

**PARISH** Old Bolsover Parish

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**APPLICATION** Proposed single storey dwelling with some matters reserved (access, layout & scale)

**LOCATION** 172 Chesterfield Road, Shuttlewood, Chesterfield S44 6QL

**APPLICANT** Mr Edinboro 172 Chesterfield Road, Derbyshire, Shuttlewood, S44 6QL

**APPLICATION NO.** 22/00197/OUT **FILE NO.** PP-11179108

**CASE OFFICER** Mrs Karen Wake (Mon, Tues, Wed)

**DATE RECEIVED** 8th April 2022

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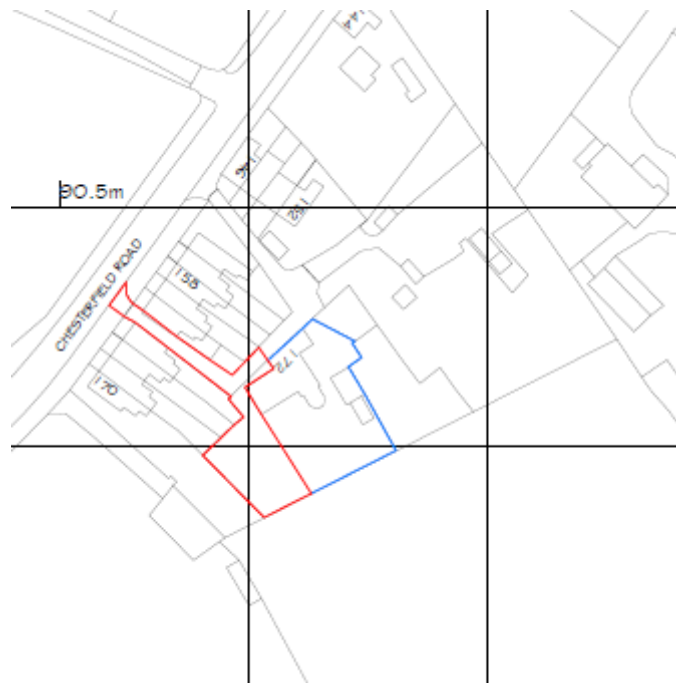
## **SUMMARY**

This application has been referred to the Planning Committee because the development proposed does not strictly comply with the provisions of policy SS9 of the Local Plan for Bolsover District and is therefore a departure to the Local Plan.

Notwithstanding the above, the application is recommended for approval.

The proposal is considered on balance to represent a location which is not unsustainable and the development is located within a small area of built development and does not encroach beyond the boundaries of that built area. The proposal therefore does not visually intrude into the rural area and as such is not considered to have an urbanising impact on the rural character of the area over and above the existing situation.

