

TOWN & COUNTRY PLANNING ACT 1990

**APPEAL UNDER SECTION 78 AGAINST THE
DECISION OF NORTH HERTS DISTRICT COUNCIL TO
REFUSE PLANNING PERMISSION FOR THE
ERECTION OF 3 DETACHED DWELLINGS WITH
GARAGES FOLLOWING DEMOLITION OF EXISTING
HOUSE AND OUTBUILDINGS. FORMATION OF
VEHICULAR ACCESS ONTO THE HIGHWAY AT**

**TREES, GOSMORE ROAD, HITCHIN,
HERTFORDSHIRE, SG4 9AN**

**WRITTEN STATEMENT ON BEHALF OF
MR M JUDGE**

**LOCAL AUTHORITY REFERENCE
25/00423/FP**

**PENTANGLE DESIGN GROUP
3 TILEHOUSE STREET, HITCHIN,
HERTS. SG5 2DW**

JULY 2025

GROUNDINGS OF APPEAL

1.0 THE APPEAL SITE AND ITS SURROUNDINGS

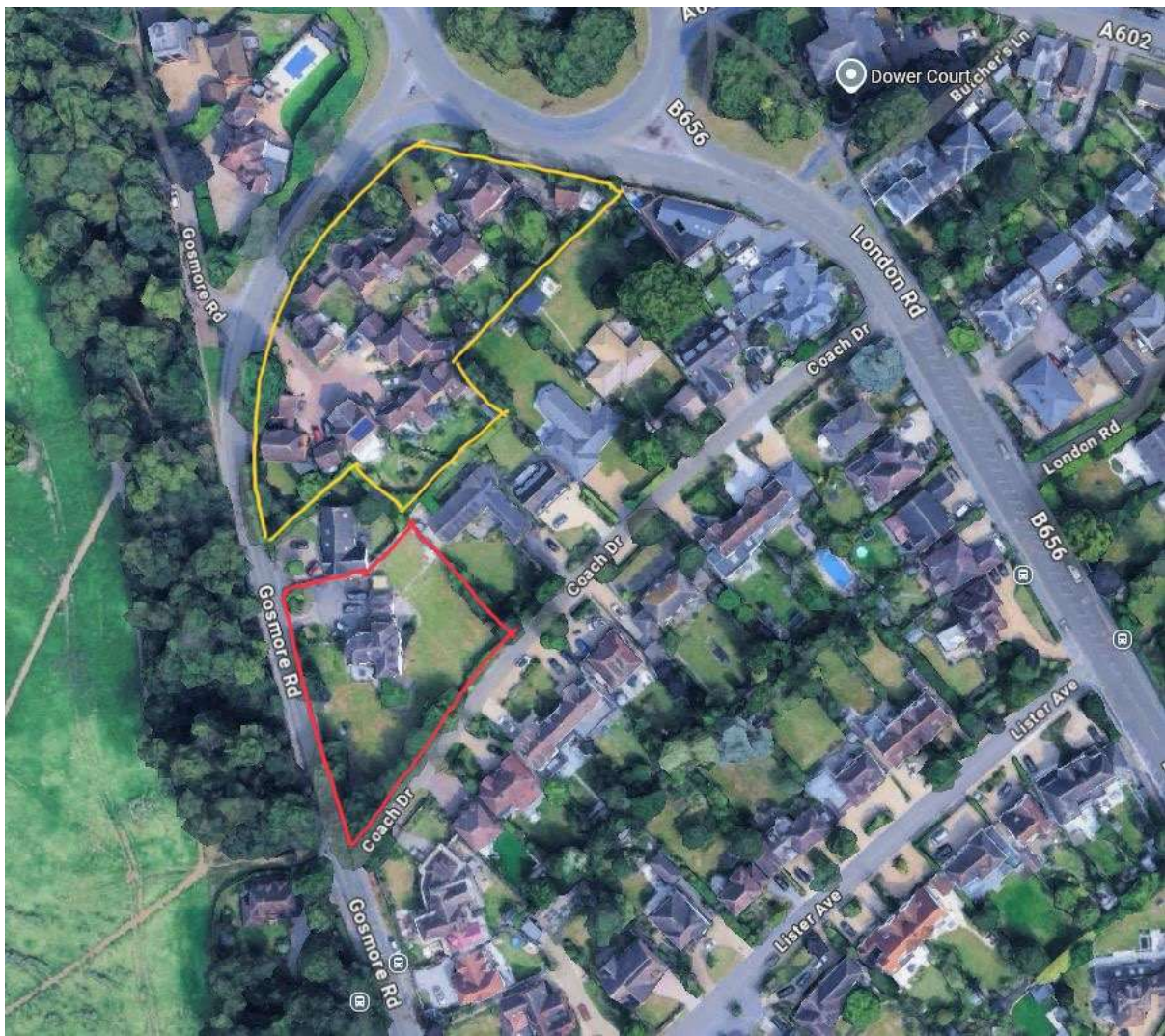
- 1.1 The property known as Trees is a detached two storey dwelling occupying a large triangular site on the northern side of the angled junction of Gosmore Road and Coach Drive. It fronts and takes access off the eastern side of Gosmore Road in a wholly residential area on the southern side of Hitchin. It benefits from a detached garage on its northern side.



