Bourne Valley Associates Ltd

Planning Statement

For

Mr Brian Forrester

For a Minor Material Amendment

Under Section 73, to Permission Granted Under 17/10780/FUL

Construction of a new dwelling

Tycho House, Land at 65a, High Street,

Burbage. SN8 3AF

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1. *Introduction*

This Statement accompanies and supports an application made to Wiltshire Council under Section 73 of the Town and Country Planning Act 1990. The application relates to permission for a proposed new dwelling within the curtilage of 65 High Street (Box Cottage), Burbage, but to the rear of 67 High Street (Cairn House). This permission was granted by Wiltshire Council on 28th February 2018, under reference 17/10780/FUL. This application is submitted by Bourne Valley Associates, acting as agent on behalf of Mr Brian Forrester, whose family has long held the land and who intends to build the property himself and live in it. He is therefore seeking "self-build" exemption from the CIL Regulations, and the appropriate forms have been completed and submitted. Since the granting of planning permission 17/10780/FUL, Mr Forrester has sold no. 65 High Street and retained the land now know as Tycho House.

A successful S. 73 application takes effect as a new and independent permission to carry out the same development as previously permitted, but subject to the new or amended condition(s), or without compliance with a condition(s). In this case, the intention is to seek to modify only one of the conditions applied to the 2018 permission. Details of the other conditions applied are set out later in this statement, and the only condition which is to be amended is Condition 2, which required the development to accord with specified plans and drawings.

This proposal seeks to submit modified drawings for essentially the same development and within the same application area. Accordingly, the changes sought would amount to a "minor material amendment". Although there is no reference under S73 of a "minor material amendment", case law has demonstrated that the legislation can only be used where there is no "operative" variation to the description of development. In this case, the description of the development remains as it was for the 2017 application, and the overall form and function of the property has not fundamentally altered.

In the decision on Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Another [2023] EWHC 176 (Admin) (27 January 2023), the High Court overturned an appeal decision which had refused a S73 application on the grounds that the amended design of the building differed materially from what had previously been approved. The judge found that, whatever the architectural style of the building, the proposal to amend the approved plans condition did not conflict with the "operative part of the permission" – the permission would remain for a single dwellinghouse. In this current S73 application, the changes are not fundamental, but the Armstrong case shows that a S73 application is not confined to "minor material amendments".

As the "operative part" is not being altered, this statement will not set out once again the case for the dwelling, but will describe the changes in being sought, why they are being sought, and how they differ from the approved plans. The implications of the proposed modifications are then examined. The material issues are the difference in appearance and its impact on the character of the conservation area, the impact on the setting of a listed building, and the impact on the amenity of neighbours.

The listed building is Box Cottage, which has now been sold and is no longer in the ownership or management of the Forrester family or of any companies in which its members have interests. Accordingly, the new property, to be known as 'Tycho House', is no longer within the curtilage of Box

Cottage. Nonetheless, and for the avoidance of doubt, we consider the impact the proposed design changes would have on the setting of that listed building.

2. *Site Context*

The location plan for the application site is formally submitted as Drawing 01100-00-H Sheet 04. However, Figure 1 provides an indicative geographical location, with the site marked by an arrow.

