

PLANNING COMMITTEE – 12 NOVEMBER 2020

PART I - DELEGATED

5. **20/0315/FUL – Laying of new 3.2 metre wide single track road and five speed cushions, stretching from the junction of South Cottage Gardens down to the junction of Berry Lane and construction of double swing gates at both ends at LOWER (SOUTH) END OF SOUTH PARK AVENUE, CHORLEYWOOD, HERTFORDSHIRE (DCES)**

Parish: Chorleywood
Expiry of Statutory Period: 13.04.2020
Extension of time: 16.11.2020

Ward: Chorleywood North and Sarratt
Case Officer: Matthew Roberts

Recommendation: That Planning Permission be Granted

Reason for consideration by the Committee: Called in by Chorleywood Parish Council.

1. **Relevant Planning History**

- 1.1 9/1051/CLPD – Certificate of Lawfulness for Proposed Development: Laying of new 3 metre wide single track tarmac road and five speed bumps, stretching from the junction of South Cottage down to the junction of Berry Lane and construction of double swing gates at both ends. Refused, for the following reasons:

The proposed resurfacing works incorporating the construction of five speed humps and the erection of electric operated farm style gates and fencing to the northern and southern ends of the existing way ("the works") would comprise development within the meaning of Section 55(1) of the Town and Country Planning Act 1990 and therefore require planning permission.

The Local Planning Authority do not consider that the re-surfacing works incorporating the provision of 5 speed humps would be permitted development by virtue of Part 9, Class E of Schedule 2 to the General Permitted Development Order 2015 (as amended) ("the Order") for the following reasons:

- *The proposed works to the track would involve its regrading to form a 3.5m wide permeable sub-base with a 3m wide tarmac surface above, extending the entire depth of the track (170m) and would include the construction of 5 speed humps in the improved section. It is clear from the application and the materials submitted as part of it, that the surfacing works would incorporate the speed humps as part of the works to be undertaken and accordingly for the purposes of Section 193(4) of the 190 Act, the Local Planning Authority considers that what is proposed would be a single operation.*
- *The Local Planning Authority is satisfied as a matter of planning judgement, that the proposed 3.5m permeable sub-base with the 3m wide tarmac surfacing on top (excluding any speed humps) would constitute "improvements" to the track within Part 9. The track in its present condition has had the benefit of surfacing treatments over the years; and what is proposed would leave that base course in place whilst improving the running surface of the track. However the speed humps, which form an integral part of the proposed re-surfacing works, would 'alter the basic character' (Cowen v SOS for the Environment and Peak District National Park (2000) JPL 171) of the track which is to be improved. Speed humps are not a feature of the track at the present time and would therefore constitute new horizontal features not part of*

the track that is sought to be improved. They would constitute the introduction of something new and different, namely, obstructions in what is at present an unobstructed track. The speed humps are not required to maintain or improve the track but would constitute obstructions to the free flow of traffic over the track placed to restrict traffic speeds that the improved surface would otherwise facilitate. Furthermore the construction of 5 speed humps along the length of the 170m track would constitute features that would alter its basic character as a track.

The Local Planning Authority do not consider that the proposed erection of electric operated farm style gates and fencing to the northern and southern ends of the existing way would be permitted development by virtue of Part 2, Class A to schedule 2 of the Order as they would not form a 'means of enclosure'. The gates would form a barrier to vehicular users of the track which, would be their principal purpose. While they would prevent free access to the track, they would not form any part of an enclosure of the 170m track; it would remain open to the several residences and, in part, the adjoining woodland along its length. It is the opinion of the local planning authority that, as a matter of fact and degree, neither of the two proposed gates would perform an enclosing function for the purposes of Part 2, Class A. They would not form part of an enclosure of the track.

The Local Planning Authority do not consider that any other parts of the Order are relevant to the determination of this application.

2 Description of Application Site

- 2.1 The application site includes a narrow unmade road known as South Park Avenue located between Berry Lane to the south and the junction of South Cottage Gardens and South Park Avenue to the north.
- 2.2 The road runs for approximately 170m and ranges in width but is predominately 3.2m wide. The application site does not include the northern section of South Park Avenue which is tarmacked and extends from South Cottage Gardens.
- 2.3 The road provides unrestricted access to 6 detached dwellings and is predominately enclosed by protected woodland (TPO 199 / TPO749) to the east which falls under the ownership of Highways England. On the western side of the track all trees are protected by TPO76.
- 2.4 Two signs exist close to the junction with Berry Lane which state 'private road, access only'.

3 Description of Proposed Development

- 3.1 This application seeks planning permission for the laying of a new 3.2 metre wide single track road and five speed cushions, stretching from the junction of South Cottage Gardens down to the junction of Berry Lane and the construction of double swing gates at both ends.
- 3.1 The re-surfacing element of the proposal will involve the deposit of hard-core materials within the pot holes/existing uneven surface of the track to form a flat surface. A number of strategic boreholes will then be inserted within the road to assist with drainage. Once completed, porous asphalt will be laid across the entire road at a depth of 100mm. The existing alignment and gradient of the road would not be materially altered with any resurfacing works following the existing route. Top soil would also be laid along the entire edge of the road which would then be seeded.
- 3.2 Along the length of the newly surfaced road there will be five speed cushions relatively evenly spaced from Berry Lane up to the junction with South Park Avenue which extends from South Cottage Gardens. Each speed cushion would measure 0.75m high, 2.5m in width and 2m in depth.

