

22/01533/FUH Retrospective application for the retention of a detached double garage. 9 Foden Close, Shenstone, Lichfield.



For: Mr Tom Smith

Date:	31 July 2023
Agenda Item:	6
Contact Officer:	Tom Watts
Tel Number:	01543 308181
Email:	tom.watts@lichfielddc.gov.uk
Key Decision?	No
Local Ward Members	Cllr David Salter

**PLANNING
COMMITTEE**

1. Executive Summary

- 1.1 This report is for Members to advise on how they would have determined application 22/01533/FUH had the applicant not submitted an appeal for non-determination, subsequent to a decision to defer the application at the meeting of Planning Committee on 3rd July 2023.
- 1.2 Officers can advise that an appeal has been submitted, but not yet validated by the Planning Inspectorate. Members need to give a clear indication as to whether they would have approved the application in accordance with the Officer recommendation or should they have been minded to refuse the application, the reasons for that refusal. This will be included in the statement of case the council submits to the Planning Inspectorate.

2. Recommendations

- 2.1 Members to note that the applicant has submitted an appeal for non-determination, so the application will be determined by the Planning Inspectorate.
- 2.2 Members to review the Officer report presented to Planning Committee on 3rd July 2023 (Appendix A); the 13 points raised by Cllr Salter at that meeting (Appendix B); and the Officer response to those comments (Appendix C)
- 2.3 Members to consider the application again and advise how they would have determined the application had an appeal for non-determination not been submitted. This outcome will be shared with the Planning Inspectorate to inform the appeal process, subject to the Appeal being validated by the Planning Inspectorate.
- 2.4 Subject to the Appeal not being validated by the Planning Inspectorate and the council recovers jurisdiction of the application, Members to delegate to officers the powers to issue the decision notice in line with the decision of planning committee.

3. Background

- 3.1 This matter was originally presented to Planning Committee on 9th January 2023, when Members resolved to approve the Application in accordance with the Officer Recommendation. However, following a clerical error an incorrect plan was included in the Officer presentation. Following Legal advice, the matter was returned to Planning Committee held on 6th February.

- 3.2 At that Committee representations were received from an objector which included that the required correct Statutory Notice had not been served on 16th November 2022 on behalf of the Applicant on the owners of No11 Foden Close, part of which (mainly a shared Drive) is included in the Application Site.
- 3.3 Following an adjournment for officers to obtain information from the applicant and consider the points raised, legal advice was given that Members could proceed to determine the application as the substantive information requirements within the Statutory Notice had been met and that it had been served by the applicant. In addition, the recipient of the Statutory Notice was aware of the application and had made representations. Planning Committee therefore resolved, to approve the application in accordance with the officer recommendation.
- 3.4 Following the meeting, and before the planning permission was issued, further representations were made, and, following a further review, it was found that, although the Statutory Notice served included the necessary details of the application itself, it omitted some mandatory general information regarding owners' rights.
- 3.5 The grant of planning permission does not affect owners' rights to retain or dispose of their property unless there is some provision to the contrary in an agreement or lease. As further representations had been received to the effect that the application site plan, within the agenda pack, and set out in the officer presentation, had incorrectly included land in the objector's ownership. Following further legal advice, the planning permission was not issued, and the applicant agreed to serve a fresh Statutory Notice. This triggered a further 21-day statutory consultation period to allow for further representations from the recipients of the Statutory Notice.
- 3.6 Following the expiration of that consultation period the application was taken back to Planning Committee on 3rd July 2023 with a recommendation to approve. Members were advised that they should consider the application afresh. Members are however reminded that, there is a principle of consistency in planning decision-making. This requires like-applications on the same site to be decided in a like-manner unless there has been a change in Local Plan policies or other material considerations. Where there have been no such material changes then planning reasons should be given for departing from a previous resolution. Members were therefore advised that they should give weight to the previous decisions of planning committee to grant this application.
- 3.7 At the meeting on 3rd July 2023, representations were made by Cllr D Salter who raised 13 points that he considered had not been addressed to his satisfaction in the officer report. The application was subsequently deferred to allow consideration of the points raised by Cllr Salter.
- 3.8 An appeal has been made to the Planning Inspectorate by the applicant. The Planning Inspectorate are yet to confirm that the appeal is valid, or to provide a start date, where the timetable for proceedings is issued. However, it is anticipated that the appeal will be validated in the coming weeks.
- 3.9 It is likely that the appeal will progress under the written representations route, as requested by the appellant. With this procedure, the planning inspector will consider written evidence from the appellant, the Local Planning Authority and anyone else who has an interest in the appeal. The written evidence usually takes the form of a statement of case written by the main parties (the appellant and the LPA) and there is an opportunity to comment on each-other's statements.
- 3.10 The Council's position and evidence will therefore be set out in a Statement of Case.

Alternative Options	There are no alternative options.
Consultation	Whilst the planning application has been subject to normal planning consultation, no specific consultation has been undertaken in respect to this report. All relevant parties will be notified once an appeal start date has been provided by the Planning Inspectorate.
Financial Implications	<p>The appellant could make an application for an award of costs that the Council has been unreasonable in not making a decision and, or, as not given reasonable reasons for refusing the application.</p> <p>Redacted information – further details can be found in the full confidential version.</p>
Approved by Section 151 Officer	Not applicable at this stage.
Legal implications	<p>Planning appeals by written representation are governed by the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009/452). In addition guidance on the conduct and management of appeals generally can be found at https://www.gov.uk/guidance/appeals#planning-appeals--general</p> <p>Specific guidance on costs awards on appeal is found at https://www.gov.uk/guidance/appeals#award-of-costs</p> <p>Redacted information – further details can be found in the full confidential version.</p>
Approved by monitoring officer	Yes
Contribution to the Delivery of the Strategic Plan	The report directly links to overall performance and especially the delivery of the District Council's Strategic Plan 2020 to 2024.
Equality, Diversity and Human Rights Implications	<p>The options presented do not raise any equality or diversity implications.</p> <p>The options set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. It is not considered that the options presented give rise to potential interference issues.</p>
Crime & Safety Issues	No impact
Environmental Impact (including Climate Change and Biodiversity).	No significant implications for the Environment including climate change or biodiversity.