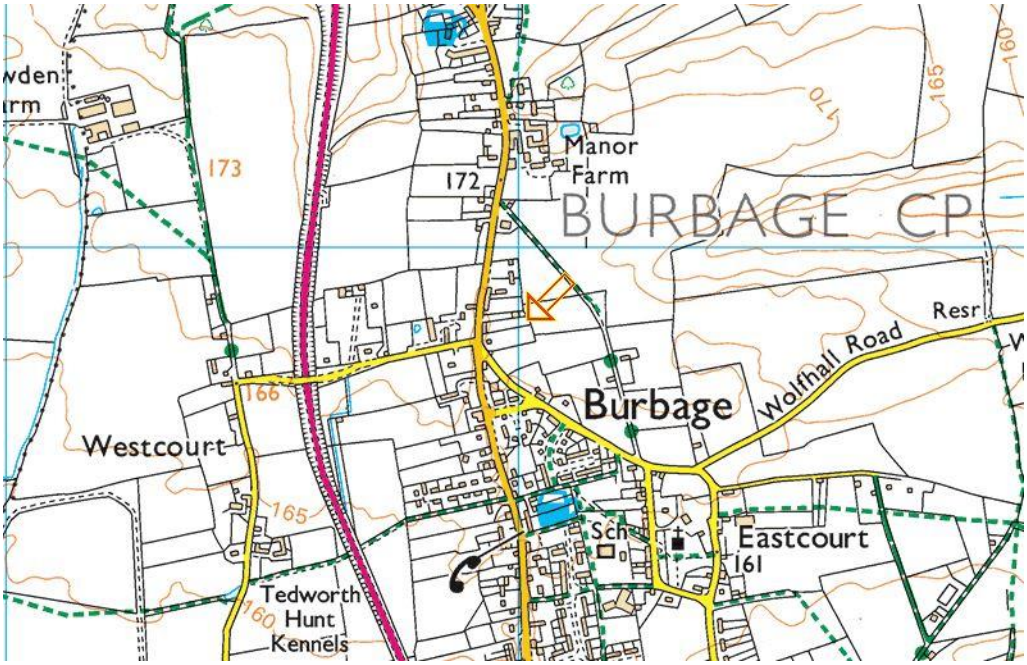


Figure 1 - Geographical context of application site

The whole immediate area lies within the North Wessex Downs Area of Outstanding Natural Beauty (AONB). The application site lies within the Conservation Area of Burbage, initially designated in 1993, but not subject to a detailed appraisal until 2008.

It is often useful to provide an aerial photograph to bolster maps and plans, when describing a site. In this case, we benefit from an aerial photograph taken in July 2020, and the latest such image available. In that image in Figure 2, the application site is shown by a red arrow, and 65 High Street (Box Cottage) by the blue arrow. Cairn House, which is in separate ownership, is the large property to the left of the application site, adjacent to and South of Box Cottage. It can be seen that open arable land lies to the East, and separated from the property by substantial tree growth.

Figure 2 also provides evidence that, by 2020, the development approved under 17/10780/FUL had commenced, with the foundations competed. Therefore, there is no question of the permission under 17/10780/FUL having lapsed.