- 3.3 The proposed southern gate would comprise of a double, five bar, farm style inward opening swing gate set back from Berry Lane by 11m. The gate would measure 1m in height and would be 4m in width with the associated posts amounting to a further 0.4m, bringing the total width to 4.4m. In order to erect the southern gate a small degree of excavation within the road will need to take place to ensure that the inward opening gates can adequately open as currently there is a gradient, rising from Berry Lane. A 2.5m wide passing place for cyclists and pedestrians would exist between the gate and adjacent boundary whilst a log would be placed on the ground to the east to prevent any circumnavigation by vehicles.
- 3.4 The proposed northern gate would be of an identical design to the southern gate, set back from the road junction between South Park Avenue and South Cottage Gardens by 7m. It would measure 1m in height and 4.4m in its total width. A passing place for cyclists and pedestrians of 1.5m in width would be provided between the gate and the boundary with Homewood House.
- 3.5 Both gates would be powered by underground cables and would open automatically (approx. 16 secs) triggered by sensors to provide unrestricted access at all times. In the event of a power failure the gates will open automatically and they would have a battery back-up system in place. The gates would be painted in an Antique Walnut colour (dark brown).
- 3.6 The proposal would also include white road markings on the speed cushions and at stopping points on the road.
- 3.7 A number of non-illuminated signs (wait at gate information sign, 20 mph zone notification sign and 20 mph zone ends sign) are also proposed (each approx. 400mm x 300mm); however all signs would be subject to a separate Advertisement Consent Application. An informative has been suggested.
- 3.8 During the application process the original plans were amended to provide a permeable surface (rather than tarmac) and speed humps were altered to speed cushions.
- 3.9 On the basis that the ownership of the road is unclear, the applicant signed Certificate D on the Application Form which sets out the reasonable steps undertaken to ascertain the land owner of the application site. This includes the requirement to place a notice of the application in the Watford Observer prior to this submission. Evidence of the advert has been submitted with the application and the Local Planning Authority (LPA) is content that the requirements of Certificate D have been met.

4 Consultation

4.1 Statutory Consultation

4.1.1 Chorleywood Parish Council: [Objection]

"The Committee wish to CALL IN this application on the following grounds:-

One of our Councillors is a resident of South Park Avenue.

The Committee had no problem with re surfacing the road. The Committee had concerns with the necessity (sic) of the gates.*

Request that the gates are well set back to ensure traffic is not queuing to gain entrance.

The Committee had Concerns with the speed humps on South Park Avenue as there is no footpath for pedestrians and can be seen as a trip hazard. Where this occurs elsewhere the speed humps are two small separate humps set in the road so that pedestrians can walk between or around them. This would work in South Park Ave."

Officer comment: It should be noted that the gates are set back significantly from both Berry Lane and the junction between South Cottage Gardens and South Park Avenue. Further, the speed humps have been altered to speed cushions and space will be retained to enable pedestrians and cyclists to avoid both sets of gates to enable unrestricted access to the road.

4.1.2 Hertfordshire County Council – Highway Authority: [No objections, condition recommended]

“The proposal comprises of the laying of a track tarmac road, speed humps and vehicular entrance gates at the lower end of South Park Avenue, Chorleywood. South Park Avenue is a private road and not maintainable at public expense. The nearest highways maintainable at public expense are Berry Lane to the south and South Cottage Gardens to the north-west, both of which are unclassified local access roads and subject to a speed limit of 30mph.

Access and Rights of Way:

The stretch of South Park Avenue subject to the planning application provides frontage access to six dwellings. The road joins with the remainder of South Park Avenue and South Cottage Gardens at its northern end. There is a claimed / pending Byway Open to All Traffic (BOAT) application (ref. 3R/103/MOD) along the length of South Park Avenue including the stretch that is the subject of this planning application. Hertfordshire County Council’s (HCC) Rights of Way service have provided a response to Three Rivers District Council confirming that there is an application for a BOAT along this section of road.

Additional details have been submitted in relation to the proposed gate and access design (submitted drawings Proposed Southern Access and Proposed Northern Access). HCC as Highway Authority would not have any objection to the upgrading of the surface of the private road to improve access for vehicles, cyclists and pedestrians, which is in a very poor condition at present. Following consideration of the submitted gate details which open inwards and are automatic opening, the arrangements would be considered to be acceptable by HCC as Highway Authority. Furthermore a space would be retained on either side of the proposed gates for pedestrian and cyclist access.

A couple of points of for consideration:

- 1. HCC as Highway Authority would recommend that the pending BOAT application be concluded prior to any formal planning decision. However if this is not possible the applicant would need to be aware that any provisions may need to be altered and/or removed at the cost of the applicant, dependent on the outcome of that application.*
- 2. Speed cushions would need to be designed and provided in accordance with Local Transport Note 1/07 – Traffic Calming (Department of Transport, 2007).*
- 3. A Construction Management Plan would be required to be submitted and approved if the proposals are granted planning permission.*

Recommended condition:

1. Construction Management

No development shall commence until a Construction Management Plan (or Construction Method Statement) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Management Plan shall include details of:

- a. Access arrangements to the site;*
- b. Any traffic management requirements*

- c. Construction and storage compounds (including areas designated for car parking, loading / unloading and turning areas);
- d. Siting and details of wheel washing facilities;
- e. Timing of construction activities

Reason: In order to protect highway safety and the amenity of other users of the public highway and rights of way in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018)."