The existing house



- 1.2 The site plan and floor plans and elevations of the existing dwelling are shown on drawings 02, 03 and 04. The dwelling stands within a spacious site with tree lined boundaries on its three sides, which together with a 1.8m high fence along the Gosmore Road frontage tend to obscure views into the site, other than through the access, which is framed by low curved walls either side
- 1.3 This area of Hitchin is defined by detached dwellings. To the north of Trees lies Holmacott, which has a larger footprint than Trees but occupies a significantly smaller plot. This is evident from the location plan on drawing 3707.01A. To the north of Holmacott is a relatively modern cul-de-sac of 5 large two storey houses, set in smaller plots than those around it. This is identified on the Google Earth view over the page - delineated with a yellow line and the application site edged in red
- 1.4 The site is located in the Hitchin settlement boundary. Neither Trees nor any of its neighbours are listed buildings and the site is not within the Hitchin Conservation Area.



Google Earth view

2.0 PRE-APPLICATION ADVICE

- 2.1 Before submitting this formal planning application we sought pre-application advice from the Council, seeking an opinion upon a proposal to demolish the existing dwelling and garage and erect three new detached 5 bedroom dwellings in its place. In this respect the scheme took its lead from the denser cluster of 5 houses to the north of Holmacott.
- 2.2 In the pre-app scheme the existing access would be stopped up and a fence erected across the resulting west boundary of Plot 1. A new access would be created further south of the existing, which would serve all of the dwellings. New hard and soft landscaping and planting was shown, with a limited number of trees and vegetation needing to be removed. The trees along Gosmore Road and Coach Drive around their junction were shown to be retained.



Pre-Application Site Plan

- 2.3 The pre-app response of 28th November 2024 confirmed that the material considerations related to the principle of the development the character and appearance, impacts on neighbour amenity, future living conditions, access and parking, landscaping and trees and biodiversity.
- 2.4 On the issue of principle, the response confirmed that the site is in the settlement boundary of Hitchin. In the adopted Local Plan Hitchin is a town under Policy SP2 where the majority of new development (to meet the Council's 5 year land supply) will be located. New housing is therefore acceptable in principle. This remains the case. The Council cannot demonstrate a five-year supply of deliverable housing sites – currently estimated at 3.9 years' worth of supply.
- 2.5 Under the heading 'Character and Appearance' the response confirmed that Trees is not a listed building, not in a Conservation Area, nor an undesignated heritage asset. Ultimately there are no objections to its demolition, including its detached garage and

boundary walls, as they're not considered to be of such architectural or historic merit that they should be retained.

- 2.6 The pre-app went on to say that the proposal would intensify the use and amount of development in the site from one dwelling to three, increasing the density of dwellings from the present 4.2/ha (the site area is approx. 0.234 ha) to 12.8/ha. This density increase was not however considered to be out of character with the locality, given that there are groups of dwellings with smaller plots and higher densities/ha nearby to the north and south.
- 2.7 The layout of the pre-app development comprised three dwellings accessed off one main access. Most dwellings in the locality do not have shared accesses, however a short distance to the north are Nos. 1 to 17 Gosmore Road, which are all accessed off of two shared accesses, therefore the use of a shared access for the new dwellings was considered acceptable in this respect.
- 2.8 It was considered that the design approach would be more traditional and formal but the locality is comprised of dwellings that are of a variety of designs and external materials. In this context there were no objections to the design approach of the dwellings. The external materials and detailing of the dwellings and their garages was also considered to be acceptable.
- 2.9 It was confirmed that each individual dwelling would not be considered to have an excessive footprint, as this is an area of larger dwellings, some of which are comparable to those proposed in the pre-app scheme. The response stated that the floorspace of each new dwelling would be greater than the existing, due to utilising floorspace within the roof.
- 2.10 The pre-app response noted that the proposed dwellings would each measure approx. 9.5m in height to their ridges, and 5.4m in height to their eaves. The difference in eaves heights was considered to be small and acceptable. However, the increased height of the new dwellings by 1m was considered significant compared to the existing dwelling, with the roofs of each being higher and bulkier. This was considered to be a negative aspect of the development, albeit a somewhat subjectively based criticism.