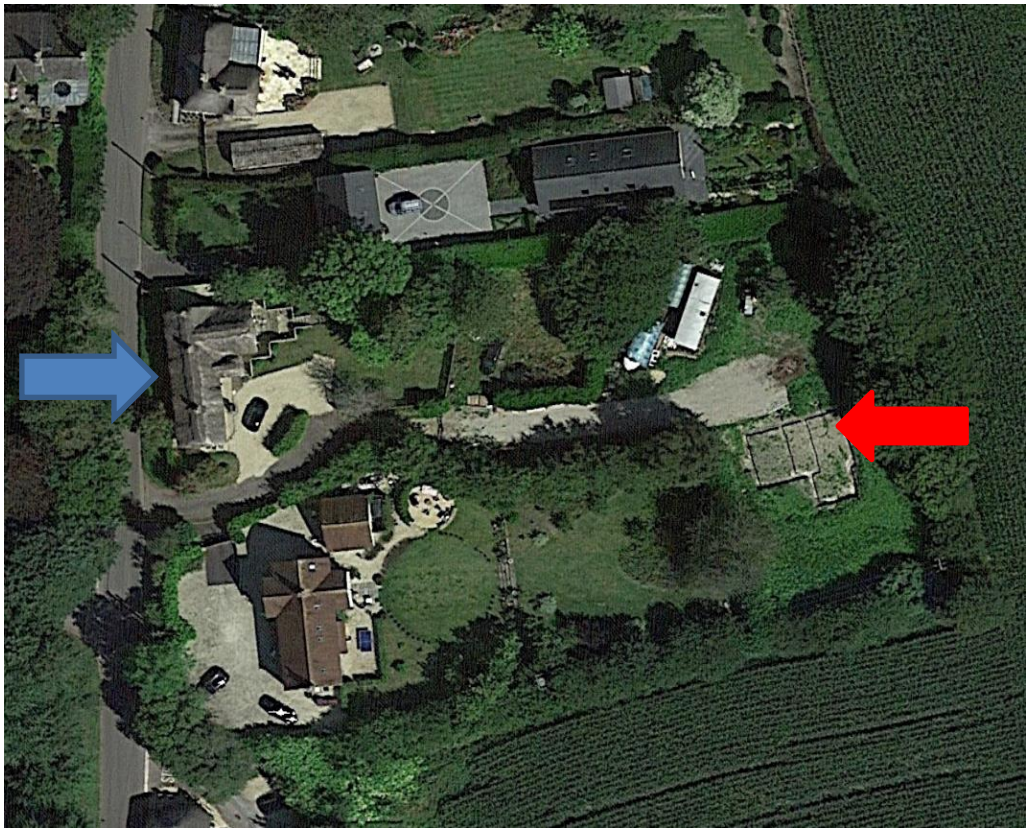


Figure 2 - Aerial photograph of application site

Figure 3 shows the vegetative screen on the site's eastern boundary, with the open countryside. This tree screen was considerable in 2017, but is now even more significant.



Figure 3 - View East showing dense tree screen

Consideration of proposals for this kind of development should also consider the impact on the amenity of the adjacent properties on either side. As that relationship was central to the previous permission, it is considered later in this statement.

3. *Permission granted in 2018*

Application 17/10780/FUL was granted for the "*Construction of one 4-bedroomed house*", subject to a set of 10 conditions. The first of those was a time limit of three years, which was achieved, as previously described. Conditions 8, 9, and 10 were regulatory conditions that the applicant is content should also be applied to the new permission granted under this application.

Condition 6 was a pre-occupancy condition requiring appropriate car parking provision. Again, the applicant is content for such a condition to be re-applied.

Condition 3 required the submission and approval of a Tree Retention Plan and Arboricultural Method Statement prior to work commencing. Condition 4 was also a pre-commencement condition, relating to materials and finishes. Condition 7 was a similar condition requiring the discharge of landscape details. Therefore, an application was submitted to discharge those three conditions. That application was successful, and the conditions were discharged on 28th November 2018. Given that work has commenced, there is no legal reason why these pre-commencement conditions need to be imposed on a new permission. If conditions related to the subjects are considered necessary, then they should be regulatory only, so that the new development approved would accord with the documents approved on 28 November 2018, following the submission of the following documents:

Condition Details	
3 (tree protection)	Arboricultural Method Statement (Ref. 1190)
4 (materials)	Planning Statement (Ref 01100-01) Product literature for timber windows & doors
7 (landscaping)	Landscaping Plan (Ref. 01100-00-D)

For the avoidance of doubt, an updated version of the landscape plan is submitted with this application. It is Drawing 01100-00-H, Sheet 05. It has been updated after the discharge of the condition to reflect drainage details, the boundary following land transfer, and the revised house layout.

The other two conditions are relevant to this proposal. Condition 2 rightly imposed the normal condition of requiring the development to accord with specified submitted plans. These showed, among other matters, the proposed floor plans and elevations. It is now proposed that they are altered, as we set out in Section 5.

Condition 5 was worded as follows:

"The finished roof height of the dwelling hereby approved relative to the heights of Cairns House and Box Cottage shall not be other than as shown on the approved drawings.

REASON

To ensure an appropriate scale and height of the development in the interests of the character and appearance of the conservation area and the setting of Box Cottage."

The applicant had objected to that condition, in that it repeated the function of Condition 2, and he and we, as agents, still argue that is the case. It is important to note that, in the body of the officer's report, there is no reference to the relative heights of those properties. Indeed, in terms of Box Cottage, the text refers to:

"The Conservation Officer raises objection in terms of the impact of the development on the setting of Box Cottage,…" then

"Whilst there would be some intervisibility between the two properties it is concluded on balance that the distance and off-set between the buildings is such that any impact on the setting of the listed building would not give rise to any harm to its heritage significance. Conditions would be recommended for any approval to secure details of materials for the new building, including windows and rainwater goods (few details have been provided in the application)."

And, in respect of the impact of heights and levels on Cairn House, there is similarly little reference. The text states:

"In terms of neighbouring amenities, there would be c. 55m+ separation between the dwelling and Box Cottage and Cairn House. No windows are proposed in the west elevation and there would thus be no impact in terms of lost privacy."