Officer comment: The pending BOAT application is acknowledged; however, it would be unreasonable to withhold the grant of planning permission until that application has been concluded which could be some time in the future. The grant of planning permissions would not override the requirement to comply with other legislation and the applicant is fully aware that the gates *may* have to be altered/removed at a later date, subject to the decision of Herts County Council. Internal legal advice was also sought on this point.

4.1.3 Hertfordshire County Council - Fire Protection: [Advice provided]

"Regarding the above application we make the following comments:-

1. Road widths.

The application indicates that the proposed re-tarmacked road is to a width of 3 metres. Approved Document B would normally require minimum of 3.7 metres for roadways and 3.1 metres for gateways. The current road surface is in poor state of repair and access width is restricted, so a re-tarmacked road may be an improvement for fire service access, however, we would strongly recommend that 3.1 metres should be the absolute minimum available width for this road, preferably 3.7 metres. This would include overhead obstructions such as tree branches up to a clearance height of approximately 3.3 metres. The new road surface substructure should ideally be capable of withstanding the weight of Hertfordshire Fire and Rescue Service pumping appliances which is currently 19 tonnes.

2. Security Gates.

The proposed gates at the North and South ends of South Park Avenue appear to provide adequate opening width at approximately 3.95 metres clear opening width. However any form of gate will inevitably cause delay in fire pumping appliances attending emergency incidents to any premises on this lane. Should the gates be installed they should be capable of being quickly and easily opened manually by fire service personnel in the event of a failure of the automatic opening system. In addition the automatic opening system should have minimum delay between sensing a vehicle and attaining a fully open position. Any gates installed should be positioned far enough away from road junctions so as not to compromise the turning arc of a pumping appliance turning into the lane from either direction.

3. Speed reduction measures.

The status of this lane may not require adherence to The Highways (Road Humps) Regulations 1999. However we are of the opinion that these regulations were put in place to minimise the risk of injury to persons and damage to vehicles, including pedestrians and emergency vehicles and emergency personnel. If applied in this instance, these regulations specify minimum 25mm and maximum 100mm heights for such devices. Our preference would be for the minimum height to reduce risk of injury to emergency personnel and risk of damage to emergency vehicles. The applicant my wish to consider speed cushions which unlike speed humps can fit between the wheel width of larger heavy goods vehicles but will still act as an effective speed reduction measure for cars.

4. Fire Service Access Summary.

South Park Avenue is currently in a poor state of repair and given its condition may cause delays in emergency vehicles attending incidents at the various domestic premises sited off

this lane. The current condition of the lane could also result in damage to emergency vehicles and potential injury to emergency personnel. Consequently any works to improve and widen the road surface we would welcome. The additional proposed measures including speed humps and security gates may delay emergency vehicle intervention.”

Officer comment: The replacement road width has been increased to 3.2m (still within the confines of the application site). The other comments are addressed in the appraisal below.

4.1.4 Hertfordshire County Council – Rights of Way: [Advice provided]

“Please be aware of the outstanding Public Rights of Way application 3R/103/MOD that is awaiting investigation which covers the area of your Planning Application 20/0315/FUL. Could you please keep me in the loop for information with regard to this planning application as it progresses.”

Officer comment: The Rights of Way Officer at HCC was made aware that this application was going to the Planning Committee and responded as follows:

“The application for South Park Avenue is still in the waiting list to be picked up and investigated by an Officer. I have had contact from the applicant informing me that he is now appealing to the Planning Inspectorate (Pins), to get the application investigated, I am waiting to hear back from Pins as to the outcome. The application is currently sitting 9th in our list of Definitive Map Modification Orders applications.”

4.1.5 Highways England: [Advice provided]

“Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

Highways England will be concerned with proposals that have the potential impact on the safe and efficient operation of the Strategic Road Network (SRN), in this case, the M25 which runs near to the site.

On looking at the documents supplied from the applicant we would like further information. Could you please let me know if applicant have been in discussion with Highways England concerning the land to the East of South Park Avenue which is an adjacent area to the M25. We would like to see further details concerning how the new tarmac road would be installed. Our main concern would be boundary infringements onto Highways England Land for example when the posts for the new automatic gates are installed. There appears to be no pedestrian access when the new gates are installed?

I trust that the above is of assistance and would be grateful if you could pass the above comments to the applicant for further consideration and reply. This email does not constitute a formal recommendation from Highways England.

Accordingly, we formally request that your authority refrains from determining this application, (other than refusal) until such time as we have received and considered all the requested information. Once we are able to adequately assess the above and its potential impact on the SRN, and this has been agreed with the applicant, we will provide you with our final formal response.

If, in the meantime, your authority wishes to determine the application, please let us know and we will provide you with a formal response based on the information available at that time.”

Officer comment: Following a meeting with Highways England they confirmed in writing on 26 October that they recommend that conditions should be attached to any planning permission that may be granted (see suggested Conditions 4 and 5 at section 8.1).

