

PARISH

Clowne Parish

APPLICATION Use of land for nature based woodland play area, including a shelter building
LOCATION Land North Of 4 To 10 Meadow View Clowne
APPLICANT Ben Shatford
APPLICATION NO. 24/00096/FUL **FILE NO.** PP-12863529
CASE OFFICER Mrs Karen Wake
DATE RECEIVED 6th March 2024

SUMMARY

The application has been referred to Planning Committee by Cllr Hiney-Saunders due to concerns about the lack of parking at the site and the impact of the development on the environment. The application is also considered to be of strategic importance by the Development Management and Land Charges Manager as the land is situated outside of the development envelope for Clowne.

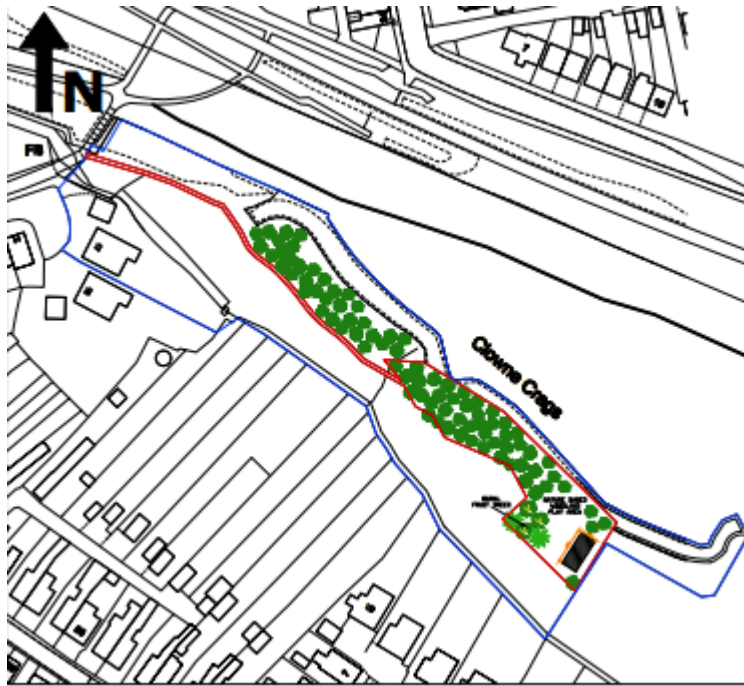
The application is also required to be determined by Planning Committee because objections have been received by 24 residents.

The application is for the change of use of the land to a woodland play area, including the erection of a shelter building.

The application is outside the development envelope within an area allocated as countryside in the Local Plan. The site is also within the Clowne Conservation Area, and a Regionally Important Geological site and is immediately adjacent to a Protected Green Space and a Wildlife Corridor and Stepping Stones.

The application is recommended for **Refusal**.

Site Location Plan



OFFICER REPORT ON APPLICATION NO. 24/00096/FUL

SITE & SURROUNDINGS

The site is situated in the countryside to the east of Clowne Town centre and comprises an undeveloped parcel of land which includes Clowne Crag, a Limestone Gorge designated as a Regionally Important Geological Site (RIGS). The site also encroaches into the Markland and Hollinhill Grips (known as Clowne Craggs); a Historic Environment Record site comprising caves and rock shelters within the gorge and numerous fissures and potential wildlife site within the Clowne Linear Park, comprising mosaic habitat. The site is partly maintained grass land and partly wooded with a stream to the south. There is no highway access to the site, only a public footpath, which is included within the application site area.

To the north/northeast of the site is the Linear Park. To the east/southeast is an area of vacant, overgrown land. To the south, southwest and west of the site are dwellings. To the northwest of a public footpath which it is proposed to use to access the site, beyond which is woodland a further dwelling and garden.

The land to the south of the application site partly lies within Flood Zones 2 and 3.

The whole of the site lies within Clowne Conservation Area.

BACKGROUND

Prior to the submission of this application, a screen fence was erected along a significant length of the site's boundaries. This fence does not form part of the planning application.

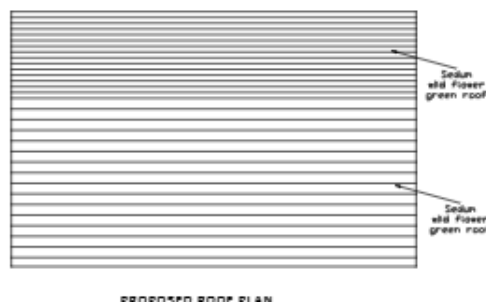
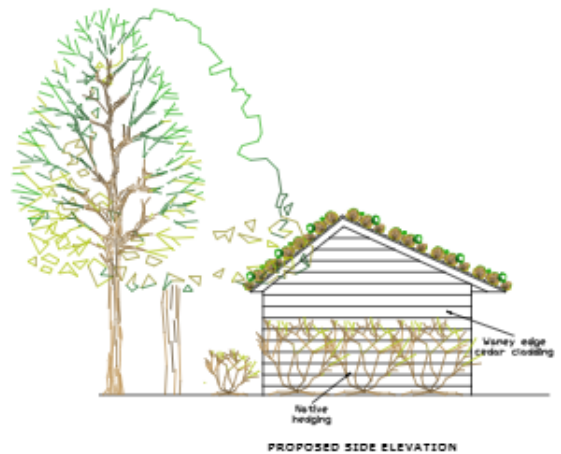
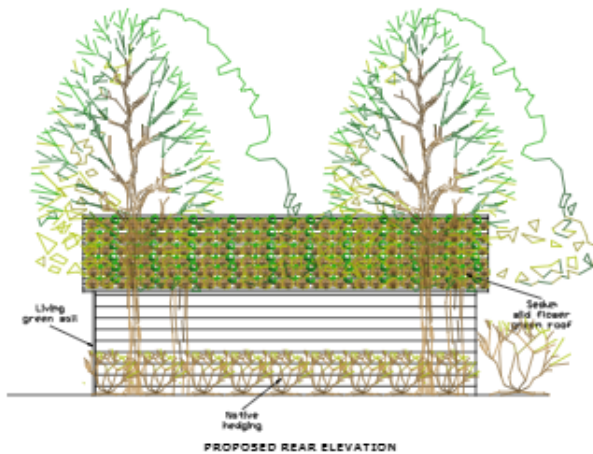
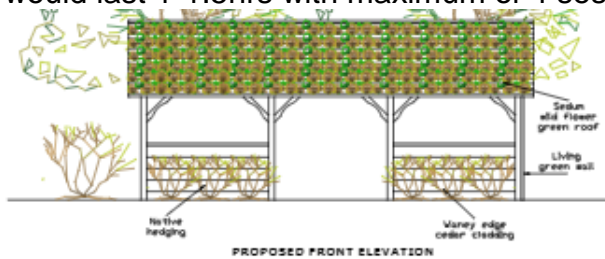
The play areas within the trees at the base of the Craggs have already been constructed but the use has not yet been implemented.

