



## Planning Appeal Statement

for

**Application 2024/0112 New Passivhaus dwelling which is accessible and adaptable to the requirements of M4 Category 2 - Land to the south of 52 Tower Street, Worsbrough Common, Barnsley, S70 1QS**

Client :Mr and Mrs Barton

Project Ref: 23\_122 / Revision r5

# Contents

Summary	3
<b>On Design.</b>	3
<b>On Road Access</b>	3
<b>On impact of proposals on existing trees.</b>	4
<b>Other policies relevant to Self Build Housing and Small Sites.</b>	5-6
<b>Conclusions</b>	6
Reason for Refusal 1 - Design	7
<b>Design policies that have not been given significant weighting.</b>	7
<b>Interpretation of other design policies.</b>	10
Reason for Refusal 2 - Road Access	15
<b>Background.</b>	15
<b>Our Access proposals.</b>	16
<b>Amended scheme</b>	17
<b>Why do we need to meet the adoptable standard?</b>	18
<b>Conclusions</b>	21
Reason for Refusal 3 - Trees	23
Other Relevant Planning Policies	25
Conclusions	26

## Summary

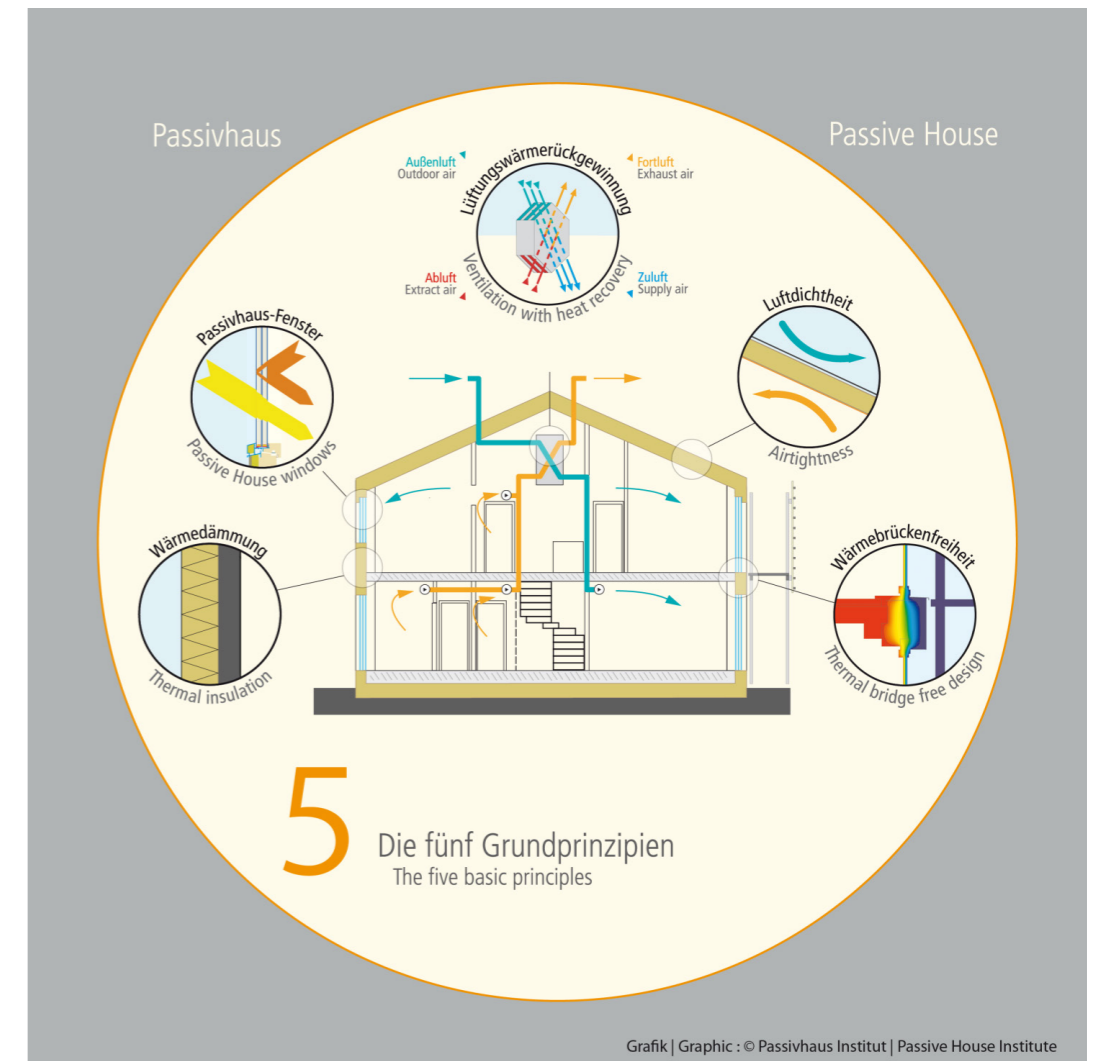
- 1 The planning application no2024/0112 was refused by Barnsley Borough council on 4<sup>th</sup> July 2024. The reasons for refusal were stated as relating to Design, Road access and Impact assessment on existing trees.

## On Design.

- 1.1 We believe that by ignoring the fact that the proposals have been designed to meet the Passivhaus standard, which promote a high level of sustainability, the officer has unreasonably disregarded Paragraph 139(b) of the NPPF.
- 1.2 Mr and Mrs Barton made a commitment to obtaining Passivhaus Certification for the completed dwelling and this was stated clearly in the Design and Access Statement.
- 1.3 If constructed this would represent the first Certified Passivhaus dwelling in the centre of Barnsley, which in our view would make the proposals “innovative”
- 1.4 On this basis the design should be assessed against NPPF para 139(b) rather than 139 (a)
- 1.5 Paragraphs 159 and 162 of the NPPF also support our arguments for orientating the building “to reduce greenhouse gas emissions” and “to minimise energy consumption.”
- 1.6 If it is necessary to demonstrate the requirements of NPPF paras 139(b) 159&162 are being met, Mr and Mrs Barton are willing to enter into a Section 106 agreement, obliging them to Certify the dwelling to the Passivhaus Low Energy Standard upon completion. Appendix B includes an executed and certified copy of the proposed Unilateral planning obligation.
- 1.7 In assessing the proposals against with Barnsley Local Plan (2019) Policy D1, National Planning Policy Framework (2023) Paragraph 135 and Section 24 (Infill Development) of the Design of Housing Development SPD (July 2023), the officer has misrepresented or misunderstood the design proposals and misinterpreted the policy and guidance.
- 1.8 In particular this relates to orientation; building line; scale; frontage entrance; design, form and appearance.
- 1.9 It is our view that the proposals are in accord with these National and Local Plan policies and that therefore the requirements of both NPPF para 139(a) & (b) are met. On this basis there is no valid argument for the refusal of this application on design grounds.

## On Road Access

- 1.10 We believe that contrary to Paragraph 115 of the NPPF, the South Yorkshire Residential Design Guide policy restricting the number of dwellings served by a private drive to 5 is not about highway safety, but rather about highways management.
- 1.11 This being the case, the requirement that the proposed road within the application boundary be built entirely to an adoptable standard should not, on its own, be a reason for refusal.
- 1.12 The technical details of any proposed highway and its improvement could be secured by a condition.



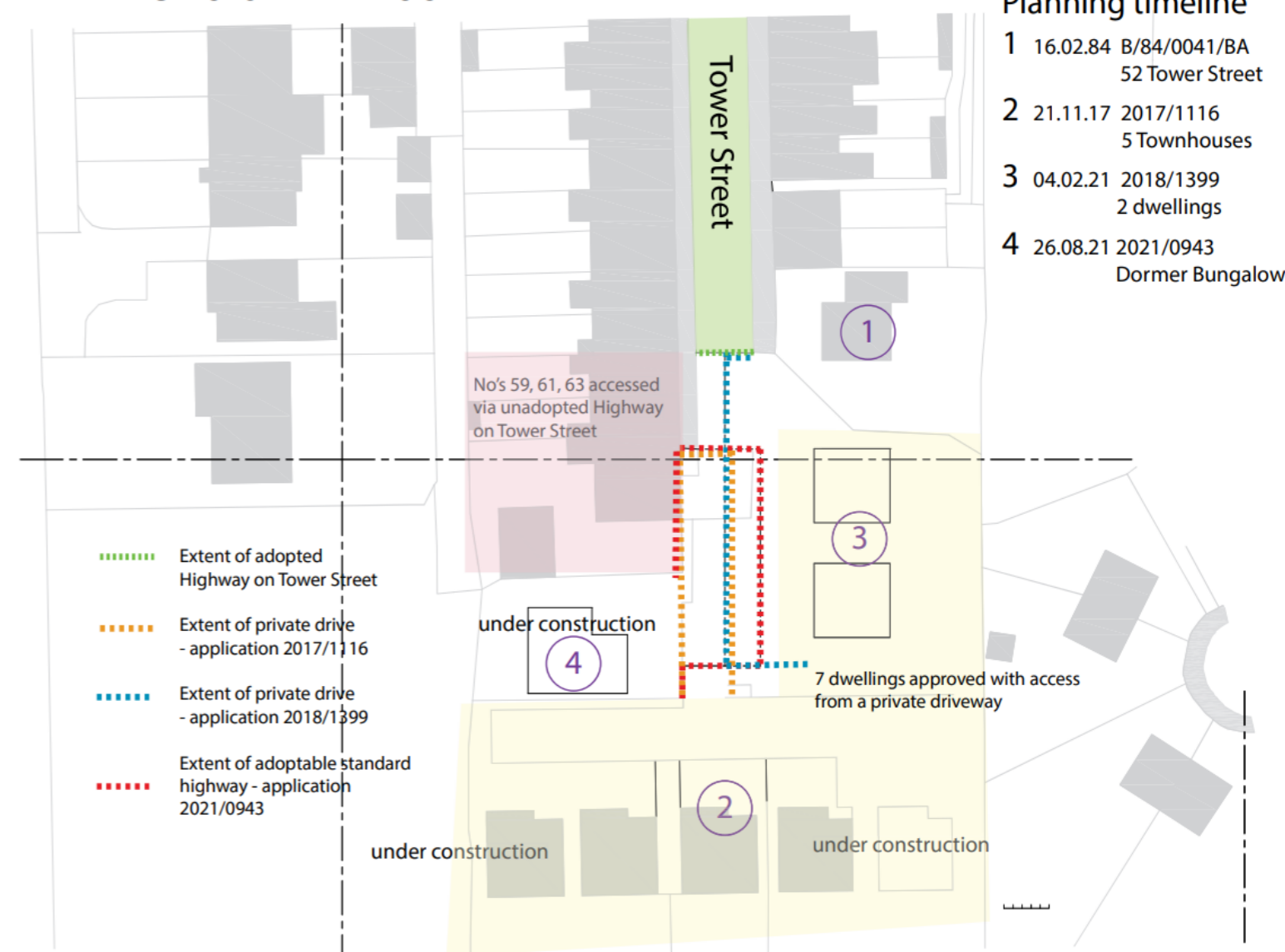
The 5 principles of Passivhaus construction