2.11 The response then looked in detail and the relationships between all 3 dwellings and those that exist nearby in terms of neighbour amenity. Against all of the positive and acceptable elements of the pre-app scheme, the response on neighbour amenity was that the proposal would increase the number of dwellings from one to three and increase the intensity of the use of the site. This was not however considered harmful due to the size of the site, the access and vehicle areas being set away from the nearest dwellings, much of the site being adjacent to highways, and as the net increase in dwellings would not be large in numbers. The proposal was not therefore considered harmful to amenity.

2.12 On the issue of future living conditions for occupiers of the 3 dwellings and Holmacott the case officer looked in great detail at all of the physical relationships between the new dwellings and each other and with Holmacott. All were found to be acceptable except for the garden of plot 3. The case officer used the tree survey to assess the quality of the garden for Plot 3, and while it was considered that the rear garden would be of an acceptable size, it was claimed to experience substantial overshadowing due to the trees along most of its boundaries and its largely small depths. Such conditions were not considered acceptable, and this it was claimed would be likely to result in future pressures from the occupants of that dwelling to lop or fell some or all of the trees.

2.13 The pre-app then looked at all other material issues and concluded as follows:

“As set out above, the proposed dwellings are not considered acceptable due to their size, height, siting, scale, amount and design; with additional concerns over living conditions for Plot 3; therefore the LPA does not consider it could support such an application. No small tweaks or alterations are apparent that could overcome these concerns.

It is however considered that the site could accommodate two new larger dwellings (following the demolition of the existing) more comfortably, which could allow the development to be sited further from the west and east boundaries and with a lower roof height, size, and amount of development.”

- 2.14 The pre-app response was caveated with an emphasise that it did not constitute a formal determination and was without prejudice to any subsequent formal planning application. Overall, we took the response to be very positive. It was considered that the proposed dwellings due to their height, size and bulk were excessively large, close to their boundaries and out of character with the locality, harming its character and appearance. The height of the dwellings and the garden of one of them also attracted a negative viewpoint. We did not however understand the conclusion that two larger dwellings would be more appropriate for the site. Based upon the detailed response to the 3 dwellings we considered it possible to modify the development at the formal application stage, sufficient to overcome the negative concerns, showing that the site would be both viable and capable of accommodating 3 dwellings.
- 2.15 Against this response we produced another detailed scheme for 3 dwellings. The principle of developing the site through the demolition of the existing dwelling was accepted, along with the density of development, design approach, amenity for occupants and neighbours, parking and highways, landscaping and trees. The negative points related mainly to the cumulative scale of the proposals (and height in particular) as well as the closeness of some of the buildings to the outer boundaries on the site with both Coach Drive and Gosmore Road.
- 2.17 These points were taken on board in the formal submission. The key change has been in the site layout with all three garages pulled away from the boundaries, plot 2 rotated parallel with plot 1, pulling plot 2 away from the Coach Drive boundary. Plot 3 has been reduced in length by 400mm and this has been repositioned to provide more space on both the Coach Drive and Gosmore Road boundaries. The ridge heights of all the houses have been reduced by approx. 1m and the garages reduced in height a little too. The cumulative effect of these changes made the scheme, in our opinion, more compact and acceptable, demonstrating that the site could accommodate three dwellings at a density lower than that of the development to the north of Holmacott.

3.0 THE FORMAL PLANNING APPLICATION

- 3.1 Against the background of principally positive pre-application advice this formal planning application was submitted, which included the changes to the pre-app scheme identified in 2.17 above. The

proposal is for the erection of 3 detached dwellings with garages following the demolition of the existing house and outbuildings, together with the formation of a vehicular access onto the highway.