A timber seating structure has been erected on land within the applicant's ownership, adjacent to the site boundary without planning permission and is therefore unauthorised. The structure is not within the application site area (edged red on the submitted site location plan) and does not form part of this application.

PROPOSAL

The application is for the change of use to a change of use to a nature based play area and the erection of a shelter building. The proposed building is 7.5m long, 4m wide and has a pitched roof which is 3.6m high to the ridge. The building is partially open on one side and is constructed in timber with a green roof and one green living wall. The other walls have native hedge planting proposed immediately adjacent to them.

The proposed use involves up to 10 children plus parents/guardian taking part in organised nature-based play activities (mud kitchen, hands-on learning, exploration etc.). The sessions would last 1-1.5hrs with maximum of 4 sessions per day.



AMENDMENTS

The proposed building on site has been amended from a classroom to a smaller shelter building which is open on one side.

Additional information submitted relating to the public benefits of the scheme.

Revised biodiversity metric has been submitted which includes the watercourse, together with a river condition survey.

EIA SCREENING OPINION

This proposal does not fall within Schedule 1 or 2 of the Environmental Impact Regulations.

HISTORY

16/00049/FUL	Granted Conditionally	Redevelopment of former car park and erection of nine dwelling houses with associated driveway and parking areas (as amended by revised plans received 13th April 2016)
17/00303/FUL	Granted Conditionally	Erection of 8 dwellings
17/00476/DISCON	Conditions discharged	Discharge of Conditions 3 (Landscaping), 6 (Biodiversity Enhancement Native Landscaping), 8 (Remediation Works), 10 (Visibility Splays), 11 (Details of Site Accommodation & Materials), 14 (Bin Collection Points) and 15 (drainage) of planning permission 17/00303/FUL
17/00646/DISCON	Conditions discharged	Discharge of Conditions 2 (External Roof & Wall Materials), 4 (Landscape & Drive Management Plan), 5 (External lighting Strategy), 7 (Boundary Treatment Materials), 9 (External Levels), 15 (Foul & Surface Water Details) of planning permission 17/00303/FUL
18/00290/FUL	Granted Conditionally	Two new dwellings over three floors, plots 7 & 8 of previously approved application 17/00303/FUL
20/00227/FUL	Granted Conditionally	Erection of two dwellings (re-design of plots 7 & 8 of 17/00303/FUL and 18/00290/FUL)
22/00058/FUL	Granted Conditionally	2 Dwellings and change of use to garden land (revised scheme)

CONSULTATIONS

Parish Council

Object to the development as there isn't any consideration to onsite car parking in what is a residential area, It is believed that access is from the side of the applicant's property and that nearby carparks are proposed to be used for customers to park/drop off and pick up. The use of neighbouring carparks is inadequate as they are mostly full during the proposed hours of operation, and this will put additional pressure on key infrastructure at key times of the day as it is assumed that there will be group use throughout.

Conservation Manager

Whilst in principle, the use of the site for outdoor play appears to be a low key use which would have a minimal impact on the historic landscape, the increased public access to the site will inevitably lead to the need for limited interventions to ensure the health and safety of users. There will also be the need for some additional outdoor furniture such as the wooden table and chairs and play equipment, which although not permanent will have an impact on the open character of the area. There is a concern that these albeit minor incremental changes will alter the character and appearance of the area. The intensified human activity may also have an impact on geology, archaeology and biodiversity.

The use as an outdoor natural play area in isolation would have a limited impact on the character of the area, however, the associated paraphernalia required for the education use, and the construction of a permanent building will have a negative impact on the alter character and appearance of the area resulting in harm the significance of the designated heritage assets. The level of harm is considered to be less than substantial (at the lower end of the scale). It would therefore be necessary to weigh any such perceived harm against the public benefits of the development.

The size of the shelter has been reduced from 45m² to 30m² and the design has been altered to create an open 3 sided stable/ barn structure. The applicant has also provided additional information / evidence for the need for some form of shelter and supporting evidence of the public benefits arising from the proposed use. Whilst the amendments to the design and scale of the shelter are welcomed and it is acknowledged that additional evidence has been provided in support of the public benefits of the use, the earlier comments in respect of the impact of the proposal on designated and non-designated assets still stands.

Environmental Health Officer

No objections.

Derbyshire County Council Flood Team

No comments as the flood team are only commenting on major applications. Would like to highlight that the proposals for biodiversity enhancements within the watercourse would be subject to Land Drainage Consent from DCC flood team to ensure that flood risk to proposed and existing properties would not be increased as a result.

Derbyshire County Council Highways

No objections. Suggest an advisory note to the applicant advising of the need for adjacent footpaths to remain open and unobstructed.

Derbyshire County Council Rights of Way

Clowne Public Footpaths Nos. 11 and 28 lie to the west of the site and are part of the access. There are no objections to the proposals as it appears that the routes will be ultimately unaffected. The applicant should be advised that:

- The footpaths must remain open, unobstructed and on their legal alignment.
- There should be no disturbance to the path surface without prior authorisation from the Rights of Way Section.
- Consideration should be given to the safety of members of the public using the path during the works. A temporary closure of paths will be permitted on application to

- DCC where the path(s) remain unaffected on completion of the development.
- There should be no encroachment of the path, and no fencing should be installed without consulting the Rights of Way section

Footpaths Secretary Chesterfield, North East Derbyshire and Bolsover Group of Ramblers

No objections. no reason why the proposed development should adversely affect the Right of Way to the North East of the area, i.e., Clowne footpaths 11 and 28.