- 1.13 If this appeal concludes that a maximum number of 5 dwellings served by a private road is a requirement for highways safety reasons, then there is no reason why there should not be a condition placed on the approval that requires that the entire road within the application boundary is constructed to an adoptable standard.
- 1.14 That being the case, the applicant would accept a condition requiring that the road within the application boundary be constructed to an adoptable standard prior to occupation.
- 1.15 If that remains unacceptable, due to concerns about the delivery of the road, then the applicant will accept a condition requiring that the road within the application boundary be constructed prior to commencement of the dwelling.
- 1.16 As stated by the case officer in their report, the issue of land ownership is not a material planning consideration. This is then contradicted by their conclusion that it is grounds for refusal.
- 1.17 Of note is that had the policy limiting the number of dwellings served by a private road to a maximum of 5 been applied consistently then the Tower Heights application, in its current form (Ref 2017/1116) should have been refused.
- 1.18 Also of note is that had the requirement for consent from neighbouring owners to the construction of a road to adoptable standards been applied consistently to the Bungalow application (Ref 2020/0684 outline & 2021/0943 reserved matters) then this also should have been refused in its current form.
- 1.19 If this appeal is successful, the applicant will make every effort to obtain agreement from the neighbouring land owners for the road to be constructed to an adoptable standard and upon completion offered for adoption.
- 1.20 This would be the case even if this appeal decides that the adoptable standard is not a requirement of approval. This is because the applicant wishes to limit their liability for any maintenance. It is hoped this argument will encourage the neighbouring owners to also agree.
- 1.21 And that, if the neighbouring owners are unwilling to reach an agreement, then the council does have the power to upgrade the road to an adoptable standard under the Highways Act 1980 Private Street Works Code.
- 1.22 Given that the council's policy is to demand a standard of road construction that can be adopted as part of a planning approval we believe the council should be willing to use these powers to bring existing roads up to that standard on safety grounds where they already exceed the stated maximum of 5 dwellings served by a private drive.
- 1.23 The applicant is willing to pay for their fair share of the upgrade to this road.
- 1.24 For all these reasons, we believe that the reasons for refusal on Highways grounds are invalid and that with suitably worded condition(s) there is no reason why any technical or preoccupation or construction requirements could not be met.

### On impact of proposals on existing trees.

- 1.25 The original application included an Arboricultural Impact Assessment.

### PLANNING HISTORY ANALYSIS



Plan submitted during the planning process to understand 'overlapping' approvals and timeline of applications

- 1.26 The proposals changed following comments by the planning and highways officer which changed the driveway and access to the dwelling.
- 1.27 This led to changes to the Landscape Plan showing the changes to both trees that are to be retained and removed.
- 1.28 The Arboricultural Impact Assessment was not changed to reflect the updated proposals.
- 1.29 However, from the tree survey we can identify the trees that were to be removed but are now retained are Category B&C and, that the trees that were to be retained, but are now to be removed are all Category U.
- 1.30 The Arboricultural Impact Assessment states that Category U trees are “Trees with limited life expectancies which should not be considered a restraint to development.”
- 1.31 At no point were we made aware that the impact on existing trees would be grounds for refusal. We first found out about it when the decision notice was issued.
- 1.32 We believe this to be unreasonable. Had we been given the opportunity we would have been able to highlight that all the trees that are now to be removed are Category U and those to be retained are Category B&C.
- 1.33 This may have enabled the officer to conclude that the impact on the existing trees was not grounds for refusal, and possibly place a condition on the approval requiring that a revised Arboricultural Impact Assessment be submitted prior to a start on site.
- 1.34 Alternatively, they could have requested an updated Arboricultural Impact Assessment, which we would have been able to provide.
- 1.35 As part of this appeal we have updated the Arboricultural Impact Assessment to reflect the current proposals. (Appendix C)
- 1.36 We now believe there are no valid grounds to refuse the application on account of its impact on existing trees.



Extract from Landscape plan drawing number 23-122-111- rev C Tower Street Proposed Landscape Plan

### Other policies relevant to Self Build Housing and Small Sites.

- 1.37 Paragraph 63 of the NPPF requires local authorities to establish the need for housing of different types and tenure. This includes “people wishing to commission or build their own home.” We have been unable to obtain details of numbers on the self build register for Barnsley and if their needs are being met.
- 1.38 Paragraph 70 of the NPPF relates to small and medium sized sites. It requires Local Authorities support the development of windfall sites... giving **great weight** to the benefits of using suitable sites within existing settlements for homes;
- 1.39 The emerging Barnsley Housing Strategy is an emerging policy includes  
 Pillar 4 – Enabling sustainable housing growth to meet need
- In order to attract and retain residents we need to provide a mix of homes, including

larger and higher value homes. This will make the borough a more appealing and more prosperous place.

- Develop low carbon new built options
  - Raising standards in the design, efficiency and the build quality of housing to reduce carbon emissions.

## Conclusions

1.40 Taken together we believe the case for the development of this site for a self build home which promotes high levels of sustainability is overwhelming.

1.41 We have demonstrated that the reasons for refusal on the grounds of design, highways and impact on existing trees are without merit.

1.42 Underlying the NPPF is the presumption in favour of sustainable development. It is our view that these proposals do represent sustainable development and should be approved without further delay.

1.43 As we believe the reasons for refusal to be unreasonable and without merit, we believe that bringing this appeal is an unnecessary and wasted expense and so, are making an application for appeal costs.

## Reason for Refusal 1 - Design

2 The first reason for refusal states that:-

*The development would disrupt the uniform and traditional character of the street scene by virtue of the appearance, orientation, layout and materials of the proposed dwelling. The proposal does not reflect or reinforce the surrounding building traditions and is therefore discordant with Barnsley Local Plan (2019) Policy D1, National Planning Policy Framework (2023) Paragraph 135 and Section 24 (Infill Development) of the Design of Housing Development SPD (July 2023).*

2.1 Rather than reviewing these policies first, we believe that the reasons for refusal has placed greater weight on some policies and ignored others that should have been given greater prominence.

2.2 We review the arguments put forward in the Planning Officers report under the following section.

### ***Design and Impact upon appearance of surrounding area***

2.3 And highlight these other relevant policies, put forward our counter arguments and review these based upon what we believe is their order of relevance.

## **Design policies that have not been given significant weighting.**

2.4 Throughout the consideration period we repeatedly drew the officer's attention to Paragraph 139 of the NPPF which we believe is important in the context of this application because the scheme has been designed to meet the Passivhaus standard. This states.

“ Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or

b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”

2.5 The officer acknowledged our suggestion of the importance of para 139(b) in their report and made the following assessment.

“The applicant has suggested that the proposal meets the criteria of para 139(b) of NPPF which supports outstanding or innovation designs which promote high levels of sustainability. Apart from the proposed dwelling including solar panels and south facing habitable rooms, it is unclear what other features the proposal includes which would qualify it as an outstanding or innovative design. On this basis, the proposal is not considered to accord with this policy and this justification is therefore disregarded.”

2.6 However, this assessment fails to make any mention of the Passivhaus standard and its importance to delivering an “ innovative design that promotes a high level of sustainability.”

2.7 The requirements and benefits of this standard were described fully within the original Design and Access statement and calculations to demonstrate how the proposals met this were included in the submission. Also included in the D&A was a statement that

“Mr and Mrs Barton have committed to building a Certified Passivhaus and commissioned Zero Energy to carry out Certification for the dwelling.”

2.8 To further explain the importance of Certification and to quote directly from the Passivhaus Trust website. [Certification \(passivhaustrust.org.uk\)](http://Certification.passivhaustrust.org.uk)

### “Certification

Over thirty years of experience demonstrates that the high levels of comfort and energy savings associated with the Passivhaus standard are achieved through independent quality testing. All certified Passivhaus buildings undergo a rigorous compliance process.

### Projects

All proposed Passivhaus designs must undergo energy modelling in the Passivhaus Planning Package (PHPP) Tests ensure these targets are met, completing the quality assurance process. A certificate is only issued by a Passivhaus Certifier if the defined criteria have been met without exception.“

2.9 It is our understanding that there are currently no certified Passivhaus dwellings within the centre of Barnsley and if constructed, this would be the first, making this an “innovative” project.

