

## PLANNING AND DEVELOPMENT COMMITTEE

<p><b>Date:</b> Friday 7th October, 2022 <b>Time:</b> 1.30 pm <b>Venue:</b> Mandela Room</p>
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### AGENDA

1. Welcome and Introduction
2. Apologies for Absence
3. Declarations of Interest
4. Minutes - Planning and Development Committee - 2 September 2022 3 - 14
5. Schedule of Remaining Planning Applications to be Considered by Committee 15 - 32  
  
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Item 1 - Grey Towers Village - Page 17
6. Any other urgent items which in the opinion of the Chair, may be considered.

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Thursday 29 September 2022

### MEMBERSHIP

Councillors J Hobson (Chair), D Coupe (Vice-Chair), D Branson, B Cooper, C Dodds, J McTigue, M Nugent, J Rostron, J Thompson and G Wilson

### Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Georgina Moore, 01642 729711, [georgina\\_moore@middlesbrough.gov.uk](mailto:georgina_moore@middlesbrough.gov.uk)

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**PLANNING AND DEVELOPMENT COMMITTEE**

A meeting of the Planning and Development Committee was held on Friday 2 September 2022.

**PRESENT:** Councillors J Hobson (Chair), D Coupe (Vice-Chair), B Cooper, C Dodds, J McTigue, M Nugent, J Rostron, J Thompson and G Wilson

**ALSO IN ATTENDANCE:** A Bennett, Councillor C Hobson, C Martin and B Wiseman

**OFFICERS:** P Clarke, A Conti, C Cunningham, A Glossop, A. Glover, R Harwood and G Moore

**APOLOGIES FOR ABSENCE:** Councillor D Branson

22/5 **DECLARATIONS OF INTEREST**

<b>Name of Member</b>	<b>Type of Interest</b>	<b>Item/Nature of Interest</b>
Councillor C Dodds	Non-Pecuniary	Agenda Item 5, Item 1 - Land at Low Lane, Ward Councillor
Councillor J Hobson	Non-Pecuniary	Agenda Item 5, Item 2 - Grey Towers Village, Ward Councillor

22/6 **MINUTES - PLANNING AND DEVELOPMENT COMMITTEE - 22 JULY 2022**

The minutes of the meeting of the Planning and Development Committee held on 22 July 2022 were submitted and approved as a correct record.

22/7 **SCHEDULE OF REMAINING PLANNING APPLICATIONS TO BE CONSIDERED BY COMMITTEE**

The Head of Planning submitted plans deposited as applications to develop land under the Town and Country Planning Act 1990.

**20/0510/OUT Outline planning application for commercial development (Use Class E), including access, parking, and associated infrastructure and development (all matters reserved except for access, layout and scale) at Land at Low Lane, Middlesbrough, TS5 8EH for ML Retail (Development) Limited**

The above application had been identified as requiring a site visit by members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Head of Planning advised that the principle issues to be considered in respect of the application were:

- site proposals and the policy context;
- retail issues;
- highway matters; and
- sustainability and highways issues.

The purpose of the application was to seek outline planning consent for a commercial development (Use class E) including access, parking and associated infrastructure at land at the A1044 in Middlesbrough. The proposal was for all matters to be reserved except for access, layout and scale.

The application site was an area of grassland located between the A174 and Low Lane (A1044) in Middlesbrough, an area of approximately 1.7 hectares. The site was located to the north of the A174 with the slip road from the A174 to Low Lane located along the eastern boundary of the site. Along the northern and western perimeters of the site was Low Lane.

Residential housing was located to the east (along Low Lane) with a modern housing development located to the north and west of the site, which formed part of the Brookfield allocation.

The site was located to the south of the A1044 Low Lane/Jack Simon Way roundabout and was surrounded on all sides by main highways, specifically the A1044 to the northern half of the site A174 and A174 eastbound exit slip road to the southern half of the site.

The proposed development requested planning permission for 9 units:

- Unit 1 would be 1,899 square metres of floor space for a Limited Assortment Discount (“LAD”) food store (i.e. Lidl);
- Unit 2 would be 1,858 square metres of floor space for a variety store, or variety store and food store;
- Units 3 to 6 and 8 to 9 would be smaller units of 92 square metres each; and
- Unit 7 would be 180 square metres of floor space for a drive thru unit.

The proposal planned to provide 218 car parking spaces, including 11 disabled spaces and 9 parent and child spaces with 54 cycle spaces. In addition, a Toucan Crossing was proposed to the east of the Low Lane/Jack Simon Way roundabout.

In terms of the policy context, paragraphs 4 to 49 of the submitted report provided information on both local and national planning policies, which determined the suitability of the proposal.

In terms of key policy considerations, Policy CS13 set out clear aims on ensuring vitality and viability through:

- encouraging development of town centre uses within a centre of an appropriate type and scale commensurate with its current and future function;
- safeguarding the retail character and function of centres by resisting developments that detract from their vitality and viability;
- ensuring shopping facilities were accessible by a range of means including by car, walking, cycling and public transport; and
- ensuring new developments were of an appropriate high-quality design particularly in the town centre.

The application site was an unallocated site within the Local Plan. Therefore, the general policies of the Local Plan would apply to the application. A key consideration was the impact the scale of development would have on delivering the Local Plan, and the community facilities proposed as part of the Brookfield allocation. The associated Stainsby Masterplan (Stainsby being the name given to the Local Plan housing allocation at Brookfield) set out further details on how the allocated site would be delivered.

The NPPF stated that, when assessing planning applications for retail use outside of defined centres, an assessment should be undertaken to determine:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).

As the proposal was not in accordance with an up-to-date plan and would be located outside of the defined centres, set out in the Council’s adopted Local Plan, a sequential test was required. It was confirmed that the sequential test seeks to establish whether the application (i.e. what was proposed) could be accommodated on sequentially preferable sites.

In discussion with the Applicant, the following centres had been assessed as part of the sequential test:

In Stockton:

- Myton Way Local Centre, Ingleby Barwick; and
- Thornaby District Centre.

In Middlesbrough:

- Acklam Road/Mandale Road Local Centre;
- Hall Drive Local Centre;
- Trimdon Avenue Local Centre;
- Viewley Road Local Centre; and
- Coulby Newham District Centre.

Officers had acknowledged the Applicant's view that the Stainsby Local Centre did not fall within the catchment area for the sequential test as, currently, it did not exist. Whilst Stainsby Local Centre was a proposal in the Local Plan, it was not an existing centre.

All of the sites assessed as part for the sequential test were unable to accommodate the proposal, with the exception of Coulby Newham Local Centre. The Applicant was of the view that the proposal could not be accommodated in Coulby Newham Local Centre. However, it was the Officer's view that sufficient flexibility had not been demonstrated in regard to the scale and format, when considering whether land on the south side of the centre could accommodate the proposed development (as required by the NPPF). Therefore, it was the Officer's view that the proposed commercial development was a main town centre use and in terms of the sequential test, the Applicant had failed to satisfactorily demonstrate flexibility in relation to other suitable locations for the intended development, particularly with the nearby Coulby Newham District Centre.

The impact assessment submitted by the Applicant did not consider the potential impact of the proposed development on the planned investment to develop a local centre within the nearby Brookfield allocation or on the currently proposed investment in new retail facilities on the south side of Coulby Newham District Centre.

A new local centre formed part of the wider Brookfield housing allocation, in the adopted Local Plan. In the context of the current application at Low Lane, the Council sought legal advice on how that allocation should be treated as part of the Low Lane application. In light of the advice received, it was necessary to consider the extent to which the application proposals would impact upon the planned investment and, therefore, how much weight should be attached to it in the determination of the application.

In terms of the Brookfield housing development, the provision of a local centre within a central location was, in the Council's opinion, an essential part of the wider development. The scale and nature of the uses proposed at Low Lane were such that they could potentially impact upon the Council's ability to achieve the planned new local centre within the Brookfield allocation.