Derbyshire County Council Archaeology

The site sits both within the conservation area and within the boundary of the Markland and Hollinhill Grips, a Limestone gorge with 12 caves, 41 possible rock shelters of various sizes, some of which have been linked with occupation sporadically since the upper palaeolithic. As the site lies within an area of wider archaeological importance and context any groundworks associated with this application should have a degree of archaeological monitoring where appropriate secured by condition. In line with NPPF Ch 16 para 211, should be worded

“No development shall take place until a written scheme of investigation (WSI) for archaeological monitoring has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives; and:

- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
- The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.”

All works should be in accordance with a bespoke written scheme of investigation (WSI) prepared specifically to the needs of this site and the development, pre-approved by DCC Archaeology in writing before implementation. The WSI should be compiled by the archaeological organisation commissioned to undertake the works in the field and should be undertaken to recognised industry standards, in line with the appropriate qualitative standards of field practice and recording as outlined in current key methodological literature (for example Barker 1993, Roskams 2001). All archaeological works should be undertaken by a suitably experienced archaeological organisation with suitably and most importantly demonstrably experienced archaeologists undertaking the work on the ground.

The reduction in scale of the shelter building, will still be likely to require groundworks/foundations and it is still probable that some degree of site strip will be needed, for which the archaeological monitoring recommended above is still appropriate.

Head of Leisure

No comments received.

Derbyshire Wildlife Trust

The revised metric, which has had the watercourse element added results in the overall BNG predictions as follows:

+0.16 habitat units / 10.70%

+1.81 watercourse units / 44.50%

No direct woodland loss will result, only minor losses of scrub and modified grassland. Woodland will be enhanced in condition through management and new mixed scrub will be planted. Proposals are generally considered low impact, with the highest potential for adverse impacts being from any new lighting associated with the site. There must be no adverse impacts to Clowne Craggs as a result of the application, with respect to roosting and foraging bats. The woodland play site is not anticipated to operate into the evening and therefore sensitively chosen lighting, with a cut off period 6 or 7pm, would be acceptable to limit impacts to wildlife.

There is opportunity to enhance this area for biodiversity through measures intended to achieve the mandatory gains and also through the additional management prescriptions provided by Armstrong Ecology for areas outside of the planning application boundary. All works within the woodland should be undertaken with due consideration for protected species, as highlighted in the ecological report. It is also noted that water voles were historically recorded along the nearby stream (records present on Derbyshire Biological Record Centre database) and any future management along the riparian corridor should take this into account and obtain advice from an ecologist prior to any works.

The ecological report makes the case that a Habitat Management and Monitoring Plan (HMMP) is not considered to be a “*reasonable or proportionate requirement going forward*”. It is agreed that the predicted unit gains are small and that the management should be simple to achieve and the highest value habitat on site, the broadleaved woodland, will only be positively affected.

However, given that the application is subject to mandatory net gain, the gains should be secured and monitored over the 30-year period and the LPA has a duty to report on the success of BNG measures secured as part of the planning process. Prior to mandatory BNG, the management prescriptions could be secured via condition, either requiring compliance with the Preliminary Ecological Appraisal and Biodiversity Impact Assessment or the production of a Landscape and Ecological Enhancement Plan (LEMP). Under mandatory BNG, the LPA should decide if the onsite gains are ‘significant’ to determine if a HMMP is required <https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer#significant-on-site-enhancements> Whichever mechanism is chosen, the recommended management prescriptions in the ecological report should be secured for the long term and ideally their success would be reported on to the LPA to evidence that net gain had been achieved.

In addition to securing the habitat management, conditions are also required to ensure the development is carried out in accordance with the reasonable avoidance methods and mitigation measures detailed in the Preliminary Ecological Appraisal and Biodiversity Impact Assessment (Armstrong Ecology, February 2024), and prior to installation of any lighting, a detailed lighting strategy be submitted for approval.

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

PUBLICITY

Site notice, press notice and neighbour letters. Objections received from 24 residents, the Clowne Community Association and a Local Councillor. The objections raised the following issues:

1. A large wooden structure has already been built but it is not shown on the submitted plans. It has been constructed close to the boundary with properties on Meadow View with no opportunity to screen it from the adjacent dwellings.
2. The proposed shelter is a substantial building, internal layout plans have not been submitted so the use of the building is unclear.
3. The building is located on an area which floods during periods of heavy rain.
4. Whilst the applicant has erected a post and wire fence to the extremities of the site but has supplemented this with pallets, orange netting and plastic garden furniture which is not very ecological.
5. The development is positioned on land closest to the houses which back onto it and will be clearly visible from adjacent dwellings because of the gradient of the adjacent gardens meaning the adjacent houses are set higher and look down onto the site. Screening by landscaping and trees therefore not screen the site from the adjacent properties.
6. Residents were not notified of any previous application which was refused.
7. The proposal will harm the peace, privacy, amenity and enjoyment of the houses and gardens adjacent to the site.
8. The proposal will look directly into the windows of adjacent homes.
9. The noise from up to 10 children plus accompanying adults attending play sessions 6 days a week, 9am-6pm will be unacceptable
10. The suggestion that the proposal will reduce anti-social behaviour on the site is unfounded. The Local Authority have been unsuccessful in their attempts to stop this, and the vast majority of antisocial behaviour occurs in the summer months in the evenings when the site will not be in use. If anything, the siting of a shelter and any equipment will actually be a draw rather than a deterrent.
11. The suggestion that visitors will use public transport is unrealistic. The site access is via Rectory Road and the public footpath, so visitors will attempt to park on Rectory Road where double yellow lines are in situ and in the surrounding roads ie Church Road which is a narrow road and is highly congested at all times rather than use the car parks in the village which are not large.
12. There are health and safety issues for visitors to the site as it is prone to flooding, suffers from poor emergency access, it has no lighting, no electricity, no sewage facilities, and no fresh-water access. Without significant as-yet-undeclared development of the site potentially breaching planning regulations, the site will remain unsafe for its proposed usage.
13. In the event of an accident how will emergency services access the site.
14. The proposal states no toilet facilities but may install a composting toilet, how would this be maintained and where would this be placed?
15. The previous owner of the site stated that when he registered his ownership with Land Registry that he had covenant placed on the land that it could not be developed and was to be held as a nature greenspace and not to be used for commercial use, it had to remain as a garden, had to be mown and couldn't be left to get overgrown or be built on.
16. The proposal will spoil the peace of the area and the linear park.
17. There is already a lack of parking in the area and on nearby streets and the proposal will make this worse.
18. The proposal has no consideration for the community.
19. The adjacent properties were purchased because of the quiet location privacy and some residents have special needs which rely on this. The proposal will have a huge

impact on the peacefulness and privacy of adjacent dwellings.

