00468/FL (not to scale)



3.3 In addition, an application for a Lawful Development Certificate has been submitted to the Council, making the case that the existing buildings and use are lawful (21/00944/LDC). This application was refused under delegated powers on 08.08.2022 and is referred to in more depth in the Assessment set out in Section 7 of this report.

4.0 Consultation Responses

4.1 The **Ward Member** and **Parish Council** were consulted on the application:

The **Ward Member** raised no comments.

The **Parish Council** raised concerns that the application building has doubled in size in a Green Belt area and the proposals are retrospective, which should not be encouraged. The comments added that there will also be traffic issues, as the lane and bridge is narrow this already makes it

difficult for cars to pass when walkers, cyclists, horses etc are using the lane. The Parish Council advised that there will be a need for Highways Officers to consider passing points being established on the lane to improve road safety for everyone who uses it.

- 4.2 **Derbyshire County Council Highways Officers** were consulted on the application, raising comments. See Assessment below for details.
- 4.3 **The Coal Authority** were consulted on the application, raising no objections to the proposed development from a coal mining legacy issue on the basis that the proposals do not appear to require substantial foundations or earthworks.
- 4.4 **Derbyshire Wildlife Trust (DWT)** were consulted on the application and raised no objections to the proposed development from a biodiversity viewpoint. The DWT response sets out that the application is retrospective and largely covers alterations to the existing buildings that have already taken place, and consequently ecological survey work is not considered necessary. DWT do encourage all applications to include benefits to biodiversity and suggest that boxes for bats and birds could be installed on the buildings, if appropriate.
- 4.5 **Environment Agency:** No comments received to date.

5.0 Representations

- 5.1 The application was publicised by way of neighbour letters and the display of a site notice. 74 letters of representation were received – the comments raised can be summarised as follows:
- The café is operating in breach of the previously approved snack cabin, in terms of its use and scale.
 - Environmental protection and residential amenity concerns arising from the café.
 - Highway safety concerns, given the single width nature of the access roads in the vicinity of the site and the increases in vehicular movements associated with the café.
 - Access should be taken from Overlees or Mill Farm to avoid increased vehicular trips along Keepers Lane.
 - Impact on the Grade II Listed bridge (Lee Bridge).
 - Support for the café as an asset to the locality and the wider improvements being made on the site.
 - The café would be a loss to the local community, if removed.

Officer Note: the representations received have been summarised for the purposes of this report and can be viewed in full via the Council's website.

5.2 Members should be aware that the recently received amended plans, for sake of completeness and transparency, have been advertised and comments requested accordingly. However, as the plans show a building of a reduced size from that previously applied for, the receipt and consideration of these amended plans at this stage in any case is not considered at all prejudicial to any interested party.

6.0 Relevant Policy and Strategic Context

North East Derbyshire District Local Plan

6.1 The North East Derbyshire Local Plan (2014 - 2034) forms the Development Plan for the area. The Local Plan policies most relevant to the proposals are set out below:

- SS1 Sustainable Development
- SS9 Development in the Countryside
- SS10 North East Derbyshire Green Belt
- SDC3 Landscape Character
- SDC6 Development Affecting Listed Buildings
- SDC11 Flood Risk and Drainage
- SDC12 High Quality Design and Place Making
- SDC13 Environmental Quality
- ID3 Sustainable Travel
- ID4 New Social Infrastructure

National Planning Policy Framework

6.2 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application.

7.0 Planning Issues

Site History and Background to the Application

7.1 Planning permission was granted in 1999 for a refreshments building on the site and in 2002 for an extension to it. Both permissions were subject to a planning condition that required the use of the facility to be only in connection with the fishing ponds and that the café should not be available for use by the general public.

7.2 The resulting building was completely destroyed by fire in 2012.

7.3 Planning permission was then granted (in 2012) for a replacement snack cabin subject to the limiting condition on use, as was imposed on the earlier permissions. However, the 2012 permission was not implemented. A different, larger building was constructed instead and substantially

completed by December 2012. The new building was, as such, unauthorised.

- 7.4 In 2020 complaints about an increase in traffic and activity associated with the café were made to the Council. A tackle shop and veranda extension had also been constructed. It also came to light then that the café building was larger than originally approved and, in any case, not that which had been granted permission in 2012.
- 7.5 The planning application, subject of this report, was submitted seeking to retain the use, the building and extensions, and to further extend the building. An LDC application for the café (as built in 2012) then followed and has subsequently been refused under officer delegated powers as set out above.

The Café Building

- 7.6 The café building was built without planning permission and substantially completed in December 2012. S171B(1) of the Act¹ provides that where there has been a breach of planning control consisting in the carrying out of a building operation the time period for enforcement is four years which, in this case, would have been by December 2016.
- 7.7 Enforcement action against the café as a “building operation” would not now be possible as the four year period has long expired.