4.1.6 Landscape Officer: [No objection]

Comments based on initial plans:

“This section of the road has previously been hard surfaced, certainly in parts at least, and therefore has a centrally compacted surface, which could form a sub-base, in part at least, for a tarmac surface, with speed bumps. Any levelling of the existing surface would need to be achieved through additional material, as opposed to grading, which is stated as the preferred option in the supporting document (planned road repairs). I therefore have no arboricultural objections in principle to the creation of a tarmac surface. The new surface will be an impermeable surface and will require a suitable SUDS/drainage system to prevent water being directed into and flooding Berry Lane. It is this element of the proposal which concerns me most, as a number of potential solutions could impact trees adjacent to the road. The applicants appear aware, and sincere, in aiming to avoid impacting adjacent trees and have therefore opted for a west – east run off option. However, on either side of the existing road are small banks which will end up channelling the water south again. And therefore this is unlikely to be considered a suitable drainage option.

In addition to the drainage issues a scheme of protection and working methodology close to trees would need to be submitted, and approved, before such a development proposal could be considered appropriate. An arboricultural impact assessment (AIA), prepared in accordance with BS5837, would address these concerns. In light of the above, and until a suitable drainage scheme has been agreed, I am compelled to raise objections, in regard to potential impact to trees.”

Comments on amended plans and submission of Arboricultural Impact Assessment:

“Further to my previous comments a new tree report has been submitted in support of the proposal.

The report proposes two solutions to construct the road and address the drainage issues. I understand that the crushed stone sub-base, makeup, with a permeable wearing surface, is the preferred option. I have no objections to this option. I further understand that the contractor has confirmed that the use of porous surfaces or strategically located boreholes can be incorporated into the final design. I am therefore content that the proposal is feasible and that adjacent trees can be retained and suitably protected. However, further information is still required in respect to the precise design, materials, working methodologies and tree protection to be used. In light of the above I no longer wish to raise any objections to the proposal, but would request that an arboricultural method statement condition is attached, should consent be granted, to address the outstanding arboricultural concerns.”

4.1.7 National Grid: [No comments received. Any comments received will be verbally updated at the Committee meeting]

4.2 Public/Neighbour Consultation

4.2.1 Number consulted: 7

4.2.2 No of responses received: 68 (37 objections & 31 support) Note, some households have submitted more than one response including one of the applicants who has also provided comments on some of the objections.

4.2.3 Site Notice x 2: Expired 19.03.2020 (displayed at either end of the road)

4.2.4 Press Notice: Not applicable.

4.2.5 Summary of Responses:

Objections:

- Two gates and 5 speed bumps are an excessive obstruction coercing 70 neighbouring properties to use an alternative route
- Creates exclusive estate for 6 properties
- Pedestrians are permitted to use the route to reach M25 bridge
- Enjoyed unfettered right of way along road
- Bumps will create a hazard
- Traffic backing up onto Berry Lane
- No provision for turning
- Pedestrians, cyclists and horse riders will be at risk
- Emergency vehicles will be delayed
- Impact on character; inappropriate for woodland setting; visual impact
- Impact on trees
- Drainage issues
- TRDC only notified 6 houses; disappointed Council did not notify me
- Applicants do not own the road
- Note that the gates will not deny us access
- Welcome resurfacing; long overdue
- Value of houses will decrease

Support:

- Ensures others do not take advantage of this crossing
- Cars at risk of puncture and damage
- Road is becoming unsightly
- Gates would add an increased deterrent to speeding
- Will become safer and more accessible for children, pedestrians and vehicles
- Benefit the whole community
- Only 16 second wait

4.2.6 **Officer comments:** The planning analysis of the proposed works will be set out in detail from section 7 onwards. In response to certain representations received, the Council fulfilled its statutory duty as part of the neighbourhood consultation which included 7 neighbour letters (to those adjoining the application site) and by erecting two site notices, one at either end of the application site/road. It should be noted that the value of properties is not a material planning consideration.

5 Relevant Planning Policy, Guidance and Legislation

5.1 National Planning Policy Framework and National Planning Practice Guidance

On 19 February 2019 the new National Planning Policy Framework was published. This is read alongside the National Planning Practice Guidance (NPPG). The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another. The 2019 NPPF is clear that “existing policies should not be

considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework”.

The NPPF states that ‘good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities’. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would ‘significantly and demonstrably’ outweigh the benefits.

5.1.2 The Three Rivers Local Development Plan

The application has been considered against the policies of the Local Plan, including the Core Strategy (adopted October 2011), the Development Management Policies Local Development Document (adopted July 2013) and the Site Allocations Local Development Document (adopted November 2014) as well as government guidance. The policies of Three Rivers District Council reflect the content of the NPPF.

The Core Strategy was adopted on 17 October 2011 having been through a full public participation process and Examination in Public. Relevant policies include Policies CP1, CP9, CP10 and CP12.

The Development Management Policies Local Development Document (DMLDD) was adopted on 26 July 2013 after the Inspector concluded that it was sound following Examination in Public which took place in March 2013. Relevant policies include DM6, DM8 and DM9.

Chorleywood Neighbourhood Plan 2020-2035 (Referendum Version, August 2020):

At a meeting of Full Council on 20 October 2020, the Council agreed that the Chorleywood Neighbourhood Development Plan (Referendum Version, August 2020) should proceed to referendum on 6 May 2021 (as required by Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020).