20. Residents are taking legal advice on this proposed development as the applicant of seems very confident as a website is already running for the business. The website is in the applicant's wife's name. This is suspicious and needs looking into as it should be in the applicant's name
21. The proposal will have a negative impact on services, weddings and funerals held at the church when people do not want to listen to excitable children.
22. The application states people will park in the town centre car parks, but these car parks are already busy and often full.
23. Adjacent residents are likely to face significant costs to further secure the rear of gardens and properties from the risk of criminal trespass, damage and antisocial behaviour – especially during the summer months and evenings. The more people who have long-term visibility of adjacent properties from the rear, the greater the risk faced, and this is an unacceptable risk.
24. There is no provision for removal of waste materials and rubbish from the site.
25. The play area is not simply a recreational play area but is actually to be part of a privately owned and operated for profit schooling facility, and as such should be subject to the planning considerations given to all schooling facilities.
26. There are a number of inaccuracies on the application form.
27. Site contamination has not been assessed by any relevant expert opinion. The stream adjacent to the site contains many drainage culverts from adjacent properties all potentially carrying wastewater, or possibly even sewage. Placing young children next to potentially dangerous effluent is irresponsible
28. Given the focus of the business operating the 'forest school play area' on tactile learning, children will be getting muddy and involved with nature on the site. This is applauded as a notion for a child's learning, there is concern regarding the potential for dangerous waste materials formerly on the site to still be present in the ground substrate. Has any assessment of this possibility been carried out?
29. The building is not a simple shelter.
30. The proposal will be harmful to protected species and other wildlife and declaring a biodiversity 10% net gain is splitting hairs to achieve a favourable recommendation on the planning application. Humans and nature do not go together in terms of biodiversity and sustainability.
31. Proposed hours of operation are unacceptable.
32. The site is too close to the stream, where fast flowing water and the likely activity of rodents is not suitable for children to play.
33. There concerns that the additional sewerage requirement on to the existing system already aged and strained would not be able to cope.
34. Not all neighbours received notification letters about the application and no site notices have been put up.
35. The site has no parking. Traffic already speeds along Rectory Road, using it as a cut through and people dropping off and collecting children and parking on here will be a further hazard.
36. The applicant has claimed he owns both sides of a stream that previously always served as a border between the site and adjacent properties. He has erected unsightly fences in areas of natural woodland and even on the edge of an area of protected Greenaway land for a considerable stretch. A party with several children was held in the garden with music etc and considerable noise and because this is a natural valley the

noise carries a long way and an echo effect is created. This spoiled the ability for adjacent residents to enjoy their gardens.

37. There is no need for the facility there are several woodlands in the area for woodland walks and several play areas around Clowne as well as a learning centre in Creswell Craggs and at Sherwood Forest Edwinstowe.
38. The proposal will result in noise, pollution, litter and traffic in the area.
39. People accessing the site and queuing to enter etc will obstruct the footpath which is well used by local people.
40. With the potential of up to 40 children per day, 6 days a week not including their careers and staff this is potentially 500 people per week, this amount of people will have a detrimental impact upon the site, the wildlife and the biodiversity will not be able to survive the destructive nature of this amount of people.
41. The limestone gorge outcrop and cliffs need to be protected within the conservation area
42. The facility is already advertised on google maps and is advertising Sunday working which is not on the application form.
43. The applicant should be asked to provide a copy of the deeds to the property so the restrictive covenants can be seen.
44. The applicant states that the noise would be compatible with a built up area that contains residential properties. There is no evidence to support that statement and the Office of National Statistics describe any area such as Kingfisher View as a hamlet due to the number of houses there.
45. The applicant states that the level of activity would be similar to the activity on the adjacent Linear Park. This is a false comparison. The area mentioned is used mainly by singular dog walkers who, other than possibly recalling their dog would bear no resemblance to the level of noise generated from the proposed scheme.
46. The parking arrangements referred to in the planning statement can only be taken at face value due to the lack of "policing" of the situation.
47. The application shows photographs of empty car parks which is misleading together with photographs of the proposed grassland area showing dense foliage and stating the screening this will bring. There is no mention of the areas lack of screening and noise deadening in the months where there is no foliage leaving the site open to nearby residences.
48. The site was bought by a building company. Once a building is approved, even just a shelter, this can be the footprint for future housing. The woodland play area is very unlikely to make a return unless it takes a huge number of 'customers' each day, which is just not feasible. It won't be long before there is an application on the site for houses.
49. The issue of flooding has not been properly addressed.
50. The biodiversity metric submitted should include the water course module and it has been omitted. This needs to be addressed before the application can be determined.
51. The site is within the Clown Conservation area for the Old Rectory and St Johns Church and anything that changes the character of this land will affect the environment and character of the conservation area. The proposed building is right in the centre of the stream valley habitat massively impacting on it. For the applicant to argue it would have no impact seems a gross misuse of the term. For the applicant to describe the building as recessive when it will be placed in the centre of the stream valley and close to a number of neighbours boundaries when no similar such uses have been here for decades is an unusual interpretation.