It therefore seems illogical that the report's conclusion, in which a rationale for the imposition of conditions is set out, states:

"Condition 5 requires the finished height of the dwelling to be no higher than as stated on the approved drawings relative to the neighbouring properties but the applicant suggests that is unnecessary and duplicates condition 2. The condition is required however as the 'Proposed Site Elevations' drawing, whilst stated as being at a scale of 1:200 includes perspective drawings which cannot be reliably scaled. The Council is also not in a position to verify the accuracy of ground levels at the site as shown on the Site Plan. The relative heights of the dwellings has been a key issue in assessing the suitability of the proposal and the relative heights as annotated on the plans provides the precise and enforceable certainty of this."

If *"the relative heights of the dwellings has been a key issue",* why was that issue not set out in the body of the report? The current S73 application seeks to remove the condition and, to show that it was unnecessary, we provide photographs in this statement to illustrate that the degree of intervisibility, which was previously limited, is now reduced even more to the point of being negligible in material terms.

4. *The rationale behind the changes in design*

Mr and Mrs Forrester owned and lived in Box Cottage, 65 High Street, which they restored from 2001 to 2005. Their intention was to create a new dwelling to be occupied by themselves, on the application site, and designed to meet the exacting requirements associated with Mrs Forrester's medical condition. Unfortunately, Mrs Forrester has since died and, while Mr Forrester still intends to build

the property himself and live in it, his requirements in terms of bedrooms required have altered, so now only three bedrooms are proposed. These will be within the same footprint as the previously approved plans, but the rooms will now be more generous.

Mr and Mrs Forrester both held a commitment to the concept of sustainable development, and wanted to create a dwelling that adheres to principles of both sustainable construction and operation. Mr Forrester is very keen to maintain these intentions, and the minor external changes now proposed would facilitate an even greater generation of electricity at site, and creation and retention of heat within the structure. These changes are set out in summary form in Section 5 and represent a commitment to sustainable construction and operation.

5. *Proposed Modifications to Design*

The applicant wishes to make the following changes to the approved design in achieving a new consent:

1. construct a new plant room for PV and air source heat pump equipment
2. construct a porch on the front of the building (North elevation)
3. raise the roof by 500mm
4. installation of photovoltaic panels on the roof's South elevation
5. install flint panels to the North and West elevations, only above a line equivalent to the base of ground floor windows.

These measures are discussed in detail below. The proposed plans are shown in Drawing 01100-01, revision H, Sheet 01.

The footprint of the property is the same as the previously approved plans and, indeed, uses the foundations that have been constructed, but with two minor exceptions. First, a single-storey utility room is proposed on the eastern side of the house. It would be 3.6m x c3.5m externally, creating an additional 10m^2 internal floorspace. The primary function of this space would be to locate heat pump buffer tanks and associated equipment, and would also house the electrical equipment for the photovoltaic panels. This structure would not be visible from adjacent properties because its low height would not be seen over the vegetated boundaries and/or the house itself would hide the views.

The second modification in footprint would be a new enclosed porch constructed on the house's North elevation, and the primary entrance into the house. Not only would the porch provide additional heat insulation on that side, which is least exposed to the sun, but also it would create a focal point for the design of that elevation, compared with the simple brick and timber construction previously proposed.

The roof would be raised by 500mm compared with the approved plans. The ridge of the roof would now be 8504mm from the ground, compared with 8004mm on the approved plans. The eaves height would similarly rise by 500mm. The reason for the increase in height is to allow for an effective array of photovoltaic panels. The previous design would only allow for one row of panels, by raising the roof by 500mm and retaining the height of the dormers an additional row of panels can be achieved.

These can be seen on the proposed South elevation, to maximise solar gain. It is proposed that there would be 14 panels. The model of panel has not been specified, but with a typical output of about 370W per panel, the total output of the array would be a little more than 5kW. That level of generation would allow either some electricity to be exported to the grid, thereby reducing the nation's dependence on carbon-derived electricity, or it could be stored in a battery system in the new house, so electricity could be used when the sun is not shining, which is advantageous both to the individual and to the nation.

In the previously approved design, the overall perception of the walls was that they would be principally of flint, but with brick detail such as on the chimney breast, at the corners, around the windows, and along one belt. On reflection, the applicant considers that the design would have been too complex or "busy" and therefore proposes a more simple use of materials. Therefore, the East and South elevations would be entirely of brick. The North and West elevations would be more readily seen by visitors to the house and therefore, although the facing material would be primarily brick, there would be some flint panels retained, but only above the base of the ground floor windows. This more simple approach to materials will present an even more pleasant appearance.