The Café Use

- 7.8 As the café building was not substantially completed until December 2012, it therefore follows that the café “use”, which the building facilitates, could not have commenced until December 2012.
- 7.9 S171B(3) of the Act provides that where there has been a change of use of land the relevant time period for taking enforcement action is 10 years i.e. in this case until December 2022. Therefore enforcement action could still be taken in respect of the café use.
- 7.10 Some form of snack facility has operated [intermittently] on the land since 1999 and the Council has previously granted permission (limited by conditions) for such a use. The possibility of another permission for a limited café use cannot, therefore, be ruled out. However, if the unauthorised café is allowed to go unchallenged, use rights will accrue and the café could then operate in an unencumbered manner (i.e. without planning conditions).

¹ Town and Country Planning Act 1990 (as amended)

- 7.11 An enforcement notice against a “use” can also require the removal of the operational development that facilitates it, even if more than 4 years have passed² [the *Murfitt* principle].
- 7.12 The *Murfitt* principle was examined in some depth in the later *Welwyn*³ case. In *Welwyn*, the judge expressed the opinion that when a local planning authority has allowed the four year period for enforcement against the building to pass, principles of fairness and good governance could, in appropriate circumstances, preclude it from subsequently taking enforcement action against it.
- 7.13 In this case, the possibility of planning permission being granted for an alternative more restricted use of the building cannot be ruled out. Consequently, it is considered that a requirement to remove the building would be a disproportionate response and contrary to the principles of fairness and good governance. Therefore, whilst the LDC application has been refused, as the building has not been in situ supporting the use for an unbroken period of 10 years, the requirement to seek the removal of the existing building is not considered expedient in the overall circumstances of this case as set out above.

Breach of Condition

- 7.14 There is some evidence, over the period 1999-2012, of refreshments being served to the wider public in breach of the limiting condition. However, the possibility for enforcing that condition would have been lost at the time that the building was destroyed by fire in 2012.
- 7.15 The 2012 permission for a replacement café had a similar limiting condition but that condition could only have been enforced if the permission had been implemented. The permission was not implemented and is now time expired.
- 7.16 The café as now operates is open to the wider public but there are no conditions that attach to it because it was an unauthorised building and built without planning permission. In light of the above, a “breach of condition” enforcement notice is not considered an option in this case.

Covered Veranda

- 7.17 A decked covered veranda area to the café was constructed in 2020 without planning permission. The structure is unauthorised and open to enforcement action.

² This is known as the “Murfitt” principle pursuant to the case of *Murfitt v SSE & East Cambridge DC* [1980].

³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

- 7.18 If the main café building is allowed to stay, however, then the main café building would be regarded as the “original building” for Green Belt planning policy purposes. The veranda extension is not considered to be a disproportionate addition and, therefore, would not be inappropriate development in the Green Belt when considered against NPPF paragraph 149(c) and LP policy SS10.
- 7.19 Being constructed of dark stained timber matching the main building and positioned on an existing paved area where there is other outdoor seating the veranda is not considered visually out of keeping with the building or the area more generally.
- 7.20 It is therefore considered (when setting aside the matter of use) that the veranda as an extension to the building is acceptable on its planning merits and that it would not be expedient to enforce against it.

Tackle Shop/Office

- 7.21 Another small extension, of similar construction, has been attached to the side of the café building. It is used as a booking office for the fishery and also for the sale of small items of tackle that may be needed by anglers using the fishery. Insofar as its use is concerned, at its present level, the tackle shop/office is in effect part of the fishery use. Neither is the building considered out of keeping with the fishery and the other buildings visually.
- 7.22 Green Belt policy (NPPF para 149b) and LP policy SS10 2b)) states that appropriate facilities for outdoor sport and recreation in the Green Belt are not inappropriate development in the Green Belt so long as openness is preserved and there is no conflict with Green Belt purpose.
- 7.23 The building is of small scale attaching to the café and positioned between the café and toilet block. It does not appear as an encroachment into the surrounding countryside and is considered therefore to preserve the visual aspect of Green Belt openness.
- 7.24 In its spatial aspect the building adds a little in volume. However, it is not considered as a disproportionate addition to the existing café building even when taken together with the veranda extension. It is therefore in these terms not inappropriate development in the Green Belt under NPPF para 149c) and SS10 2c).
- 7.25 In all these circumstances it is considered that the tackle shop/office building is acceptable on its planning merits and that it would not be expedient to enforce against it.