Whilst there was potential for the application proposals to impact on (or prejudice) the proposed new local centre at Brookfield, the proposed new centre remained at an early stage, and that needed to be reflected in the weight that could be afforded to the impact upon investment in the centre.

In terms of the Coulby Newham District Centre, planning permission had been granted in October 2016 on land immediately to the south of the Parkway Centre (and north of Dalby Way) for the erection of 5 no additional units (3,997 square metres). However, in 2021 that permission had expired. A new application had now been submitted for the erection of 2 units (Class E) with a total floor space of up to 5111 square metres. The Range had been identified as an occupier for one of the units. The owners of the Parkway Shopping Centre (within the district centre), who had recently made the planning application, had reasonable concerns that their proposed development would be impacted by any approval of the Low Lane application. In that context, Officers had considered that there was potential for the subject application proposals to prejudice the currently proposed investment within Coulby Newham District Centre. Whilst that scheme had not yet been approved, it did appear to be an acceptable scheme in planning policy terms. In addition, given the similarity of the proposed uses and the

location of the proposals within a defined district centre, the potential impact upon that scheme was a material consideration which needed to be taken into account in determination of the subject planning application.

In terms of the impact upon vitality and viability, following the initial review of the Applicant's Planning Economic and Retail Statement, a number of significant concerns were raised in relation to the quantitative assessment. Those related to:

- the use of out-of-date population and expenditure data;
- the base shopping patterns, which were not based on the Council's most recent study; and
- the spread of the forecast trade diversion impacts, which under-stated the trade diversion from stores/centres closer to the site and over-stated that from stores/centres further away.

Whilst the Applicant did provide a response, the information submitted did not contain any updated quantitative assessment to deal with the concerns raised.

The quantitative impact assessment provided had a number of deficiencies, including in relation to the base population/expenditure and shopping patterns used, as well as the spread of forecast impacts. However, even when taking those deficiencies into account, the impact of the application scheme upon Middlesbrough Town Centre and defined local centres was likely to be modest and unlikely to be significantly adverse. The impact upon Coulby Newham District Centre had also been under-stated, however, Officers had reached the conclusion that the impact upon vitality and viability was also unlikely to be significantly adverse.

In terms of highways considerations, the Council's Core Strategy Policies CS17 (Transport Management) and CS18 (Demand Management), CS19 (Road Safety) needed to be taken into account. With regard to the NPPF, the following paragraphs were particularly relevant:

- 105 and 106 stated that the planning system should actively manage patterns of growth and significant development should be focused on locations which were or could be made sustainable;
- 110 stated that planning applications needed to demonstrate that safe and suitable access to the development site could be achieved for all users and any significant impacts from the development on the transport network or on highway safety could be cost effectively mitigated to an acceptable degree;
- 111 commented that developments should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the impacts on the road networks would be severe; and
- 112 established that applications for development should give priority first to pedestrian and cycle movements both within the scheme and within neighbouring areas and should promote access to high-quality public transport services and encourage public transport uses.

In respect of the submitted application, National Highways had been consulted and had issued a non-determination response to enable the Applicant to submit additional information. Revised plans were submitted and subsequently, National Highways removed its holding direction and confirmed it had no objections to the scheme, subject to a pre-commencement condition requesting that a detailed scheme for off-site highway works be provided to the Local Authority.

With regard to assessing the level of traffic that would be generated by the development, the views of the Applicant and the Local Authority conflicted. The Applicant was of the view that the development was similar to a retail park and the Local Authority was of the opinion the development should be viewed as a local centre. The position of the Local Authority was that given its location and design, in addition to the small size of the ancillary units, the development was more akin to a local centre. Agreement could not be reached with regards to the likely trip rates and as such the Aimsun model was used to generate predictions for both scenarios. The results of the Aimsun assessments were detailed in the submitted report at paragraphs 161 to 165. In terms of the level of traffic generated, Test 1 (retail park) showed a total of 117 (AM) and 270 (PM) vehicle trips, Test 2 (local centre) showed an increased total of 297 (AM) and 502 (PM) vehicle trips.

Assessment and analysis of the model identified primary areas of congestion/delay and concerns were seen in the following locations:

- Blue Bell Roundabout;
- B1365/Stainton Way roundabout; and
- Newham Way/Stainton Way/Lingfield Way roundabout.

The Applicant had put forward proposed mitigation schemes at two locations. Those mitigation schemes had not been agreed by the Highway Authority for a number of reasons, including that they did not mitigate the harm created by the development.

In assessing the sustainability of the proposed development, non-car accessibility was considered to not be realistic with no mitigation or supporting works proposed to encourage sustainable travel. Given the local environment was dominated by vehicular infrastructure, it would be more convenient to access the development by car. Therefore, the development would increase car dependency, traffic and congestion.

The parking provision for the site included 218 car parking spaces. The Tees Valley Design Guide required, for a commercial development of that scale, 247 to 286 parking spaces. The deficiency would impact on both users of the proposed development and highway users on the adjacent network in terms of both safety and free flow of traffic.

In respect of the proposed drive-thru, due to inadequate servicing arrangements and the layout of car parking, the internal stacking space would be limited. It was that internal stacking which would enable vehicles to efficiently enter, park and leave the site. The limited space would cause road safety issues, causing congestion and disrupting the free flow of traffic on the highway.

There was significantly limited provision within the site of pedestrian and cycle facilities and there was a lack of a safe and established pedestrian and cycle routes into the proposed site. Both pedestrians and cyclists accessing the site or walking/cycling around the site would have to cross multiple roads/access lanes and car parking to access the site.

The surrounding highway network created severance between the proposed development and adjacent residential areas. The development would create a hostile environment for pedestrians, given the lack of facilities, particularly for vulnerable highway users.

The unmanned crossing point on the B1380 was not designed or intended for the potential volume of pedestrians/cyclists that would be associated with a commercial development. There were highway safety concerns given the location of the footpath crossing to the roundabout and the fact four lanes of traffic (A174) would need to be negotiated.

In terms of place making, paragraph 126 of the NPPF set out the principle of high quality, beautiful and sustainable buildings and places as being fundamental to the planning and development process. Specific criteria was set out within paragraph 130 of the NPPF, which stated that developments should:

- a) function well and add to the overall quality of the area;
- b) be visually attractive as a result of good architecture, layout and appropriate landscaping;
- c) be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change;
- d) establish or maintain a strong sense of place, using arrangements of streets, spaces, building type and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and support local facilities and transport networks; and
- f) create safe, inclusive and accessible places, which promote health and wellbeing, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime would not undermine the quality of life or community cohesion and resilience.

It was considered that the proposed development did not meet the criteria of paragraph 130,

given its poor access, poor layout and inherent lack of positive character. The development failed to integrate with its surroundings, there was a lack of any meaningful landscaping and the proximity of buildings to the site boundaries had not been fully considered.

In terms of bus service provision for the nearby residents to access the development, there were two bus stops located away from the pedestrian crossing and services stopped at 6pm. Therefore, there would be a proportion of the staff and customers that would be car reliant, given the lack of safe pedestrian and cycle provision provided.

In comparison, reference was made to the Stainsby Masterplan, which included provision of a local retail centre being positioned centrally within the site to maximise the accessibility for future residents and to provide a high-quality scheme. The indicative site layout of the Stainsby Masterplan showed the local centre location to be at the heart of the site, it remained central to the scheme and planned to provide a sustainable hub for the community, which planned to deliver sustainable transport links whilst reducing the need for travel.