Application Site Plan

- 3.2 Drawing 3707.05B shows the buildings to be demolished and drawing 06H shows the layout of the 3 new dwellings within the site, moved away from the boundaries. It also shows the garages for each dwelling, the new access onto Gosmore Road, the existing planting and a new hedgerow to be planted along the frontage of the site, either side of the access.
- 3.3 Drawing 3707 7D and 8C show the floor plans and elevations of the dwelling on Plot 1, 09C and 10C the dwelling on Plot 2 and 11C and 12C the dwelling on Plot 3. The application was also accompanied by front views of the 3 houses, an aerial view of the development, a comprehensive Design and Access Statement, a Sustainability Statement and Preliminary Bat Roost Assessment and BNG Reports produced by Coyne Environmental.
- 3.4 The 3 dwellings would be constructed in red multi facing brick with reconstituted stone detailing, beneath natural slate roofs and with powder coated aluminium windows.

4.0 THE COUNCIL'S DECISION

4.1 Despite our optimism that we had addressed the key negative elements identified in the pre-application response, we learnt that the case officer still had some misgivings and that not all of the concerns had been addressed. There was concern about views expressed by a neighbour and, in correspondence with the case officer prior to a decision being taken, we indicated that not only had we heeded the pre-application advice, but that we were prepared to amend the drawings to deal with any continued concerns. The case officer advised us that he would be in touch if this was the case.

4.2 In the event, in addition to changes made from the pre-app scheme, amended drawings were submitted with the second floor dormer windows omitted and the roof height lowered by a further 0.5m. This was to address the officer's view that the scale of the scheme remained excessive, and to reduce the overlooking and impact on No.8 Coach Drive, following neighbour objections.

4.3 However, to our complete surprise amendments to overcome the concerns in respect of some of the detailed aspects of the scheme were not accepted and the application was refused without them ever being considered. We shall return to this important issue later. The application was refused on 30th June 2025 for the following two reasons:

1. The proposed development, by reason of its size, scale, design, siting and appearance, would be excessive and out of character with the site and locality, resulting in harm to their character and appearance. The proposal does not comply with Policy D1 of the Local Plan, and Section 12 of the NPPF.

2. The proposed development, by reason of its size, scale, design and siting, would result in harmful loss of privacy and overbearing visual impacts to No. 8 Coach Drive which would be harmful to the amenity of that dwelling. The proposal does not comply with Policy D3 of the Local Plan.

4.4 What surprised us most was that the Council's refusal notice added a 'Proactive Statement' which stated that :

"The Council acted proactively through early engagement with the applicant at the pre-application stage. This positive advice has

however been ignored and therefore the Council remains of the view that the proposal is unacceptable. Since the Council attempted to find solutions, the requirements of the Framework (paragraph 38) have been met and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

- 4.5 We can't deny that the Council acted proactively at the pre-app stage, but we refute completely the allegation that the positive advice was ignored and that the Council attempted to find solutions. Self-evidently had the advice been ignored, then an identical scheme to that previously submitted would have been presented. In practice significant changes were made to the pre-app scheme. Had the Council attempted to find solutions we were willing to meet them. The heights of the houses was reduced (by 0.8m), plot 3 was reduced in size by 25sq.m and the site layout was re-designed to address comments in relation to building positions and distances to boundaries. Subsequent further amendments were submitted, when we learnt of the further concerns, with the second floor dormer windows omitted and the roof height lowered by a further 0.5m.
- 4.6 Paragraph 40 of the latest NPPF advises that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.
- 4.7 Paragraph 42 makes the point that the more issues that can be resolved at pre-application stage, the greater the benefits. The Council's own guidance on amendments states that:

Unless there are exceptional circumstances, we will only seek an amendment under the following conditions:

- 1. If more information or clarification is needed to complete the assessment of the scheme (for example, cross sectional or levels details drawings)*
- 2. Where amendments of a modest nature would improve the scheme.*

- 4.8 At the application stage we believed that we had resolved the detailed concerns expressed in the pre-application response. Then, when learning of the continued concerns about the height of the dwellings and proximity to neighbours, we made further changes all, we believe, were of a modest nature and designed to improve the scheme. The Council's advice on amending applications is to encourage applications that are thoroughly considered and do not require significant amendments to them to be determined. In our view the amendments that we made after submitting the formal application were not significant.
- 4.9 The formal planning application, changed significantly from the re-app scheme, had thoroughly considered the pre-app response. Concerns about the 3 dwellings and advice that 2 would be more appropriate was based upon the scale (mainly height) and proximity of the houses to the boundaries of the site. It was logical to conclude that overcoming these concerns would enable the 3 dwellings to be constructed within the site. We advised the Council that reducing the number of dwellings would make the decision to replace the existing dwelling unviable and that it would result in the loss of 2 additional dwellings to assist in the significant shortfall in the Council's 5 year land supply.
- 4.10 We acknowledge that we can't turn the clock back or require the latest amendments to be considered as part of the appeal process. However, despite being deprived of having some further and less significant changes accepted during the application stage, we believe that the Council's reasons for refusing this application are not soundly based and believe that this appeal against the final decision is fully justified.