52. Town centre car parks are already at capacity +-and are full most of the time.
Realistically, people using the proposed development will park on nearby streets where parking is already a problem.
53. A seating area has already been constructed without planning permission and other structures will follow and the use will extend outside the approved area.
54. The facility is already advertised saying it will operate 7 days a week which is unacceptable for residential amenity.
55. If the use is a woodland school will it need Ofsted approval?
56. The proposal does not comply with the council's parking policy or parking standards.
57. Covenants refer to owners or occupiers of neighbouring properties. Given that Bolsover District Council are one of those neighbours as they own/maintain that part of the linear park I would expect them to have a view on this application regardless of covenants. The fencing that has been put in place along the boundary of the property and linear park and which provides the privacy to allow the applicant's business use has certainly caused *annoyance* to a number of users of the linear park. BDC Leisure department should be consulted as they may have an objection regardless of whether they instigate or join in with any post application legal process associated with these covenants.
58. The proposal poses a health and safety risk for its users
59. The applicant has trespassed on adjacent properties and erected a fence without consent of the land owner.
60. The proposal is in breach of the Human Rights Act for residents on Meadow View. This act gives a right to private and family life and a respect of your home.
61. The applicant has now submitted a river survey and identified opportunities to improve the water course and riparian bank area. However, there is no accompanying plan/schedule of works that can be conditioned as part of any grant of planning permission. It is essential therefore that the applicant brings forward a "Plan of Works" that details the initial work to be done and the longer-term riparian planting identified in the report. This will allow the Local Planning Authority to monitor the progress of the development site as part of their own and the applicant's compliance requirements over the next 30 years. It would also form a baseline against which any future applications to vary, for example, may be considered.
62. The mandatory Biodiversity Net Gain (BNG) requirements make clear that the site to be assessed is the whole area within the planning Red Line Boundary. The BNG information and metrics submitted do not cover all of the site because the site area shown on the BNG metrics are 0.12 ha on the first one and 0.14ha on the second. The site area when measured on the council's area measuring tool is 0.19ha. The applicant should submit a further Statutory Biodiversity Metrics that encompass the whole site area and the required water course with riparian areas.
63. The applicant has submitted a river condition assessment prepared by an ecologist. However, the 20% area assessment in any Modular River Survey field survey should be conducted across multiple areas within the watercourse length, rather than in just one area. This approach ensures a representative assessment of the watercourse's physical characteristics and habitat conditions along its entire length. The report only assesses the first 20% of the watercourse and therefore excludes any assessment of the watercourse and riparian bank area located directly opposite where the applicant plans for their customers to use the site. This area falls within the 10m assessment requirements, has considerable existing habitat value, and is considerably distinctive from the first 20% of the watercourse assessed. In addition, the location of "RCA Module Midpoint 1" is faulty in its plotted and reported location. The applicant should

submit a River Condition Assessment Report (and update their Statutory Biodiversity Metrics accordingly) that provides a representative assessment of the entire watercourse length, impacted by the proposed development, and not just the western most (20%) part of the watercourse.

64. The applicant has erected a timber fence around their boundary. The fence runs directly over the water course and dips down in height making it much closer to the water level where it crosses the watercourse. The fence presents an obstruction to water-based wildlife and restricts and redirects the water course in the event of elevated water levels. This will result in flooding being re-directed along the public footpath towards
65. Rectory Road. During periods of flooding the fence may break away and become blocking debris at exactly the point in the water course that it starts to narrow.
66. The fence does not have planning permission. It screens Clowne Crags, removing them from sight resulting in considerable loss of amenity to the local setting. The fence is clearly visible at all points parallel to it from the southern Linear Park footpath. Coloured in light brown the fence significantly contrasts with the surrounding landscape and is highly visible. This detracts significantly from the surrounding landscape. The fence is therefore causes harm to the Clowne Conservation area.
67. A planning enforcement complaint has been raised submitted about the fence, in parallel to a complaint to Derbyshire County Council Flood Team (as the LLFA.) The applicant should amend the application to include retrospective planning permission for a fence that is suitable for a setting within the Clowne Conservation Area, and that allows wildlife to transit through/between panels unimpeded and remove the existing fencing panels that are within the riparian bank area and that cross the water course, that do not have consent from the Derbyshire County Council Flood Team (acting as the LLFA), in contravention of the Land Drainage Act 1991 as amended by the Flood and Water Management Act 2010.
68. The applicant has stated that a Habitat Management Plan is not required. The LPA should be mindful of the site's location within Clowne Linear Park. Due regard should be given to the wildlife onsite, the immediate surrounding area (Clowne Crags) and downstream (Creswell Crags). A Habitat Management Plan provides several benefits, including enhanced Biodiversity, establishing a long-term management and monitoring plan ensuring the sustainability of the habitats and provides a quantifiable baseline against which approved and future biodiversity net gains can be considered and likely captured. The applicant should submit a Habitat Management Plan that details how the proposed development will manage the interaction between the development site, its immediate surrounding area and nature.

Two letters of support received which raise the following issues:

1. Giving Clowne children a play area in a rural setting would be very welcome and would benefit local people who can walk there and enjoy the beautiful setting.
2. There are lots of carparks in Clowne and there are always spaces except possibly at the beginning and end of the school day.
3. Clowne and the Bolsover district has a lack of Early Years (under 5) services and is far behind neighbouring counties of South Yorkshire (Sheffield) in terms of council provision.
4. Young families and young children need services to nurture their minds. Lacking a family centre/Sure start centre, this outdoor activity space would be fantastic for clowne and neighbouring residents to support children and develop their senses and provide

early years education. Children need to be in outdoor spaces, rather than old fashioned toddler groups. Being with nature and learning and socialising with their peers is paramount.

5. Maternal Mental Health is high up on the national agenda and these groups would support mothers to meet other parents in the early years which is often extremely difficult and isolating.
6. Most families attending would walk/park in community allocated parking spaces. With such an increase in new homes in the region, there are numerous families new to the area and supporting local trade such as supermarkets and cafes after groups. This application would be fantastic for the young families of Clowne and neighbouring villages which are somewhat forgotten by Derbyshire County Council.