A Decision Statement was subsequently published on 21 October. In accordance with Planning Practice Guidance relating to Neighbourhood Planning, the Chorleywood Neighbourhood Development Plan can now be given significant weight in decision making, so far as the plan is material to the application. The following policies are relevant to the current proposal: Policy 10, 12, 14, 15.

5.1.3 Other

The Localism Act received Royal Assent on 15 November 2011. The growth and Infrastructure Act achieved Royal Assent on 25 April 2013.

The Wildlife and Countryside Act 1981 (as amended), the Conservation of Habitats and Species Regulations 2010, the Natural Environment and Rural Communities Act 2006 and the Habitat Regulations 1994 may also be relevant.

The Community Infrastructure Levy (CIL) Charging Schedule (adopted February 2015).

Hertfordshire’s Local Transport Plan (adopted 2018).

6 **Reason for Delay**

- 6.1 Amended plans sought and received, and confirmation from Highways England was required before recommendation could be put to Planning Committee.

7 Planning Analysis

7.1 Site Visit

- 7.1.1 A site visit has been made at various points within the application process.

7.2 Overview

- 7.2.1 A prior Certificate of Lawfulness for Proposed Development Application was refused by the LPA under Council reference 19/1051/CLPD. This concluded that the resurfacing works incorporating five speed humps and the erection of electric gates comprised development (Section 55(1) of the Town and Country Planning Act 1990 (as amended)) requiring express planning permission.
- 7.2.2 It is worth noting that the resurfacing of the road alone (with no speed bumps) *may* potentially amount to “improvement” works and thus *could* be automatically granted deemed planning permission by virtue of Part 9, Class E to schedule 2 of the General Permitted Development Order 2015 (as amended).
- 7.2.3 This application has been submitted as a number of households who have access onto the unmade track wish to undertake and finance the upgrading works so an alternative safer access can be provided.

7.3 Impact on local character and streetscene

- 7.3.1 Policy CP1 of the Core Strategy states that development should protect and enhance our natural, built and historic environments from inappropriate. Policy CP12 of the Core Strategy (adopted October 2011) states that the Council will expect all development proposals to have regard to the local context and conserve the character, amenities and quality of an area. In respect of national planning policy, the NPPF at paragraph at 127 states that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 7.3.2 The area in and around the application site is dominated by woodland and the M25 motorway which bridges over Berry Lane to the east. The part of Berry Lane close to the application site is for the most part bounded by woodland with a number of large dwellings present but set back from Berry Lane. The area is also made up of a cluster of residential roads, The Beeches, South Cottage Drive, South Cottage Gardens, Haywood Park, Haywood Drive and South Park Avenue. South Park Avenue, the road subject to this application, unlike the other above-mentioned roads, is an un-made and very uneven road which is predominately made up of crushed stone and concrete and provides access to six detached dwellings all of whom front the road with the topography rising steeply from Berry Lane up to the junction between South Cottage Gardens and South Park Avenue.
- 7.3.3 Due to the current make-up of the road, the proposed resurfacing works would alter its character by introducing a more formal road surface with road markings and speed cushions. This change in character is acknowledged, however, the upgrading works would simply make the road appear more akin to other nearby roads. Further, there will be no material change to the alignment or gradient of the road and it would still have its heavy wooded backdrop. The proposed speed cushions at five different points along the track would further alter the character and appearance of the road; however, given their scale and design (not extending fully across the track) they would not appear as incongruous features given its general topography.

- 7.3.4 The proposed gates would be introducing new elements of built form where none are currently present; however, it is not considered that timber, five bar gates at 1m high would appear so uncommon having regard to the wider area that would make them appear inappropriate within their immediate setting. It is agreed that as standalone features, they may appear somewhat alien; however, the southern gate would be viewed in conjunction with timber fencing serving Garlands and the northern gate would be viewed amongst a wooded backdrop. Further, the timber rural style of the gate is generally in keeping with the wider character of the area and would be painted in dark brown.
- 7.3.5 Notwithstanding the gates design, there is significant concern that their very principle would result in an exclusive estate. Whilst such concerns are fully noted and their presence visually would act as a deterrent to those that approach the road by vehicle, given the fact that spacing would exist to the side of each gate to enable pedestrians and cyclists unrestricted access and that gates would provide unrestricted access to vehicles at all times, it is not considered that the erection of gates would undermine community cohesion in this instance. A condition has been recommended to ensure the gates provide unrestricted access at all times (24 hours a day every day).
- 7.3.6 Consequently, whilst acknowledging that the works will alter the character and appearance of South Park Avenue, it is not considered that the resurfacing works including speed cushions and markings and two new gates would collectively result in harmful development that would adversely impact the character or appearance of the locality. The development is therefore considered to comply with Policies CP1 and CP12 of the Core Strategy.
- 7.4 Highway safety
- 7.4.1 Policy CP10 of the Core Strategy (adopted October 2011) states that all development should demonstrate that it provides a safe and adequate means of access. The NPPF at paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 7.4.2 The existing road is uneven, unmade and in a poor state of repair (not maintainable by HCC) and therefore it is evident to see that the road requires upgrading. During the course of the application the scheme has been amended and the minimum width of the resurfacing will be 3.2m, which accords with the advice from the Fire Protection Service. The original plans have also been amended to alter the speed bumps to speed cushions which again follows highway advice and would enable improved access for pedestrians and cyclists. The road would also be constructed to British Standards and thus will be capable of withstanding the weight of emergency vehicles.
- 7.4.3 The Fire Protection Service have also advised that a minimum clearance height of approximately 3.3m should occur along the length of the road. Whilst this is noted, the works to trees may go beyond the control of the applicant and would require agreement with the adjacent land owner, Highways England (condition recommended).
- 7.4.4 Concerns have been raised that emergency vehicles would be delayed due to the presence of the two gates. The applicant has advised that the gates would operate on a loop entry and exit system (based on remote sensors) which would negate any requirement for codes or fobs and that the gates will provide unrestricted access day and night. A condition has therefore been recommended to ensure details of the electronic gate system are submitted to the LPA for agreement along with details of the time it takes to open to ensure that any delays are limited. However, based on the fact that the road would be resurfaced will be of benefit, providing enhanced access.
- 7.4.5 The proposed gates would not be a barrier to pedestrian, cyclists and horse riders, who could use the space between the standalone gate and the boundaries of the application site which are open at both points. A condition has been recommended which requires space to be left