## **Site Location Plan**



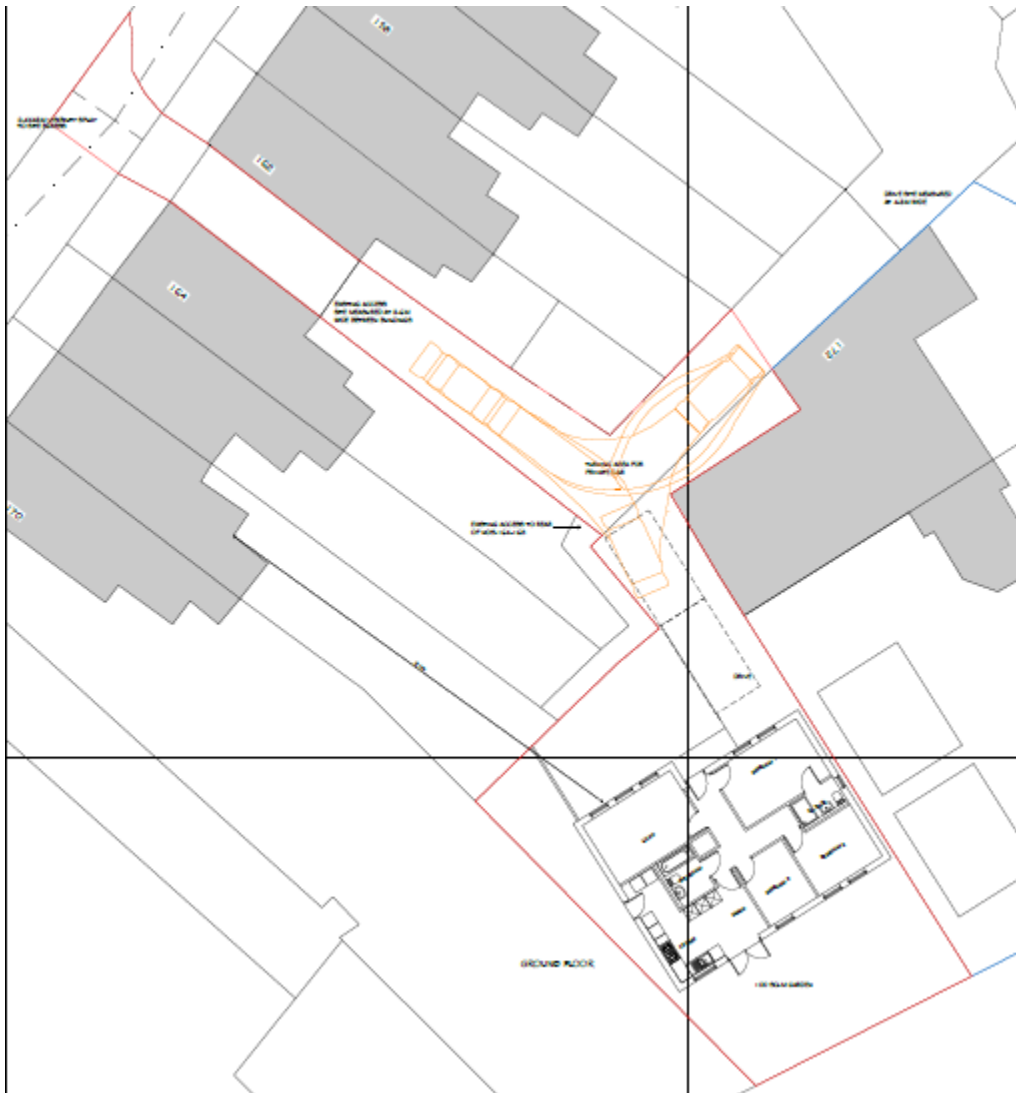
# OFFICER REPORT ON APPLICATION NO. 22/00197/FUL

## SITE & SURROUNDINGS

The site is a side garden to the existing single storey dwelling to the northeast of the site. The site is predominantly used as a domestic allotment. The site slopes down north to south and east to west. There is existing access to the site from the unmade private drive which serves the dwelling on site and a number of adjacent dwellings. There is a 2m high fence and gates along the frontage boundary of the site with two storey dwellings beyond. On the southwest and southeast is mature hedges/shrubs. To the rear of the site is open fields.

## PROPOSAL

The application is in outline with access, scale and layout included as part of the application. The proposal includes a single storey dwelling with two parking spaces. The appearance of the dwelling and the landscaping of the site are reserved matters.



## **AMENDMENTS**

The application was originally submitted for a two storey dwelling with an attached garage. The proposal has been amended to include a single storey detached dwelling with no garage. Swept path analysis has been submitted to show the manoeuvring available from the site.

## **HISTORY**

None.

## **CONSULTATIONS**

### Parish Council

No comments received.

### Derbyshire County Council Highways

No objections to the amended proposal.

