CH/17/037
Land west of Pye Green Road, Hednesford, WS11 5RZ
Erection of new primary school and associated works (reserved matters application for CH/11/0395)
1 objection received
Location Plan
Proposed Site Plan
Proposed Site Plan
With Coach Swept Path
Proposed Sections

ITEM NO. 6.7
Application No: CH/17/037  
Received: 13/02/2017  
Location: Land off Pye Green Road, Hednesford  
Parish: Hednesford  
Ward: Hednesford Green Heath Ward  
Description: New Primary School  
Application Type: Reserved Matters  

Recommendation: Approve  

Reason for Granting Permission  
In accordance with paragraphs (186-187) of the National Planning Policy Framework the Local Planning Authority has worked with the applicant in a positive and proactive manner to approve the proposed development, which accords with the Local Plan and/ or the National Planning Policy Framework.  

Reason for Committee Decision:  
The application has been requested to be called in by the Parish Council and objectors have requested to speak to Planning Committee.  

This application was considered at Planning Committee on 31st May 2017 where it was resolved to defer determination to allow Officers to make a request to the applicant to provide additional parking and or a drop off facility for parents. This request has been made to the applicant who has declined to make any changes to the scheme on the basis that  

i) There is insufficient space within the site to accommodate additional parking spaces or a drop off facility.  

ii) The school is designed to accommodate children from the new estate.  

iii) It is the policy of the education authority not to provide onsite parking for parents.  

The application has been returned to Planning Committee for further consideration.  

Conditions  

1. Prior to commencement of development full details of road markings for the roadway fronting the site, details of changes to pedestrian measures and a strategy for managing school pick up/drop offs shall be submitted to and approved in writing by the Local Planning Authority. The road markings, pedestrian measures and strategy shall thereafter be provided in accordance with the approved details prior to first opening of the new school.  

Reason  
In order to comply with Paragraph 32 of the NPPF and in the interest of Highway Safety.  

2. Prior to commencement of development a Construction Vehicle Management Plan (CVMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall include:
- Arrangements for the parking of site operatives.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.
- Construction hours.
- Delivery routing and hours.
- Recorded daily inspections of the highway adjacent to the site access.
- Wheel washing and measures to remove mud or debris carried onto the highway.

Reason
In order to comply with Paragraph 32 of the NPPF and in the interest of Highway Safety.

3. Prior to first opening of the new school the three vehicular access points from the access road, as indicated on submitted site plan drawing A022 Rev P2, shall be completed.

Reason
In order to comply with Paragraph 32 of the NPPF and in the interest of Highway Safety.

4. Prior to first opening of the new school the parking, manoeuvring and servicing areas indicated on the submitted Site Plan drawing A025 Rev. P2 shall be completed and surfaced in a bound material with the individual parking bays plus circulation routes clearly marked.

Reason
In order to comply with Paragraph 32 of the NPPF and in the interest of Highway Safety.

5. Approved Plans

Informative Notes to be included on Decision Notice

The Highway Officer has advised

(i) Condition 1 above refers to road markings necessary for the school. To be enforceable these will require a Traffic Regulation Order (TRO) which will require funding.

(ii) Condition 3 above involves off-site highway works which will require a Highway Works Agreement with Staffordshire County Council and the applicant is therefore requested to contact the Council in respect of securing the agreement. Follow the link www.staffordshire.gov.uk/developers for Highway Agreements, a flowchart to identify the relevant agreement, information packs and application forms for the Highway Works. Please complete and send to the address indicated on the application form which is Staffordshire County Council at Network Management Unit, Staffordshire Place 1 c/o 2 Staffordshire Place, Tipping Street, Stafford, ST16 2DH or email nmu@staffordshire.gov.uk
Any soakaway should be located a minimum of 4.5m rear of the highway boundary

Informative
Comments from Staffordshire Police

EXTERNAL CONSULTATIONS

Hednesford Parish Council
The town council welcomes the provision of a new school in connection with the large scale residential developments in Hednesford. However, after meeting with representatives of Entrust and the County Council, the Town Council is extremely concerned at the lack of parking facilities for visitors and parents and envisages that this will lead to congested on-street parking on the access road to the site and also on Pye Green Road resulting in associated highway safety issues. As a consequence the Planning Authority is requested to "call-in" the application.

County Highways
No objections subject to conditions.

Staffordshire Police

Environment Agency
No objection.

Severn Trent
Happy to the discharge of the drainage related condition.

Local Lead Flood Authority
Although we have no objection to the overall layout further details would be required to discharge the condition below on the outline permission CH/11/0395, for this phase.