GDPR / Privacy Impact Assessment	Assessment not required.
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	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	<p><u>Financial risk</u> There is a risk of costs being awarded to the appellant.</p> <p>Even if a costs application is not made, and Inspector has the discretion to make an award of his own volition.</p>	Yellow	<p>An award of costs is always at the Inspector's or Secretary of State's discretion. But he/she would normally make an award if:</p> <p>(i) one of the parties has applied for costs at the appropriate stage and (ii) a party has behaved 'unreasonably'; and (iii) this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily</p> <p>All three conditions need to be met.</p> <p>Redacted information – further details can be found in the full confidential version.</p>	Yellow

	<p>Background documents</p> <ul style="list-style-type: none"> • Planning Committee Report 3rd July 2023. • Planning Committee Supplementary Report 3rd July 2023. • Cllr Salter's 13 points. • Officer response to Cllr Salter's 13 points.
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	<p>Relevant web links</p> <p>Planning Application Documents: https://planning.lichfielddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage</p> <p>Planning Committee Agenda and Minutes 04 July 2022: https://democracy.lichfielddc.gov.uk/ieListDocuments.aspx?CId=135&MIId=1969&Ver=4</p>
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APPENDIX A: Committee Report Presented to Planning Committee on 3rd July 2023

Address:	9 Foden Close, Shenstone, Lichfield, Staffordshire, WS14 0LE		
Application number:	22/01533/FUH	Case officer:	Tom Watts
Ward:	Shenstone	Date received:	25/10/2022
Parish:	Shenstone		
Proposal: Retrospective application for the retention of a detached double garage			
Reason for being on agenda:	Reported to the Planning Committee due to the application being called in by Councillor David Salter, elected member for Shenstone Ward on the following grounds: <ul style="list-style-type: none">• Design• Residential Amenity• Planning Policy		
Recommendation: (i) To rescind the resolution of Planning Committee on the 6th February 2023 to grant planning permission, subject to conditions; and (ii) That this planning application be approved subject to the conditions contained in the report of the Chief Executive.			
Applicant: Mr Tom Smith		Agent: Mr Dave Ralph, PP Architectural Ltd	

1. Executive summary

- 1.1 The application seeks approval for the retention of a detached double garage and is therefore retrospective.
- 1.2 The application property is a detached dwelling located to the western end of Foden Close in Shenstone. Foden Close terminates with a hammerhead and the application property and No 11 opposite is served by a private access.
- 1.3 Objections have been received from neighbours and the parish council.
- 1.4 The garage has been designed with matching materials and is of domestic scale to ensure a satisfactory appearance that reflects those materials found on Foden Close.
- 1.5 The garage has not resulted in a significant loss of light or outlook to neighbouring properties and would retain a rear private amenity area of approximately 90m². A high standard of amenity has been retained.
- 1.6 Having had regard to all relevant local and national policies and guidance, it is concluded that the development is acceptable in principle, at this location, and would not have a significant impact on acknowledged interests.

Summary

Overall, the scheme is considered appropriate and acceptable and is recommended for approval subject to the recommendations as set out within this report.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below and overleaf, which provides full details of all consultation responses, planning policies and the officer's assessment. Members are advised that this summary should be read in conjunction with the detailed report.

2. The site

- 2.1 The application relates to a detached property located to the western end of Foden Close in Shenstone. Foden Close terminates with a hammerhead and the application property and No 11 opposite is served by a private access. To the front of No11 there is an existing double garage.
- 2.2 The property is situated in a residential area as part of a modern development amongst properties matching in style. The property as originally built benefited from an integral garage located to the north side elevation. This former garage has been converted to amenity space by the applicant.
- 2.3 To the rear (west) is a railway line, the embankment of which is separated by a strip of scrubland that is approximately 10m wide.
- 2.4 The site is within the 15km area of the Zone of Influence for Cannock Chase Special Area of Conservation. An extract from the Location Plan is shown below, with the red line indicating the application site.

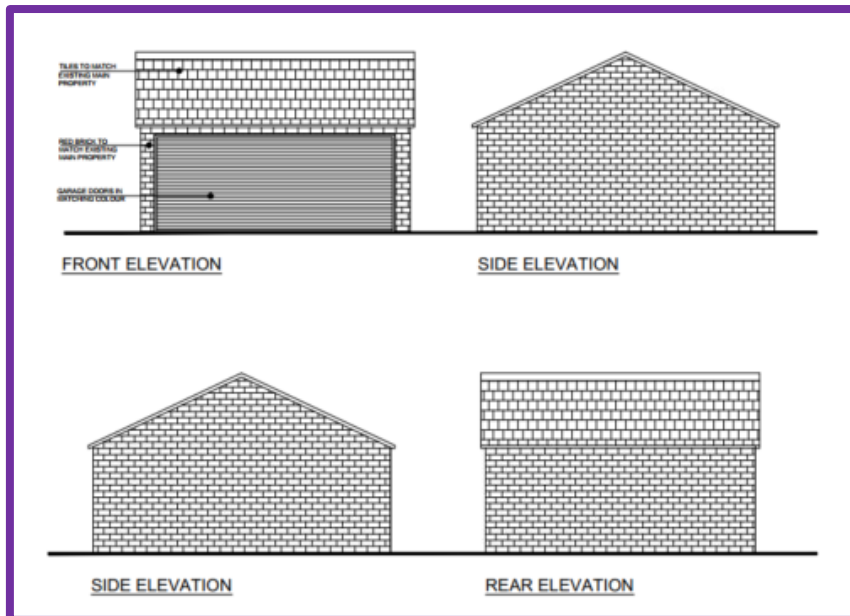


3. Planning history

- 3.1 Apart from the previous decisions of planning committee to grant planning permission (but no planning permissions being issued for the reasons set out within this report): There is no relevant planning history.

4. Proposals

- 4.1 This application seeks permission for the retention of a detached double garage and hence is retrospective.
- 4.2 The garage, subject to this application, is positioned to the northern side of the existing property, in garden space forward of the front elevation of the host property. The garage measures 6m x 5m with a height of 3.7m and have a pitched roof. The garage has been constructed of brick and tile to match the existing dwelling. The elevations and proposed site plan are shown below:



5. Background

- 5.1 This matter was originally presented to Planning Committee on 9th January 2023, when Members resolved to approve the Application in accordance with the Officer Recommendation. However, following a clerical error an incorrect plan was included in the Officer presentation. Following Legal advice, the matter was returned to Planning Committee held on 6th February.
- 5.2 At that Committee representations were received from an objector which included that the required correct Statutory Notice had not been served on 16th November 2022 on behalf of the Applicant on the owners of No11 Foden Close, part of which (mainly a shared Drive) is included in the Application Site.
- 5.3 Following an adjournment for officers to obtain information from the applicant and consider the points raised, legal advice was given that Members could proceed to determine the application as the substantive information requirements within the Statutory Notice had been met and that it had been served by the applicant. In addition, the recipient of the Statutory Notice was aware of the application and had made representations. Planning committee therefore resolved, to approve the application in accordance with the officer recommendation.