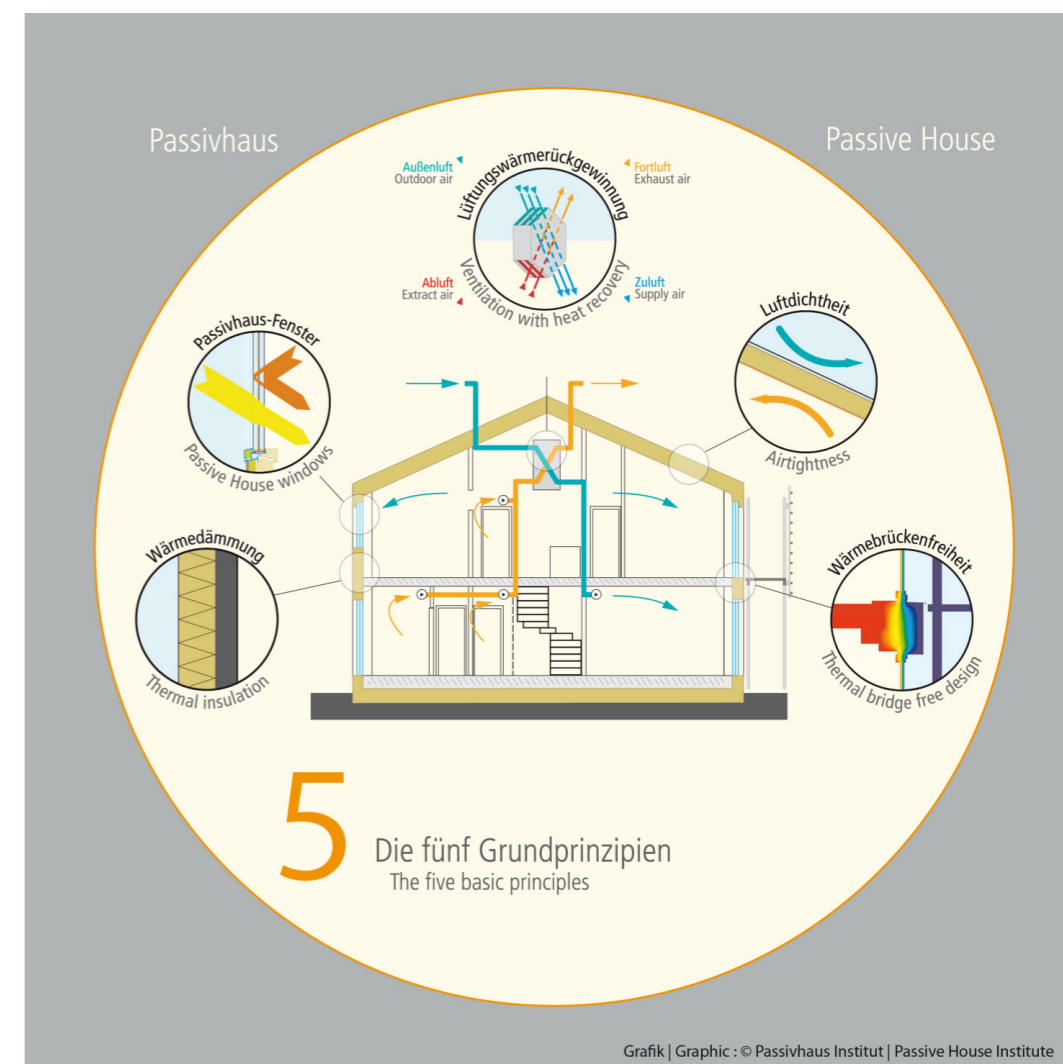
2.10 The proposals changed during the planning consideration period, due to the change of access from the road. As part of this appeal we have produced an additional technical document which reanalyses the now revised design against the Passivhaus standard and provides further justification, We believe this demonstrates that these proposals do represent a high level of sustainability and should therefore be considered under paragraph 139(b)

2.11 This document also includes calculations for the previously approved detached dwellings and shows how these dwellings, if constructed to current Building Regulations standards would be approximately 4 times less efficient in terms of space heating demand, than the proposed Passivhaus dwelling.

2.12 The orientation of the building was also an issue we disagreed with the case officer on and in particular they suggested that the building be orientated so that the long elevation fronted Tower Street. During the consideration period we produced **Appendix A to the Design and Access Statement** which included calculations to show the impact of a change to the building orientation on energy performance. Put simply, a building of a similar geometry, turned through 90 degrees would lead to a 37% increase in heating energy demand due to the loss of beneficial winter solar gains. The case officer did not give consideration to this argument at all.

2.13 The case officers arguments for refusal all fall under 139(a) and centre on local design guidance, supplementary planning documents and codes. We actually disagree with much of the officer’s assessment and believe that the proposals also meet many of the requirements of 139(a) but will address these arguments later on.

2.14 However, in the first instance, we believe that the proposals do fall under 139(b) and so the



Passivhaus is the only energy standard that requires rigorous thermal modelling utilising passive solar gains and high fabric performance, followed by full monitoring on site and air testing to a standard far exceeding Building Regulations, to deliver comfort and low running costs to the occupants with Certification.

proposals need only “fit in with the overall form and layout of the surroundings.”

2.15 In this respect we believe they do. The building fronts Tower Street and fits within the existing building line. The geometric layout of the proposed building also sits squarely to front both Tower Street and Tower Heights and act as an intermediary between the east/ west orientation of Tower Street and the North/South orientation of Tower Heights.

2.16 This being the case we believe that that the requirements of 139(b) are met and those of 139(a) should be of lesser relevance.

2.17 On the issue of orientation we also wish to highlight paragraphs 159 and 162 of the NPPF. Para 159 states.

“New development should be planned for in ways that:

b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design....”

2.18 And Para162 states.

“In determining planning applications, local planning authorities should expect new development to:

b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption. “

2.19 To demonstrate their commitment to achieving Passivhaus and to meeting the requirements of paras 139(b), 159 & 162 of the NPPF, Mr and Mrs Barton are willing to enter into a Section 106 agreement placing an obligation on them to achieve a minimum standard of the Passivhaus Low Energy Building Certification for the completed dwelling, should this be deemed necessary to secure a positive approval.

2.20 Appendix B includes an executed and certified copy of the proposed Unilateral planning obligation, should this be required.

2.21 To clarify the requirements of Passivhaus Standards.

The Passivhaus Classic standard requires that the building meets the following key performance requirements.

Annual Space Heating Demand	15kWh/m <sup>2</sup> annum
Airtightness at 50Pa	0.6 ac/h
Frequency of Overheating >25°C	10% max (5% target)

The Passivhaus Low Energy Building standard is a slightly lesser standard that requires that the building meets the following key performance requirements.

Annual Space Heating Demand	30kWh/m <sup>2</sup> annum
Airtightness at 50Pa	1 ac/h
Frequency of Overheating >25°C	10% max (5% target)

2.22 The applicants have every intention of trying to certify the building to the higher standard of Passivhaus Classic but are willing to commit to, as a minimum, certifying the building to the Passivhaus Low Energy Building Standard through a unilateral planning obligation.

2.23 As the comparison analysis shows of the previously approved detached dwellings, the new proposal, even at Low Energy Standard, would still be a considerable improvement over the standard of a building regulations compliant dwelling and would still promote a high level of sustainability.

### Interpretation of other design policies.

2.24 In this section, we review the planning officer’s arguments to justify their decision to refuse the application. In several cases we believe they misrepresent or misunderstand the design, as well as misinterpret the policy and guidance.

2.25 Contrary to the officer’s assessment we therefore believe that the proposals largely meet the requirements of NPPF Paragraph 139(a) as well as Paragraph 135. Barnsley Local Plan (2019) Policy D1 and Section 24 (Infill Development) of the Design of Housing Development SPD (July 2023)

### Orientation.

2.26 In their report, the officer sites.

“Section 24 of the SPD which requires dwellings to be orientated to face the highway and be sited to reflect the prevailing character and building line of the street.”

This is in fact a misrepresentation of the policy which states.

“Dwellings should be orientated to have a frontage to the existing public highway.”

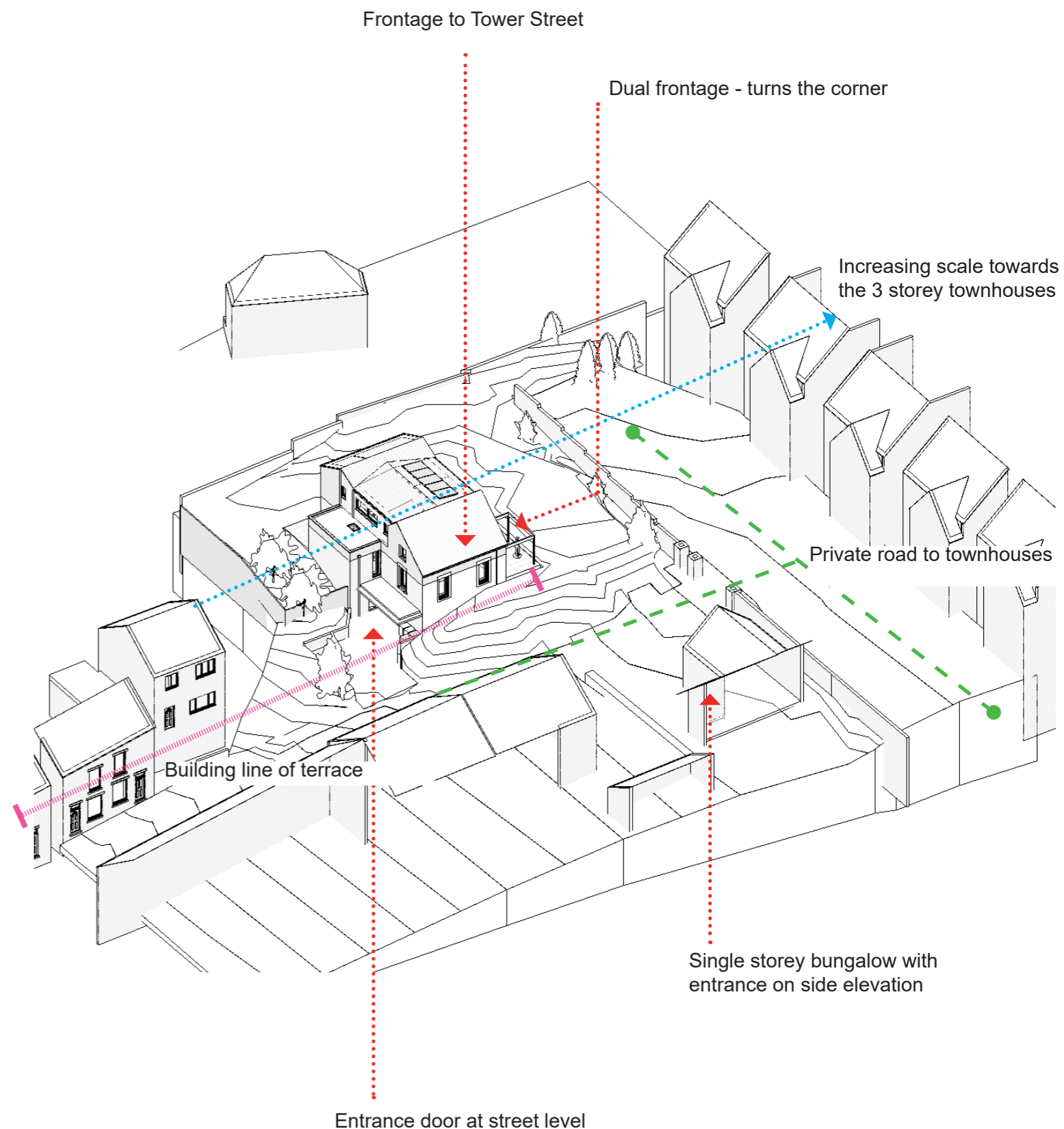
The proposals do in fact have a frontage to Tower Street and so in our view are in accord with this policy