No development of any individual Phase shall take place until a surface water drainage scheme for that Phase based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with FRA addendum (Ref CCC – CH/11/0395, produced by Atkins, dated January 2012) before the development is completed. The strategy shall also include:

- Restricting surface water outflows to Greenfield equivalent rates of runoff.
- Provision of sufficient storage ponds to cater for the 1 in 100 year plus climate change storm event.
- Details of how the strategy shall be maintained and managed after completion.
Reason:
To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity and ensure future maintenance of these.

The details submitted indicate that surface water will be discharged to a large ‘regional’ attenuation basin at the south-east of the wider outline site, which would presumably provide the majority of the required attenuation volume. However details and calculations for the overall scheme have not been provided.

I would anticipate the need for the inclusion of Source Control SuDS features (for example permeable paving etc.) within the subject site layout. The Landscape Plan drawing also indicates ‘water attenuation under car park’, but no further information is provided.

Provided that this can be accommodated within the proposed layout then the reserved matters application is acceptable. However there is the potential for the layout to be affected by the inclusion of the necessary SuDS features.

School Organisation
Fully support the planning application as it is needed to provide additional school places in the Pye Green area to mitigate the impact of residential developments in the area.

County Land Use
No objections in respect to minerals safeguarding issues.

South Staffordshire water
No comments received.

Cannock Access Group
No comments received.

County Archaeologist
No comments received.

Sport England
No objection.

INTERNAL CONSULTATIONS

Policy
No comments received.

Ecological Officer
No comments received.

Environmental Health
No comments received.

Trees and Landscape
No objections.
Environmental Services
After assessing The Environmental Noise Survey report produced Noise.co.uk (dated 16th November 2016 reference 17364-1), I confirm the assessment methodology and recommendations are approved by the Environmental Protection Team, I summarise the report as follows:

- Road traffic noise from the adjacent Pye Green Road is the dominant noise source on the proposed primary school development. The report suitably demonstrates the internal ambient noise level criteria from BB93 can be achieved with natural ventilation in all areas of the school with the exception of SEN rooms and music rooms on the eastern edge of the development. The required façade sound insulation shall accord to the recommendations detailed in table 5 on page19 of the report.

- The BS4142 noise assessment of the proposed Heating, Ventilation, Air Conditioning Plant (HVAC) and car park demonstrates that provided noise from the plant is limited to 84 dB(A) at 1m from the plant room doors, the rating level will be below typical background levels at nearest existing and proposed residential receptors. All installed HVAC plant within the development shall therefore, adhere to this noise criterion.

- I concur that noise from the MUGA and sports pitches are expected to be below 50dB L_Aeq at the boundary of existing and proposed residential receivers, therefore, no noise mitigation measures are required.

No further comments are offered in respect to this matter.

RESPONSE TO PUBLICITY

The application was advertised by neighbour letter and site notice. A letter of objection has been received stating: -

The big increase in traffic in the Pye Green Road (already being experienced, this development will bring, will considerably add to pollution and noise. This is particularly felt in properties below road level. The pollution will also be increased from vehicles waiting to access the site.

There is difficulty already in trying to gain access onto the Pye Green Road from properties and roads lying at a lower level, e.g. Thornhill Road, Fieldhouse Road, etc.

Pedestrian safety on existing narrow footpaths seems to have been ignored.

RELEVANT PLANNING HISTORY


CH/11/0395/C: Discharge of Conditions 2 (Site Details), 4 (Landscaping), 6 (off-site Highway Works).
1. SITE AND SURROUNDINGS

1.1 The application site comprises part of a former wider field system located west of Pye Green Road and north of Limepit Lane, Hednesford, but which is now being built out under planning permission CH/11/0395 for a mixed use development and which has already been laid out with a road system connecting to Pye Green Road.

1.2 To the south, east and west of the site is the wider area subject to planning permission CH/1/0395. To the north is a Christian Centre, including a plant nursery "Fuchsia World" and an area for the outside storage of caravans. There is an established deciduous tree belt running along the southern side of this site.

1.3 Along Pye Green Road is an established hedge which effectively screens the application site, especially in summer when it is in full leaf.

1.4 The site is part of an area allocated as a Strategic Housing Site (CP6) in the Cannock Chase Local Plan (Part 1) and lies adjacent to the built up area of Cannock. It also has good public transport links by bus to Cannock where there are a variety of goods and services and is in walking distance to local schools, shops and businesses to serve day to day needs on Pye Green Road.

1.5 The site is located within Flood Zone 1 on the Environment Agency's flood risk maps and is subject to a Minerals Conservation Area.