- 5.4 Following the meeting, and before the planning permission was issued, further representations were made, and, following a further review, it was found that, although the Statutory Notice served included the necessary details of the application itself, it omitted some mandatory general information regarding owners' rights.
- 5.5 The grant of planning permission does not affect owners' rights to retain or dispose of their property unless there is some provision to the contrary in an agreement or lease. As further representations had been received to the effect that the application site plan, within the agenda pack, and set out in the officer presentation, had incorrectly included land in the objector's ownership. Following further legal advice, the planning permission was not issued, and the applicant agreed to serve a fresh Statutory Notice. This triggered a further 21-day statutory consultation period to allow for further representations from the recipients of the Statutory Notice.
- 5.6 This period has since expired at the time of writing this report. However, further representations have been received and considered as part of this assessment. Any further representations received following the publication of this report, will be summarised in the update sheet in the usual way.
- 5.7 As the planning permission has not been issued, the application has been returned to planning committee for re- determination, and to allow officers to respond to further concerns raised.
- 5.8 Members are advised that they should consider the application afresh. Members are however reminded that, there is a principle of consistency in planning decision-making. This requires like-applications on the same site to be decided in a like-manner unless there has been a change in Local Plan policies or other material considerations. Where there have been no such material changes then planning reasons should be given for departing from a previous resolution. Members are therefore advised that they should give weight to the previous decisions of planning committee to grant this application.

6. Policy framework

6.1 National Planning Policy

National Planning Policy Framework
National Planning Practice Guidance

6.2 Local Plan Strategy

Core Policy 1: The Spatial Strategy
Core Policy 2: Presumption in Favour of Sustainable Development
Core Policy 3: Delivering Sustainable Development
Policy BE1: High Quality Development
Policy ST2: Parking Provision

6.3 Supplementary Planning Document

Sustainable Design SPD
Biodiversity & Development SPD
Trees, Landscaping and Development SPD

6.4 Shenstone Neighbourhood Plan (2016)

There are no relevant policies in the Shenstone Neighbourhood Plan.

6.5 Lichfield District Local Plan 2040

The emerging Lichfield District Local Plan 2040 has completed its Regulation 19 public consultation stage (August 2021) and the draft Local Plan has been submitted to the Secretary of State for the Department for Levelling Up, Housing and Communities. Planning Inspectors were appointed, but a pause in the examination has since been agreed for up to 12 months and so no date for public examination has been set. At this stage limited weight is given to the draft Emerging Local Plan Policies. Given this document and the policies therein are within the early stage of the adoption process, they carry minimal material planning weight. Relevant policies in the emerging Local Plan include: -

Strategic Policy SP1: The Spatial Strategy
Strategic Policy SP10: Sustainable Development

The above policies reflect the thrust of their counterpart policies within the current adopted Local Plan and do not change the overall conclusions arrived at in the in the determination of this application.

7. Supporting documents

7.1 The following plans and supporting documents form part of this recommendation:

- 9FC-05 Proposed Plans and elevations dated as received

8. Consultation responses

8.1 **Shenstone Parish Council** - Object on the following grounds: -

- Original title of application is misleading (retention of double garage) as the proposal is for a new garage in a separate location with the existing garage being converted.
- This is a retrospective application as construction has commenced.
- Other development works ongoing are not covered in the application.
- Affected neighbours have not been consulted and a site notice has not been put up
- The land surface that the proposed garage is being built on is subject to covenanted restrictions.
- Application does not conform to H2 of the Shenstone Neighbourhood Plan in respect of backland development.
- The garage does not reflect the character of the existing property and would result in cramming.
- The proposal would be a discordant structure restricting the openness and causing harm to the residential amenity of the estate. (14.11.2022)

8.2 **Network Rail** - No comments. (11.11.2022)

9. Neighbour responses

9.1 On 08.11.2022 neighbour consultation carried out with regards to the initial planning application as submitted. On 01.12.2022 a further neighbour consultation was carried out following amendment to description of application.

9.2 13 letters of objection have been received from the occupiers of neighbouring properties. These objections are available to view on the Council website and their objections are summarised below: –

- The application is misleading. There would be no need to 'retain' the proposed garage if the existing garage had not been converted.
- A garden brick wall, lawn, shrubs and trees have been removed and so the depiction of 3 car parking spaces showing as existing is an attempt to mislead.
- The objections of the parish council are reiterated.
- The erection of a separate building will block out light and change the overall view of open space.
- The proposal will reduce both the feeling and enjoyment of open amenity space.
- The garage could be used as an office or even small bungalow
- A precedent would be set that could lead to crowding of the estate.
- The building work to the house has impacted neighbours with loud music and vans blocking access.
- The application does not include the ongoing work to the house and front porch.
- The garage would take away an open view onto communal land.
- Reference was made to the similarities to application 20/00721/FUL which related to the demolition of a boundary wall and the erection of a repositioned fence at a property in the nearby Oakwood Close and was refused in 2020 on the grounds of restricting openness.
- Land ownership issues.

Further representation was received on 15th May 2023 from 1 neighbour with the following objections:

- The completed garage has been used as a home gym with residents exercising in the morning/evening within. The door has been left open and so the neighbour has been subject to new noises including a guttural working out noise.
- The garage emits significant artificial light.
- The garage is not being used to house cars resulting in additional road parking which creates new obstructions.

10. Assessment

10.1 It is considered that the determining issues relevant to the assessment of this proposal are:

- Policy & Principle of Development
- Design and Impacts on the Character of the Area
- Residential Amenity
- Parking and Highway Safety
- Ecology/ Biodiversity
- Cannock Chase SAC
- Other Matters
- Human Rights

11. Policy & principle of development

11.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan for Lichfield District comprises the Local Plan Strategy (2008-2029), adopted in February 2015, the Local Plan Allocations Document (2008-2029), adopted in July 2019 and the Shenstone Neighbourhood Plan (2016). The Local Plan Policies Maps form part of the Local Plan Allocations Document.