In terms of assessing the social, environmental and economic sustainability of the development, the following was outlined:

- The social objective of sustainable development set out in paragraph 8 of the NPPF related to supporting strong, vibrant and healthy communities by fostering a well-designed and safe built environment with accessible services to reflect current and future needs and to support communities' health, social and cultural well-being. In respect of the development, the combination of the physical separation and the lack of connectivity to the existing housing within the area had resulted in the development design providing no social cohesion with the existing communities.
- The environmental sustainability objective set out within paragraph 8 (c) of the NPPF, stated that the development should protect and enhance the natural, built and historic environment, including making the most effective use of land, helping to improve biodiversity and minimising waste and pollution. The internal layout of the development site provided limited areas of landscaping/grass. Furthermore, no consideration had been given to support and enhance biodiversity.
- The economic objectives of sustainable development set out at paragraph 8(a) aimed to build a strong, responsive and competitive economy by ensuring sufficient land of the right types was available in the right places and at the right time to support growth, innovation and improved activity and by identifying and coordinating the provision of infrastructure. The creation of jobs associated with the development did not provide sufficient justification to approve the scheme, as the unsustainable location would prevent any future economic development.

In the opinion of the Local Planning Authority, it was recommended that the application be refused due to the lack of sustainability, lack of adequate place making, the adverse impact on the character of the area, the adverse impact on investment in established and planned centres, failure of the sequential test, the impact on the highway network and failure to provide suitable, realistic and desirable sustainable transport options.

The Agent was elected to address the committee, in support of the application.

The Agent asked the committee to disregard the Officer's recommendation to refuse the application, on the grounds that not all information submitted by the Applicant had been fully considered or included in the submitted committee report. It was explained that it had not been reported that detailed information had been submitted by the Applicant in August 2022, which demonstrated the acceptability of the proposal in terms of retail, sustainability and transport. In addition, the report did not include the Applicant's highway commitments and the contribution towards highway mitigation schemes, which aimed to provide a sustainable transport infrastructure. Therefore, the Agent stated that the report was inaccurate and should not be considered when making an informed decision on the application.

In summary, the Agent raised the following points:

- The Applicant was willing to restrict the range of permitted uses in order to ensure that the development would not have a detrimental impact on the Coulby Newham Local Centre.
- The site at Coulby Newham could not reasonably accommodate the proposed development and Officers had themselves expressed doubt, which had been detailed



in the committee report. Therefore, the recommendation for refusal, due to the failure of the sequential test, was not robust.

- The site was a sustainable and accessible location, which planned to serve both existing and future residential areas.
- New cycling infrastructure (to connect residential areas to the site) and highway mitigation measures had been proposed, which had not been reported by Officers.
- The fact the site was considered unsustainable was somewhat confusing as the Council was proposing to implement a shared footpath and cycleway along the Southern side of Low Lane. Therefore, the site would be both sustainable and accessible and the Council itself was promoting infrastructure works to enhance the accessibility of the site for pedestrians and cyclists.
- Ultimately, the proposal presented a good opportunity to provide retail and service facilities in a location that would reduce travel times for residents, which would assist the Council in tackling the effects of climate change by reducing the length of car journeys.
- The proposal should be supported as it provided retail and commercial facilities, which planned to increase the vitality of the area.
- The proposal planned to provide an easily accessible low cost food shopping destination and it supported the strategic ambition for residential growth in the area.
- The proposal would provide a high-quality commercial development.

In contrary to the comments made by the Agent, the Head of Planning advised that the mitigation schemes proposed by the Applicant had been reported in the submitted documentation. It was clarified however, that the measures proposed were not acceptable as they did not mitigate the harm created by the development.

An Objector was elected to address the committee, in objection to the application.

In summary, the Objector raised the following points:

- Evolve Estates Limited had recently acquired Parkway Shopping Centre in Coulby Newham.
- In May 2022 a planning application had been submitted by Evolve Estates Limited, which was an evolution of a previously consented scheme to provide new retail facilities in the Coulby Newham District Centre, providing job opportunities and investment in the area.
- Evolve Estates Limited strongly objected to the proposed development as it would prejudice the ability for the company to bring forward its development and improvements at Coulby Newham District Centre.
- The proposal underestimated the impact on the Coulby Newham District Centre and the Applicant had not provided robust justification in terms of the sequential test, which lacked detail and did not provide sufficient analysis of Coulby Newham District Centre.
- The proposal would have a significant adverse impact on the vitality and viability of centres in Middlesbrough and future investment in those centres.
- The proposal was not a sustainable development, it did not provide safe and suitable access for pedestrians and cyclists and was surrounded by major roads and junctions.
- The development site was not accessible by all modes of transport and catered only for trips by private car.
- The application, as recommended by Officers, should be refused in line with the Local Development Plan and the NPPF.

A discussion ensued and the following comments were made:

- the site was located in an unsustainable location;
- the traffic from the development would spill out onto the adjacent highway and impact on the free flow of traffic;
- as servicing vehicles moved along the same routes as customers, any stacking would include service vehicles;
- the site was surrounded on all sides by main highways and was a dangerous and hostile environment for pedestrians, given the lack of facilities;
- the scheme would cause a detrimental impact on highway safety; and

- traffic would increase significantly.

Members commented that part of the proposed scheme was comparable to the McDonalds drive thru at the Parkway Centre. Given the restricted internal layout, vehicles queuing to enter the drive thru area would obstruct servicing traffic accessing the service yard. Those vehicles would also obstruct access into/out of car parking associated with the drive thru. It was commented that should queues extend further, then large areas of car parking would become inaccessible with significant potential for queues to quickly escalate back to Low Lane.

In response to a Member's query regarding objections, the Head of Planning clarified that following consultation, there had been 66 letters of objection received from nearby residents and a petition submitted from Andy McDonald MP with 386 signatures and 4 letters of support. In response to a Member's query, the Head of Planning advised that although some of those who signed the petition did live abroad, the submitted petition had been considered collectively as one objection.

A Member queried whether the proposal would have a detrimental impact on the trade at Coulby Newham Local Centre. In response, the Objector commented that the submitted proposal would have an adverse impact on the local centre.

The Head of Planning advised that the impact assessment that had been undertaken had two parts, the first part assessed how the proposal would impact on the vitality and viability of the local centre. It was added that the work undertaken by the Applicant was not correct and it underestimated and under-stated trade diversion. However, even if the impact on trade had been calculated correctly, impact upon the vitality and viability was unlikely to be significantly adverse. The second part assessed the impact on investment. Coulby Newham was a recognised district centre located in the South of Middlesbrough and was a sustainable retail centre. Following the assessment, it was determined that the proposed development would have a detrimental/adverse impact upon investment within both established and planned centres. Therefore, the second part of the test provided sufficient justification to warrant refusal, as the proposal would prejudice future investments.

**ORDERED** that the application be **Refused** for the reasons set out in the report.

**22/0240/FUL Retrospective alterations to retaining wall increasing the height/face of the wall and approval of facing materials at Grey Towers Village, Nunthorpe, Middlesbrough for Barratt David Wilson Homes - North East**

The above application had been identified as requiring a site visit by members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager advised that the site was located within the Grey Towers development site, which was currently under construction. The site was located along the northern edge of the wider Grey Towers site and to the south of Brass Castle Lane and the existing hedgerow that separated the site from the road. To the east, south and west was the housing development site. To the north was an existing residential estate.

Retrospective permission was sought to make changes to an approved retaining wall and to agree the finishing materials used in the construction of the wall. The height of the wall appeared greater than approved, due to changes to the ground level at the base of the wall to the north. The ground levels at the top of the wall were in accordance with the approved plans.

The previous approval had a condition attached that required the Applicant to agree the finishing materials used for the wall, with the Local Planning Authority. The wall had been built without the Applicant seeking agreement of those materials. The purpose of the submitted application was to seek agreement of the finishing materials used. There was also a lower ground level associated with the wall, which had resulted in an increase in the height of the

wall. The approved plans showed the height of the wall measuring between 0.7 and 1.2 metres, however, the wall that had been constructed measured between 1.2 and 2.4 metres high. Therefore, those measurements exposed a greater view of the wall.

The retaining wall was a structure that already had consent and as such all that required consideration were the changes from those previously approved.