### Environmental Health Officer

Due to sensitive end use a phased contaminated land investigation condition should be included on any permission. Note suggested advising the applicant of the requirements of The Control of Pollution Act with regard to noise and dust control during construction  
Senior Engineer: The sewer records do not show a public combined sewer within the curtilage of the site however the applicant should be made aware of the possibility of unmapped public sewers which are not shown on the records but may cross the site. These could be shared pipes which were previously classed as private sewers and were transferred to the ownership of the Water Authorities in 2011. If any part of the proposed works involves connection to/diversion of/building over/building near to any public sewer the applicant should be advised to contact Severn Trent Water in order to determine their responsibilities under the relevant legislation. The applicant should be advised that all proposals regarding drainage will need to comply with Part H of the Building Regulations 2010.

*All consultation responses are available to view in full on the Council's website.*

## **PUBLICITY**

Site notice and six neighbours notified. Four letters of objection received which raise the following issues:

1. The properties are not on mains drains and the proposal may overload the septic tank/settling bed.
2. The access is tight for accommodating construction traffic.
3. Permission has been refused on an adjacent site because the site is in an area of non-development.
4. The dwelling is very close to adjacent dwellings and will overlook dwellings and gardens resulting in a loss of privacy.
5. The access is unsuitable to serve an additional dwelling.
6. The proposal will be out of character with the existing historic properties.
7. The pedestrian right of way to the rear of adjacent dwellings will be crossed by the site

- access causing danger for pedestrians using the right of way.
8. The access track is unmade and there are drains running under the access track. The track and drains may be damaged by construction vehicles and increased usage. Who will pay for this?
  9. The access to the rear of 172 Chesterfield Road should be pedestrian access only.
  10. The existing property has a right of access on the private drive but this may not extend to an additional dwelling.
  11. If this dwelling is approved it set a precedent for others.
  12. Increased traffic to the rear of existing dwellings will cause noise and disruption.
  13. The proposal will increase use of the access onto Chesterfield Road where there have already been numerous accidents.
  14. The turning area shown on the plans is on common land and is not included in the right of way to the site.

## **POLICY**

### Local Plan for Bolsover District (“the adopted Local Plan”)

Planning law requires that applications for planning permission be determined in accordance with policies in the adopted Local Plan, unless material considerations indicate otherwise. In this case, the most relevant Local Plan policies include:

- SS1 Sustainable Development
- SS9 Development in the Countryside
- SC2 Sustainable Design and Construction
- SC3 High Quality Development
- SC9 Biodiversity and Geodiversity
- SC11 Environmental Quality (Amenity)
- SC14 Contaminated and Unstable Land
- ITCR11 Parking Provision

### National Planning Policy Framework (“the Framework”)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

- Chapter 2: Achieving sustainable development
- Paragraphs 47-48: Determining applications
- Paragraphs 55-56: Planning conditions
- Paragraph 174: Conserving and enhancing the natural environment
- Paragraph 180: Habitats and biodiversity
- Paragraphs 183-188: Ground conditions and pollution

### Supplementary Planning Documents

#### *Successful Places: A Guide to Sustainable Housing Layout and Design, Adopted 2013:*

The purpose of the Successful Places guide is to promote and achieve high quality residential development within the District by providing practical advice to all those involved in the design, planning and development of housing schemes. The guide is applicable to all new

proposals for residential development, including mixed-use schemes that include an element of housing.

## **ASSESSMENT**

### **Key issues**

It is considered that the key issues in the determination of this application are:

- the principle of the development and the impact on the character of the countryside
- residential amenity
- whether the development would be provided with a safe and suitable access and impacts on highway safety;
- Biodiversity
- Contamination

These issues are addressed in turn in the following sections of this report.

#### Principle of the development and the impact on the character of the countryside

In the Local Plan for Bolsover District (March 2020) the village of Shuttlewood is identified as a small village in the countryside, which in terms of the settlement hierarchy and the distribution of development steered by the local plan it would be placed at the lower end of meeting the criteria of sustainable development (policy SS3). As a village without a defined development envelope, Shuttlewood is considered to lie in the open countryside where development proposals should be considered against policy SS9 of the Local Plan.