11.2 The NPPF sets out a presumption in favour of sustainable development and this is echoed in the Lichfield District Local Plan Strategy Core Policy 2.

11.3 The application relates to an outbuilding at a residential property located within a predominantly residential area. The application site is sustainably located within the settlement boundaries for Shenstone as identified in the Local Plan and, as such, the principle of the development is considered to be acceptable. However, proposals that are acceptable in principle are subject to all other policy tests which will now be discussed in turn.

12. Design and impact on the character and appearance of the surrounding area

12.1 The NPPF attaches great importance to design of the built environment and sets out that high quality and inclusive design should be applied to all development, including individual buildings, private spaces, and wider area development schemes. Paragraph 130 of the NPPF states that 'planning decisions should ensure developments' are (b) 'visually attractive as a result of good architecture, layout and appropriate and effective landscaping' and are (c) 'sympathetic to local character and history including the surrounding built environment and landscape setting'. This sentiment is echoed in Core Policy 3 of the Local Plan Strategy which states that development should: "protect and enhance the character and distinctiveness of Lichfield District"; "be of a scale and nature appropriate to its locality" and "encourage the re-use of previously developed land". Policy BE1 of the Local Plan Strategy states "development will be permitted where it can be clearly and convincingly demonstrated that it will have a positive impact on new development in terms of layout, size, scale, design and public views". The policy continues to expand on this point advising that good design should be informed by "appreciation of context, as well as plan, scale, proportion and detail".

- 12.2 The garage is located to the northern side of the property in the existing front garden and has been designed with matching materials and of domestic scale to ensure a satisfactory appearance that reflects those materials found on Foden Close.
- 12.3 It is noted that an objection has been made regarding the size and scale of the garage. From a design perspective, it is considered that the development is of a similar scale and footprint to the garage of the neighbouring property at No11 Foden Close that it sits alongside.
- 12.4 Objections have also been raised on the grounds that the garage would/ has changed the overall view of open space and would/ has taken away an open view onto communal land. However, although there has been some erosion of openness within the streetscene this would have been marginal and insufficient to warrant refusal. Furthermore, although the garage has reduced views of the open land to the west of Foden Close it should be noted that these views are already restricted by the garage at No11 and the former wall that separated the close from the open land to the west. Some views of the trees to the west remain over the garage. Again, the overall effect has been marginal, has not significantly affected the character of the area and is insufficient to warrant refusal.
- 12.5 In terms of overall design and impacts on the character of the area, it is considered that the garage meets the design requirements of Policy BE1 and Core Policy CP3 of the Lichfield Local Plan Strategy.

13. Residential amenity

- 13.1 Paragraph 130(f) of the NPPF states “planning policies and decisions should ensure that developments [amongst other things] create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users”. Similarly, Core Policy 3 of the Lichfield Local Plan Strategy states that development should “protect the amenity of our residents”.
- 13.2 The Sustainable Design SPD sets out guidance for residential development that seeks to prevent the loss of amenity to occupiers of neighbouring dwellings. This includes the recommended distance between windows serving principal habitable rooms and recommended distance between existing and proposed development. The SPD further recommends minimum standards for amenity space based upon the number of bedrooms in a dwelling.
- 13.3 Objections have been raised from the occupiers of a neighbouring property with regards to a potential loss of light. The Sustainable Design SPD sets out that a 25-degree guideline will be utilised to assess the impact of a new building opposite an affected window. Given that the garage is single storey with a maximum height of 3.7m and is largely screened from No11 by the existing double garage serving that property, there is no possibility of any part of it intercepting a perpendicular line drawn with a 25-degree vertical angle from the centre of the nearest neighbouring window. It is therefore concluded that the garage has not resulted in a significant loss of light to neighbouring properties. Therefore, the amenities of the occupiers of neighbouring residential properties have been preserved.
- 13.4 In respect to any adverse impact upon the amenities of the existing and future occupiers of the application property, it is noted that the garage has been built forward of the front elevation. As such, the development would retain a rear private amenity area of approximately 90m² which exceeds the 65m² set out in the Design SPD. Therefore, it is considered that sufficient amenity space has been retained and preserved to meet the needs of occupiers.
- 13.5 The development is considered to achieve a high standard of residential amenity in accordance with Policies CP3 and BE1 of the Local Plan Strategy and paragraph 130(f) of the NPPF.

14. Ecology/ Biodiversity

- 14.1 Policy NR3 of the Local Plan Strategy states that development will only be permitted where it “Protects, enhances, restores and implements appropriate conservation managements of the biodiversity and/or geodiversity value of the land and buildings”. It further requires that all development deliver a net gain for biodiversity.

14.2 Taking into account the submitted development, the site of the garage originally formed part of the garden area. It is not considered that the garage has caused significant harm to existing biodiversity. The original officer report presented at planning committee, contained a recommendation to attach an informative in respect to wildlife law to any permission granted. However, as the garage has since been completed in its entirety, such an informative would now no longer serve any planning purpose. The garage is therefore considered acceptable. with regard to the ecological policies of the development plan.

15. Cannock Chase Special Area of Conservation

15.1 Policy NR7 of The Lichfield Local Plan Strategy states that before development is permitted it must be demonstrated that either alone or in combination with other developments the proposal will not be likely to lead directly or indirectly to an adverse effect on the integrity of the Special Area of Conservation (SAC).

15.2 The provisions of the Conservation of Habitats and Species Regulations 2017, require that the Local Planning Authority, as the competent authority, must have further consideration, beyond planning policy matters, to the impacts of the development on the Cannock Chase SAC.

15.3 A Habitat Regulation Assessment has been completed which has screened out the requirement for an 'appropriate assessment' as the development would not increase the number of dwellings within the defined zone of influence for the Cannock Chase SAC. Where the number of dwellings does not increase through the development proposals there is no requirement for mitigation through a financial contribution. It is therefore considered that the proposals will not have an adverse impact on the Cannock Chase SAC.

16. Other Matters

16.1 Further concerns raised by neighbouring residents and the Parish Council not addressed in the above report will be considered below.

16.2 Objections have been raised on the grounds that this application deals solely with the garage development and does not include other works to the property. Officers' comment that objections relating to other work carried out at the property, such as a wall, porch, or integral garage conversion, are not the subject of this application – and thusly, not material to its determination. For the avoidance of doubt these elements would constitute permitted development and would not require formal permission from the Local Planning Authority.