2. PROPOSAL

2.1 The applicant is seeking approval for the reserved matters of "appearance", "landscaping" and "layout" for a primary school in connection to outline approval CH/11/0395 for a "mixed use development".

2.2 The proposal includes "landscaping and green infrastructure, groundworks, drainage works, provision of services and related media and apparatus; miscellaneous and ancillary development and associated and other operations."
2.3 The building arrangement consists of four flat-roofed connected blocks; a two storey classroom and office block, a double height sports hall and a single storey kitchen and plant room. The building would be finished in part acrylic render and metal cladding to give a contemporary appearance.

2.4 The external works would provide compliant grassed sports pitches, hard surfaces for sports and recreation, and hard surfaces for staff and visitor parking and pedestrian access.

2.5 The car park would have 52 car parking spaces, including 3 spaces for people with disabilities and 3 motorbike parking spaces and associated turning and circulation spaces and with separate "in" and "out" access and egress.

3. PLANNING POLICY

3.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the provisions of the Development Plan, unless material considerations indicate otherwise.

3.2 The Development Plan currently comprises the Cannock Chase Local Plan (2014).

3.3 Other material considerations relevant to assessing current planning applications include the National Planning Policy Framework (NPPF) and Supplementary Planning Guidance/Documents.

Cannock Chase Local Plan Part 1 (2014)

3.4 CP1-Strategy
The focus of investment and regeneration will be in existing settlements whilst conserving and enhancing the landscape of the AONB, Hednesford Hills, Green Belt and the green infrastructure of the District. Reaffirms the presumption in favour of sustainable development set out in the NPPF.

3.5 CP3 - Chase Shaping – Design
High quality design will be a requirement of all development. This policy seeks new development to

- consider design imaginatively in its context, complementing and enhancing the character and appearance of the local area and reinforcing local distinctiveness.

- be well related within the wider development and to existing buildings in terms of design, materials and appearance (amongst others). This is supplemented by the Design SPD (adopted April 2016).

- successfully integrate with existing trees, hedges and landscape features of amenity value and employ measures to enforce biodiversity and green the built environment with new planting designed to enhance local distinctiveness.
• protect the amenity enjoyed by existing properties including supporting mixed uses whilst avoiding incompatible ones and have regard to existing uses with potential to generate pollution which could have an unacceptably detrimental effect on proposed development.

• promote ease of access and mobility within development and from its surroundings, contributing to a network of attractive, well connected spaces in sustainable locations with the safety of pedestrians’ cyclists and other road users in mind.

3.6 CP10-Sustainable Transport

3.7 Local parking standards and servicing standards will be detailed in Local Plan Part 2.

3.8 National Planning Policy Framework

3.9 The NPPF sets out the Government’s position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it outlines the “presumption in favour of sustainable development”.

3.10 The NPPF confirms that a plan-led approach to the planning system and decisions must be made in accordance with the Development Plan. In particular the following NPPF references are considered to be appropriate.

3.11 All the core planning principles have been reviewed and those relevant in this case are that planning should:

- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.

- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and

- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

3.12 Promoting Sustainable Transport

3.13 Paragraph 29 of the NPPF states:

"Transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health
objectives. Smarter use of technologies can reduce the need to travel. The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. However, the Government recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.

3.14 Paragraph 30 of the NPPF states:

"Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. In preparing Local Plans, local planning authorities should therefore support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport."

3.15 Requiring Good Design

3.16 Paragraph 56 attaches great importance to the design of the built environment and states good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

3.17 Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

3.18 Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment.

3.19 Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

3.20 Other Relevant Documents


Manual for Streets

4. DETERMINING ISSUES

4.1 The determining issues for the proposal are whether the:

(i) appearance;
(ii) layout;
(iii) scale; and
(iii) landscaping

are acceptable.

4.2 Appearance and Scale and the Impact on the Character and Form of the Area

4.3 Policy CP3 of the Local Plan requires that, amongst other things, developments should be:

   (i) well-related to existing buildings and their surroundings in terms of layout, density, access, scale appearance, landscaping and materials; and
   (ii) successfully integrate with existing trees; hedges and landscape features of amenity value and employ measures to enhance biodiversity and green the built environment with new planting designed to reinforce local distinctiveness.

4.4 The proposed school building, like many such institutional buildings is of contemporary design incorporating a flat roof and modern finishes in metal and render. As such it would be very different from the existing traditional style houses within the Pye Green area, which are typically built from a mix of brick and render under pitched tiled roofs. However, the proposed school building would be set within its own landscaped grounds and as such viewed as a set architectural piece, slightly separate from the buildings that would eventually surround it. In this respect it is noted that the NPPF makes it clear that planning decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.