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
- WC3: Supporting the Rural Economy
- SC2: Sustainable Design and Construction
- SC3: High Quality Development
- SC5: Change of Use and Conversions in the Countryside
- SC7: Flood risk
- SC10: Trees, Woodland and Hedgerows
- SC9: Biodiversity and Geodiversity
- SC11: Environmental Quality (Amenity)
- SC16: Development Within or Impacting upon Conservation Areas
- SC17: Development affecting Listed Buildings and their Settings.
- SC18: Scheduled Monuments and Archaeology
- SC21: Non-Designated Local Heritage Assets
- ITCR6: Protection of Green Space
- 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 7 - 10: Achieving sustainable development.
- Paragraphs 47 - 50: Determining applications.
- Paragraphs 55 - 58: Planning conditions and obligations.
- Paragraphs 96 - 107: Promoting healthy and safe communities.
- Paragraphs 108 - 117: Promoting sustainable transport.

- Paragraphs 123 - 127: Making effective use of land.
- Paragraph 165 - 175: Planning and Flood Risk.
- Paragraphs 180, 186 and 188: Conserving and enhancing the natural environment.
- Paragraphs 189 - 194: Ground conditions and pollution.
- Paragraphs 200 - 214: Conserving and enhancing the historic environment.

Supplementary Planning Documents

Clowne Conservation Area Appraisal and Management Plan 2018

Local Parking Standards:

This document relates to Policy ITCR11 of the Local Plan by advising how the parking standards contained in appendix 8.2 of the local plan should be designed and implemented with development proposals. This SPD does not revise the standards contained in the Local Plan but does provide suggested new standards for parking matters not set out in the Local Plan, such as cycle parking. The design supersedes the parking design section included within the existing Successful Places SPD (2013).

Biodiversity Net Gain Design Note:

In light of the requirement for mandatory 10% biodiversity net gain, the Council has prepared a planning advice note to provide advice on the background to the introduction of mandatory 10% Biodiversity Net Gain, how this statutory provision relates to policy SC9: Biodiversity and Geodiversity in the Local Plan for Bolsover District, and how we will expect those preparing applications to approach this new legal requirement.

ASSESSMENT

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the purposes of the Act is the Local Plan for Bolsover (2020) and the supplementary planning documents outlined above. The National Planning Policy Framework (2023) is a material consideration in respect of this application.

There is a separate legal duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Case law has established that the above legal requirement must be given “considerable importance and weight” in decision making.

Having regard to the above requirements in law and the relevant provisions of the development plan and other material considerations, consultation and public comments received the main issues for consideration are:

- The acceptability of the development in location terms
- The impact of the development on this part of Clowne Conservation Area and other heritage assets
- The impact of the development on the character and appearance of the area

- Impact on the local environment, including:
 - Residential amenity of the occupants of nearby residential properties
 - Wildlife and Biodiversity
 - Highway safety considerations, and
 - Drainage and Flooding

Matters of land ownership, trespass, regulation of the proposed use and health and safety sit outside of the remit of the planning system. They are covered under separate regulatory regimes or relate to civil matters.

The acceptability of the development in location terms

Policy SS1 of the Local Plan for Bolsover (2020) sets the criteria against which the Council will consider the sustainability of a proposal. The Policy does not require any proposal to achieve a benefit against every criterion, but it seeks to provide a basis on which to recognise the various sustainability costs and benefits of a proposal, which will then be considered by the Council in the overall 'Planning Balance'. The policy is supportive of development proposals, which support the local economy by providing employment opportunities and promote the efficient use of land in sustainable locations. The policy also seeks to locate development in close proximity to trip generators with the aim of reducing the need to travel by non-sustainable modes of transport, create well designed places that are accessible, durable, adaptable and enhance local distinctiveness, protect and enhance the character, quality and settings of towns and villages and heritage assets through an appropriate mix of good quality, well-designed development and protect, create and / or enhance the character, quality and diversity of the District's green infrastructure and local landscapes, the wider countryside and ecological and biodiversity assets amongst other considerations.

The site lies outside of the defined development envelope of Clowne, within the countryside. The proposal does not accord with the criteria of Policy SS9 relating to supported forms of development in the countryside. The land is not previously developed and the proposed use is linked to learning (Use class F1) and indicated by the applicant to be sui-generis and does not therefore accord with criteria a) or c) as suggested by the applicant. It is, however, acknowledged that the nature of the learning / play offer is linked to the environment and a woodland setting, which may warrant a countryside or edge of settlement location. The harm is therefore tempered in this respect.

Policy SC5 makes provision for the change of use and conversion of buildings in the countryside. Although there is no existing buildings on site and the application involves new building operations, criteria b) requires in the case of changes of use the development to be in-keeping with the original character of the land and to enhance the landscape character type generally.

The applicant has stated in their supporting Planning Statement that it is not the intention to create a regular day nursery where children attend full time on a daily basis. The use would be operated by the applicants, who are an experienced and qualified operator specialising in early years development. The woodland play sessions will be within dedicated time slots, with a maximum of 10 children in attendance at each session. Sessions would typically last 1-1.5 hrs with 4 sessions a day between 9am and 6pm. The specified hours of operation are between 9am and 6pm Monday to Saturday. Limited information has been presented relating

to the need for a forest school in this location and intensity of use would indicate that it would serve a wider catchment than Clowne if it was not to operate as a private day nursery as suggested. The applicant suggests the same by indicating that visitors will be encouraged to park at a meeting point at a public footpath and to use public car parks if travelling by car. Although the site can be accessed by public transport and foot, it is convoluted and over some distance off a public footpath. Policy SC3 requires development to provide appropriate access for people with physical and/or mobility difficulties to both individual buildings and the wider built environment. The distance and route is such that it would not be readily accessible by all.

The development relates to the use of the land and the development of a physical base in the form of a shelter building. Whilst weight is given to the benefits associated with woodland play / learning and the locational requirements of such a use, the need for a significant building / shelter on the site results in a permanent commercial base and development that is harmful in the context of the sites sensitive and constrained location.

Whilst it is acknowledged that the site is located on the fringes of Clowne, which is a higher order settlement in the Local Plan for Bolsover (2020), the intended use would introduce significant activity and development within an otherwise tranquil location on the fringes of the settlement with poor accessibility, which contributes to the landscape and historic setting of the settlement. The use and associated development, whilst reduced in scale, would introduce a form of development that would result in significant harm to the landscape and historic setting of Clowne that would be contrary to the criteria of Policy SS1 that consider such impacts. Furthermore, the development would introduce a commercial / learning based use and associated development that has not been demonstrated to be necessary in a countryside location contrary to the spatial objectives of the development plan and the requirements of Policy SS9.