A number of comments had been received regarding safety of users with some residents stating that cars could come off the road and end up on Brass Castle Lane. That issue was not a material planning consideration or part of the planning process. The issue would be picked up as part of the technical approval process, in order to satisfy the Highway Authority (as adopting authority) that the highway was safe for the public to use. Although the risk assessment was part of the highway works and 1.35m high railings were proposed to run along the top of the wall, due to the height of the retaining wall, it had been considered reasonable to recommend a planning condition. The condition would require a risk assessment to be carried out within six months of the decision date, should the application be approved.

An Adoption Agreement was not yet in place for the current phase of Grey Towers, however, the Local Highway Authority was actively working with the Applicant to get such an agreement in place.

Following consultation, objections had been received from 19 residential properties. Objections had also been received from a Ward Councillor, a Community Council and a Parish Council. The reasons for objection related to flood risk, highway safety and the impact on ecology. A number of the objections were not material to the planning application, as they did not specifically relate to the proposed works.

The Applicant had submitted a landscaping scheme. Whilst the wall was currently visible in a couple of locations, the proposed landscaping scheme aimed to significantly reduce and soften the appearance of the wall and the stones used in its construction. Evergreen ivy climbers were proposed, those would climb the wall to mask it. In addition, the ivy would be supported by a 50/50 holly (also evergreen) and birch hedgerow to be planted in front of the wall.

The visual appearance of the finishing materials of the wall could be mitigated against through the implementation of the proposed landscape scheme. The Officer recommendation was for approval, subject to relevant conditions.

A Member commented that the colour of the stones used for the construction of the wall were not appropriate and could be considered to have a negative impact on the streetscene.

In response to a Member's query regarding safety, the Development Control Manager advised that the railings provided a physical barrier to the wall to ensure the safety of residents.

A Member stated that in terms of previously approved plans, although the previous application did provide an indication of the proposed positioning of the retaining wall, the primary reason for that application was to seek approval to increase the number of dwellings on the site. The Member commented that the retaining wall had not been referenced in the previous committee report, which had been submitted for the committee's consideration in 2018. Concerns were expressed that the wall had been built without its height and the finishing materials being agreed by the Local Planning Authority.

The Development Control Manager explained that regardless of whether an application was retrospective, the committee needed to determine whether an application was acceptable in planning terms. It was clarified that in respect of boundary treatments and surfacing materials for residential developments, those were frequently dealt with through the use of conditions, as developers did not tend to provide those exact details at the application stage. As mentioned, a condition had been attached to the 2018 permission stating that the materials used for the retaining wall required submission to, and approval from, the Local Planning Authority. Furthermore, it was stated that the proposed height of the retaining wall had been referenced within the approved plans, i.e. between 0.7 and 1.2 metres. Given the previous approval, the principle of the retaining wall had been established through that permission.

In response to a Member's query, the Development Control Manager explained that if the committee decided to refuse the application due to the height of the wall, the Applicant could redress the soil levels on site and raise the ground levels at the base of the wall. If Members were in agreement that the finishing materials used were not appropriate, given that the Applicant had proposed a landscaping scheme to mitigate against the visual appearance of the black/grey stones, the committee would need to provide reasonable grounds for refusal.

An Objector was elected to address the committee, in objection to the application.

In summary, the following points were raised by the Objector:

- When the wall reached 2 metres high, the Local Authority was notified and the Head of Planning had confirmed that the Applicant had been informed that the height of the wall did not comply with approved plans and that the finishing materials required approval from the Local Planning Authority. Regardless of that, the Applicant continued to erect the wall.
- The land behind the retaining wall increased to approximately 2.5 metres above the original ground level.
- There was currently a very significant safety risk due to the height of the road.
- The Applicant had deliberately broken planning laws and had ignored instructions from the Local Planning Authority to adhere to the pre-agreed plans - there needed to be consequences.
- Risk assessments should be undertaken in respect of the possibility of subsidence on the site, flooding and the suitability and validity of the wall.
- An additional safety barrier was required to ensure the safety of residents.

The Development Control Manager advised that the Highway Officer had considered the implications of the road network on the south side of the barrier and was satisfied with the railings proposed along the top of the retaining wall. However, the Highways Officer had requested that a planning condition be attached to the development, requiring a Road Safety Risk Assessment to be carried out. Furthermore, it was explained that the retrospective changes being sought by the application had been assessed by the Local Flood Authority and did not result in an increased risk of flooding on Brass Castle Lane or Eagle Park.

In response to a Member's query, the Objector explained that the height of the wall was the prominent issue and safety measures were required.

A discussion ensued and Members were minded to defer the application. A Member commented that another site visit would be beneficial, which enabled the committee to fully access the site - as access had previously been restricted due to ongoing works. The importance of the Applicant being in attendance, to the answer questions of the committee, was highlighted.

The Head of Planning advised that if Members did wish to request additional information from the Applicant, questions could be submitted and answers brought back to the following meeting, for the committee's consideration. It was commented that the Applicant could be asked to attend that meeting, however, there was not a legal requirement for the Applicant to do so.

The Ward Councillor was elected to address the committee.

In summary, the Ward Councillor raised the following points:

- A number of complaints had been submitted relating to the type and colour of the bricks used and the height of the wall, none of which were in keeping with the area.
- The Applicant had been told to take the wall down but instead building continued.
- The 8ft wall was significantly higher than what had been agreed and in an attempt to reduce the height, the Applicant had placed 2ft of rubble at the base of the wall, which was ridiculous.
- The wall impacted negatively on the streetscene and the character of the area.
- The ivy proposed, as part of the landscaping scheme, would damage the wall.
- Approval of the application would set a precedent for others to erect walls that were higher than those permitted.

**ORDERED** that the application be **Deferred** for the following reasons:

**To enable further information to be requested and obtained from the Developer to provide the Planning and Development Committee with the information it needed to fully assess the application.**

**22/0346/COU Single storey extensions to side and rear and change of use from C3 dwelling house to C2 residential institution at 15 Salton Close, Middlesbrough, TS5 5BG for Anita Puri, Aapna Services**

The above application had been identified as requiring a site visit by members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager advised that planning permission was sought for the change of use from a dwellinghouse (C3 use) to a residential institution (C2 use). The application site was located on Salton Close, fronting Acklam Road.

There was limited parking at the front of the property on Acklam Road, which consisted of communal parking bays located off the carriageway. The existing property had a garage at rear and area of hardstanding in front of that for parking purposes with a parking bay which provided a small element of on street parking off Acklam Road.

The proposed use would provide accommodation for one child with two carers, offering 24-hour support and care. The proposed change of use would remain to be a residential use in a residential area, therefore the principle of use had generally been established.

It was considered that the proposed change of use would be consistent with the existing uses of the location and it would not be detrimental to any adjoining or surrounding properties.

Following the consultation process, there had been 3 letters of objection received. The objections related to highway and parking issues, noise and disturbance, business use in a residential area and impact on the residential character, privacy and amenity and maintenance issues.

The application proposed a rear extension, which would sit close to the boundary with the attached neighbour but would not be excessive in size/scale or excessive in height, it would also be positioned to the south of the attached neighbour.

In addition, a side extension was also proposed that planned to infill the space between the boundary and detached neighbour, who had already extended in a similar manner. It was planned that the extension would align with the front and rear building lines of the property and as such separation distances between those properties to the front and rear would be retained.

It was considered that the proposed use was acceptable in the existing residential area. It was also considered that the level of the intended use and the proposed extensions to the property would have no significant impact on the character and appearance of the area or the privacy and amenity of the neighbouring properties. Therefore, the application was considered to be an acceptable form of development and was recommended for approval.

A condition was recommended which planned to control the use and the number of occupiers, stating that no more than 2 children would reside there at any time. A Member commented that as the submitted application proposed accommodation for one young adult, the opportunity to increase the number of occupiers to two children residing at the property should not be provided.

A Member commented that Aapna Services was a registered charity that provided health and social care services in Teesside, particularly in respect of children with disabilities. Therefore,

accessing the property could be problematic and the suitability of the property was questioned.