Policy SS9 states that development will only be granted planning permission where it can be demonstrated that the proposals fall within one or more of the policy categories. In this instance the development the subject of this application does not meet any of that policy criteria. Notwithstanding this however, whilst it is accepted that the development proposals do not meet the provisions of the development plan in regard to policy SS9, planning decisions can be taken contrary to the development plan if there are material circumstances which dictate otherwise.

In this instance the site is close to a soon to be developed employment site and is fairly close to the shops and facilities provided in Bolsover. Bolsover is accessible by bus, as are other larger towns and cities and there are bus stops within walking distance of the site. Whilst it is accepted that this is not the most preferable location for new growth in terms of its accessibility / sustainability and is in no way ideal, it does mean that the site is not considered to be in a remote location and is accessible other than only by means of a car.

Although located in the countryside, the proposed dwelling is located on a side garden/private allotment area to the existing dwelling on site and as such is already in residential use. This site has dwellings and gardens to three sides and when viewed on a plan, forms part of this small area of built development within the countryside. The site is enclosed by existing boundary treatments and, visually, is seen in the context of the residential development around the site and is not considered to result into an encroachment into the open countryside and as such is not considered to have an urbanising impact on the rural character of the area. In this respect the proposal is considered to respect the form, scale and character of the landscape.

### Residential Amenity

The proposal has been amended to propose a single storey dwelling. Subject to a condition requiring the provision and retention of suitable boundary treatment of the site and appropriate levels, the proposed dwelling is not considered to result in any overlooking or loss of privacy for residents of adjacent dwellings.

It is however considered necessary to remove permitted development rights to prevent future alterations to the dwelling or the roof of the dwelling as the provision of first floor accommodation may result in overlooking of adjacent dwellings.

The single storey dwelling is adjacent to the boundary with other dwellings but is not considered to result in a significant loss of daylight to or outlook from adjacent dwellings and is considered to meet the requirements of the councils housing layout and design guidance in this respect.

The proposal includes adequate private open space for the future residents and leaves sufficient private open space for the existing dwelling on site to meet the requirements of the councils housing layout and design guidance.

Subject to conditions relating to existing and proposed levels and boundary treatment details the proposal is not considered to result in a significant loss of privacy or amenity for residents of adjacent dwellings and is considered to meet the requirements of Policies SC2, SC3 and SC11 of the Local Plan for Bolsover District and the guidance set out in the Successful Places, a Guide to Sustainable Housing Layout and Design published by the council.

### Access/Highways

The site is accessed via an unmade track which serves this site and the rear of a number of adjacent dwellings. There is a right of way to the existing dwelling on site which has been the subject to previous legal challenge but it is unclear whether this access extends to an additional dwelling on the site. Given that the proposed dwelling utilises an existing driveway to the existing dwelling it is likely that such a right exists. However, provided the proposal is required to provide access before construction commences then if that right of access doesn't exist the dwelling cannot be constructed. The details of the extent of that right of way is otherwise a private matter between the parties concerned.

The proposal utilises an existing access into the site and proposes two parking spaces for the proposed dwelling which meets the councils parking standards. The provision and retention of these parking spaces can be controlled by condition. There is a further access and two parking spaces to the other side of the existing dwelling to serve the existing dwelling on site which again meets the council's parking standards.

Swept path analysis information has been submitted to show how a vehicle can enter and leave the site itself. The access track which serves the site has two points of access onto the highway such that if larger vehicles, such as emergency vehicles, need to access the site, they can enter and leave the site in a forward gear. On this basis there are no objections to the proposal on highway safety grounds. Subject to conditions requiring access and parking to be provided on site in accordance with the approved plans the proposal is not considered to be detrimental to highway safety and the proposal is considered to meet the requirements of Policy SC3 of the Local Plan for Bolsover District in this respect.