16.3 Objections received, stating that letters to neighbours had not been sent and a site notice not erected, were made somewhat prematurely. Letters notifying neighbours of the application were initially sent on 08/11/2022, with further letters sent on 01/12/2022, including a site notice posted to advise of an updated application description. However, this may have been as a result of the retrospective nature of the application, at that time.

16.4 In respect to restrictive covenants, officers would advise that the existence of a restrictive covenant is not a material planning consideration. Rather, it is a civil matter for the relevant parties to that covenant to settle.

16.5 Comments were received relaying that the development herein being assessed, would conflict with Policy H2 of the Shenstone Neighbourhood Plan, with respect of it being considered as backland development. However, it is the view that, as the garage is sited forward of the front elevation of the dwelling - this does not constitute backland development and therefore does not engage Policy H2.

16.6 With respect to the comments received that the garage may be used for other purposes, such as, an office or separate bungalow, officers would comment that although the use of an office for personal use would be incidental, the use as a separate bungalow would require planning permission. The use of the garage for purposes other than incidental to the enjoyment of the dwelling house could be adequately addressed by a condition restricting the use of the garage to purposes incidental to the enjoyment of the dwelling. It is recommended that any approval should be subject to a condition that the garage shall only be used for purposes incidental to the enjoyment of the main dwelling.

- 16.7 Comments were received that objected to the use of the garage as an area for exercise. The use of the garage for personal exercise would be incidental to the enjoyment of the main dwelling and as such would be acceptable in planning terms.
- 16.8 Objections were raised regarding the removal of shrubs, a wall and 2 trees in the front garden. Council records indicate there were no trees of importance and this would therefore constitute landscaping of a private amenity space which the owner would be entitled to undertake.
- 16.9 Although the application site includes a shared drive, it is confirmed that land ownership is not a material planning consideration and any approval issued would not override any rights of access which would be a civil matter. The National Planning Practice Guidance provides as follows:
- “What if there are restrictions through deeds or covenants that prevent development?
Land ownership, including any restrictions that may be associated with land, is not a planning matter. An appropriate legal professional will be able to provide further advice on this if necessary.”*
- 16.10 For the avoidance of doubt, officers can confirm that the garage would project 3m from the plane of the front elevation of the garage at the neighbouring property at No 11 Foden Close.
- 16.11 Reference was made by objectors to the similarities of this case to application 20/00721/FUL, which, related to the demolition of a boundary wall and the erection of a repositioned fence on a prominent corner position at a junction in the nearby Oakwood Close. This was refused in 2020, on the grounds of restricting openness. This, in effect, repositioned the boundary treatment to the back edge of the public footpath and enclosed what appeared to be a wide-open verge at the entrance to a cul-de-sac. Although the planning history of a site can be a material planning consideration, and there is a principle of consistency of decision making in Planning Law, ultimately each application must be determined on its own merits. The proposal submitted for the erection of a garage is substantially different from that at Oakwood Close, both in terms of the characteristics of the site and its impact on openness of the estate. It is therefore, not considered that the situation in this current case is similar to the one at Oakwood Close.
- 16.12 With respect to comments relating to artificial lighting, it is not considered that light emitting from the garage would cause additional harm over lighting that already exists on the main dwelling house. A condition restricting the use of external lighting would ensure that neighbouring residential amenity is safeguarded and has been recommended within the report.

17. Human rights

- 17.1 The development set out in the report is considered to be compatible with the Human Rights Act 1998. The development may interfere with an individual’s rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

18. Conclusion

- 18.1 Having had regard to all relevant local and national policies and guidance, it is concluded that the development, in its retrospective form, is acceptable at this location. Furthermore, it is considered that the development would not cause significant harm to the character and appearance of the area, the amenity of neighbouring properties or biodiversity.
- 18.2 Consequently, it is recommended that this application be approved, subject to conditions included in this report.

19. Recommendation: Approve, subject to the following conditions:

CONDITIONS

1. The development authorised by this permission shall be retained in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.

Reason: For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of Policies CP2, CP3, BE1 and NR7 of the Lichfield Local Plan Strategy, the Sustainable Design SPD, the Biodiversity and Development SPD, the Trees, Landscaping and Development SPD and Government Guidance contained in the National Planning Practice Guidance and the National Planning Policy Framework.

2. The garage hereby approved shall only be used for purposes incidental to the enjoyment of the main dwelling at 9 Foden Close.

Reason: In the interest of protecting the residential amenity in accordance with paragraph 130(f) of the National Planning Policy Framework

4. No external illumination shall be brought into use until details of the external illumination have been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to safeguard neighbouring residential amenity, in accordance with the requirements of Core Policy 3, and Policy BE1 of the Local Plan Strategy and Government Guidance, the Supplementary Planning Document: Sustainable Design and the National Planning Policy Framework.

NOTES TO APPLICANT:

1. The Development Plan comprises the Lichfield District Local Plan Strategy (2015) and Lichfield District Local Plan Allocations (2019) and the Shenstone Neighbourhood Plan (2018).
2. The applicant's attention is drawn to The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017, which requires that any written request for compliance of a planning condition(s) shall be accompanied by a fee of £34 for a householder application or £116 for any other application including reserved matters. Although the Council will endeavour to deal with such applications in a timely manner, it should be noted that legislation allows a period of up to 8 weeks for the Local Planning Authority to discharge conditions and therefore this timescale should be borne in mind when programming development.
3. The development is considered to be a sustainable form of development which complies with the provisions of paragraph 38 of the NPPF.
4. Severn Trent Water standard advise is that there may be a public sewer located within the application site. Even where statutory sewer records do not show any public sewers within the application area, there may be sewers that have been recently adopted under the Transfer of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and contact must be made with Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building. Please note that there is no guarantee that you will be able to build over or close to any Severn Trent sewers, and where diversion is required there is no guarantee that you will be able to undertake those works on a self-lay basis. Every approach to build near to or divert our assets has to be assessed on its own merit and the decision of what is or isn't permissible is taken based on the risk to the asset and the wider catchment it serves. It is vital therefore that you contact Severn Trent Water at the earliest opportunity to discuss the implications of their assets crossing your site. Failure to do so could significantly affect the costs and timescales of your project if it transpires diversionary works need to be carried out by Severn Trent.