Members expressed concerns regarding the size of the extensions proposed and the lack of outdoor space, access and parking provision.

The Development Control Manager advised that there were no set standards/requirements for outdoor space and garden sizes. The key material considerations were the principle of the development, the impact on amenity, impact on the character and appearance of the property and wider area and highway safety.

Members acknowledged that collection of refuse in the locality was already problematic, due to restricted access issues. The Head of Planning commented that, given that the application was for a residential use in a residential area, the approval of the application would not compound that issue.

Members were in agreement that the property was unsuitable due to the increase in demand for parking and the traffic generated. In addition, the proposed alterations would limit access to the property.

**ORDERED** that the application be **Refused** for the following reasons:

**In the opinion of the Local Planning Authority the proposed extensions would have removed external access to the rear garden resulting in the difficulty of storing and removing refuse from the property. Furthermore, there was a lack of parking associated with the property where there would have been a daily demand for staff parking which would have resulted in ad-hoc parking in the immediate vicinity of the house likely to adversely affect the free flow of pedestrian and vehicular movements within the area, contrary to Local Plan Policy DC1 (c & d).**

## Planning & Development Committee Schedule - 07-Oct-2022

Town Planning applications which require special consideration

1	<p>Reference No: 22/0240/FUL</p> <p>Ward: Marton West Ward buffer = Marton West Ward buffer = Nunthorpe</p>	<p>Applicant: Barratt David Wilson Homes - North East</p> <p>Agent: Barratt David Wilson Homes - North East</p>	<p>Description: Retrospective alterations to retaining wall increasing the height/face of the wall and approval of facing materials.</p> <p>Location: Grey Towers Village, Nunthorpe, Middlesbrough</p>
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## APPLICATION DETAILS

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<b>Application No:</b>	22/0240/FUL
<b>Location:</b>	Grey Towers Village, Nunthorpe, Middlesbrough
<b>Proposal:</b>	Retrospective alterations to retaining wall increasing the height/face of the wall and approval of facing materials.
<b>Applicant:</b>	Barratt David Wilson Homes - North East
<b>Ward:</b>	Marston West,
<b>Recommendation:</b>	Approve with Conditions

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## SUMMARY

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The site is located with the Grey Towers Development site which is currently under construction. The site is along the northern edge of the wider Grey Towers site to the south of Brass Castle Lane and the existing hedgerow that separates the site from the road.

Retrospective permission is sought to make changes to an approved retaining wall and to agree the finishing materials used in the construction of the wall. The height of the wall appears greater than approved due to changes to the ground level at the base of the wall to the north. The ground levels at the top of the wall are in accordance with the approved plans.

Objections have been received from a Ward Councillor, a Community Council and a Parish Council. Objections have also been received from 19 residential properties. A number of the objections are not material to this planning application as they do not specifically relate to the proposed works.

The proposed development has been assessed in relation to material planning considerations. It is the planning view that the changes that have been made do not alter the impact of the housing development on the amenity of residents and do not result in increased flood risk to Eagle Park and Brass Castle Lane. Concerns regarding the safety of pedestrians and vehicles due to the height of the road can be mitigated against as part of the highways adoption process however a condition on this application will ensure the safety assessment is carried out in a reasonable timeframe. Railings at the top of the wall provide a safety barrier for pedestrians. The visual appearance of the finishing materials of the wall can be mitigated against through the implementation of the proposed landscape scheme.

The recommendation is for approval subject to relevant conditions.

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## SITE AND SURROUNDINGS AND PROPOSED WORKS

The site is located with the Grey Towers Development site which is currently under construction, accessed from Dixons Bank. The site is to the north of the wider Grey Towers site to the south of Brass Castle Lane and the existing hedgerow that separates the site from the road. To the east, south and west is the housing development site. To the north is an existing residential estate.

Retrospective permission is sought to make changes to a retaining wall approved under application 18/0060/FUL and to agree the finishing materials used in the construction of the wall.

The height of the wall appears greater than approved due to changes to the ground level at the base of the wall to the north not due to an increase in the ground levels at the top of the wall which are in accordance with the approved plans. Railings are also proposed along the top of the retaining wall.

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## RELEVANT PLANNING HISTORY

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18/0060/FUL

Residential development comprising 238 dwellinghouses with associated access and landscaping

Approve subject to 106 Agreement

27th June 2018

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## PLANNING POLICY

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In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

### Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

### National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 - General Development, CS5 - Design, CS4 - Sustainable Development

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.  
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

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## **CONSULTATION AND PUBLICITY RESPONSES**

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Following a consultation exercise objections were received from residents at 19 properties. The objections are summarised below.

- a. Increased flood risk and drainage issues;
- b. Highway safety on Brass Castle Lane for pedestrians, cyclists and vehicular traffic due to a lack of visual sight line awareness impeded by the height of the wall;
- c. What will prevent cars rolling onto Brass Castle Lane in ice conditions;

- d. Noise and disturbance from houses;
- e. Inappropriate materials not in keeping with the area;
- f. Eyesore/unsightly;
- g. Impact on air quality;
- h. Loss of natural light;
- i. Overlooking;
- j. Loss of views;
- k. Not previously proposed in the development;
- l. Impact from ongoing construction works/not told road would be dug up;
- m. Works to road are not to a high standard;
- n. Scope to build the wall even higher as the road can be seen above the wall;
- o. Safety rail should be required;
- p. Wall has no footings, we are concerned about erosion and the wall being unstable;
- q. Developer has carried on working even when told the wall was not in accordance with their approval;
- r. Unauthorised earthworks
- s. The houses will now be higher than approved. The land level must be reduced to the approved level;
- t. Impact on ecology;
- u. Works have damaged the existing hedge;

Received from:

- 1. 3 Brass Castle Lane
- 2. 5 Brass Castle Lane
- 3. 9 Brass Castle Lane
- 4. 11 Chesterfield Drive
- 5. 2 Eagle Park
- 6. 6 Eagle Park
- 7. 16 Eagle Park
- 8. 20 Eagle Park
- 9. 30 Eagle Park
- 10. 34 Eagle Park
- 11. 37 Eagle Park
- 12. 43 Eagle Park
- 13. 66 Eagle Park
- 14. 72 Eagle Park
- 15. 88 Eagle Park
- 16. 92 Eagle Park
- 17. 112 Eagle Park
- 18. 297 Eagle Park
- 19. 329 Eagle Park

Highways – MBC

No objections subject to a condition relating to a highway restraint scheme.

Lead Local Flood Authority - MBC

Having consider all the information provided as part of the original development application and the wall application it is noted that the drainage on the site has been designed with the use of SUDS and a restricted discharge rate to ensure that the Flood Risk from the site is not increased.

It is my view that the amount of water which may fall on the area between the wall and the hedge would be minimal and if any surface water that fell on this area did flow onto the road it would be significantly less than the amount that probably ran onto the roads from the fields before the development was built as such in my view the flood risk has not been increased

#### Nunthorpe Parish Council

Councillors from Nunthorpe Parish Council expressed concerns and object to this retrospective application, this will be discussed further at the Parish Council meeting on Thursday 19th May to enquire if there are any additional residents comments. The proposed area of the retaining wall is situated on the boundary of Nunthorpe and Marton West Ward areas, with the adjacent Grey Towers Village being in Nunthorpe.

During the consultation period for this phase of Grey Towers Village, Nunthorpe residents raised particular concerns regarding the pavement deficiency along Brass Castle Lane at this location. This high wall appears to exacerbate this problem, making it difficult to walk along Brass Castle Lane, either side of the retaining wall.

The photographs are unclear if a pavement is in existence at all.

The information from the applicant is unclear. The proposal description identifies two matters.

1. The wall length on 150 metres, graduating in height to 2 metre at its highest point.
2. Approval of facing materials on the 2 metre high wall. However the Design and Access Statement assumes the only issue is the facing material. It states that the applicant "seeks retrospective approval of a facing materials used to construct a retaining wall".