5.0 THE POLICY CONTEXT

- 5.1 The two reasons for refusal cite Policies D1 and D3 of the adopted Local Plan. **Policy D1** relates to Sustainable Design and is a permissive policy that planning permission will be granted provided that development proposals respond positively to the site's local context and take all reasonable opportunities, consistent with the nature and scale of the scheme, to meet a list of sustainable criteria.
- 5.2 **Policy D3** relates to protecting living conditions and it too is permissive, stating that planning permission will be granted for development proposals which do not cause unacceptable harm to living conditions. Where the living conditions of an existing

development would be affected by a proposed use, the Council will consider whether there are mitigation measures that can be taken to mitigate the harm to an acceptable level. If the Council is not satisfied that mitigation proposals would address the identified harm, development proposals will not be permitted.

6.0 MATERIAL CONSIDERATIONS

- 6.1 It is acknowledged that the principle of demolishing the existing dwelling and replacing it with more houses is acceptable in this location. At the pre-app stage the Council considered that the site could accommodate two new larger dwellings (following the demolition of the existing) more comfortably, which could allow the development shown in the pre-ap scheme to be sited further from the west and east boundaries and with a lower roof height, size, and amount of development.
- 6.2 Our interpretation of the pre-app response was that changes made to some of the details of the 3 dwelling scheme (principally heights and positioning) would allow 3 smaller dwellings to fit comfortably into the site. We made those changes in this formal submission.
- 6.3 **Reason 1** alleges that the proposed development, by reason of its size, scale, design, siting and appearance, would be excessive and out of character with the site and locality, resulting in harm to their character and appearance. As a starting point the pre-app response noted that the pre-app scheme would intensify the use and amount of development in the site from one dwelling to three, increasing the density of dwellings from the present 4.2/ha (the site area is approx. 0.234 ha) to 12.8/ha. This density increase (i.e the 3 dwellings) was not however considered out of character with the locality given there are groups of dwellings with smaller plots and higher densities/ha nearby to the north and south.
- 6.4 It was further stated that that the proposal would increase the number of dwellings from one to three and increase the intensity of the use of the site. This was not however considered harmful due to the size of the site, the access and vehicle areas being set away from the nearest dwellings, much of the site being adjacent to highways, and as the net increase in dwellings would not be large in numbers.

- 6.4 Favourable comparisons with the more modern development of 5 large detached houses grouped around a short cul-de-sac to the north of Holmacott are inevitable in the context of reason 1 of this application.
- 6.5 On **size**, before the houses were reduced, the pre-app response noted that each individual proposed dwelling would not be considered to have an excessive footprint, as this is an area of larger dwellings, some of which are comparable to those proposed. This remains the case.
- 6.6 On **scale** we acknowledged the issue of the height of the dwellings and the incorporation of rooms within the roof. The difference in eaves heights is small and acceptable, but the increased height of the new dwellings by 1m was considered significant compared to the existing dwelling. We addressed this issue in this formal submission. The ridge heights of all the houses has been reduced by approx. 1m and the garages reduced in height. The scale of the development compares favourably with that of the modern cul-de-sac of larger houses nearby.
- 6.7 The **design** of the houses was not criticised at the pre-app stage. It was confirmed that although the design approach would be more traditional and formal, the locality is comprised of dwellings that are of a variety of designs and external materials. In this context there were no objections to the design of the dwellings. The external materials and detailing of the dwellings and their garages were considered to be acceptable.
- 6.8 On **siting** the dwellings were moved further from their boundaries in this formal application and this is evident from site layout drawing 06H. Again comparisons with the nearby cul-de-sac of modern houses show similar relationships to plot boundaries. There has been no criticism of any lack of amenity space to serve the new dwellings, nor any allegation that the 3 houses, as revised from the pre-app scheme, amount to an overdevelopment of the site.
- 6.9 Lastly on **appearance** we did not detect any criticism of the appearance of the development in the pre-app response. An objective analysis of the various elements of the development of these 3 houses, mentioned in reason 1 does not, we submit, lead to the conclusion that it would be excessive and out of character with the site and locality, resulting in harm to their character and

appearance. This was not a criticism levelled at the similar redevelopment that has taken place on the other side of Holmacott.