Principle of Development (Green Belt)

- 7.26 The current application, as amended, seeks full planning permission for the retention of the existing buildings occupying the site, for a general café use (i.e. not restricted for the use of those using the fishing lakes only). As set out above, the application has been amended by the applicant and seeks no further material changes to the buildings already in situ on the site.
- 7.27 Based on the Council's conclusions on the LDC application and the planning merits of the matter (as set out above in Paragraphs 7.1 – 7.25 of this report), Officers consider that seeking to remove the building from the site would be a disproportionate course of action, contrary to the principles of fairness and good governance. Consequently, Officers are of the view that an application to regularise the existing building (and so allow its retention) and its use is acceptable in principle. Having reached the decision that removal of the building would not be warranted, Officers are satisfied that the application, which also seeks to retain the buildings in their current form, would not result in any further harm to the Green Belt by way of inappropriateness, or conflict with the fundamental reasons for including land in Green Belt.

Impacts of the Proposed Use of the Building as a general Café

- 7.28 Officers are of the view that the use of the existing building as a café would not be inappropriate in Green Belt terms. The re-use of existing buildings is an identified exemption to inappropriate development. Therefore, Officers have no reason to conclude that a café use would conflict with applicable Local Plan and NPPF policies pertaining to development in the Green Belt.

Residential Amenity

- 7.29 The building subject of this application is situated approximately 100m from the nearest neighbouring property. The intervening land between the site and properties in the locality comprises a band of dense woodland on the banks of Barlow Brook. Officers are of the view that the relationship between a café use and the nearby residential uses would not give rise to unacceptable harm in terms of noise, odours or nuisance, and is therefore considered acceptable. The applicant proposes café opening hours of 7am to 5pm (on any day). Officers consider that a condition of approval to control the opening hours of the café, to those applied for, would further mitigate any potential impacts on residential amenity levels in the vicinity of the site and restrict any evening opening.
- 7.30 Some concerns have been expressed by local residents regarding disamenity caused by increased vehicular movements associated with the café use. Officers acknowledge that it is likely that some increase in vehicular movements has/will arise as a consequence of the café being open to the general public. However, in the context of the existing traffic

generating use of the site (fishing lakes) and the modest scale of the café, both as originally approved and now, which this application seeks to retain, it is not considered that any significantly harmful amenity impacts would arise by way of increased vehicular movements in the locality.

- 7.31 Based on the above considerations, Officers have no reason to conclude that the proposed development would result in any unacceptable impacts on neighbouring/residential amenity in the locality.

Highway Safety

- 7.32 Policy ID3 of the North East Derbyshire Local Plan and NPPF Paragraph 111 state that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 7.33 Derbyshire County Council (DCC) Highways Officers were consulted on the application.
- 7.34 In their initial consultation response, DCC Highways Officers set out that as a result of this proposal, the gross internal area of the building would be increased approximately from 55sqm to 91sqm. Officer Note: The amended scheme now seeks no further extension of the application buildings.
- 7.35 DCC advised that the proposed increase in the size of the existing café is not significant and does not appear to result in the intensification of the use of the access/highway. DCC went on to advise that the applicant, however, needs to confirm the existing and the proposed car parking spaces at the proposed site, and access to the site, should be shown on the revised plan.
- 7.36 Upon receipt of additional details submitted by the applicant, DCC Highways Officers provided additional comments advising that the access road [to the café] is single-width up to most of its length and 5.5m wide at the junction with Smeltinghouse Lane, without having passing places and does not appear suitable for the two-way traffic movements. DCC added that the track provides access to a number of sustainable transport users and parking to vehicles, and in this context, the PROW route must remain unobstructed at all the time in the interest of highway safety.
- 7.37 In light of the above, DCC Highways Officers set out recommendations for track widening and the introduction of passing places. It was also recommended that the first 10m of the private access road from Smeltinghouse Lane be widened to 5m to avoid vehicles waiting on the main road if another vehicle is using the track on the site.

- 7.38 In this instance, Officers are of the view that the café use comprises a capacity limited by its scale, and the site comprises an existing traffic generating use (the fishing lakes). In this case, Officers consider that a planning condition, in line with DCC recommendations, to require that the first 10m of the private access road from Smeltinghouse Lane be widened to 5m would be reasonable and necessary, in the interests of highway safety and avoid vehicles waiting on the main highway. Such a condition is considered by Officers to provide sufficient mitigation for any increases in vehicular visits to the site. However, the other requirements are not considered necessary in terms of highway safety and would merely assist in avoiding inconvenience within and on the site whilst impacting harmfully on the character of the site by introducing additional hard standing and surfacing within it.
- 7.39 In light of the above, Officers are of the view that the retention of the existing buildings, to be used as a café and tackle shop, would not result in any unacceptable highway safety harm within the vicinity of the site, subject to a condition requiring the track/access closest to the public highway to be widened. Therefore, in these terms, it is considered that the proposals accord with the relevant parts of Local Plan Policy ID3 and Paragraph 111 of the NPPF.