### Building Line.

2.27 In their report the officer states.

“The siting of the dwelling should reflect the building line of the dwellings on the same side of the street.”

This is a misrepresentation of the design. Our proposals comply with this requirement, with the façade fronting Tower Street aligning with the building line, whilst achieving the min 12m overlooking distance to the dwellings opposite. The building line has in fact been brought forward relative to the previous application for 2 dwellings and more closely matches that of the neighbouring terrace.



**Scale.**

2.28 In their report the officer states.

“The elevated design of the dwelling would create a dominating and imposing impact upon street scene and upon the bungalow opposite in particular.”

Again, we believe this is a misrepresentation of the design. The scale of the building sits entirely within that of the previously approved detached dwellings and the eaves and ridge line follows the 2 storey scale of the neighbouring terrace.

In this sense the bungalow opposite does not fit in with the scale with the surroundings. We also highlight the neighbouring Tower Heights, which are an additional storey higher. The scale of these does not appear to have been a concern when it came to their approval.

**Frontage Entrance**

2.29 In their report the officer states.

“The lack of frontage entrance is not reflective of the street scene, whereby the adjacent properties consist of a more traditional layout in which the principal elevation faces onto the street. Instead, the proposed doorway is located on the eastern facing elevation and therefore cannot be seen from the street.”

This is a misunderstanding of the design. The main entrance to the dwelling is not on the eastern facing elevation. It is at lower ground floor level, accessed directly from the driveway or street level and faces directly onto Tower Street.

We also note that the front door to the bungalow opposite does not provide a frontage entrance to Tower Street, rather it is located facing sideways to the north.

**North**

1 : 100



**South**

1 : 100



Street elevation (timber fence removed to show front door to street)

**Design, Form and Appearance.**

2.30 In their report the officer states

‘the overall design, form and appearance of the proposed dwelling fails to take into account the traditional characteristics of the neighbouring properties and street scene. The dwelling is an unusual shape, consisting of various roof lines and ridges, and includes multiple finishing materials, which adds to the harm which would be introduced upon this uniform street scene.

It is recognised that the windows have been positioned to take into account energy efficiency, however the lack of openings on the frontage elevations further detracts from the appearance of the dwelling. The northern elevation in particular appears abnormally blank with the majority of the windows at second floor level only.’

*And that*

“Architectural features, fenestration and materials should reflect the positive elements elsewhere on the street.”

And that

“The proposed finishing materials also fail to replicate the surrounding building materials or traditions. As described above, the street scene consists of stone built properties, meaning the proposed use of steel cladding and sheeting would be a new introduction to the street scene. The use of such modern materials sandwiched between the traditional stone neighbouring dwellings would draw further attention to the site and emphasise its uncharacteristic features.”

Again, we believe these comments are a misrepresentation of the design.

2.31 We have previously described our reasoning for the design and form of the building as well as the positioning and size of windows which is based upon optimising energy performance through orientation and solar gain to help meet the Passivhaus standard, whilst dealing with the challenging access and topography of the site.

2.32 On appearance, we have designed the street elevation so that the proportions of the façade facing Tower Street is in keeping with the terrace houses rather than the modern properties that immediately surround the site. The architectural features, fenestration and materials therefore, in our view do reflect the positive elements found elsewhere on the street.

2.33 An elevational study was undertaken and submitted to demonstrate this, see drawing **23-122-118-rev A Tower Street Elevation analysis**. This shows how the Tower Street frontage reflects the surrounding terraces, with its stone façade and slate pitched roof. The window openings with their vertical emphasis are also informed by those of the surrounding terraces, whilst the stone cills, lintols and jamb reveals match those found on the terrace opposite (no 63) and offer a more elegant solution than the later properties on the street.

2.34 The window reveal depth and the use of natural rather than artificial stone (as used on the town houses) illustrate the proposed quality of materials to be used.

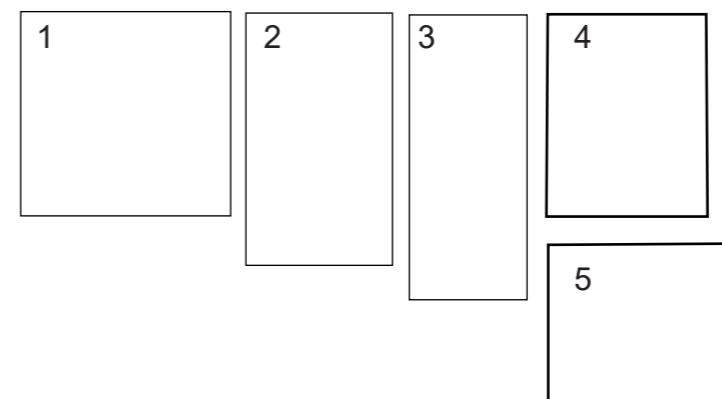
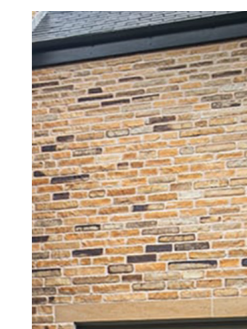
2.35 On the secondary northern and southern elevations, which for the most part are obscured by the surrounding dwellings and seen at an oblique angle we consider that the use of a small proportion



Proposed elevation to Tower Street



Stone surround details to terrace extension opposite



- Material Palette**
- 1.0 PV panels fixed to steel standing seam roofing
  - 2. Vertical standing seam steel cladding above masonry (see south elevation on previous page)
  - 3. Internorm aluminium faced timber windows in horizontal format stone
  - 4. Horizontal format stone facing, to be weathered as per example
  - 5. Slate roofing - west (street facing) roof

of standing seam roof and wall cladding is justifiable on design terms to articulate these secondary façades, particularly as this is an appropriate solution to achieve the low roof pitch of the main roof.

- 2.36 However, if it helps to we are willing to change the wall cladding to a hung slate in lieu of the standing seam cladding. The roof will have to remain as metal standing seam as the pitch is too low for a slate finish.
- 2.37 On the windows to the north elevation, again this is a secondary façade which will only be seen obliquely. Additional or enlarged windows, as suggested by the case officer would lead to a reduction in energy performance due to increased heat loss with no real benefit in terms of views or daylighting.

### Neighbouring developments.

- 2.38 We also wish to highlight that the overall design, form and appearance of the more recently approved and completed neighbouring properties does not necessarily take account of the “traditional characteristics of the neighbouring properties and street scene”

This includes

a non-traditional dwelling (no 52) with small (horizontal format) windows and a wider frontage than the traditional terrace;

a dormer bungalow, which is an incongruous house typology on the street due to its scale, the dormer windows and integral garage.

the Tower Heights townhouses, which are 3 storey and gable-fronted, a feature not seen on the traditional terraces. Like the dormer bungalow they have integral garages at ground floor. The *Design of Housing Development SPD (July 2023)* cites this arrangement of garages on the townhouses crossing the end of Tower Street as not acceptable. ‘Garages, integral or detached, should not form the end view of any vistas or be prominent in important views’

### Amenity.

- 2.39 Amenity is also an important design issue and on this it is important to highlight that the officer has no concerns. They state

“In summary, it is not considered that the development would have a harmful impact in terms of overlooking and/or overshadowing of neighbouring properties. Similarly, the future residents of the proposed dwelling would have acceptable levels of residential amenity.”

- 2.40 One other issue which was not picked up in the officer’s report which we believe it is important to highlight is that the design of the dwelling is accessible and adaptable to the requirements of Part M4 Category 2. We believe none of the more recently approved dwellings in the vicinity meet this standard, which allows for the future adaptation of the dwelling to enable easier access should an occupant(s) become disabled.



View along Tower Street towards townhouses with dominant garages at ground floor level terminating the street

## Conclusions.

2.41 In conclusion, the end of Tower Street is currently a disjointed, incohesive urban infill lacking high quality design credentials. Our proposals reintroduce the design features of the terraces to the Tower Street elevation and use natural stone and a natural slate roof to reinforce this. The return elevations are more modern to reflect the modern gable fronted designs of the townhouses.