6. *Appearance and impact on conservation area and listed building*

The impact of the new dwelling on these heritage assets was the primary determining factor with the 2017 application. However, the concept of a new house was agreed then, with the officer concluding that "*the development would not result in harm to the character and appearance of the conservation area or its heritage significance."* Therefore, the principle of a new house is not open to further debate under this application, as there have been no changes in Government or local heritage policy or guidance since 2018. Moreover, as has been mentioned above, the vegetative cover within and around the property has markedly reduced the degree of visibility of the new dwelling and the fact that Box Cottage is now in separate ownership means that the new house would not lie within its curtilage, though we accept it would remain within its setting.

The factors to be considered under this application relate to the changes in design we have set out above. There should not be any revisiting of previous matters of principle.

Turning first to the impact on the wider conservation area, we made a virtue out of the use of traditional materials in the 2017 submission. The planning officer commented, somewhat surprisingly, in his report:

"A dwelling of less traditional construction and materials could be considered preferable in such a position so as to avoid suggestion that it forms part of the historic layout of the village. The distance and screening from public views however would mitigate against the impact of the proposed design and materials."

The more simplified use of materials should help to mitigate this criticism, but the comment about the degree of screening from public views still applied, as the photograph in Figure 4 shows. The view is looking East from the junction with the High Street along the drive shared with Box Cottage. The degree of vegetation is even more significant than with the previous application, and the impact of the view can be regarded as negligible, even with the 500mm increase in roof height. It should be noted that the bulk of the elevation facing the road (West) is less than that facing North and South.

Therefore, we consider that the officer's comment: "*Any views when passing along High Street would be fleeting, out of the line of sight and heavily filtered"* would remain equally applicable under the new design.



Figure 4 - View East from entrance onto High Street

In terms of the impact on the setting of Box Cottage, the officer's report on the previous approved development stated "*the red-lined area would now be set wholly outside the historic curtilage of Box Cottage, but nonetheless clearly within its setting*." We agree, and these details are constant.

The officer concluded "*Whilst there would be some intervisibility between the two properties it is concluded on balance that the distance and off-set between the buildings is such that any impact on the setting of the listed building would not give rise to any harm to its heritage significance."* This conclusion took account of the distance of 65m separating the nearest points of these properties. The degree of intervisibility has reduced further over time, as Figure 5 shows. It is taken (June 2023) from the temporary gate separating the eastern boundary of Box Cottage from the new limit of drive to Tycho House. The view actually presents a worst case scenario, in that the windows of Box Cottage are behind the viewer to the left, and the bulk, albeit not all, of the new house would be to the right in the background, behind the birch tree. That tree would filter the view of the solar panels and the increased roof height. The utility/plant room is on the South elevation and single storey, so certainly not visible from the listed building. The porch, which might be visible, would not be any larger.

We therefore argue with confidence that the impact of the modified design on the setting of the listed building would be negligible and acceptable.



Figure 5 - View East from eastern boundary of Box Cottage

7. *Impact on amenity of Box Cottage*

In our submission for the 2017 application we argued that there would be no negative impact on the residential amenity of properties to both North and South, because there would be no overlooking and because of the tree cover, and the long separation distances between the properties. It seems that the planning officer agreed, for the report stated *"There would be c. 25m from the north elevation of the proposed house to the boundary with the new dwelling at. No. 53. That property presents rooflights and ground floor windows towards the application site. With boundary hedging between the sites and the rooflights being high-level, there would be no material intervisibility between properties."*

The report reasonably did consider the impact on the amenity of residents of Cairn House. It reported:

"In terms of neighbouring amenities, there would be c. 55m+ separation between the dwelling and Box Cottage and Cairn House. No windows are proposed in the west elevation and there would thus be no impact in terms of lost privacy."

There was no reference to levels in that part of the report. There have been no changes to windows proposed for the West elevation, facing Cairn House. While we accept that the roof, as proposed, would be 500mm taller than under the previously approved plans, we do not consider that increased height would be material. Figure 6 shows a view from the rear (eastern) boundary of the application site, looking West. The tall hedge would certainly prevent any significant views of the properties in either direction, given the distance involved.