- 6.10 The Council cannot demonstrate a five-year supply of deliverable housing sites – currently estimated at 3.9 years' worth of supply. In our view there are no adverse impacts that would significantly and demonstrably outweigh the benefits that would arise from the proposal to redevelop the appeal site and therefore there is a presumption in favour of the proposed development and planning permission should have been granted accordingly.

- 6.11 **Reason 2** alleges that the size, scale, design and siting, would result in harmful loss of privacy and overbearing visual impacts to No. 8 Coach Drive which would be harmful to the amenity of that dwelling.

No 8 Coach Drive is an 'L' shaped bungalow that lies to the north-east of the application site, with which it shares an angled boundary. The following extract from the pre-app response deals with the relationship of the houses on Plots 1 and 2 with No 8 Coach Drive:

"No. 8 Coach Drive is a bungalow that shares the NE boundary of the site. Plot 2 would be a minimum of 8.2m from the boundary, and further from the dwelling itself. The rear of Plot 2 would be a minimum of 10.6m from boundary with No. 8, and would also be obscured by trees and vegetation. It is not considered that the amenity of No. 8 would be adversely affected by Plot 2.

Plot 1 would be 11.8m and 13.7m from the boundary of the site with No. 8 and further from the dwelling itself, and is not considered harmful to the amenity of No. 8."

- 6.12 In this formal planning application the position of the house on Plot 1 has not changed. The house on Plot 2 has been reorientated to align parallel with the house on Plot 1, but not to an extent that it would be harmful to the amenity of No 8, continuing to be obscured by trees and vegetation. The combination of the reorientation and the ridge heights of all the houses having been reduced by approx.1m has ensured that they are measures that have been taken to mitigate the harm to the amenity of No 8 Coach Drive to an acceptable level, such that the requirement of Policy DS3 is met.

- 6.13 In the context of making possible changes to the scheme in respect of the relationship of the development to No 8 Coach Drive we were prepared to omit the second floor rear dormers as an additional measure to mitigate any impact on that property. Unfortunately, as we have already mentioned, amended drawings covering this change were not accepted, depriving us of that opportunity. However, we continue to believe that the measures that have been taken in the formal planning application have mitigated the alleged harm to the amenity of No 8 Coach Drive (identified in the pre-app response) to an acceptable level,
- 6.14 For completeness, copies of all of the plans illustrating the amendments that we provided the Council with before it took the decision to refuse permission (and which were not accepted) accompany this appeal.

7.0 SUMMARY

- 7.1 This appeal site was the subject of a pre-application request relating to the demolition of the existing dwelling and its replacement with 3 new detached dwellings. The pre-app response dealt with all of the relevant issues and for the most part it was positive, especially in relation to the principle of such a development.
- 7.2 The site is within an established residential area and a similar form of redevelopment exists close-by. The negative aspects of the pre-app response were taken on board and addressed in this formal planning application. It is therefore incorrect of the Council in taking the decision to refuse the revised scheme, to note that its positive advice has been ignored. It clearly has not, for the formal planning application exhibits significant changes, drawing on the pre-application comments in respect of scale (height in particular) and relationships to neighbouring properties.
- 7.3 The two reasons for refusal, in our view, contradict much of what the Council found acceptable at the pre-app stage. Attempts to negotiate some minor amendments of a modest nature to improve the scheme were rejected during the processing of the application, against the Council's own advice note, and the spirit of the advice in the NPPF to minimise the issues, should a refusal of permission be necessary.

- 7.4 The failure of the Council to enter into continued dialogue on what we believed to be minor issues, and the resultant refusal of permission has resulted in the appellant bringing the matter to appeal. For all of the foregoing reasons of both principle and of detail we submit that the development;
- Represents a viable scheme of 3 dwellings that contribute positively towards the Council's significant shortfall in its 5 year housing land supply.
 - Compares favourably with a similar development of large detached houses just to the north of the site.
 - Is an appropriate density for the site, as confirmed in the pre-app response.
 - Addresses the concerns of the pre-application advice in terms of scale (roof heights in particular) and relationship to No 8 Coach Drive, which was not considered to be an issue at the pre-app stage.
 - Meets the requirements of Policies D1 and D3 of the Local Plan in terms of sustainable design and protecting living conditions.
- 7.5 For these reasons we respectfully invite the Inspector appointed to determine this appeal to agree and to grant planning permission accordingly.

Pentangle Design
July 2025