From a site visit this wall and facing material described is already in the process of construction. The facing material does not appear to be in line with design, appearance and materials used in construction of properties on the site.

The appearance of the wall appears overbearing in its proximity to neighbouring properties, highway and walkways.

#### Councillor Chris Hobson

This wall is not shown in the planning application at this height. It has to be reduced in height we will not in Marton West accept anything else.

The wall is way above the legal height and therefore needs to come down no ifs no buts.

#### Nunthorpe Ward Councillors

No response

#### Marton West Community Council

I have received several requests from Marton West residents for the Community Council to send an objection concerning a recent Planning Application.

This application is for Barratt Homes to build an eight foot wall on their new development at the corner of Brass Castle Lane and Dixons Bank.

To date, we understand that the residents' objections have resulted in a Planning Application being submitted by Barratt Homes, in order to extend the legal two metre height, although we are unable to find any reference to this on the Council Planning Department website.

We think this height is excessive and wish to submit a formal objection.

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## PLANNING CONSIDERATION AND ASSESSMENT

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1. Planning application 18/0060/FUL for 'Residential development comprising 238 dwellinghouses with associated access and landscaping' was submitted in February 2018. It was approved subject to conditions by the Planning and Development Committee on 4th May 2018. The decision was subsequently issued on 27th June 2018 following the completion of a s106 agreement. The submitted plans included a plot levels plan that identified the location of the retaining wall and the height ranging from 0.7m to 1.2m.
2. The wall has been constructed in the approved location (part of the housing development) and the ground level on the south/top of the wall is in accordance with the approved plans and is not part of the consideration of this application. This application relates to the materials that have been used to construct the retaining wall and the height/face of the retaining wall as a result of the groundworks to the base of the wall on the north side.
3. The wall height is relatively flat at the top of the wall with only small variations of approximately 0.3m. Due to changes in the gradient of the slope of the bank at the bottom of the wall the change in the height/face of the wall varies between a maximum of 2.6m and a minimum of 1.2m. 1.35m high railings are proposed to run along the top of the wall.
4. Any comments received in relation to the height at the top of the wall, or in relation to the overall housing development, are not material considerations in relation to this application in the sense that these have been established by earlier approvals. Those comments which are not material include, but are not limited to, overlooking/loss of privacy, loss of views, impacts on air quality, noise, impacts of construction, works to nearby roads.
5. A number of comments have also been received about the developer seeking retrospective permission because the works are not in accordance with the plans, and therefore they should be refused. Legislation allows for permission to be sought retrospectively. The fact that the developer has continued work whilst this application is being considered, is not a reason for refusal.

### Amenity

6. As stated above, the wall is built in the previously approved location and the ground level at the top of the wall is as approved. The impact on the amenity of residents as a result of the raised ground level in this location was considered as part of the housing development and the principle of that height of wall / structure has therefore been established.
7. Due to its location and the presence of an intervening hedge, landscaped area and road, the wall has no impact on light to any of the existing residential properties. Comments from residents in relation to privacy relate to the height of the ground level and houses to the south of the wall which have been approved and do not form part

of this application. The wall itself and ground levels to the north of the wall will not have any impact on the privacy of residents.

8. Whilst the wall has not been constructed as approved, as a result of changes to the gradient of the slope on the north side, at the foot of the wall between the wall and the hedge running along Brass Castle Lane. The changes do not result in any more impact on the amenity of existing or new properties in the area, above what has already been approved, in relation to light, overshadowing or privacy.
9. The development is considered to be in accordance with the requirements of policy DC1 and CS5.

#### Design/Streetscene

10. The retaining wall is located behind the existing hedgerow which runs adjacent to Brass Castle Lane. It has been constructed using black/grey stones. During the summer months the wall is not overly visible due to its location behind the hedge which is deciduous. During the winter months when the hedge loses its leaves the wall is more visible.
11. Currently there is a section of the hedgerow which has been removed opposite the junction with Eagle Park, which allows views of the wall. There is also a smaller section further to the east where there is a gap in the hedge which has been there historically to allow pedestrian access. The housing development includes a footpath link in this location which also allows views of the wall.
12. The road can currently be seen above the wall as there is a small grass slope between the top of the wall and the channel of the constructed road. This is in accordance with the approved plans in this location. This does not mean that the wall will be increased in height as suggested by some of the residents.
13. Above the retaining wall it is proposed to erect railings which are in keeping with those approved on the wider housing development. The railings provide a physical barrier to the wall to ensure the safety of residents.
14. A number of comments relate specifically to the appearance of the wall due to the materials that have been used, namely the black/grey stones. Whilst the wall is currently visible in a couple of locations the proposed landscape scheme seeks to significantly reduce and soften the appearance of the wall and the stones used in its construction. Ivy climbers which are evergreen are proposed, these will climb the wall to mask it. In addition, the ivy will be supported by a 50/50 Holly (also evergreen) and Birch hedgerow to be planted in front of the wall.
15. As a result of the landscape scheme the materials used in the construction of the wall will become screened at differing times of the year and as landscaping becomes more established. The colour of the stones used in the wall is therefore considered to have limited impact visually within the area, over time. The additional planting also has added benefits for biodiversity at the site and will provide further habitat for wildlife.
16. The proposed development is considered to be in accordance with the requirements of policies DC1, CS4 and CS5.

### Highways

17. The retaining wall is a structure which already has consent and as such all that is being considered is the change from that previously approved.
18. A number of comments have been received regarding safety of users with some residents stating that cars could come off the road and end up on Brass Castle Lane in slippery conditions. The proposed plans show a 100mm check on the road channel and railings along the top of the wall.
19. In order to determine the most appropriate form of features to prevent errant vehicles, pedestrians, cyclists etc falling from areas of higher land a simple risk assessment is normally undertaken which considers a number of factors/issues such as the alignment of the adjacent carriageway, height difference, risk of injury, vehicle speed etc. This process sits outside of planning and will be picked up as part of the technical approval process in order to satisfy the Highway Authority (as adopting authority) that the highway is safe for the public to use.
20. An Adoption Agreement is not yet in place for this phase of Grey Towers but the Local Highway Authority are actively working with the developer to get such an agreement in place.
21. Due to the alignment of the retaining structure, distance from Brass Castle Lane and off-set from the internal estate road it is considered that a suitable restraint system could be installed and that the risk of anyone falling from the higher land can be mitigated appropriately.
22. Although the risk assessment is part of the highway works, due to the height of the retaining wall it is considered to be reasonable to attach a planning condition to this development which requires the risk assessment to be carried out within six months of the decision date, should this application be approved.
23. The wall runs parallel to Brass Castle Lane and is located outside the adopted highway. Due to the location of the wall outside the adopted highway, set back from Brass Castle Lane and separated by an existing hedge and a landscaped bank, the wall has no impact on visibility along Brass Castle Lane.
24. The wall has no impact on any existing footpaths on Brass Castle Lane. Within the Grey Towers housing development footpaths run along the south side of the road which is located to the south of the retaining wall. The footpath then breaks through the hedgerow to the north giving access to Brass Castle Lane. The footpath links are approved as part of the housing development plans.
25. The development is considered to be in accordance with the requirements of Policies DC1 and CS5.

### Flood Risk

26. The Local Flood Authority have considered all the information provided as part of the original development application and this application it is noted that the drainage on the site has been designed with the use of sustainable drainage system and a restricted discharge rate to ensure that the Flood Risk from the site is not increased.