Appendix B: Cllr Salter's 13 Points

The Application Contravenes the following:

In the Lichfield District Local Plan Strategy:

- Core Policy 3 (Delivering Sustainable Development) Page 33
- Policy BE1 (High Quality Development) Page 92

The Sustainable Design Supplementary Planning Document:

At Page 12, 3.5 includes public and private spaces such as: **Private gardens, and open spaces;**

At Page 16, 3.33 Small Development Sites

The demarcation of public and private spaces, boundaries and screening is highlighted.

And at P25 Appendix A, Space about Dwellings and Amenity Standards for all Development requires: **A satisfactory level of outlook within new developments and in relation to existing development.**

In the SPD

The wording on page 28 aims to avoid any undue overbearing impact on neighbouring properties in terms of outlook as a result of new development.

This development has been positioned less than 8 meters from no 11's window and outlook which is well under the document's recommendation.

There are also breaches in the NPPF

At 2. Achieving sustainable development Page 5 8B, Page 36 and Page 124 all refer to the desirability of maintaining an area's prevailing character and setting (including residential gardens)

Referring now to breaches of the adopted Shenstone Neighbourhood Plan

At Page 22, section 6.10 states:

- Backland development is defined as development on land behind the rear of the building line (or other development) and is usually land that has previously been used as gardens, or is partially enclosed by gardens.

The site proposed is a combination of front and back garden and has been used as enclosed back garden for 30 years.

- Section 6.11 defines infill and states: Infill development involves the development of a small gap in an otherwise built up frontage. It usually consists of frontage plots and compromises side gardens to existing houses.

Section 6.13 states: Adverse impacts of inappropriate developments can include: Overshadowing
Loss of green links Visual Intrusion Loss of space between buildings

All of these apply to this application.

Section 6.14 states **It is vital that the design of such developments does not have a negative impact on amenity of existing residents in the neighbouring properties.** LDC has received 13 objections stating that it does in terms of the attractiveness of the street scene and views.

Appendix C: Officer Response to Cllr Salter's 13 Points

Cllr Salter's suggested 13 points appear to rest on purported conflict with relevant planning policy. In this context it is appropriate to set out the correct way of interpreting policy statements as set out in *Tesco v Dundee City Council*, 2013 SC (UKSC) 278. In the decision that was handed down Lord Reed set out that 'Planning authorities do not live in the "world of Humpty Dumpty" in which they can make the development plan mean whatever they would like it to mean' adding 'Policy statements should be interpreted objectively in accordance with language used, in context, but not as if they are contracts or statutes'.

Having had regard to the above officers would respond to the representations made by Cllr Salter as follows.

Local Plan Policies

Cllr Salter opines that the application contravenes the following: -

Core Policy 3 (Delivering Sustainable Development), p33

Policy BE1 (High Quality development), p92

Both policies are composites which deal with a range of issues and are provided in full below.

Core Policy 3 (Delivering Sustainable Development)

'The Council will require development to contribute to the creation and maintenance of sustainable communities, mitigate and adapt to the adverse effects of climate change, make prudent use of natural resources, reduce carbon emissions, enable opportunities for renewable energy and help minimise any environmental impacts. To achieve this, development should address the following key issues:

- protect and enhance the character and distinctiveness of Lichfield District and its settlements;
- protect the amenity of our residents and seek to improve their overall quality of life through the provision of appropriate infrastructure, services and facilities;
- promote social cohesion and inclusion and reduce inequalities, and ensure access for all sectors of the community to employment opportunities (including safeguarding local jobs through local employment provision), adequate and affordable housing and a range of services and facilities, in both our urban and rural areas;
- assist in the regeneration and evolution of towns and villages and surrounding areas in meeting the changing needs of their population over time and maintain the vitality, viability and vibrancy of local communities;
- be of a scale and nature appropriate to its locality;
- encourage the re-use of previously developed land in the most sustainable locations, and encouraging the reuse of buildings as a sustainable option;
- ensure that development on brownfield sites affected by contamination is remediated and that any ground instability arising from mining legacy or former land uses is addressed; reduce the overall need to travel, whilst optimising choice of sustainable modes of travel, particularly walking, cycling and public transport;
- use our natural resources prudently and conserve, enhance and expand natural, built and heritage assets and improve our understanding of them wherever possible;
- minimise and manage water, waste and pollution in a sustainable way, particularly through reduction, re-use and recycling measures in both the construction and use of buildings inline with the requirements of the Code for Sustainable Homes and BREEAM assessments, or their successors, and including incorporating adequate space provision within buildings/layouts for appropriate storage or sorting of materials for recycling;
- give priority to utilising ground infiltration drainage techniques and including sustainable drainage techniques and incorporate other sustainable techniques for managing surface water run-off such as green roofs in new development and in retro-fitting where historic flooding events have been identified;
- guide development away from known areas of flood risk as identified in the Strategic Flood Risk Assessment (Level 1) and Surface Water Management Plan. Where development is proposed in flood

risk areas a site-specific flood risk assessment must be undertaken inline with the National Planning Policy Framework;

- avoid sterilisation of mineral resources;
- minimise levels of pollution or contamination to air, land, soil or water, including noise and light pollution and avoid unacceptable uses within source protection zone 1 areas to safeguard water resources and ensure water quality;
- ensure that all new development and conversion schemes are located and designed to maximise energy efficiency and utilise sustainable design and construction techniques appropriate to the size and type of development, using local and sustainable sources of building materials wherever possible;
- maximise opportunities to protect and enhance biodiversity, geodiversity and green infrastructure and utilise opportunities to facilitate urban cooling; and
- facilitate energy conservation through energy efficiency measures as a priority and the utilisation of renewable energy resources wherever possible, in line with the energy hierarchy.'

Policy BE1 (High Quality development)

'All development proposals should ensure that a high quality sustainable built environment can be achieved. Development will be permitted where it can be clearly and convincingly demonstrated that it will have a positive impact on:

The significance of the historic environment, such as archaeological sites, sites of historic landscape value, listed buildings, conservation areas, locally listed buildings and skylines containing important historic, built and natural features (in conjunction with Policy NR5);

Reducing carbon emissions, by appropriate use of sustainable design and renewable energy schemes (in conjunction with the relevant sections of Core Policy 3, & Policies, SC1 and SC2);

The built vernacular. New development, including extensions and alterations to existing buildings, should carefully respect the character of the surrounding area and development in terms of layout, size, scale, architectural design and public views;

Public safety, health and reducing inequality, including the latest 'designing out crime' principles;

Amenity, by avoiding development which causes disturbance through unreasonable traffic generation, noise, light, dust, fumes or other disturbance;

The natural environment. Effective hard and soft landscaping including tree planting will be required and should be implemented in an integrated manner, making use of green corridors for movement of people as well as for biodiversity (in conjunction with Core Policy 13, NR3, NR4 and NR6); and Sustainable transport. New development should be located in areas which have good safe access to public transport to reduce the need to travel by private car and should optimise choice of sustainable travel, particularly walking, cycling and public transport, creating new public transport nodes where necessary (in conjunction with Core Policies 3 & 5 and Policy ST1).