### Biodiversity

The application is considered to have a very low impact on biodiversity. The site is a garden/private allotment and has largely been cultivated. As a garden there would have been no controls over its management or surfacing and as such a biodiversity net gain assessment is considered unnecessary. However, given the requirement to achieve a biodiversity net gain, or at the very least no net loss, a biodiversity enhancement plan can be conditioned to secure measures such as bat and bird boxes, new planting etc. to achieve some level of biodiversity enhancement of the site. Subject to such a condition the proposal is considered to meet the requirements of Policy SC9 of the Local Plan for Bolsover District

### Contamination

The site has previously been used as private allotments/garden and involves the removal of some made ground and hard standings. This has the potential to give rise to land contamination. Given the sensitivity of the proposed development a phased contaminated land investigation condition is considered necessary to ensure the site is free from contaminants and suitable for residential development in accordance with Policy SC14 of the Local Plan for Bolsover District.

## **OTHER PLANNING CONSIDERATIONS**

### **Issues raised by residents**

Most of the issues raised by local residents are covered in the above assessment.

The issue over the capacity of the septic tank / settling bed is a private / civil matter between whichever properties have connections to the infrastructure, as is the matter of whether there may be damage caused to the private drains as a result of the construction works. Building regulations will also consider / control the suitability of the foul drainage connections.

It is noted that some of representations raise the issue over precedence, given decisions taken on land nearby previously. Each application is assessed on its own individual merits.

Access rights over any private access track is also a civil matter between the interested parties and not a material planning consideration.

## **CONCLUSION / PLANNING BALANCE**

In conclusion, it is acknowledged that the principle of development does not accord with the provisions of policy SS9 of the Local Plan as the proposal would allow a new dwellings in open countryside contrary the criteria based in this policy.

However as is set out in this report, the site is already in residential use and is within a small area of existing residential development.

On balance therefore, it is accepted that development of this site for a single storey dwelling can be accepted because the development is of an appropriate scale and layout which is complimentary to the fact the site sits within a small village settlement and does not, visually, form an encroachment into open countryside and as such is not considered harmful to the rural landscape.

## **RECOMMENDATION**

**The application be APPROVED subject to the following conditions:**

1. Approval of the details of the appearance and landscaping (hereinafter called "the reserved matters") must be obtained from the Local Planning Authority in writing before any development is commenced on site.
2. Application for approval of the reserved matters must be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development to which this permission relates must be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
3. The dwelling hereby approved must be single storey only and the scale and layout of the development must be in accordance with plan number 2149-FS01 Rev B and must be maintained as such thereafter.
4. Notwithstanding the provisions of Classes A, AA, B & C of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extension, enlargement, alteration or the provision of incidental or ancillary buildings, surfaces or boundary treatments to the dwellinghouse hereby permitted and its curtilage and adjoining non-curtilage land shall take place unless authorised by an express grant of planning permission.
5. Before construction commences on the dwelling hereby approved, the access to the site must be provided in accordance with the approved plans and must be maintained as such thereafter.
6. Before the dwelling hereby approved is first occupied the two parking spaces shown on the approved plans must be provided on site in accordance with the approved plans and must be maintained as such thereafter.
7. The details submitted with the reserved matters application must include full details of each of the boundary treatments for the site. The boundary treatments approved in the reserved matters application must be provide on-site in accordance with the approved details before the dwelling is first occupied and must be maintained as such thereafter.
8. The details submitted with the application for reserved matters must include a scheme of biodiversity enhancement measures to be incorporated within the development to maximise the opportunity for biodiversity enhancement on site must be submitted to and approved in writing by the Local Planning Authority. The approved enhancement measures must be incorporated on site in accordance with the approved scheme and must be maintained as such thereafter.

## **Statement of Decision Process**



Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application. The proposal has been considered against the policies and guidelines adopted by the Council and the decision has been taken in accordance with the guidelines of the Framework.

### **Equalities Statement**

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic

### **Human Rights Statement**

The specific Articles of the European Commission on Human Rights (‘the ECHR’) relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process. In carrying out this ‘balancing exercise’ in the above report, officers are satisfied that the potential for these proposals to affect any individual’s (or any group of individuals’) human rights has been addressed proportionately and in accordance with the requirements of the ECHR.