4.5 As such the contrast of the proposed building with the character and form of the surrounding buildings, both existing and those which will come forward as the wider site develops, need not necessarily result in harm to the character of the area. Indeed such a contrasting building could be considered to add interest to an area of no particular local distinctiveness such as the environs of Pye Green Road which is comprised of mid to late C20th housing.

4.5 The finishing colour for the render has not been submitted but could be controlled through condition.

4.6 It is therefore considered that having had regard to Policy CP2 and the good design section of the NPPF the appearance and scale of the proposal is acceptable.

4.7 Layout

4.8 The proposed part single part two storey school building would be located 15.5m from the northern boundary of the site (which is comprised of a woodland shelter belt), 72m from the nearest building at 521 Pye Green Road, 20 m to the eastern boundary of the application site and approximately 117m from the nearest dwelling
on the eastern side of Pye Green Road, 73m from the southern boundary of the application site and 44m from the western boundary of the application site. As such the building by virtue of its size, mass and distance form neighbouring properties would not result in any unacceptable degree of overlooking, overshadowing or loss of outlook.

4.9 In respect to the car parking arrangements the comments made by the parish council and the objector are noted. However, the Highway Authority has stated that they have no objections subject to the attached conditions. As such the proposal is considered to be acceptable in respect to that part of its layout relating to parking, circulation and turning areas and its impact on highway safety and capacity.

4.10 In respect to all other matters such as the provision of sports facilities and community safety it is noted that Sport England, Staffordshire County Council Educational Authority and Staffordshire Police have no objections to the layout of the proposal.

4.11 Although drainage is subject to a separate condition attached to the outline permission it is noted that the drainage bodies have raised no objections to the layout in so far as they relate to the drainage strategy for the site.

4.12 Therefore having had regard to all the above it is considered that the layout is acceptable.

4.10 Landscaping

4.11 The proposal is accompanied by full landscaping proposal outlining the soft and hard landscaped areas together with planting schedules and associated specifications. These have been reviewed by the Council's Landscape, Trees and Countryside Officer who has raised no objections.

4.12 It is therefore considered that the landscaping proposals are acceptable and in accordance with Policy CP3 of the Local Plan and the Good Design section of the NPPF.

4.13 Other Issues Raised by Objectors

4.14 Issues such as congestion and pollution are matters that were addressed, at least in part, at the outline matters stage. It is clear that in granting that outline permission for the scale of development permitted that it was accepted that the local road system had the capacity to accommodate the additional traffic and increase in car emissions.

5.0 HUMAN RIGHTS ACT

5.1 The proposals set out in this report are considered to be compatible with the Human Rights Act 1998. The recommendation to approve the application accords with the adopted policies in the Development Plan which aims to secure the proper planning of the area in the public interest.

6.0 CONCLUSION
6.1  The principle of a school at this location was established under the previous outline consent as was the means of access. The four issues for determination in this submission are the appearance, layout, scale and landscaping. Having had regard to all relevant policies, the comments made by the consultees and the wider community it is considered that these matters have been satisfactorily addressed and are acceptable.

6.2  It is therefore recommended that the application be approved subject to the attached conditions.
REPORT OF THE DEVELOPMENT CONTROL MANAGER

ENFORCEMENT INVESTIGATION

SITE: 6 Hewston Croft, Hednesford, WS12 1PB

1.0 PURPOSE OF REPORT

1.1 In light of historic and more recent allegations of breaches of planning control in relation to the above site, to:

   a) Investigate and set out the details of such alleged breaches of planning control and enquiries;

   b) Advise on whether or not any of the alleged breaches of planning control are enforceable, and;

   c) Recommend what if any further action is necessary, and:

   c) Consider other matters raised by complainants.

2.0 SITE AND SURROUNDINGS

2.1 The site is known as 6 Hewston Croft and comprises a detached dwelling and associated curtilage. This dwelling is accessed off Hewston Croft, which is a short road terminating with a turning circle. There are eight existing detached dwellings forming part of the development, the majority of which are serviced off Hewston Croft, including no.6, which is located at the head of the turning circle. Hewston Croft is accessed via Littleworth Road, Hednesford.

3.0 POLICY IMPLICATIONS

3.1 National Planning Policy Framework (NPPF)

3.2 The NPPF sets out the Government’s position on the role of the planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it emphasises a “presumption in favour of sustainable development”.

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3.3 On the matter of enforcement Paragraph 207 of the NPPF states:

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

3.4 Planning Practice Guidance (PPG)

3.5 The Planning Practice Guidance was issued on the 14th March 2014 and is regularly updated. As the title suggests this provides practical guidance to support the NPPF. It contains a section on enforcement entitled ‘Ensuring Effective Enforcement’. This provides an overview of enforcement, enforcement advice and enforcement remedies available to Local Planning Authorities.