The impact of the development on this part of Clowne Conservation Area and other heritage assets

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires Local Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This must be given “considerable importance and weight” in decision making.

Policy SC16 of the Local Plan for Bolsover (2020) states that development proposals within or impacting upon Conservation Areas will be permitted where they preserve or enhance the character and appearance of the area and its setting. It advises that applications will be considered in relation to how well the design and location of the proposal has taken account of:

- a) The development characteristics and context of the conservation area, in terms of important buildings and important open spaces
- b) Landscapes, walls, trees and views into or out of the area
- c) The form, scale, size and massing of nearby buildings, together with materials of construction

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 paragraphs 200 - 214: Conserving and enhancing the historic environment.

Harm is differentiated under the national guidance in two categories: harm is either 'substantial' or is 'less than substantial'. Any harm to significance requires clear and convincing justification and must be weighed against the public benefits of a scheme (NPPF 207 and 208).

Paragraph 205 of the NPPF makes it clear that: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

The District Councils Conservation and Heritage Manager has assessed the application, in its amended form, and had regard to the above policy framework and the significance of the site (with particular regard being given to Clowne Conservation Area and Management Plan 2018 and the setting of nearby listed buildings and other heritage assets).

They advise that the landscape is a key component of the character and appearance of a settlement. The underlying geology influences the natural landforms, features and natural vegetation. These in turn influence the nature of man's activities over the centuries including the very nature of settlement. They recognise that landscape is therefore integral to sense of place and a key component that underpins character and appearance.

The Craggs and their wider landscape setting are historically, geologically and visually significant for their pre/early settlement character. Recognising that the site is visually contained as a result of its positioning within the Craggs, below the former railway line (now the Linear Park) and the dense tree cover and the built form along Church Street, they have explained that the development will have a negative impact on the alter character and appearance of the area resulting in harm the significance of the designated heritage assets. The site has remained undeveloped for centuries and has a rich and varied history. The Craggs and their wider landscape setting are historically, geologically and visually significant for their pre/early settlement character. The development of the site will negatively impact on heritage and the less than substantial harm will need to be weighed against the public benefits to be derived.

The impact of the development on the character and appearance of the area

Policy SC3 'High Quality Development' requires development to create good quality, attractive, durable and connected places through well designed locally distinctive development that will integrate into its setting, respond positively to the context and contributes to local identity and heritage in terms of height, scale massing, density, layout and materials and respond to the established character and local distinctiveness of the surrounding landscape and create conditions for active travel choices through provision of connected places that are easy to move around, integrated with their surroundings and which

facilitate access through sustainable forms of transport including walking, cycling, and bus and rail public transport amongst other considerations.

The site constitutes undeveloped land within a linear park. It is of particular environmental importance, contributing positively to the history, geology and landscape of the area. The introduction a commercial use, building and associated paraphernalia would not respond positively to the sites existing character or context. It would constitute unwarranted and harmful urban encroachment into this sensitive area. Furthermore, the convoluted and difficult access to the site does not create conditions that facilitate sustainable forms of transport that is accessible to all. The development is therefore considered to be contrary to the requirements of Policy SC3.

Residential amenity of the occupants of nearby residential properties

As set out in earlier sections of this report, the nature of the use will materially affect the tranquillity of the area. In terms of the impact of the development on the residential amenity of the occupants of nearby dwellings / land uses, Policy SC3 requires new development to ensure a good standard of amenity is maintained for the occupants of existing neighbouring properties as well as the future occupants of new development, including levels of privacy and light, position and avoiding overbearing relationships and the provision of adequate amenity space.

Policy SC11 'Environmental Quality (Amenity)' states that development likely to cause, or experience, a loss of residential amenity as a result of light, noise, dust, odour or vibration, or a loss of privacy must be supported by a relevant assessment. If necessary, appropriate mitigation must be put in place. It advises that applicants will need to demonstrate that a significant loss of amenity would not occur as a result of the development or throughout its construction and operation.

It is not considered that the development will cause a loss of residential amenity that would be unacceptable in planning terms. Existing residential dwellings to the south of the site have relatively large rear gardens. The proposed development is also sited on the northern part of the land owned by the applicant. The location of the site and proposed shelter and its scale relative to neighbouring properties is such that there would not be unacceptable overbearing or overshadowing effects, loss of privacy or noise nuisance. No objections have been received from the Environmental Health Team and a management plan could be controlled by condition to effectively manage the use of the site and any disturbance arising, to minimise the impacts.

Wildlife and Biodiversity

Policy SC3 requires development to address opportunities for biodiversity, conservation, and enhancement ensuring that local semi-natural features, including watercourses are created or enhanced as integral parts of development.

Policy SC9 of the Local Plan for Bolsover (2020) states that development proposals should seek to conserve and enhance the biodiversity and geodiversity of the district and to provide net gains where possible. Proposals for development must include adequate and proportionate information to enable a proper assessment of the implications for biodiversity

and geodiversity.

Paragraph 180 (d) of the National Planning Policy Framework states planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. Paragraph 186 (a) of the framework states that planning applications which cause significant harm to biodiversity cannot be avoided, planning permission should be refused.

Although the application was made before the mandatory requirement to deliver 10% Biodiversity Net Gain (BNG) for smaller sites, the applicant has submitted a metric in addition to an Ecological Report by Armstrong Ecology, which was amended to include the watercourse habitat, following public comments which identified the need for this habitat to be assessed separately. The predictions for biodiversity enhancements on site, indicate +0.16 habitat units / 10.70% and +1.81 watercourse units / 44.50%. Although further concerns have been expressed relating to the area of the site assessed, it has been demonstrated that the development could deliver gains beyond measurable net gain which carry weight in the planning balance. It would appear that the polygon drawn of the site by the Council does not fully correspond with the site location plan submitted by the applicant upon, which the metric is based. The District Council has no reason to doubt the applicant's calculations and Derbyshire Wildlife Trust have not raised any objections.