Impacts of the Proposed Development on the Grade II Listed Lee Bridge

- 7.40 Lee Bridge is situated approximately 150m to the east of the application buildings on the private access track serving the site. The Historic England Listing details identify an *“early C18 [bridge], with date stone to arch lining which apparently reads '1722' with C19 alterations. Rubble Coal Measures sandstone, with ashlar voussoirs and arch linings, and massive squared coping blocks. Single-arch bridge, with semi-circular arch, splayed abutments and crudely cantilevered parapet walls. A former packhorse bridge on the old route between the village of Barlow and the town of Dronfield, the bridge was widened in the C 19 to take wheeled traffic. A substantially complete example of rural bridge 'engineering', the design of which anticipates the form of the canal bridge of the late C18.”*
- 7.41 Policy SDC6 of the adopted North East Derbyshire Local Plan relates to development affecting Listed Buildings. The Policy states that proposals for alterations to or changes of use of a listed building will be supported where they preserve the significance of the heritage asset and its setting including impacts on the character, architectural merit or historic interest of the building. Proposals should use materials, layout, architectural features, scale and design that respond to and do not detract from the listed building.
- 7.42 Officers are of the view that the impact of the buildings which this application seeks to retain, on the setting of the Listed Building would be

negligible. Although the site is accessed via Lee Bridge, the application buildings are not seen in the context of the bridge and are not considered by Officers to detract from its significance as a heritage asset.

- 7.43 Officers have no evidence that the increased vehicular movements generated by the café would lead to harm to the significance of the heritage asset. Responsibility for the maintenance and upkeep of the bridge lies with the landowner.

Other Matters

- 7.44 The comments of the Coal Authority and DWT are noted. These raise no additional issues.

Conclusion

- 7.45 It is noted that the LDC application has been refused in respect of the café building. However, for the reasons set out above that matter stands alone and does not need to fetter the taking of enforcement action or the determination of this application.
- 7.46 The expediency of taking enforcement action against the existing building is discussed at paragraphs 7.12 and 7.13 and, for the reasons set out, Officers do not consider it expedient or appropriate to take action to secure the removal of the buildings in situ.
- 7.47 The application originally sought consent to not only retain the building as is, including the tackle shop and veranda but also to add further extensions. These further elements have now been removed from the application and Officers contend that the two extensions for which consent is now sought, the verandah and tackle shop, both represent not inappropriate development in this Green Belt location and, by reason of their scale and construction, acceptable development in the countryside. As such, it is concluded that enforcement action is not expedient or appropriate against them and that planning consent should also be granted for their retention.
- 7.48 There are not considered any technical reasons why planning consent should not be granted. Officers are of the view that, subject to conditions, there would be no harmful impacts caused to the highway network, and potentially only inconvenience off it. Consequently, further on site hard surfacing in the form of passing paces are deemed to be unnecessary and potentially harmful to the character of the area.
- 7.49 There is no proven harm caused to the heritage assets on the site.
- 7.50 Overall, and in closing. Officers conclude it is not expedient to seek the removal of the as built café building and following from that, the ongoing

use is acceptable as is the retention of the two additional structures, the verandah and tackle shop. Accordingly, it is recommended that permission is granted subject to conditions as explained in the report.

8.0 Recommendation

8.1 GRANT Full Planning Permission subject to the following conditions with the final wording and content of the conditions delegated to the Planning Manager (Development Management).:

1 The development hereby permitted shall be started within 3 years from the date of this permission.

(To comply with the provision of Section 91 (as amended) of the Town and Country Planning Act 1990)

2 The development hereby approved shall be carried out and retained in accordance with the amended plans listed below (which were uploaded to the Council's website on 04.08.2022), unless otherwise subsequently agreed through a formal submission under the Non Material Amendment procedures and unless otherwise required by any condition contained in this decision notice:

- Existing and Proposed Floor Plans (P100 Rev 4)
- Proposed Elevations (P200 Rev 5)
- Location Plan (P400 Rev 3)
- Site Plan (P500 Rev 2)

(Reason: for clarity and the avoidance of doubt)

3) The café hereby approved shall only be open to public between the hours of 07:00 to 17:00 on any day.

(As applied for and in the interests of preserving the amenity levels currently enjoyed by the occupiers of nearby properties).

4) Within 84 days of the permission hereby granted, the first 10m of the private access road from Smeltinghouse Lane shall be widened to 5m. The widened track shall be retained as such thereafter.

(In the interest of highway safety)