27. The ground level on the housing development were approved as part of the housing application and as part of the sustainable drainage strategy with levels governed by the surface water routing and sustainable drainage features. The drainage scheme results in redirected flows through the surface water network to the detention basins within the housing development and thereafter into the surface water outfall as agreed with Northumbrian Water.
28. The road at the top of the retaining wall will have a kerb face whereby all surface flows from the road will be collected by the nearby gullies. This leaves overland flows (surface flow that is outside the confines of a stream channel) from vegetated areas above and below the wall. There are land drains installed as a result of the wall which will collect some flows and some flow will be naturally collected and mitigated by the soft landscaping scheme and would have naturally fallen to Brass Castle Lane prior to development as well.
29. There have been issues of flooding on Brass Castle Lane previously as a result of the drains along the road (which are not the responsibility of the developer) being blocked. The drains have now been cleared.
30. It is the view of the Local Flood Authority that the amount of water which may fall on the area between the wall and the hedge would be minimal and if any surface water that fell on this area did flow onto the road it would be significantly less than the amount that ran onto the roads from the fields before the development was built. As a result the housing development provides a betterment on overland flow risks compared to the pre-existing topography and therefore the flood risk has not been increased. The retrospective changes being sought by this application do not result in an increased risk of flooding on Brass Castle Lane and Eagle Park.
31. The development is considered to be in accordance with the requirements of policy CS4.

#### Members Questions/Statements

32. This application was previously considered by Members at the Planning and Development Committee. The application was deferred with Members requesting responses to a number of questions/statements. This section of the report will respond to the matters raised. The question or statement made by members at committee is shown in bold with the response below.

#### **Who decided the type of brick?**

33. The developer chose the brick type. It should be noted that 'who' made the decision on the materials is not a material planning consideration as it has no bearing on whether or not the material is acceptable in planning terms. However, as stated in paragraph 15 above, as a result of the landscape scheme the materials used in the construction of the wall will become screened at differing times of the year and as landscaping becomes more established. The colour of the stones used in the wall is therefore considered to have limited impact visually within the area, over time. The additional planting also has added benefits for biodiversity at the site and will provide further habitat for wildlife.

#### **Who increased the height of the wall?**

34. It should be noted that the height of the wall has not been changed, the base and top of the wall are as originally planned. What has changed is how much of the wall is

exposed and visible. The developer has amended the angle of the embankment abutting/enclosing the wall. This change has been made by the developer during construction due to issues relating to access for plant and machinery, construction, health and safety, ongoing maintenance and drainage. It should be noted that 'who' made the decision to change the height of the wall is not a material planning consideration as it has no bearing on whether or not the wall is acceptable in planning terms

35. Should this application be refused the land gradient could be constructed as approved however, increasing the gradient of the land would introduce the issues detailed below:

- *Restricted Plant access* - Limited area for plant movement and operation against the wall and the site boundary. This limits the ability for machinery to batter the earth against the wall to the required gradient in a tight-corridor against the wall and Brass Castle Lane and could result in damage to the existing hedgerow.
- *Levels Change* - Existing drainage would require lifting to accommodate new ground levels and an increase in the slope on the ground, would increase the gradient and steepness of the installed footpath traversing this embankment.
- *Constrained access and safety for maintenance machinery* – Maintenance of proposed and existing landscaping in the area maybe constrained by the ability of the management company to operate on a steeper gradient, this may impact the quality of the landscaping in the area.

36. It is the planning view that the majority of the wall is screened by an existing hedgerow and the proposed evergreen planting will further screen the wall all year round. It is therefore considered preferable to have a shallower ground level at the bottom of the wall to a steeper gradient on the footpath above the wall. This is safer for pedestrians, reduces risk of harm to the existing hedgerow and allows for better maintenance.

**The design of the wall impacts on the quality of the area.**

37. The analysis of this development set out in the body of this report in relation to amenity, design/streetscene, highways and flood risk concludes that the design of the wall does not have a significant impact on the quality of the area.

**People will erect fences and walls oversized because of this.**

38. A planning application must be assessed in relation to national and local policy and guidance and material planning considerations. A decision must not be made on the basis of something that may or may not happen, by people not associated with the applicant or development. The consideration of this application will have no bearing on the enforcement processes currently in place to deal with any breaches of planning should they occur.

Conclusion

39. The changes that have been made do not alter the impact of the housing development on the amenity of residents and do not result in increased flood risk to Eagle Park and Brass Castle Lane. Concerns regarding the safety of pedestrians and vehicles due to the height of the road can be mitigated against as part of the Highways Adoption process however a condition on this application will ensure the safety assessment is carried out in a reasonable timeframe. The visual appearance

of the finishing materials of the wall can be mitigated against through the implementation of the proposed landscape scheme.

40. It should also be noted that refusal of this application would not result in the developer being required to reduce the height of the wall by reducing the ground level at the top of the wall. It would simply require them to increase the gradient of the slope at the bottom of the wall which will not be visible due to its location behind the existing hedgerow, thereby reducing the height/face of the wall.
41. The proposed development is considered to be acceptable and in accordance with relevant planning policies. It is recommended that the application be approved subject to conditions.

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## RECOMMENDATIONS AND CONDITIONS

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### Approve with Conditions

#### 1. Approved Plans

The development hereby approved shall be carried out in complete accordance with the plans and specifications detailed below and shall relate to no other plans:

Location Plan, received on 1st April 2022;

- a) Retaining Wall Location Plan on North-western Boundary of Phase 8 Adjacent to Brass Castle Lane, drawing no. GT8 LP 001;
- b) Retaining Wall Elevations Based on Surveyed Heights, drawing no. GT8 RTW 001 rev. A;
- c) Georoc Section A-A, drawing no. H6520-GS-1001; and,
- d) Detailed Landscape Proposals, Sheet 1 of 4, drawing no. c-1559-21 rev. A.

Reason: For the avoidance of doubt and to ensure that the development is carried out as approved.

#### 2. Road Safety Risk Assessment

A safety risk assessment shall be undertaken to determine the most appropriate highway restraint scheme to be provided along the top of the retaining structure. Details of the proposed highway restraint scheme shall be submitted to an approved in writing by the Local Planning Authority. The aforementioned approved highway restraint scheme shall be installed within 6 months of the date of approval of the scheme unless agreed otherwise in writing by the Local Planning Authority.

Reason: To ensure a satisfactory form of development and in the interests of highway safety having regard for policies CS5 and DC1 of the Local Plan and sections 9 and 12 of the NPPF.

3. The landscaping scheme must be implemented in the first planting season after the date of this approval, or in accordance with a timeframe to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory form of development in the interest of visual amenity and the character of the area having regard for policies CS4, CS5 and DC1 of the Local Plan and sections 12 and 15 of the NPPF.

#### 4. Replacement Tree Planting

If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.

Reason: To ensure a satisfactory form of development in the interest of visual amenity and the character of the area having regard for policies CS4, CS5 and DC1 of the Local Plan and sections 12 and 15 of the NPPF.

#### 5. Retained Trees

In this condition retained tree means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of five years from the date of the occupation of the final building on site for its permitted use.

- a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998:1989 (with subsequent amendments)(British Standard recommendations for Tree Work).
- b) If any retained tree is removed, uprooted or destroyed or dies during the period of construction another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the local planning authority. Similarly, if a retained tree dies or needs to be removed within five years of completion, and this is found to have been the result of damage sustained during development, this replanting condition will remain in force
- c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority. Retained trees shall be protected fully in accordance with British Standard 5837:1991 (Guide for Trees in Relation to Construction). In particular, fencing must not be dismantled at any time without the prior consent of the local planning authority.

Reason: To prevent the loss of or damage to trees and natural features during the development and to ensure so far as is practical that development progresses in accordance with current best practice having regard for policy CS4 and CS5 of the Local Plan and section 9 of the NPPF.

#### 6. Hedges and Hedgerows

All hedges or hedgerows on the site unless indicated as being removed shall be retained and protected on land within each phase in accordance with details submitted to and approved in writing by the local planning authority for the duration of works on land within each phase unless otherwise agreeing in writing by the local

planning authority. In the event that hedges or hedgerows become damaged or otherwise defective during such period the local planning authority shall be notified in writing as soon as reasonably practicable. Within one month a scheme of remedial action, including timetable for implementation shall be submitted to the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable. Any trees or plants which within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To prevent the loss of or damage to existing hedgerows and natural features so far as is practical that development progresses in accordance with current best practice having regard for policy CS4 and CS5 of the Local Plan and section 9 of the NPPF.