3.6 Extracts that are of particular relevance are set out below:

Who can take enforcement action?

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas.

Paragraph: 002 Reference ID: 17b-002-20140306

Revision date: 06 03 2014

When should enforcement action be taken?

There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207:
Can breaches of planning control be addressed without formal enforcement action, such as an enforcement notice?

Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore in some instances formal enforcement action may not be appropriate.

It is advisable for the local planning authority to keep a record of any informal action taken, including a decision not to take further action.

Paragraph: 010 Reference ID: 17b-010-20140306
Revision date: 06 03 2014

When might formal enforcement action not be appropriate?

Nothing in this guidance should be taken as condoning a willful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;

- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;

- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

Paragraph: 011 Reference ID: 17b-011-20140306
Revision date: 06 03 2014
4.0 BACKGROUND AND REPORT DETAIL

4.1 The Council is in receipt of historic and more recent complaints alleging breaches of planning control at the above address and other matters. Whilst officers have investigated these complaints; the complainants remain dissatisfied with the Council’s responses and lack of action. To this end, the purpose of this report is to investigate and set out the details and context of the alleged breaches of planning control and recommend whether or not to pursue enforcement action in respect of these. The report also advises on other matters raised by complainants.

4.2 In summary, the alleged breaches of planning control relate to:

a) Change of use of land adjacent 6 Hewston Croft to garden land;
b) Erection of a detached garage, more recent extension/alterations to the garage and alleged unauthorised use of the garage;
c) Use of 6 Hewston Croft for business purposes;
d) Proposed construction of a pool and enclosure;
e) Storage of materials on land adjacent to 6 Hewston Croft;
f) Other works including: part surfacing of driveway, installation of kerb stones and erection of a wall to the front of the land adjacent to 6 Hewston Croft.

4.3 Other matters raised by complainants include:

  g) Issues of land ownership and access;
h) Concerns have been raised with the Council that recent planning applications for 6 Hewston Croft have been submitted with incorrect information and subsequently withdrawn;
i) Concealment of breaches of planning control and the request to serve a Planning Enforcement Order (PEO);
j) Health and safety issues.

4.4 Each of these matters is considered below:

4.5 Change of Use of Land Adjacent to 6 Hewston Croft to Garden Land

4.6 The main issues in this case is whether there has been a material change in the use of the land to the side and front of 6 Hewston Croft from whatever use it had before to garden land associated with 6 Hewston Croft, when this occurred, and whether it inferred the status of domestic curtilage on the land incorporated into the garden of 6 Hewston Croft.

4.7 The question of when this use occurred is of vital importance as Section 171B of the Town and Country Planning Act 1990 (as amended) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. In respect of any other breach (such as change of use or breach of condition) no enforcement action may be taken after the end of the period of ten years from the date of the breach except where the breach of planning control consists of a change of use of any building to use as a single dwellinghouse, in which case a four year period applies.
4.8 As such if the area of land that had been incorporated into the garden of 6 Hewston Croft been used as garden land for period in excess of 10 years then it would be immune from enforcement action and considered by the planning system to have a lawful use as garden land. This report will now go on to look at the planning history of the site to determine when certain events have taken place.

4.9 Planning permission for 8 dwellings as part of the Hewston Croft was granted in 1980. However, a further planning permission for No. 6 Hewston Croft was granted separately in 1986, CH/86/194 (Erection of house and garage). The approved location plan accompanying this planning permission shows the extent of the ‘planning unit’. This is shown on Plan 1 in Appendix A of this report. This also established the extent of the curtilage of the original dwelling.

4.10 Following a complaint alleging unauthorised works at 6 Hewston Croft, the Council’s Enforcement Officer visited the site in October 2005. As a direct consequence of the investigations a retrospective planning application was submitted: CH/06/0001, which was for the “[r]etention of 2.2metre high boundary fence, canopy to front elevation and single storey extension to rear”. This was received on 4th January 2004.

4.11 Application CH/06/0001 was submitted by Mr G Small and was accompanied by a plan showing the extent of the application site. This is included in Appendix B of this report and is shown as Plan 2. It includes land which formed the original garden and curtilage to 6 Hewston Croft but also encompassed additional land to the side and front.

4.12 The officer report for the application states: -

“Near neighbours were notified resulting in two responses. Both letters state that the boundary fence is now stopping visitors [sic] cars parking on the land. In addition, one letter further states that the land is not in the applicants [sic] ownership and the fence is out of place as the croft was supposed to be open plan.”