2.42 It is our view that the proposals are in accord with paragraph 135 of the NPPF which states that planning decisions should ensure that developments:

“c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.. and

f) create places that are safe, inclusive and accessible and which promote health and well-being,”

and Section 24 (Infill Development) of the Design of Housing Development SPD (July 2023).

However, any assessment against these design policies, should also be weighed against paragraph 139(b) of the NPPF. It is our view that the proposals accord with both Paragraph 139(a) and 139(b) of the NPPF and so there is no argument for the refusal of this application on design grounds.



Private drive serving the townhouses - view back down Tower Street

## Reason for Refusal 2 - Road Access

3 The second reason for refusal states that.

“Insufficient information has been provided regarding the proposed highways works. The LPA are unconvinced that the proposed carriageway improvements can be undertaken. Without such works being completed, the development would exceed the maximum number of dwellings allowed on a private drive. The development therefore fails to accord with National Planning Policy Framework (2023) Paragraph 115 and Barnsley Local Plan (2019) Policy T4.”

3.1 The two policies the refusal notice directly quotes are NPPF Paragraph 115 which states.

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. “

And the Barnsley Local Plan (2019) Policy T4 which states.

“New development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. If a development is not suitably served by the existing highway, or would create or add to problems of safety or the efficiency of the highway or any adjoining rail infrastructure for users, we will expect developers to take mitigating action or to make a financial contribution to make sure the necessary improvements go ahead. Any contributions will be secured through a planning obligation or planning condition.”

3.2 The refusal notice also makes reference to “the maximum number of dwellings on a private drive” but does not quote the maximum, nor the relevant policy. Our understanding is that this comes from The South Yorkshire Residential Design Guide (SYRDG) which states

“J.1.1 The policy throughout South Yorkshire is that all residential developments should be designed to the standards and specification of the Authority in order that the streets may be adopted as publicly maintained highways.

J.1.2 This applies to all streets except those agreed to remain as private drives serving up to 5 dwellings. The adoption will include all signs, lighting, highway drainage and street furniture. Footpaths and cycleways away from carriageways will be adopted where the route is likely to be used by the public and is part of a link within a network.”

And

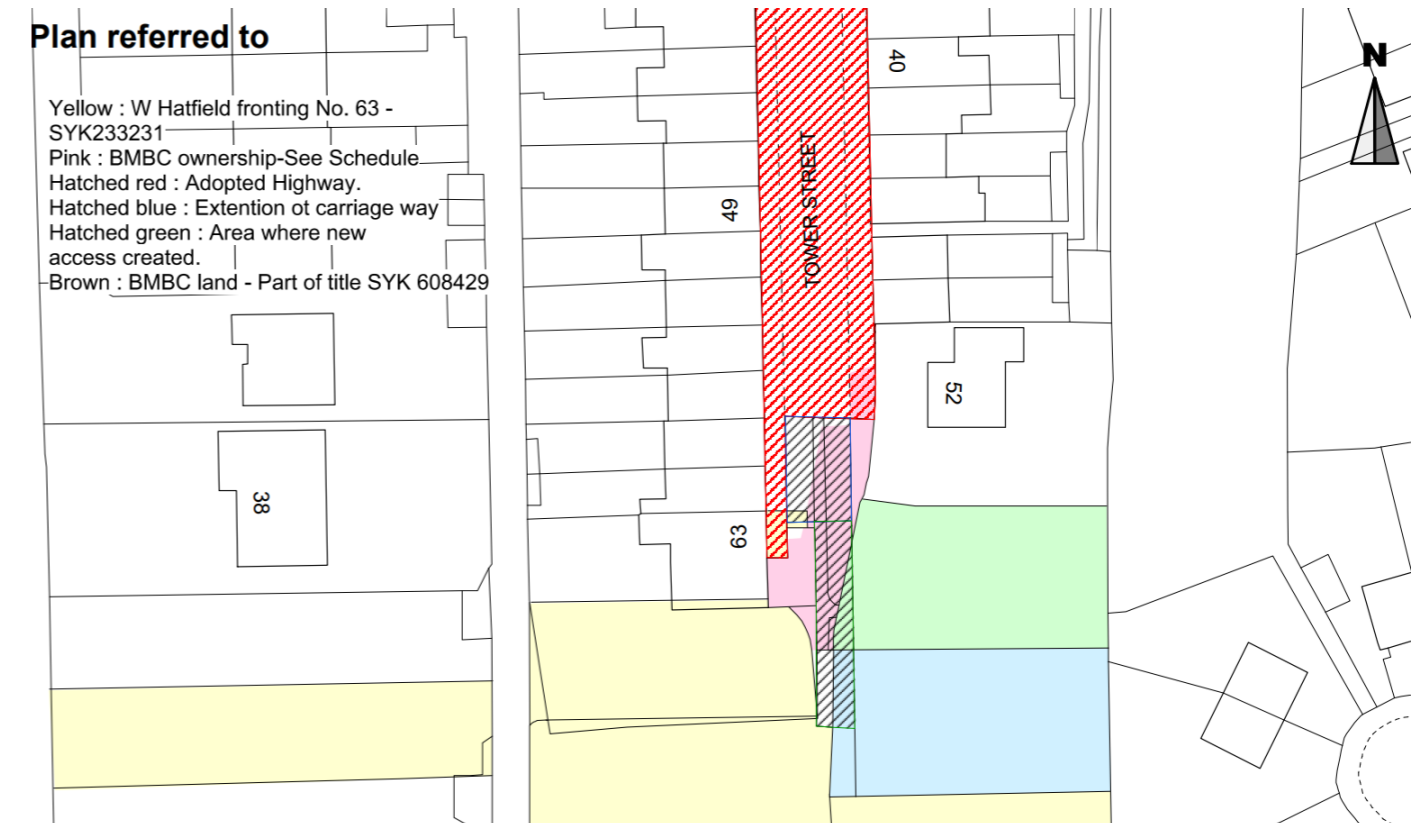
“B.1.1.9 Shared Private Drives are unadopted and may give access up to a maximum of 5 dwellings. This limit relates to the notional capacity of a private service connection, which would not need to be laid in an adopted highway.”

## Background.

3.3 The site sits at the southern end of Tower Street on the eastern side of the street.

To the south, a development of 5 townhouses was approved and completed ( Ref 2017/1116) with access provided via a private road that links to the existing highway.

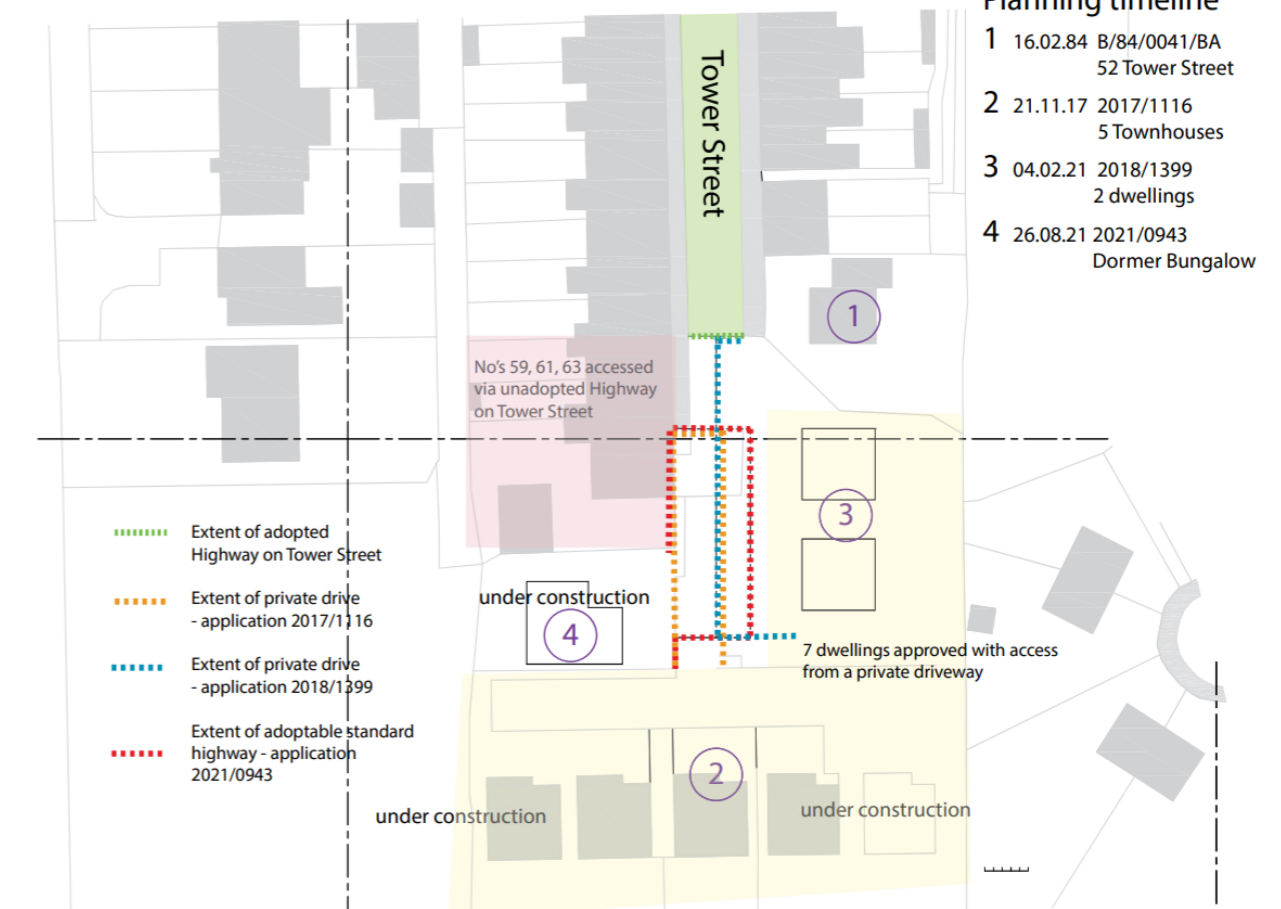
There remains a short stretch of the existing highway that is unadopted outside no’s 63,61 &



Plan provided by Asset Management team dated 23/04/2015 - area hatched green indicated as private drive to townhouses includes the client’s land (solid blue and green areas - land in client ownership)

Land in client’s ownership overlaps redline of proposed adoptable road, conditioned in application 2021/0943

## PLANNING HISTORY ANALYSIS



59 Tower Street. This stretch of road is within a number of ownerships with the council being the majority owner.

- 3.4 As a point of note this means that currently there are 8 dwellings accessed from a private road. The 5 new dwellings of Tower Heights and no's 63,61 and 59. If there had been consistency in the application of the policy limiting the number of dwellings served by a private drive to 5, then this planning application would not have been approved in its current form.
- 3.5 A subsequent application for a single bungalow on the west side of the street was approved and has started on site. (Ref 2020/0684 outline & 2021/0943 reserved matters), This approval included the proposal to construct a road to adoptable standards and the following condition.