unrestricted at all times immediately adjacent to the gates for pedestrians and cyclists. The improvements to the surface including speed cushions is likely to enhance highway safety for pedestrians and other highway users when compared to the current condition of the road, which would significantly deter highway users like cyclists from using the road. Additionally, the gates would open inwards and more than sufficient space would exist between the gates and the relevant road junctions to avoid delays and obstructions on adjacent highways.

7.4.6 To avoid vehicles circumnavigating around the southern gates, logs are to be strategically placed adjacent to the southern gate but not in a way that restricts access by pedestrians and cyclists.

7.5 Impact on trees / landscaping

7.5.1 Policy DM6 of the Development Management Policies LDD states that proposals for new development should be submitted with landscaping proposal which seek to retain trees and other important landscape and nature conservation features. Landscaping proposals should also include new trees and other planting to enhance the landscape of the site and its surroundings as appropriate. It goes on to state that development proposals on sites which contain existing trees and hedgerows will be expected to retain as many trees and hedgerows as possible, particularly those of local amenity or nature conservation value or hedgerows considered to meet the criteria of the Hedgerow Regulations 1997.

7.5.2 The land on both sides of South Park Avenue is dominated by protected trees with a total of 41 trees (including a group of Sycamore trees) noted to be potentially affected by the proposed works. Given the sensitivity of the site, there were two main fundamental concerns raised by Officers from the outset which related to the impact and safeguarding of the trees during the works and the drainage impact on the trees.

7.5.3 Following the submission of an Arboricultural Impact Assessment it was identified that a number of techniques and mitigation measures would be required to safeguard the trees in question. The resurfacing works would need to include a crushed stone backfill to parts of the existing road which have potholes and the strategic drilling of a number of boreholes. The main surface would also need to be permeable which has been confirmed by the applicant, a significant improvement on the current impermeable surface currently in situ. In addition to these measures protective fencing/boarding, hand dug holes for the gate posts and pre-commencement meeting(s) would be required with the project's arboriculturalist to ensure the appointed contractor was fully aware of the requirements when undertaking both the resurfacing works and when erecting the gates.

7.5.4 Whilst the works would all be within the root protection areas of nearby trees, if the above measures were implemented the Landscape Officer has no objection to the development, subject to the imposition of an Arboricultural Method Statement condition which would require a detailed process of events which must occur before, during and after works to be submitted to the LPA for approval before any works commence.

7.5.5 In light of the above and subject to the recommended conditions, the development would comply with Policy DM6 of the Development Management Policies LDD.

7.6 Impact on neighbouring properties

7.6.1 Policy CP12 of the Core Strategy states that the Council will expect all development proposal to protect residential amenities.

7.6.2 Due to the nature of the development, no harm to neighbouring amenity is considered to occur.

7.6.3 The proposed gates would operate electronically and thus there may be a degree of noise from their opening. However, given the location of the gates any noise would not result in unacceptable harm to neighbouring amenity.

7.7 Ecology impacts

7.7.1 Section 40 of the Natural Environment and Rural Communities Act 2006 requires Local Planning Authorities to have regard to the purpose of conserving biodiversity. This is further emphasised by regulation 3(4) of the Habitat Regulations 1994 which state that Councils must have regard to the strict protection for certain species required by the EC Habitats Directive. The Habitats Directive places a legal duty on all public bodies to have regard to the habitats directive when carrying out their functions.

7.7.2 The protection of biodiversity and protected species is a material planning consideration in the assessment of this application in accordance with Policy CP9 of the Core Strategy and Policy DM6 of the Development Management Policies document. Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by proposals minimising impacts on and providing net gains for biodiversity, including by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

7.7.3 A Local Biodiversity Checklist has been completed by the applicant and submitted with the application. Due to the nature of the work, there are no recognised constraints in relation to biodiversity; however, a condition relating to bird nests and a bat informative have been recommended to minimise potential impacts.

7.8 Drainage

7.8.1 Policy DM9 of the Development Management Policies LDD states that development will only be permitted where it would not be subject to unacceptable risk of flooding; and would unacceptably exacerbate risk of flooding elsewhere.