4.13 Paragraph 1.3 of the officer report goes on to state: -

“With response to the concerns from the objectors, the previous owners of application site submitted a claim to land registry in 1998. The land will become in the ownership of the applicant in 4 years time “

4.14 It is therefore clear on the above evidence that as early as 2006 the land that was originally to the side of 6 Hewston Croft had been incorporated into the garden of 6 Hewston Croft. In addition the Council’s Enforcement Officer has confirmed that when he visited the site in October 2005, this area had been fenced off and was being used for domestic purposes in connection with 6 Hewston Croft.

4.15 As such given that the site was used as garden land in connection with 6 Hewston Croft as early as October 2005 (and possibly earlier) it would have become immune from enforcement action by October 2015 (possibly earlier depending on the actual date the use commenced) and therefore would have a lawful use as garden land. This would have been irrespective of the ownership of the land.

4.16 Whether the Land Forms Curtilage
The concept of “curtilage” is of vital importance in the assessment of this case as permitted development rights for free standing buildings incidental to the enjoyment of a dwelling house only apply to the curtilage of a dwelling. Although in most cases in urban areas the curtilage of dwelling is the same as the garden, this is not always the case (for example in the case of large houses in extensive grounds the whole of the grounds may not necessarily form part of the curtilage).

Curtilage is not defined in statute and hence it should be applied in the normal dictionary meaning of the word such as Collins as constituting “the enclosed area of land adjacent to a dwelling house”. The word has nevertheless been subject of judicial consideration on a number of occasions. The courts have identified 3 relevant characteristics, namely (i) it is confined to a small area about a building, (ii) an intimate association with land which was undoubtedly part and parcel of the curtilage land; and (iii) it is not necessary for there to be physical enclosure. In practice the extent of a curtilage is normally defined on the ground by some physical features and by function as a matter of fact and degree and will be a matter of planning judgement in each case.

In Sumption v Greenwich LBC[2007] EWHC 2776 (Admin) the High Court in considering a challenge from a neighbour to the grant of a certificate of lawfulness for the erection of a new boundary wall the court found that the land had been fenced, was useable and was intended to be an extension to the garden. As such, it formed part of the curtilage of the house. In coming to its decision the court reasoned that, irrespective of the historical basis for a particular curtilage, it could be expanded by the annexation of other land.

The above decision was challenged in the court of Appeal (Sumption v London Borough of Greenwich 8/4/2008). The court summarized the three tests to be used to address the issue of curtilage, these being:

i) A single ownership is neither necessary nor sufficient to make land a single curtilage;

ii) Co-occupation of the house and land is not sufficient;

iii) It is not necessary for the land to be useful, advantageous or necessary to the dwellinghouse for it to be regarded as part of the curtilage.

The Court of Appeal did however emphasise that it was also a matter of fact and degree.

In respect to the above it is noted that the enlarged garden, by virtue of its intimacy and physical relationship to the dwelling at 6 Hewston Croft, and the way it has been used as garden land in connection with 6 Hewston Croft falls within the definition of curtilage to that property. As such within 10 years from the annexation of the land to the side of the 6 Hewston croft that land would not only have had a lawful use as a garden to 6 Hewston Croft but would also have constituted curtilage to 6 Hewston Croft and therefore would have benefited from permitted development rights associated with buildings incidental to the use of the dwelling.

Erection of a Detached Garage Building

In 2015, a complaint was received regarding alterations to a detached garage building at 6 Hewston Croft.
4.24 Officers are aware that a detached garage was erected on land adjacent to the dwelling at 6 Hewston Croft, (which was substantially completed in 2010), based on information from the owners and other evidence. This garage is on land, which did not form part of the original curtilage to No. 6 Hewston Croft (Plan 1 - Appendix A) and on land which was subsequently extended to form part of the garden to No. 6, as shown Plan 2 - Appendix B.

4.25 Prior to constructing the garage the owner of the property sought advice from the Local Planning Authority as to whether or not planning permission would be required for the detached garage. Based on the information provided at the time, the owner was advised that the garage would be ‘permitted development’ and therefore did not require the submission of a planning application.

4.26 The garage building is located to the east of the dwelling (6 Hewston Croft). It originally measured 5.5m x 6.4m with a height of 3.95m. This has a garage door on its east elevation and French doors on the south and north elevations.

4.27 Officers on a recent visit have noted that the original garage has been extended along its east elevation by approximately 1.3m and includes two new single doors on the north and south elevations. The garage, as extended, has been measured on site and remains within the parameters of permitted development and therefore does not require planning permission.