"The extension to the highway shall be constructed in accordance with the detailed construction specification for Standard Carriageway Cross Section (Type 5A) Road Standard Carriageway Cross Section (Type 5B) Road, as detailed in approved plan 17-185 P02C. The highways construction shall be completed prior to the occupation of the dwelling.

Reason: In the interests of highway safety and in accordance with Local Plan Policy T4."

- 3.6 The land required to construct this road was shown within the redline boundary. It extended into and included land outside of its applicant's ownership that is within our clients' ownership. It did not however include the 14.3m length of existing unadopted road in front of no 63,61 & 59.
- 3.7 Again, there is inconsistency in the application of the policy requiring that adjacent owners agree to the adopted highway being constructed on their land. If this had been applied in the same way as it has been applied here it would have meant this application should also have been refused.
- 3.8 The construction of the bungalow continues to progress, although we have been unable to obtain any details from planning, highways or the developer of the proposed new road and how it deals with the issue of levels where it encroaches onto the applicants' site. The applicants have recently corresponded with the Senior Planning Officer on this issue and her response is included in Appendix F. Again this response has highlighted inconsistencies in the issue ownership when considering this application which we highlight at 3.38
- 3.9 We also highlight that there is a historic covenant that provides a right of access for our clients over the neighbouring land and likewise for the developer of Tower Heights over our clients' land that corresponds to the existing back edge of footpath width of Tower Street. Please refer to Appendix G for details.

### **Our Access proposals.**

- 3.10 Our proposals have been through a number of iterations and we feel it is important to briefly summarise the discussions we had with both planning and highways to provide an explanation as to how we have arrived at the current solution.

### **Previously approved planning. (Ref 2018/1399)**

- 3.11 When our clients purchased the plot it came with planning approval for 2 detached dwellings. This application was approved after the Tower Heights approval with access provided via a private drive from the end of Tower Street. The application did not progress for a number of reasons and expired in Feb 2024.

**Pre application. (2023/ENQ/00289)**

3.12 At pre application the submitted proposals showed access to a drive from an extended Tower Street, close to the southern boundary of the site. In the pre- app response, there was no mention of the policy that limited the number of dwellings served by a private drive to 5 nor that the road needed to be constructed to an adoptable standard. ( See Appendix A )

The pre-application response states that “the principle of residential development of this site has been established with the granting of planning permission 2018/1399”

**Original Application.**

3.13 As part of the original application validated on 15 Feb 2024, our proposals accepted the constraints of the proposed new road that has been approved under 2020/0684 and proposed that access to the new driveway would be from this new road close to the southern boundary of the site. At that stage we did not set out the standard of this proposed road.

3.14 We were surprised by the comments from the Planning Officer in an email dated 1 May 2024 that stated.

“I have had a discussion with our Highways DC Officer and unfortunately, we are of the opinion that development of this site would not be acceptable due to the condition of the private drive. Whilst I note that the property adjacent is required to bring the road up to an adoptable standard, as per the planning condition, I must assess the planning application based upon the current situation.

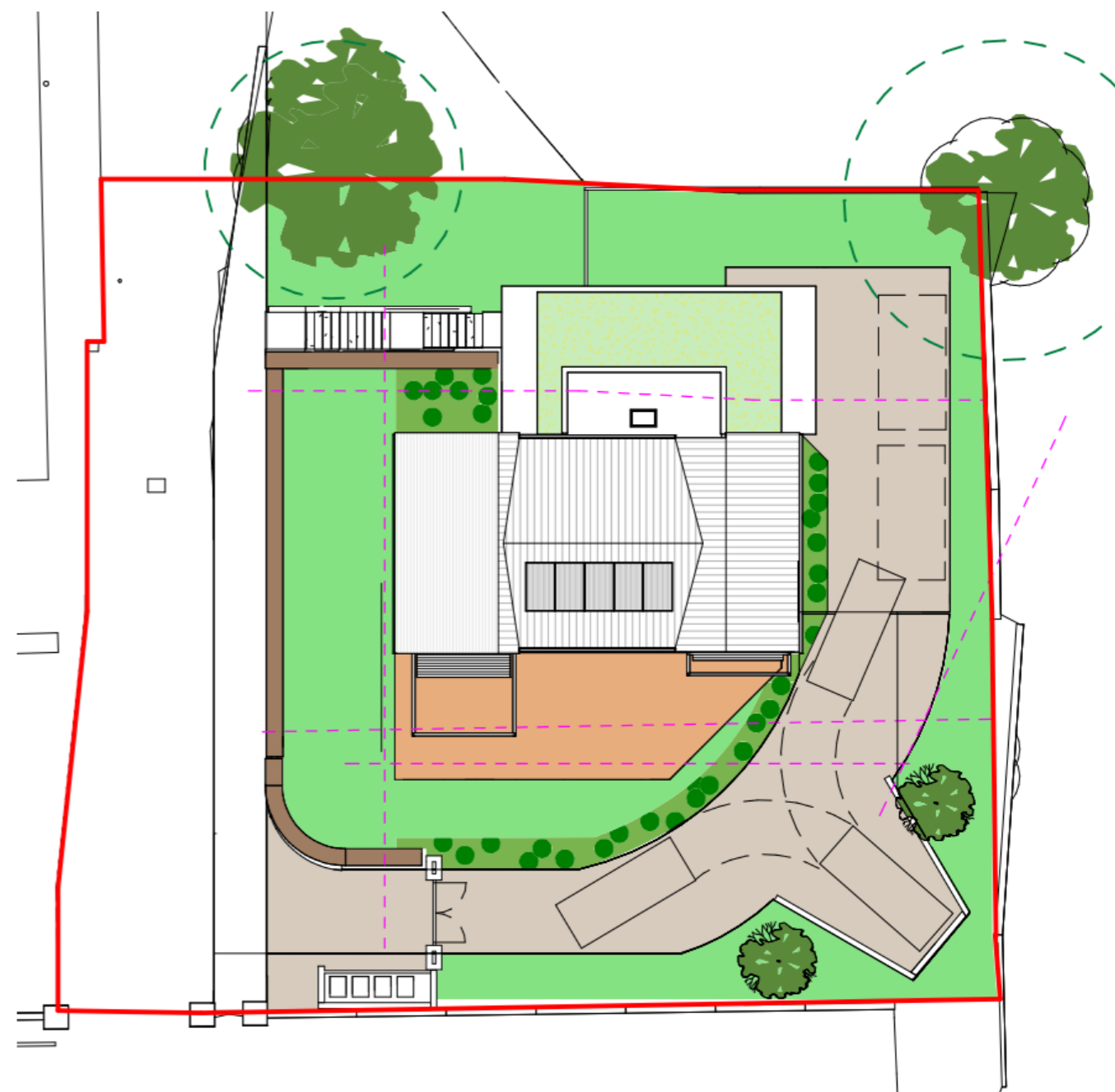
Similarly, I am not in a position to attach the same condition to any favourable permission at this site as overlapping/replicated the conditions would make it extremely difficult to enforce.”

3.15 Firstly, this contradicts the response in the pre- application that the site can be developed for residential purposes.

3.16 It was also our view that the approval of the road under a separate application is a material consideration for this application and had established the principal of a road, constructed to an adoptable standard in this location.

3.17 It was also our view that the existing condition of the private drive was immaterial, the applicants would have been happy to accept a similar condition to that placed upon the bungalow, that the road be constructed to an adoptable standard prior to occupation. It would also have been their responsibility to seek agreement with any neighbouring owners. Afterall, it would also in their interest that the road is constructed to the required standard to meet the requirements of their approval.

3.18 We also did not comprehend the issue of enforcement and overlapping conditions. If the bungalow, which it currently under construction, is completed then we would expect the road to be constructed to an adoptable standard prior to occupation and if it is not then an enforcement notice to be issued. Likewise, if the proposed dwelling were to be completed prior to the bungalow.



ORIGINAL APPLICATION PLAN - Extract from 23-122-110 rev C Tower Street Proposed Site plan

## Amended scheme

- 3.19 Nevertheless, to move forward we amended the proposals in an attempt to address the officers' concerns. The proposals were updated to provide driveway access from the north of the site where access could be provided from the existing highway, outside of the redline boundary for the bungalow application. The design of the dwelling was changed, with a lower ground floor added, to address the new point of access and internal changes to make sure the proposals were still accessible and adaptable to the requirements of Part M4 Category 2.
- 3.20 However, following discussions with the asset management team, it was highlighted that there remained a 14.3m stretch of Tower Street that was unadopted and it was made clear to us by the Planning Officer that this stretch of road would need to be brought up to an adoptable standard to avoid the maximum requirement of 5 dwellings served by a private drive being exceeded.
- 3.21 The redline boundary was adjusted to exclude the land outside our clients' ownership that was required for the new highway to west of the site and include the land that is currently unadopted to the north west, that had been excluded from all of the other applications. This also avoided any overlapping of applications which the case officer had highlighted as an issue.
- 3.22 This proposed stretch of road was marked on the plans as being constructed to an adoptable standard. It is this scheme that was refused for the reasons given in the decision notice and officer's report.