New development will have a positive impact on the public realm and ensure high quality, inclusive design. This will be achieved by an appreciation of context, as well as plan, scale, proportion and detail. Specifically designed features, including public art where appropriate, should be integrated into developments in order to enhance the bespoke nature and individuality of design solutions Innovative and contemporary designs will be supported where they are sympathetic to the setting and context of the surrounding area and existing development.'

It is clear from the all-embracing nature of both policies that they include requirements that would not normally be engaged by a proposal for a domestic garage.

Cllr Salter in his 13 points does not identify which parts of Policies CP3 or BE1 that he considers the application to contravene. Clearly it cannot be all of the policy as not all parts are relevant to the determination of the application. However, one would anticipate that he is attempting to allude to those parts of both policies that relate to the impacts of a proposal on the character and appearance of an area.

That being the case, Section 12 of the officer report assesses the design of the garage and its impact on the character and appearance of the surrounding area. Section 12 states: -

‘Core Policy 3 of the Local Plan Strategy states that development should: “protect and enhance the character and distinctiveness of Lichfield District”; “be of a scale and nature appropriate to its locality” and “encourage the re-use of previously developed land”. Policy BE1 of the Local Plan Strategy states “development will be permitted where it can be clearly and convincingly demonstrated that it will have a positive impact on new development in terms of layout, size, scale, design and public views”. The policy continues to expand on this point advising that good design should be informed by “appreciation of context, as well as plan, scale, proportion and detail”.’

Paragraphs 12.2 to 12.5 provides an assessment against the above policy tests and concludes that ‘In terms of overall design and impacts on the character of the area, it is considered that the garage meets the design requirements of Policy BE1 and Core Policy CP3 of the Lichfield Local Plan Strategy.’ As such these policies have clearly been addressed in the officer report.

The Sustainable Design Supplementary Planning Document

Cllr Salter refers to the following extracts from the Sustainable Design SPD

‘At page 12, 3.5 includes public and private spaces such as private gardens and open spaces

At page 16 3.33 Small Development Sites’

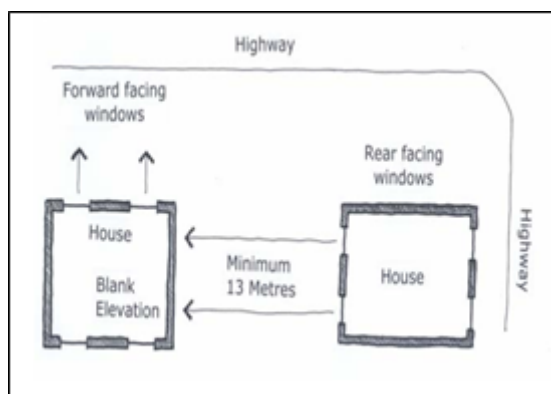
However, an objective analysis of these paragraph, clearly shows that they relate to housing development and are not intended to apply to householder development for the extension or alteration to a dwelling or the provision of a building within the curtilage of a dwelling for purposes incidental or ancillary to the enjoyment of that dwelling. Paragraph 3.33 in respect to ‘Small Development Sites’ rams this point stating ‘On all small application sites (including proposals of 9 dwellings or less)’. As such these paragraphs are not material to the determination of the application.

Cllr Salter goes on to allude that at p25 of Appendix A, the Space about dwellings and Amenity Standards for all development requires that ‘a satisfactory level of outlook within new development in relation to existing development’ and then refers to guidance on page 28 before going on to opine the ‘development has been positioned less than 8 metres from no11s window and outlook is well under the document’s recommendation’.

The guidance to assess outlook is set out on page 28 of Appendix 1 of the Council’s Sustainable Design Guide which states

‘To avoid any undue overbearing impact on neighbouring properties in terms of outlook as a result of new development, both from and to, where one dwelling faces the two storey side of a neighbouring property, and which is a blank elevation (i.e. no facing windows), the minimum distance separation between the 2 storey parts of each dwelling should be 13 metres or 10 metres in the case of single storey development. (Figure A.7)’

Figure 1: Extract from Appendix 1

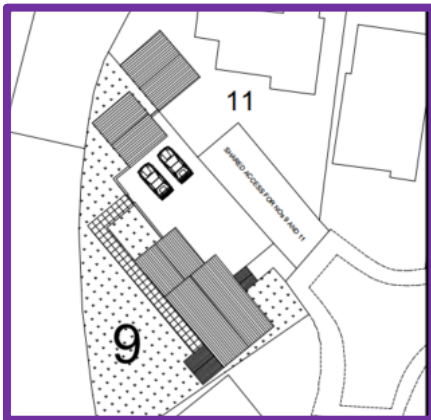


In the first instance, it should be borne in mind that Appendix 1 is in the nature of guidance. Guidance should always be used judiciously and applied flexibly, having regard to the particular circumstances of the proposal to be

determined. As can be seen from the above diagram the 13m as well as the 10m for single storey relationships applies where the elevation affected is at 90 degrees to the blank side elevation. Allowances therefore should be made as a proposal departs from the relationship set out in the diagram above. The more oblique the angle the shorter the distance between affected elevations can be.

The relationship between the garage at No9 and the dwelling at No 11 is shown below in Figure 2. This shows that No11 does not face the private drive at 90 degrees but rather at an angle. As such the garage does not fall immediately in front of the windows of No11. It is also largely obscured by the garage that serves No11, so that only 3m projects in front of that existing garage. As such an open aspect is clearly retained. The issue of light entering into the property is set out in paragraph 13.3 of the officer report.

Figure 2: Site Plan for No 9 Foden Close



Purported Breaches in the NPPF

In this respect it should be noted that the current version of the NPPF was published in 2021 and therefore any references used by Cllr Salter to the NPPF will be reviewed within this context.