4.28 The Town and Country Planning (General Permitted Development) (England) Order 2015 (which consolidated the 1995 Order and subsequent amending instruments) permits development within the curtilage of a dwellinghouse. It is the curtilage rather than the ownership or occupation, which is relevant. The Order sets out the classes of developments for which a grant of planning permission is automatically given, subject to the provisions of the Order.

4.29 Officers can confirm that at present the garage building is used as a gym and for domestic storage, including for bikes belonging to the owner. There is an allegation that the gym is being used by ‘third parties’. The owner has confirmed that one of his employees also has used the gym. Officers are satisfied that the use of the garage building as a gym and domestic storage is incidental to the enjoyment of the dwelling house and therefore no change of use has occurred.

4.30 Members will be aware that it is not uncommon for garage buildings to be used for incidental uses associated with a dwellinghouse e.g. gym, games room, office etc.

4.31 Operation of a Business from 6 Hewston Croft

4.32 In 2009 and 2016 complaints were received alleging that a business use was operating from 6 Hewston Croft.

4.33 The operation of a business from a dwelling is not an uncommon occurrence and some businesses are operated from dwellings without requiring planning permission. In general, whether or not the operation of a business constitutes a material change of use and therefore requires planning permission is a matter of ‘fact and degree’ which is determined on a case by case basis. This includes considering a number of factors, which include the size of the dwelling, signage/livery associated with the business, visitors, deliveries, impact on parking, storage of equipment/machinery and processes.
In this particular instance the applicant is the proprietor of a commercial glazing business. The Council’s Enforcement Officer has visited the site on both occasions and noted that the applicant does drive and brings his work vehicles home, some of which are commercial. He also has a desk with a computer in one of his rooms and shelving for files, which he uses in connection with business and personal matters; this is no different from a ‘study’. The owner’s employees do visit the property in a personal capacity and to undertake work at the property. However no clients visit the site and no materials/equipment associated with the business are stored at the property. Neither do any processes take place in connection with the business. The owner of the business has confirmed that he has a commercial unit on an industrial estate which he uses for his business. The main function of the dwelling is as a home for the occupier and his family.

The key test in order to establish whether there has been a change of use is whether the overall character of the dwelling has changed. Based on the information provided by a neighbour and site visits, your officers conclude that owner’s use of the property in connection with his business is incidental as opposed to a resulting in ‘material change of use’ which has altered the character of the dwelling. Consequently, there is no material change of use, which requires planning permission.

Construction of a Plunge Pool.

A further recent complaint (2016) is that a plunge pool is being installed at 6 Hewston Croft. Council Officers have investigated this and observed that a certain amount of excavation works have taken place at the rear and side of the detached garage building; the owner has confirmed that he was intending to construct a pool and enclosure (which would be attached to the garage building along its north elevation and include an extension to the east elevation) and had submitted a Building Regulations application for this. The applicant has been advised that if he intends to proceed with this development it would require planning permission.

Storage of Materials on Land Adjacent to 6 Hewston Croft

A recent complaint in 2016, alleging unauthorised storage of materials on land adjacent to 6 Hewston Croft. Officers have investigated this and noted that land to the front of the garage building, which is screened by a tall conifer hedge is being used to store various items including building material (timber/blocks) a large water container, a small shed and soil excavated from the foundations for the proposed pool. Some soil is also deposited in front of the conifer hedge. All the storage is ancillary to the use of the dwellinghouse and the level of storage witnessed does not constitute development requiring planning permission.

Other Works Including Surfacing of the Driveway, Installation of Kerb Stones and Erection of a Wall to the Front of the Land Adjacent to 6 Hewston Croft.

A retaining block work wall has been constructed to the side and front of the land to south of the garage building. This measures approximately 1.2m at its highest part. Due to its height and location this wall benefits from permitted development and does not require planning permission.
4.42 The installation of kerb stones does not constitute development and therefore these works do not require planning permission.

4.43 The driveway has a road stone surface and in parts has been repaired/resurfaced. These works do not require planning permission.

5.0 OTHER MATTERS

5.1 Issues of Land Ownership and Access

5.2 Information has been submitted by local residents to the effect that:

(i) Two separate planning applications were submitted to develop part of the site which is not owned by the owner of 6 Hewston Croft (land parcel SF509492).
(ii) The 'claimed' curtilage & ownership was false.
(iii) There was/is no legal access to SF509492.
(iv) Hewston Croft is a private road.
(v) Both previous applications were withdrawn.
(vi) Copies of extracts from land registry deeds SF262687 & SF306901, which with SF509492 form the claimed curtilage/legal tenure of the site.
(vii) The developed land SF509492 is not owned by the developer, it is merely subject to a caution against first registration.