7.8.2 The application site is located in Flood Zone 1; however, given the current impermeable surface and its steep gradient, there is a medium risk of surface water flooding (as identified on the Environment Agency's mapping). Given the existing surface there is already the potential to cause flooding, especially within and around the Berry Lane junction. As part of the resurfacing works drainage was seen as a critical factor in ensuring that the development was acceptable. During the course of the application the main surface has been altered to porous asphalt with boreholes to be infilled at strategic locations to mitigate surface water flooding. The development would therefore be an enhancement on the existing situation.

7.9 Conclusion

7.9.1 It is recognised that there has been significant concern locally regarding the installation of speed cushions and two gates and there is currently a Right of Way application pending with HCC. However, in planning terms and subject to conditions, it is not considered that the amended development would have an unacceptable impact on the character and appearance of the area nor would it have a harmful impact on protected trees. The development would offer some enhancements from improved drainage and a more user friendly surface for all highway users when compared to the current condition of the road and thus is considered acceptable.

8 Recommendation

8.1 That PLANNING PERMISSION be GRANTED subject to the following conditions:-

- C1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91(1) of the Town and Country Planning Act 1990 and as amended by the Planning and Compulsory Purchase Act 2004.

- C2 The development hereby permitted shall be carried out in accordance with the following approved plans: TRDC 001 (Location Plan); TRDC 002 (Block Plan); TRDC 003 (Proposed Northern Access); TRDC 004 (Proposed Southern Access); TRDC 005 (Rear elevation of Northern gate), TRDC 006 (Rear elevation of Southern gate), TRDC 007 (North Gate pedestrian access) & TRDC 008 (South Gate pedestrian access).

Reason: For the avoidance of doubt, to preserve the character and appearance of the area, safeguard protected trees and highway safety and in the proper interests of planning in accordance with Policies CP1, CP9, CP10 and CP12 of the Core Strategy (adopted October 2011) and Policies DM6, DM8 and DM9 of the Development Management Policies LDD (adopted July 2013).

- C3 No development shall take place whatsoever until an Arboricultural Method (prepared in accordance with BS: 5837 (2012) 'Trees in relation to design, demolition and construction') has been submitted to and approved in writing by the Local Planning Authority. This method statement shall include details of timetables of works, importation and storage of materials and site facilities on the site, tree protection measures, details including location and depths of underground service routes from the gates, methods of excavation and construction methods (including the location of boreholes and proposed use of porous asphalt) all of which must follow and expand upon the recommendations as set out within the Arboricultural Impact Assessment Method Statement & Tree Protection Plan dated 5th June prepared by Trevor Heaps Arboricultural Consultancy Ltd.

The construction methods to be used shall ensure the retention and protection of trees, shrubs and hedges growing on or adjacent to the site. The development shall only be implemented in accordance with the approved method statement.

The protective measures, including fencing / boarding, shall be undertaken in full accordance with the approved scheme before any equipment, machinery or materials are brought on to the site for the purposes of development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made. No fires shall be lit or liquids disposed of within 10.0m of an area designated as being fenced off or otherwise protected in the approved scheme.

Reason: This condition is a pre-commencement condition to ensure that no development takes place until appropriate measures are taken to prevent damage being caused to trees during construction, to protect the visual amenities of the trees, area and to meet the requirements of Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

- C4 No development shall take place whatsoever until the applicant provides a statement which a) confirms that Highways England and its representatives shall be given an opportunity to attend any, or all, on site meetings and inspections relating to, but not limited to, the area of wooded land that forms part of the Secretary of State's asset near the applicant site and b) that the boundary line of the assets in the ownership of

the Secretary of State is pegged out on site to delineate a line beyond which no works can take place without the prior consent of Highways England.

Reason: To ensure that Highways England and its representatives are present when discussions take place concerning assets in the ownership of the Secretary of State and to protect the interests and asset in the ownership of the Secretary of State that are near to the development site.

- C5 No development shall take place whatsoever until the applicant produces a statement setting out the proposals for the drainage arrangements such as they affect the lower part of South Park Avenue (towards Berry Lane). The statement shall set out how it is intended to deal with water run-off in South Park Avenue so as to prevent water exceedance in Berry Lane causing potential flooding.

Reason: To ensure that the development proposal does not result in additional water run-off entering Berry Lane and in the interests of protecting the Secretary of State's asset and in the interest of safety of road users in accordance with Policy DM8 of the Development Management Policies LDD (adopted July 2013).

- C6 No development shall commence until a Construction Management Plan (or Construction Method Statement) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Management Plan shall include details of:
- a. Access arrangements to the site;
 - b. Any traffic management requirements
 - c. Construction and storage compounds (including areas designated for car parking, loading / unloading and turning areas);
 - d. Siting and details of wheel washing facilities;
 - e. Timing of construction activities

Reason: In order to protect highway safety and the amenity of other users of the public highway and rights of way in accordance with Policies 5, 12, 17 and 22 of Hertfordshire's Local Transport Plan (adopted 2018) and Policy CP10 of the Core Strategy (adopted October 2011).

- C7 Prior to the erection of the northern and southern electronic gates hereby permitted, details of the loop entry and exit system (including how long it takes for the gate to open fully) and a maintenance and monitoring plan shall be submitted to and approved in writing by the Local Planning Authority to ensure that unrestricted access is provided at all times (24 hours a day every day) and acceptable back up arrangements can be implemented without delay. The agreed details shall be implemented and permanently retained thereafter.