## Why do we need to meet the adoptable standard?

- 3.23 This appeal allows us to explore in more detail the policies used to justify the reason for refusal, their purpose and how that may be satisfactorily addressed.
- 3.24 In the first instance it is worth restating Paragraph 115 of the NPPF

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. “

Based solely on this policy, the first question that should be asked is simply about the impact of the proposals on highway safety.

- 3.25 No issues have been raised by the Highways, or the Planning Officer about the impact of the proposals on highways safety, their concern has simply been about the ability to construct the road to an adoptable standard to avoid exceeding the maximum number of 5 dwellings served by a private drive.

## So why is there a 5 dwelling maximum served by a private drive?

- 3.26 The requirement for a **maximum** number of 5 dwellings served by a private drive has come from the South Yorkshire Residential Design Guide (SYRDG) . It is important for us to highlight that this is a guidance document and not a policy document. It states.

B.1.1.9 Shared Private Drives are unadopted and may give access up to a maximum of 5 dwellings. This limit relates to the notional capacity of a private service connection, which would not need to be laid in an adopted highway



AMENDED APPLICATION PLAN - Extract from 23-122-110 rev C Tower Street Proposed Site plan

However, it is also worth referring to the Manual for Streets which on this same subject states.

11.7.16 There is no statutory basis for the lower limit on the number of dwellings justifying adoption. The use of five dwellings as a criterion may have come from the notional capacity of private service supplies (gas, water, etc.) but it is now more commonplace for utilities to lay mains in private streets.

3.27 Of note is that

- Both the SYDC and the manual for streets make reference to the notional capacity for a private service connection.
- Whilst the SYDC states 5 is a **maximum** number for a shared private drive, the Manual for Streets refers to a lower limit or **minimum** number to justify an adoptable road.

3.28 The purpose of a minimum number to justify adoption we believe, is to limit the liability of a local authority for the maintenance of a highway where it does not offer a significant public benefit. A minimum number therefore does not prevent a higher number of dwellings being served by a private drive.

3.29 The purpose of a maximum number to be served by a private drive is more questionable. The only argument offered in the SYRDG for this maximum is the notional capacity of a private service connection, but as the Manual for Streets highlights there is no statutory basis for this and there is no longer a technical argument for this limit.

### Is this about an unacceptable impact on highway safety?

3.30 It is our view that the maximum number of 5 dwellings served by a private drive is not about highway safety. It is about who is responsible for the management and maintenance of the highway. The SYRDG puts forward no arguments that this policy is about highways safety and no arguments to this effect have been put forward by the case officer or the planning officer.

3.31 The policy therefore is simply preventing, what would otherwise be acceptable development and it seems to be based simply on the notional services capacity of a private drive rather than any issue of highways safety.

3.32 In this respect it is our view that the application of this policy does not accord with Paragraph 115 of the NPPF and is therefore not a valid reason for refusal.

3.33 It is therefore our view, that even if the 14.3m link cannot be brought up to an adoptable standard in its entirety, the improvements that could be made to the road within both our clients' and the council's ownership could lead to an improvement in Highway safety. The technical details of this road could be secured by a condition.

3.34 We do appreciate the desire of the council to adopt as much of the highway as possible and this is a desire that is also shared by the applicant who also wishes to limit their liabilities.

3.35 If this argument were successful, the applicant would still make every attempt to agree with the neighbouring owners that the whole link road be constructed to an adoptable standard and offered for adoption upon completion, but they would be free of any threat of being held to



The bungalow is currently under construction (photo dated 27th October 2024), with a planning condition to construct an adoptable road, including the clients' land.



View to townhouses, 'extension to carriageway' as noted on Asset Management plan, not currently adopted

ransom by any of the neighbouring owners.

**If this appeal concludes that for reasons of highway safety, the maximum number of dwellings served by a private drive is 5.**

- 3.36 Notwithstanding our previous arguments, if we have to accept the policy of a maximum number of dwellings served by a private drive is 5 for reasons of highway safety, then we see no reason why a condition should not be placed on an approval requiring the road, within the application boundary, be upgraded to an adoptable standard either prior to occupation or pre commencement of the dwelling. This is exactly as has been placed upon the Bungalow application opposite and our clients' would accept this if our previous arguments are not upheld.
- 3.37 It is clearly open to the Council to take such an approach – national Planning Policy Guidance paragraph 007 makes that clear as does the retained Appendix A -Model Conditions-to Circular 11/95-The Use of Conditions in Planning Permissions, specifically as set out under model condition 42-'The works comprised in (specified part) of the development permitted shall not be commenced before the works comprised in (specified part) are completed.
- 3.38 The issue of land ownership is also not in our view a material planning consideration, a point that the case officer makes in their report, but then goes on to contradict.

“Although land ownership is not a material planning consideration, it is prudent for the LPA to take into account the likelihood of the development being implementable or where it impacts the compliance with adopted policies. Information provided by the Council’s Asset department indicate that there are a number of ownerships in relation to the land in question, including the Council, the adjacent developer and a substantial section of unregistered land (which would be deferred to the adjacent frontages). The applicant would be unable to undertake the proposed improvements works without a formal agreement being entered into by all the landowners.”

This issue is also contradicted in the more recent correspondence from Elaine Ward relating to the Bungalow application ( Appendix F) In response to the query from Mr and Mrs Barton about the upgrade of the highway required by condition under application 2022/0265 she stated.

“With regard to the upgrade, the applicant must seek permission to undertake the work from the Councils Asset Management Team and yourselves, both of whom own land which may be affected by an upgrade to the highway (and any other landowner who owns land which may be affected). The Highways team must agree to plans and specifications for the work. **This however, would be a highways authority matter and not a planning matter.**”

- 3.39 If the applicant was successful in their appeal, they would of course make every effort to reach a formal agreement with all the other landowners to enable the road to be constructed to an adoptable standard.
- 3.40 On this issue it is important to highlight that the actual adoption of the road, is separate from a planning approval. The adoption of the road is dealt with under a separate procedure, Section 38 of the Highways Act. The planning approval can merely place a requirement that the road be constructed to an adoptable standard in anticipation of being offered for adoption upon completion.
- 3.41 This is important, as whilst there is a possibility that all of the neighbouring owners may not agree to the road being adopted there are measures that the council could take independently under the Highways Act 1980 to upgrade the road to an adoptable standard. This would allow the

requirements of any planning condition to be met, even if the road remained unadopted.

3.42 Under the Private Street Works Code the street works authority have the following powers.

**205 Street works in private streets.**

(1) Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.

(2) Where the authority resolve to execute street works with respect to a part only of the street (other than a part extending for the whole of the length of the street), the expenses incurred by them in executing the works shall be apportioned only between the premises fronting the length of the street which constitutes or comprises that part.

(3) Where an authority have passed a resolution under subsection (1) above, the proper officer of the council shall prepare—

(a) a specification of the street works referred to in the resolution, with any necessary plans and sections,

(b) an estimate of the probable expenses of the works, and

(c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged with them under the private street works code;

and the specification, plans, sections, estimate and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of Schedule 16 to this Act and shall be submitted to the authority, who may by a further resolution (hereafter in the private street works code referred to as “the resolution of approval”) approve them with or without modification or addition as they think fit.

(4) If, in the case of a street outside Greater London, the street works referred to in the resolution under subsection (1) above include the sewerage of the street, the proper officer of the county council shall, when preparing the specification required by subsection (3) above, consult the council of the district in which the street works are to be carried out.

3.43 It is our view, that if the council have a policy that a road should be constructed to an adoptable standard for highways safety reasons, and are using this policy as a reason for the refusal of planning, they should be willing to use the powers they have to upgrade roads to an acceptable safety standard, particularly as there are currently 8 dwellings served by a private road, in excess of the stipulated 5.

3.44 The council owns the majority of the land in question and the applicants would be happy to accept their share of the costs for the upgrade of the road to this standard. We therefore see no reason why, with the support of the council, that the proposed improvements works could

not be satisfactorily completed to address the requirements of any condition.

3.45 The road would then be ready for adoption under a Section 38 application as and when agreement is secured from all of the relevant landowners. If the road remained unadopted then liability for its maintenance would rest with the individual landowners, a point that would be pressed home to them to encourage their agreement to it being adopted.

## Conclusions

3.46 We believe that contrary to Paragraph 115 of the NPPF, the South Yorkshire Residential Design Guide policy restricting the number of dwellings served by a private drive to 5 is not about highway safety, but rather about highways management.

3.47 This being the case, the requirement that the proposed road be built entirely to an adoptable standard should not, on its own, be a reason for refusal.

3.48 If this appeal concludes that a maximum number of 5 dwellings served by a private road is a requirement for highways safety reasons, then there is no reason why there should not be a condition placed on the approval that requires that the entire road within the application boundary be constructed to an adoptable standard.

3.49 That being the case, the applicant would accept a condition requiring that the road within the application boundary be constructed to an adoptable standard prior to occupation.

3.50 If that remains unacceptable, due to concerns about the delivery of the road, then the applicant will accept a condition requiring that the road within the application boundary be constructed prior to commencement of the dwelling.

3.51 If the neighbouring owners are unwilling to reach an agreement, then the council does have the power to upgrade the road to an adoptable standard under the Highways Act 1980 Private Street Works Code.

3.52 The applicant is willing to pay for their fair share of the upgrade to this road.

3.53 Of note is that should this application be approved and implemented the current missing 14.3m link of road that is not constructed to an adoptable standard, but which in theory should be, will have been resolved. This is important as it will.