(In considering the above Members are advised that the land is the subject of a caution against first registration and is registered by the land Registry under caution title SF509492. The registration of a caution against first registration is a way of protecting an interest in unregistered land. The registration of land is now compulsory and if an application to register the caution land is made the person who lodged the caution has to be notified and the caution dealt with before the registration will be completed by the Land Registry)

5.3 Having considered these documents it is apparent that they relate to matters of landownership and rights of access. These matters are civil in nature and are not determinant issues in respect of the case before Planning Committee. Whether the site has lawful use as a garden or the extent of the curtilage are not defined by matters of land ownership nor do they, in themselves, confer any right of access or ownership. Ultimately it is for the courts to adjudicate in matters of land ownership or access and not the local planning authority.

5.4 It is for the above reasons that members are advised that the above issues should be given no weight in the consideration of the matter before them.

5.5 Concerns have been Raised with the Council that Recent Planning Applications for 6 Hewston Croft have Submitted with Incorrect Information and Subsequently Withdrawn.

5.6 As these planning applications have been withdrawn there is nothing further for the Council to consider.

5.7 Concealment of Breaches of Planning Control and the Request to Serve a Planning Enforcement Order (PEO)

5.8 Where a person deliberately conceals an unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. A Planning Enforcement Order enables the Local Planning Authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may
have expired. Due to the circumstances set out in this report Officers do not consider that the owner of the property has deliberately concealed any unauthorised development.

5.9 Health and Safety Issues

5.10 A neighbour has complained about an employee of the owner washing a van by standing on it and standing on a van to cut hedges. Again, these matters are outside the control of the planning system and should be given no weight in the consideration of the substantive matter before Planning Committee. Neighbours are advised to discuss such matters with the Health and Safety Executive.

6.0 CONCLUSION

6.1 The change of use to garden area of land adjacent to No. 6 Hewston Croft was undertaken over 10 years ago and has since been used ‘incidental’ to the use of No. 6 Hewston Croft. Therefore, it has an established use and is immune from any enforcement action. No further action can be pursued in respect of this matter.

6.2 The detached garage was substantially completed over four years ago (2010) and benefits from immunity from enforcement action. However, it was extended in 2015/2016. The garage building as extended remains within the parameters of permitted development and therefore no action is proposed in respect of this.

6.3 Allegations of No. 6 Hewston Croft being used for businesses purposes have been investigated and the level of activity associated with the business use is considered incidental to the enjoyment of the dwellinghouse by its occupiers, which does not result in a ‘material change of use’. Therefore, planning permission is not required for this. No further action is to be pursued in respect of this matter.

6.4 Footings have been dug out for a pool and enclosure. If this is to be constructed based on the building regulations drawings, this would require planning permission, if work continues; the owner of the property is aware of this.

6.5 Some materials and equipment are being stored at the property. Based on the level and type of storage your officers conclude that this is ancillary to the use of the dwellinghouse and does not constitute development requiring planning permission.

6.6 The retaining block work wall is permitted development and does not require planning permission. The driveway has a road stone surface and in parts has been paired/ resurfaced. These works do not require planning permission.

6.7 The installation of kerb stones does not constitute development and therefore these works do not require planning permission.

6.8 Notwithstanding the fact that the extended garden land and detached garage building are immune from enforcement action by virtue of Section 171B of the Town and Country Planning Act 1990 (as amended) or permitted development; Officers are of the opinion that having regard to the Development Plan and other material considerations if planning permission had been sought for these developments, then approval would have been recommended. Consequently, it would have not been expedient to pursue formal enforcement action.

6.9 For the reasons set out under Section 5 of this report, none of the ‘other matters’ raised by neighbours require any further action.

7.0 LEGAL IMPLICATIONS
7.1 As set out in this report.

8.0 RECOMMENDATION

8.1 The alleged breaches of planning control as set out under paragraph 4.2 of this report have been investigated. The only element, which would have required planning permission was the ‘change of use’ of land adjacent to 6 Hewston Croft to garden land. The use of the land adjacent to 6 Hewston Croft for garden land has subsisted for over 10 years and therefore is immune from any enforcement action by virtue of Section 171B of the Town and Country Planning Act 1990 (as amended). As such, no further action is proposed.

8.2 It is recommended that no action is taken.
9.0 LIST OF APPENDICES

Appendix A: Plan 1 – Planning Permission CH/86/194 - Erection of house and garage. (Location Plan)

Appendix B: Plan 2 – Planning Permission CH/06/0001 - Retention of 2.2 high boundary fence, canopy to front elevation and single storey extension to rear. (Location Plan)
Appendix B: Plan 2