The site is located within a wooded area and a potential wildlife site, comprising mosaic habitat. Derbyshire Wildlife Trust have advised that no direct woodland loss will result, only minor losses of scrub and modified grassland. Woodland will be enhanced in condition through management and new mixed scrub will be planted.

With sensitive lighting and the use not operating into the evenings it is not anticipated that there would be any unacceptable impacts on wildlife. Subject to conditions to control lighting and secure habitat management on site the development would be acceptable from a wildlife and biodiversity perspective, with potential enhancements to biodiversity a benefit of the development.

Highway safety considerations

Policy ITCR11: Parking Provision of the Local Plan states that planning permission will be granted where there is appropriate provision for vehicle and cycling parking as set out in the Local Plan for Bolsover District's Appendix 8.2.

No dedicated parking is proposed to serve the development and access to the site will be via a pedestrian footpath link only. Policies SS1 and ITCR10 of the Local Plan promote sustainable travel patterns and the use of the District's sustainable transport modes. Although in location terms, the site is reasonably well connected to sustainable travel options and parking opportunities within the settlement, the access to the site is via a convoluted route and is by foot only. Concerns have been expressed that the location of the site, nature of the use and intended operation of the facility will result in a demand for on street parking in the area. No objections have, however, been raised by the Local Highway Authority on the grounds that the development would have an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe having regard to paragraph 115 of the National Planning Policy Framework (2023).

In terms of the proposed access arrangements, Policy SC3 requires that development provide appropriate access for people with physical and/or mobility difficulties to both individual buildings and the wider built environment. The nature of the access to serve the proposed use is not considered to be policy compliant in this respect and is a negative of the application.

Drainage and Flooding

Policy SC7 'Flood Risk' states that all development will be required to consider the effects of new development on flood risk, both on-site and off-site, commensurate with the scale and impact of the development.

All developments shall have regard to Environment Agency standing advice for flood risk assessment. This should be demonstrated through a Flood Risk Assessment (FRA), where appropriate.

The policy states that development will not be permitted unless:

- a) In the functional floodplain (flood zone 3b), it is water compatible or essential infrastructure
- b) In flood zones 2 and 3a, it passes the Sequential Test, and if necessary, the Exceptions Test, as required by national policy
- c) In flood zone 1, it can be demonstrated for sites over 1 ha. in area through an FRA that the development, including access, will be safe, without increasing flood risk elsewhere and where possible will reduce flood risk overall.

The operational development is located within flood zone 1, however, the access to the site is located within flood zones 2 and 3. Consideration therefore needs to be given to the need for a sequential test. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.

The application is accompanied by a Flood Risk Assessment (FRA) which was updated to cover the access to the site. The updated FRA includes monitoring and emergency procedures in the event of flooding.

On the basis that the building and other operational development is located in flood zone 1 and only the access to the site, which is covered by the change of use is located within flood zones 2 and 3 the sequential test is not considered to be necessary, as such development is specifically excluded from this test by paragraph 174 and footnote 60 of the National Planning Policy Framework (2023).

Notwithstanding the above, paragraph 173 of the National Planning Policy Framework (2023) states that applications should be supported by a site-specific flood-risk assessment and development should only be allowed in areas at risk of flooding where, in the light of this assessment it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;

- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Whilst it is considered that residual risks could be safely managed and safe access and escape routes could be found, the vulnerability of the site access to flooding is a negative of the development.

CONCLUSION / PLANNING BALANCE

Whilst it is acknowledged that the nature of the proposed use is linked to the environment and a woodland setting, which may warrant a countryside or edge of settlement location, the development does not accord with the spatial strategy of the development plan and the requirements of Policies SS9 or SC5 of the Local Plan for Bolsover (2020).

Notwithstanding this policy conflict, consideration can be given to the costs and benefits of a proposal in the form of the 'Planning Balance' as advocated by Policy SS1 to establish whether the proposal would contribute to sustainable development within the Bolsover District.

In considering this balance, special attention to the desirability of preserving or enhancing the character or appearance of Clowne Conservation Area must be given, having regard to section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This carries "considerable importance and weight" in decision making.

Having regard to the main considerations set out in the assessment section of this report, the proposed development constitutes a significant incursion into, and will harm the landscape setting of Clowne and fail to respond positively to the identity and context of the area and result in less than substantial harm to the character and appearance of this part of Clowne Conservation Area and Clowne Craggs. These costs / negative impacts weigh heavily against the development. Whilst it is acknowledged that the development would provide a new forest school / play facility and bring with it some employment (one job) and provide biodiversity net gains, this harm when considered alongside the other costs / negatives, including the nature and vulnerability of the site access to flooding are considered to outweigh the benefits to be derived. A recommendation of refusal is put forward on this basis.

RECOMMENDATION

The current application be Refused for the following reasons:

1. The proposed development constitutes an unwarranted and unsustainable form of development in the countryside that is poorly connected to and would result in significant incursion into, and harm to the landscape setting of Clowne and fail to respond positively to the identity and context of the area, contrary to the requirements of Policy SS1, SS9, SC3 and SC5 of the Local Plan for Bolsover (2020) and policy contained within the National Planning Policy Framework (2023).

2. The development will encroach into an area of land which makes a significant contribution to the historic, geological and early settlement character of Clowne and would result in less than substantial harm to the character and appearance of this part of Clowne Conservation Area and Clowne Craggs that would not be outweighed by the public benefits to be derived, contrary to the requirements of Policy SC16 of the Local Plan for Bolsover (202) and policy contained within the National Planning Policy Framework (2023).

Statement of Decision Process

Officers have worked with the applicant to address issues raised during the consideration of the application to narrow down officer concerns relating to technical aspects of the submission. It, however, remains that the Council has fundamental concerns with the development proposal. On this basis the requirement to continue to engage in a positive and proactive manner following the resolution of technical aspects of the application is considered to be best served by the Local Planning Authority issuing a decision on the application at the earliest opportunity and thereby allowing the applicant to exercise their right to appeal.

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 evidence to suggest that the nature of the access to the site will negatively impact on those with disabilities / mobility issues. This has been given weight in the planning balance.

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.