Reason: To enable unrestricted access to all highway users and to minimise danger, obstruction and inconvenience to users of the adjacent highways and to prevent unnecessary delays in the case of emergency access is required, in accordance with Policies CP1 and CP10 of the Core Strategy (adopted October 2011).

- C8 The northern and southern electronic gates (including associated posts) hereby permitted, shall be painted in Antique Walnut (as shown on the submitted document titled Gate Colour Reference 20/0315/FUL).

Reason: To ensure the gates are in keeping with the locality in accordance with Policies CP1 and CP12 of the Core Strategy (adopted October 2011).

- C9 The northern and southern electronic gates hereby permitted, must only open inwards as shown on approved drawings TRDC 003 (Proposed Northern Access) and TRDC 004 (Proposed Southern Access).

Reason: To minimise danger, obstruction and inconvenience to users of the adjacent highways, in accordance with Policies CP1 and CP10 of the Core Strategy (adopted October 2011).

- C10 Unrestricted access for pedestrians and cyclists immediately adjacent to the gates hereby permitted shall be provided at all times as shown on drawing numbers TRDC 007 (North Gate pedestrian access) & TRDC 008 (South Gate pedestrian access).

Reason: To minimise danger, obstruction and inconvenience to users of the adjacent highways, in accordance with Policies CP1 and CP10 of the Core Strategy (adopted October 2011).

- C11 No external lighting of any kind shall be affixed to the northern and southern electronic gates hereby permitted.

Reason: To protect the amenities of wildlife and to minimise danger to users of the road in accordance with Policies CP1, CP9 and CP10 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

- C12 No removal of trees, hedges or scrub shall take place between 1 March and 31 August inclusive unless searched immediately beforehand and certified free of nesting birds by a qualified ecologist.

Reason: To protect the amenities of wildlife during the primary nesting season and to meet the requirements of Policies CP1 and CP9 of the Core Strategy (adopted October 2011) and Policy DM6 of the Development Management Policies LDD (adopted July 2013).

8.1.1 **Informatives:**

- 11 With regard to implementing this permission, the applicant is advised as follows:

All relevant planning conditions must be discharged prior to the commencement of work. Requests to discharge conditions must be made by formal application. Fees are £116 per request (or £34 where the related permission is for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). Please note that requests made without the appropriate fee will be returned unanswered.

There may be a requirement for the approved development to comply with the Building Regulations. Please contact Hertfordshire Building Control (HBC) on 0208 207 7456 or at buildingcontrol@hertfordshirebc.co.uk who will be happy to advise you on building control matters and will protect your interests throughout your build project by leading the compliance process. Further information is available at www.hertfordshirebc.co.uk.

Community Infrastructure Levy (CIL) - Your development may be liable for CIL payments and you are advised to contact the CIL Officer for clarification with regard to this. If your development is CIL liable, even if you have been granted exemption from the levy, please be advised that before commencement of any works it is a requirement under Regulation 67 of The Community Infrastructure Levy Regulations 2010 (As Amended) that CIL form 6 (Commencement Notice) must be completed, returned and acknowledged by Three Rivers District Council before building works

start. Failure to do so will mean you lose the right to payment by instalments (where applicable), and a surcharge will be imposed. However, please note that a Commencement Notice is not required for residential extensions IF relief has been granted.

Care should be taken during the building works hereby approved to ensure no damage occurs to the verge or footpaths during construction. Vehicles delivering materials to this development shall not override or cause damage to the public footway. Any damage will require to be made good to the satisfaction of the Council and at the applicant's expense.

Where possible, energy saving and water harvesting measures should be incorporated. Any external changes to the building which may be subsequently required should be discussed with the Council's Development Management Section prior to the commencement of work.

12 The Local Planning Authority has been positive and proactive in its consideration of this planning application, in line with the requirements of the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority suggested modifications to the development during the course of the application and the applicant and/or their agent submitted amendments which result in a form of development that maintains/improves the economic, social and environmental conditions of the District.

13 Bats are protected under domestic and European legislation where, in summary, it is an offence to deliberately capture, injure or kill a bat, intentionally or recklessly disturb a bat in a roost or deliberately disturb a bat in a way that would impair its ability to survive, breed or rear young, hibernate or migrate, or significantly affect its local distribution or abundance; damage or destroy a bat roost; possess or advertise/sell/exchange a bat; and intentionally or recklessly obstruct access to a bat roost.

If bats are found all works must stop immediately and advice sought as to how to proceed from either of the following organisations:

The UK Bat Helpline: 0845 1300 228

Natural England: 0300 060 3900

Herts & Middlesex Bat Group: www.hmbg.org.uk

or an appropriately qualified and experienced ecologist.

(As an alternative to proceeding with caution, the applicant may wish to commission an ecological consultant before works start to determine whether or not bats are present).

14 The applicant is reminded that there is a pending Rights of Way application 3R/103/MOD that is awaiting investigation by Hertfordshire County Council. You are strongly advised to seek advice from row@hertfordshire.gov.uk following the grant of planning permission.

15 The application is reminded that the speed cushions would need to be designed and provided in accordance with Local Transport Note 1/07 – Traffic Calming (Department of Transport, 2007).

16 The applicant is reminded that an Advertisement Consent Application may be required to display signage on the gates. Further advice should be sought from the Local Planning Authority.