Figure 6 - View West from rear of plot, showing screen preventing views of Cairn House

8. *Enhanced sustainability measures*

The National planning Policy Framework states that planning permission should normally be granted for sustainable development. The measures now put forward further strengthen the applicant's commitment towards sustainable construction and operation. In our statement supporting the 2017 application, we wrote on this aspect:

Construction and insulation

"The house fabric insulation will exceed current building regulations.

In addition to this we will be installing a modern Mechanical Ventilation system with Heat Recovery (MVHR) such as the Domus System from Polypipe. This system will ensure that the heat inside the home is not lost when it is ventilated to levels which exceed the current building regulations. This measure also applies to the cooling of the home, where the temperature inside the home is to be lower than the outside temperature. Control is achieved by using the highly efficient, but simple, heat exchanger of the MVHR system which has 95% heat recovery efficiency.

The design principles of the home will be based on the Solcer house project from Cardiff University, but with the look of the house being more traditional than the prototype home built in Bridgend[1]".

Then, in respect of water management through rainwater harvesting:

[1] For details, see http://sites.cardiff.ac.uk/architecture/news-items/solcer-house/

"It is proposed to collect rainwater from the roof and for it to be stored underground. The stored water would then be used for WC flushing, garden watering and car cleaning: as many non-potable uses as possible. A battery-operated pump system will (powered from the solar roof) be used to transport the water from underground storage to where it will be used. There will be an automatic switch over to mains water should the underground water store be depleted."

These statements continues to apply. The additional sustainability measures of heat pumps and solar panels will make the house, as modified, even more sustainable in its operation.

9. *Implications of Proposed Design Alterations on Planning Policy*

Applications for planning permission for a new dwelling would normally merit a full analysis of the proposals against planning policy. However, much of that analysis would relate to the principle of development, and that principle has already been established. Therefore, such policy analysis is not undertaken in this statement. The focus is only on those policy aspects related to the proposed changes in design, as we have set out in previous sections. Also, we pay attention to Wiltshire's policies only, and not to national policy, though all analysis is against the clear evidence that this would be sustainable development.

No significant change to local policy has occurred since the determination of the previous application. The Core Strategy for Wiltshire remains the current policy, and though the Wiltshire Local Plan Review DPD is in preparation, it will not be adopted until at least the end of 2024.

Core Policy 18 covers development in the Pewsey Community Area, and confirms Burbage as a "large village". It sets out (at para 5.95) specific issues to be addressed by development proposals. Few of those issues are relevant here, though there is reference to the fact that development "*will need to conserve the designated landscape of the North Wessex Downs Area of Outstanding Natural Beauty and its setting*". While the site is within the AONB, there has not been any real argument made, even in previous applications, that there would be any detrimental impact on its character. Thus, the development accords with Policy 18.

Policy 57 is significant in considering this proposal. Accordingly, it is copied in full here in italics, and our consideration of whether the proposal complies with each criterion is provided in normal, upright text, within that section. Only relevant criteria are included.

Core Policy 57

Ensuring high quality design and place shaping

A high standard of design is required in all new developments, including extensions, alterations, and changes of use of existing buildings. Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through:

i. enhancing local distinctiveness by responding to the value of the natural and historic environment, relating positively to its landscape setting and the existing pattern of development and responding to local topography by ensuring that important views into, within and out of the site are to be retained

and enhanced. Great weight has been placed on how the design responds to local character, including the relationship with the wider countryside; the relationship with the nearest properties; and the vegetative framework within and around the site.

ii. the retention and enhancement of existing important landscaping and natural features, (e.g. trees, hedges, banks and watercourses), in order to take opportunities to enhance biodiversity, create wildlife and recreational corridors, effectively integrate the development into its setting and to justify and mitigate against any losses that may occur through the development. There are no significant natural habitats on site. The tree retention plan already approved will safeguard trees and shrubs.

iii. responding positively to the existing townscape and landscape features in terms of building layouts, built form, height, mass, scale, building line, plot size, elevational design, materials, streetscape and rooflines to effectively integrate the building into its setting. There would be no additional material impacts on townscape compared with the approved design, so the setting would be conserved.