#### Reason for Approval

The retrospective changes to the retaining wall and the facing materials at Grey Towers is considered to be appropriate for both the application site itself and within the surrounding area, in that the proposal is in accordance with national and local planning policy.

The relevant policies and guidance is contained within the following documents: - National Planning Policy Framework 2012 - Middlesbrough Local Development Framework (LDF) - Core Strategy (2008); Regeneration DPD and Proposal Map (2009) - Middlesbrough Housing Local Plan, Housing Core Strategy and Housing Development Plan Document (2014)

In particular the increased face of the retaining wall, facing materials and landscaping scheme is complementary to the surrounding area and will not have a detrimental impact on the amenity of any adjoining or nearby resident, will not prejudice the character and appearance of the area and will not significantly affect any landscaping nor prevent adequate and safe access to the site.

Issues set out in the representations made by nearby residents are not considered, on balance, to give rise to any inappropriate or undue affects. Accordingly, the Local Planning Authority considers that there are no material planning considerations that would override the general assumption that development be approved unless other material factors determine otherwise.

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## INFORMATIVES

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- A condition setting the timescale for the commencement of the development is not required because the application is retrospective as works have already begun on site.
- Discharge of Condition Fee  
Under the Town & Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2018, the Council must charge a fee for the discharge of conditions. Information relating to current fees is available on the Planning Portal website  
<https://1app.planningportal.co.uk/FeeCalculator/Standalone?region=1>. Please be

aware that where there is more than one condition multiple fees will be required if you apply to discharge them separately.

- Deliveries to Site

It should be ensured that, during construction, deliveries to the site do not obstruct the highway. If deliveries are to be made which may cause an obstruction then early discussion should be had with the Highway Authority on the timing of these deliveries and measures that may be required so as to mitigate the effect of the obstruction to the general public.

- Cleaning of Highway

The applicant is reminded that it is the responsibility of anybody carrying out building work to ensure that mud, debris or other deleterious material is not deposited from the site onto the highway and, if it is, it shall be cleared by that person. In the case of mud being deposited on the highway wheel washing facilities should be installed at the exit of the development.

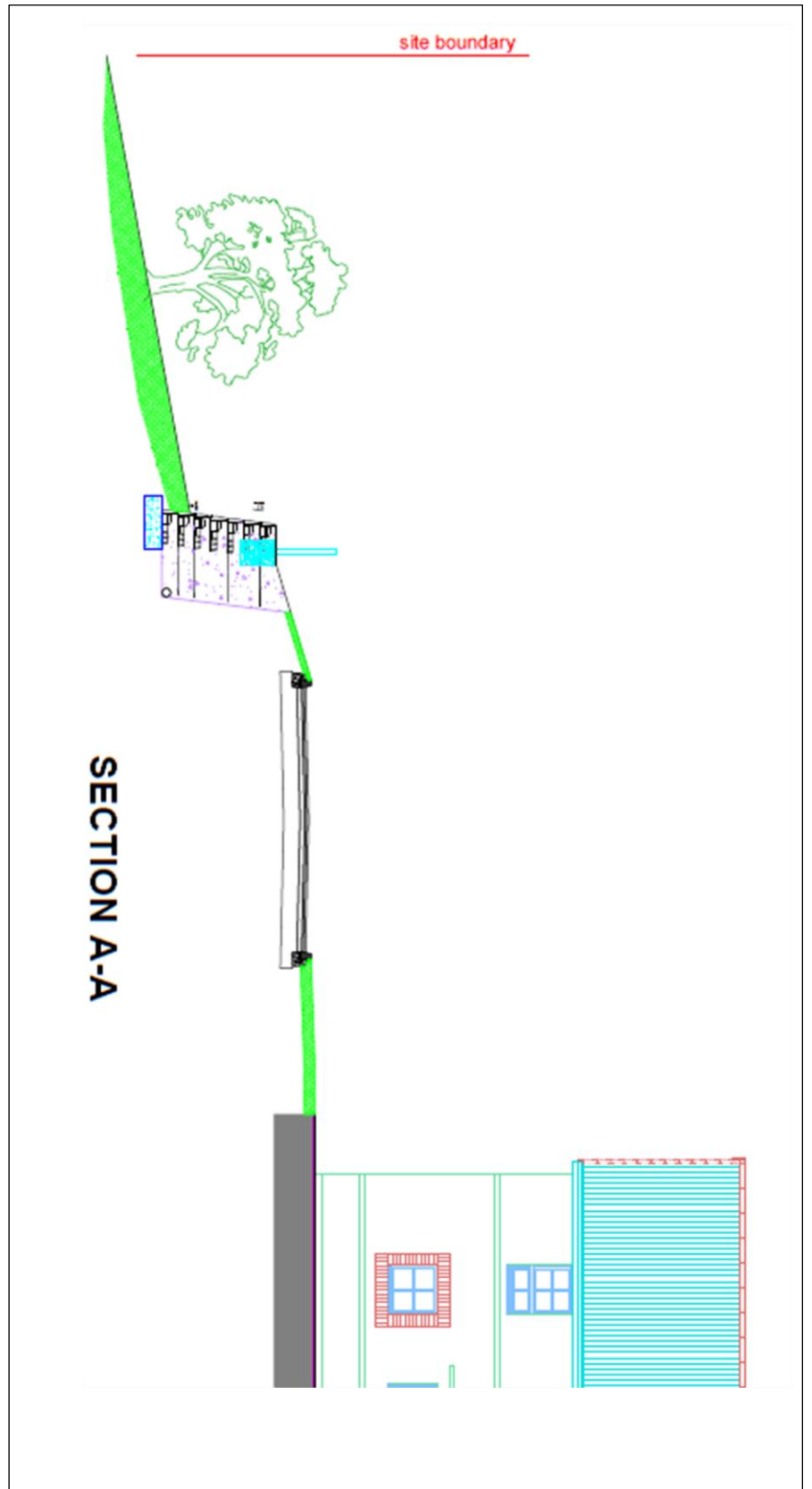
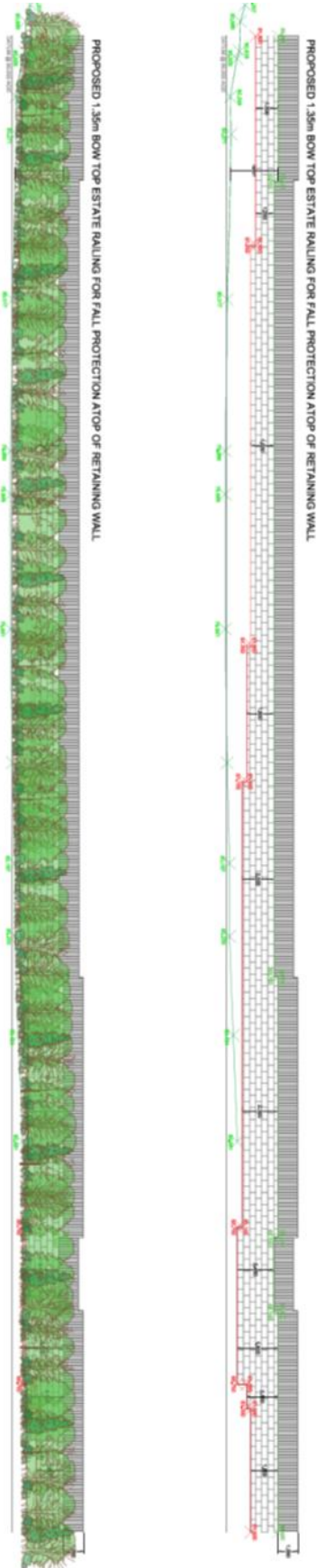
Case Officer: Shelly Pearman

Committee Date: 7<sup>th</sup> October 2022

### Appendix 1 – Location Plan



Appendix 2 – Elevations and Section



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