Cllr Salter refers to:

‘At 2. Achieving sustainable development page 5 8B, page 36 and page 124 refer to the desirability of maintaining an area’s prevailing character and setting (including residential gardens)’.

Paragraph 8(b) in Section 2 ‘Achieving Sustainable Development’ states: -

‘Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and’

The above is a high level policy which applies to all development proposals but which is expanded upon in the relevant sections of the NPPF that deal with discrete topic areas. Where these are appropriate they are alluded to in the officer report which looks at design and impact on the character of the area.

As to the reference to page 124 it should be noted that the NPPF only has 75 pages. However, paragraph 124 relates to ‘Achieving appropriate densities’ and states

‘Planning policies and decisions should support development that makes efficient use of land, taking into account:

- a. the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
- b. local market conditions and viability;

- c. the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
- d. the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
- e. the importance of securing well-designed, attractive and healthy places.’

Paragraph 124 forms part of Section 11 ‘Making effective use of land’ which starts at paragraph 119 which states

‘Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses [officer emphasis], while safeguarding and improving the environment and ensuring safe and healthy living conditions’

Therefore, considered in their proper context page 36 and paragraph 124 relate to the provision of new homes and other uses and do not relate to householder types of development such as a residential garage. Officers can confirm that they are not material to the determination of the application and therefore, no reference is made to them in the officer report for that reason.

Notwithstanding the above Section 12 of the officer report considers ‘design and impact on the character and appearance of the surrounding area’ with reference to the appropriate paragraph of the NPPF, namely paragraph 130 as well as Policies CP3 and BE1 of the Local Plan Strategy.

Purported Breaches of the adopted Shenstone Neighbourhood Plan

Cllr Salter opines that at Page 22, section 6.10 states:

‘Backland development is defined as development on land behind the rear of the building line (or other development) and is usually land that has previously been used as gardens, or is partially enclosed by gardens.’

And then adds: ‘The site is a combination of front and back garden and has been used as enclosed back garden for 30 years’.

Having regard to Lord Reed, in *Tesco vs Dundee*, that policy statement should be ‘interpreted objectively in accordance with language used’ it is noted that the central thrust of the definition of backland development is that it comprises ‘development on land behind the rear of the building line (or other development)’. The sentence then goes on to use the word ‘and’. As such a prerequisite for backland development is that it has to be on land behind the rear of the building line. As a matter of fact the garage is not situated behind the rear of the building line but rather indeed is forward of the plane of the front elevation of the dwelling.

As to Cllr Salter’s assertion that the site is a combination of front and back garden this is partly correct. The application site, as defined by the red line boundary on the location and block plan includes the whole property, including the rear garden. This is no different to any other householder application. However, this does not mean that the footprint of the garage is in the rear garden. As matter of fact given that the footprint of the garden is beyond the front elevation of the dwelling any rational and objective person would conclude that this is part of the front garden, albeit in this case walled off to provide a private area.

Turning now to the wording of *Tesco v Dundee City Council* that Policy statements should be interpreted objectively in accordance with language used, **in context** [officer emphasis]. The context in which Policy H2 sits is set out in Section 6.0 which is entitled ‘Housing’. The term ‘Housing’ is concerned with the provision of new dwellings not with alteration, extension of dwellings or the provision of buildings ancillary or incidental to the enjoyment of a dwelling. This is perfectly clear on any objective reading of that section. The section covers ‘meeting housing needs’ and that the Neighbourhood Plan seeks to contribute towards this by addressing the housing needs of the neighbour area. The policy justification for Policy H2 is set out at paragraph 6.12 which states: -

‘One of the particular issues raised by the community of Shenstone has been the concern that infill development in particular could serve to inappropriately increase the density of development in the village. With the presence of the

green belt across much of the ward, coupled with the large gardens that many existing properties enjoy, **a significant amount of new housing could come through infill development** [officer emphasis].’

It is quite clear that on any objective consideration of the context of Policy H2 would conclude that it relates to housing development (the provision of new homes) and not householder development (the extension or alteration of a dwellinghouse or the provision of outbuildings within their curtilage).

Turning now to Cllr Salter’s assertion that this issue has not been addressed in the officer report attention is drawn to paragraph 16.5 of that report which states:

‘Comments were received relaying that the development herein being assessed, would conflict with Policy H2 of the Shenstone Neighbourhood Plan, with respect of it being considered as backland development. However, it is the view that, as the garage is sited forward of the front elevation of the dwelling - this does not constitute backland development and therefore does not engage Policy H2.’

As such Cllr Salter’s assertion that Policy H2 is engaged by the proposal in respect to backland development is demonstrably wrong. Furthermore, it is also demonstrably wrong that this issue had not been dealt with in the officer report.

Infill Development

In respect to Cllr Salter’s assertion that the proposal constitutes ‘infill’, Policy H2 relates to housing development and not to householder development when objectively considered in its proper context. As such Policy H2 is not engaged by the proposal.

Cllr Salter’s reference to Section 6.13 ‘Adverse impacts of inappropriate development can include’ again is a misapplication of policy. Section 6.13 again falls under the heading ‘Residential infill and backland development’ and, in particular, the ‘Policy Justification’ for Policy H2. As such it must be objectively considered in respect to infill or backland development which as demonstrated above relates to ‘housing’ and not householder development. As such, section 6.13 is not material to the determination of the application.

The same analysis and conclusion apply, with equal force, to Cllr Salter’s reference to section 6.14 of the Neighbourhood Plan.

The above issues are dealt with in the Policy Framework section of the officer report which clearly sets out at paragraph 6.4

‘Shenstone Neighbourhood Plan (2016)

There are no relevant policies in the Shenstone Neighbourhood Plan.’

As such Cllr Salter is incorrect in his assertion that this issue has not been addressed.

Finally, Cllr Salter’s states LDC received 13 objections and asserts that the garage does [have an impact] in terms of attractiveness of the street scene and views. Officer response is that applications should be determined on an objective analysis of a proposal against policy tests, interpreted correctly in their proper context and not on the weight of opposition or support that a proposal receives.

Conclusion

The 13 points put forward by Cllr Salter constitute a collection of policy and page references which when assessed objectively, in accordance with language used and in their proper context are either: -

- (i) Not material to the determination of the application; and, or
- (ii) Have been misapplied, or
- (iii) Have already been addressed in the officer report.

As a consequence, they do not have any bearing on the proper assessment of the proposal or the recommendation within the officer report.