iv. being sympathetic to and conserving historic buildings and historic landscapes. There would be no further physical impact on Box Cottage, the nearest listed building, compared with the previously approved plans, nor would its setting be negatively affected.

v. the maximisation of opportunities for sustainable construction techniques, use of renewable energy sources and ensuring buildings and spaces are orientated to gain maximum benefit from sunlight and passive solar energy, in accordance with Core Policy 41 (Sustainable Construction and Low Carbon Energy). This property is built for occupation by the applicant, who is keen to further enhance the sustainability credentials of its construction and operation.

vi. making efficient use of land whilst taking account of the characteristics of the site and the local context to deliver an appropriate development which relates effectively to the immediate setting and to the wider character of the area. The minor extension compared with the previously approved plans would represent good use of land. The tree screen around the site allows easy integration with the area, especially as the retention plans have been approved.

vii. having regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, vibration, and pollution (e.g. light intrusion, noise, smoke, fumes, effluent, waste or litter). As mentioned above, the site character will be maintained, without detriment to adjoining users. The construction of the dwelling will ensure there is no significant pollution in terms of noise, fumes or light.

xi. taking account of the needs of potential occupants, through planning for diversity and adaptability, and considering how buildings and space will be used in the immediate and long term future. The new property is designed to be future-proofed against climate change.

xii. the use of high standards of building materials, finishes and landscaping, including the provision of street furniture and the integration of art and design in the public realm. There will be high standards of materials employed, as the elevational drawings suggest. Although the ration of brick and flint would be different, the materials would be as previously approved through the discharge of a condition.

Core Policy 58 ensures the conservation of the historic environment. The decisions on the earlier appeals on the application site have turned, to a large degree, on the impact of those proposals on the conservation area of the village and on the setting of the listed Box Cottage. Therefore, that policy is set out fully here and the development assessed against its criteria, in the same way as it was against Policy 57.

Core Policy 58

Ensuring the conservation of the historic environment

Development should protect, conserve and where possible enhance the historic environment. Designated heritage assets and their settings will be conserved, and where appropriate enhanced in a manner appropriate to their significance, including:

iii. buildings and structures of special architectural or historic interest.

iv. the special character or appearance of conservation areas.

We have explained that the planning officer was content that the impact of the previously approved proposals on both the nearest listed building (Box Cottage) and on the Burbage Conservation Area would be acceptable. The changes now sought are so minor that his conclusion would continue to apply.

Supplementary documents

A Neighbourhood Plan for Burbage, entitled "*Burbage Neighbourhood Development Plan 2017-2026"* was adopted in July 2018, and so is a new document to consider. However, though it refers to the need for good design to consider these proposals, it good not provide guidance as to what such design should exhibit.

The only clear policy for this proposal is Policy 9, which relates to Heritage:

"Within the Burbage and Eastcourt Conservation Areas, any development proposals must demonstrate how the guidance contained in the Burbage Conservation Area Character Appraisal and Management Proposal, February 2008 or in the Eastcourt Conservation Area Character Appraisal and Management Proposal, February 2008, or any subsequent updates to these documents, has been taken into account."

We concur with the aspiration under Policy 9, and consider it has been demonstrated with the earlier permission and also within this statement in respect of the revised design.

We consider that the current proposal accords with planning policy and that there is no basis to argue that any significant and material harm would be caused through the changed development. Therefore, there are no sound reasons why a new permission should not be granted.

10. *Conclusion*

These revised proposals are fundamentally similar to those approved under 17/10780/FUL, so that the principle of development cannot reasonably be revisited, and the only material considerations are the differences in impacts that would result from the minor changes.

We have shown that the impact of the changes on design and appearance, and on the setting of the listed building and the character of the wider conservation area, and on the amenity of neighbouring properties would be minor, if not negligible. They therefore accord with planning policy.

Thus, the current proposals made under Section 73 of the Town and Country Planning Act should be approved, with a new decision letter and date of issue. Conditions should be relevant and necessary, and there should not be a requirement for repetition of previously imposed conditions that have been discharged. In respect of landscape details, previously required under Condition 7, they can be regulated by ensuring accordance with Drawing 01100-00-H, Sheet 05. There is no sound reason for the imposition of a condition to replicate the previous Condition 2, as all development would accord with the plans now submitted and detailed.