- Improve the current situation where 8 dwellings are currently served by a private drive. ( Tower Heights, plus no 63,61&59)
- Provide the missing link to the proposed road required to an adoptable standard by the condition of the bungalow application.
- Improve highway safety.

3.54 For all these reasons, we believe that the reasons for refusal on Highways grounds are invalid and that with suitably worded condition(s) there is no reason why any technical, pre commencement or preoccupation condition requirements could not be met

## Reason for Refusal 3 - Trees

### 4 The third reason for refusal states

“Insufficient information has been submitted in regard to Trees. The submitted Arboricultural Impact Assessment does not actually reflect the amended proposal and therefore the full impact upon the existing trees cannot be assessed in accordance with Barnsley Local Plan (2019) Policy BIO1 and Trees and Hedgerow SPD (May 2019).”

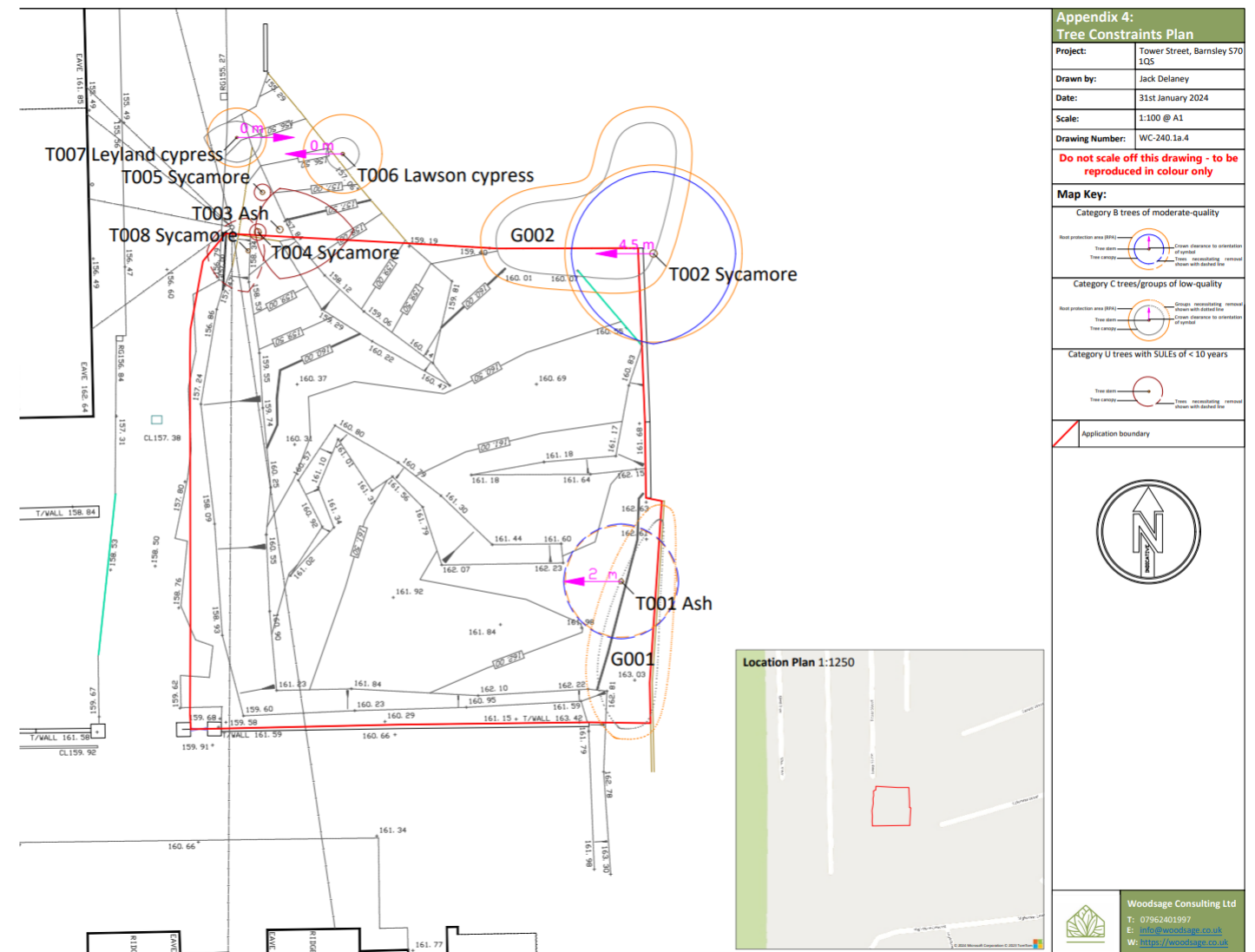
- 4.1 The planning submission included an Arboricultural Impact Assessment by Woodsage Consulting ( Ref WC-240.1a) which assessed the impact of the proposed development on the existing trees.
- 4.2 Whilst the proposals were under consideration and as a result of comments by both the Planning and Highways Officer regarding the road and access the proposals were updated to show a revised driveway and dwelling entrance to the north west of the site.
- 4.3 The removal of the driveway to the south meant that there is no longer the need to remove the Ash tree (T001) and Group of Cherry Laurel trees ( G001) in the south east corner of the site , nor construct a no dig driveway in the north east corner of the site. The Group of Cherry Laurels will be removed as they are non-native.
- 4.4 However, the excavation that would now be required for the new driveway meant that 3 trees at the north west site boundary would need to be removed.
- 4.5 These design changes have resulted in the following changes to tree retention and removal as shown on the revised landscaping plan. Ref 23-122-111 rev C.
- 4.6 It is correct that the Arboricultural Impact Assessment was not updated to reflect the revised proposals.
- 4.7 However, from the original Arboricultural Impact Assessment we can identify the trees that have changed status and their category.

Tree	Category	Original Submission Retained or removed?	Amended scheme Retained or removed?
T001	B	Removed	Retained
G001	C	Removed	Removed
T003	U	Retained	Removed
T004	U	Retained	Removed
T008	U	Retained	Removed

To clarify,

- the tree that was being removed and is now retained is Category B.
- the trees that were being retained and are now removed are Category U
- the laurels that was being removed at Category C.

- 4.8 The Table under paragraph 3.2.3 of the Arboricultural Impact Assessment identifies the Category U trees and states



“Trees with limited life expectancies which should not be considered a restraint to development. “

- 4.9 At no stage did the planning officer inform us that this issue was going to be grounds for refusal. The first time we found out this was an issue was when the decision notice was issued.
- 4.10 We would normally have expected to be informed when an issue is grounds for a refusal and be given an opportunity to respond. We believe this to be unreasonable.
- 4.11 If we had been given the opportunity to respond, we would have first responded to say that the trees that are now to be removed are all Category U and that those that are now to be retained are Category B & C.
- 4.12 This may have given the officer sufficient information to assess the full impact of the proposals on the existing trees, possibly with a condition requiring full details be submitted prior to a start on site.
- 4.13 If it did not, then we would have had the opportunity to update the Arboricultural Impact assessment to fully reflect the current proposals.
- 4.14 Included with this appeal submission is a revised Arboricultural Impact Assessment which reflects the current proposals.
- 4.15 On this basis we believe there are no valid arguments for the refusal of this application on the grounds of impact on trees.

## Other Relevant Planning Policies

5 Paragraph 63 of the NPPF requires local authorities to establish the need for housing of different types and tenure. This includes “people wishing to commission or build their own home.”

5.1 As a result of this local authorities are expected to maintain a self build register. We have placed a FOI request to Barnsley Council to obtain details of the numbers on this register as well as the numbers of self build plots currently with planning approval and those completed to see if the established need is being met, but have not received any response. As part of this appeal we request that the council provides this information.

5.2 Paragraph 70 of the NPPF relates to small and medium sized sites. It requires Local Authorities provide

“land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved” and

b) seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing;

d) support the development of windfall sites through their policies and decisions – giving **great weight** to the benefits of using suitable sites within existing settlements for homes;”

5.3 The Barnsley Housing Strategy is an emerging policy that has gone through a consultation period and is being further developed. We believe it should be a material consideration in any current planning application.

[https://www.barnsley.gov.uk/services/housing/housing-strategies/housing-strategy/#:~:text=Our%20revised%20housing%20strategy%20\(2024-2028\)%20sets%20out%20our](https://www.barnsley.gov.uk/services/housing/housing-strategies/housing-strategy/#:~:text=Our%20revised%20housing%20strategy%20(2024-2028)%20sets%20out%20our)

This strategy includes

Pillar 4 – Enabling sustainable housing growth to meet need

- In order to attract and retain residents we need to provide a mix of homes, including larger and higher value homes. This will make the borough a more appealing and more prosperous place.
  - Develop low carbon new built options
    - Raising standards in the design, efficiency and the build quality of housing to reduce carbon emissions.

## Conclusions

- 6 Taken together we believe the case for the development of this site for a self build home which promotes high levels of sustainability is overwhelming.
- 6.1 We have demonstrated that the reasons for refusal on the grounds of design, highways and impact on existing trees are without merit.
- 6.2 As we believe the reasons for refusal to be unreasonable and without merit, we believe that bringing this appeal is an unnecessary and wasted expense and so, are making an application for appeal costs.

In particular.

It is unreasonable to ignore Paragraph 139b of the NPPF when the proposals are innovative and do promote high levels of sustainability.

It is unreasonable to prevent development on highways grounds where there is little or no impact on highways safety, contrary to Paragraph 115 of the NPPF. No arguments have yet been put forward against development on highways safety grounds.

If there are highways safety reasons why a road to an adoptable standard must be constructed, then It is unreasonable to not place a condition on the application requiring the road be constructed to that standard.

It is unreasonable to refuse an application based upon ownership.

It is unreasonable to ignore the original Arboricultural Impact Assessment and its categorisation of the existing trees.

- 6.3 Underlying the NPPF is the presumption in favour of sustainable development. It is our view that these proposals do represent sustainable development and should be approved without further delay.

**Jeremy Poulter**  
RIBA



