

Agenda Item No. 4.2

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

8 October 2018

Report of the Strategic Director – Economy, Transport and Environment

- 2 PROPOSED ERECTION OF NEW SECURE BOUNDARY FENCE
2.4M HIGH WELDMESH, WITH TWO MATCHING SINGLE GATES
AND THE REMOVAL AND RELOCATION OF EXISTING STEEL
PALLISADE FENCE WITH NEW MATCHING DOUBLE GATE AT
LEYS JUNIOR SCHOOL, FLOWERY LEYS LANE, ALFRETON, DE55
7HA
APPLICANT: DERBYSHIRE COUNTY COUNCIL
CODE NO: CD6/1117/68**

6.543.10

Introductory Summary This application is for the erection of 2.4 metres (m) high weldmesh fencing along the north, east and south boundaries of the school playing field and double gates and two single pedestrian gates. The existing galvanised palisade fencing would be removed and reused to the east of the existing car parking area with a single double gate for maintenance access at Leys Junior School, Flowery Leys Lane, Alfreton. A petition and letters of representation objecting to the proposal have been received, expressing concerns regarding general use of the playing field and access across the site from Flowery Leys Lane to Milton Avenue and lack of access to green space. The applicant has revised the plans in response to these concerns and it is now proposed to create a 2m wide informal pedestrian footpath along the perimeter of the site. I consider that the proposed amendments to redirect the pedestrian footpath addresses some of the concerns raised and I do not anticipate any significant environmental impacts as a result of the proposed development.

Therefore, it is concluded that the development would not conflict with policies of the Amber Valley Borough Local Plan (2006) (AVBLP) and the emerging Amber Valley Borough Draft Local Plan (March 2018) (AVBDLP). It is therefore recommended that planning permission is granted for the development.

- (1) Purpose of Report** To enable the Committee to determine the application.

(2) Information and Analysis

Site and Surroundings

Leys Junior School is situated within the town of Alfreton. The proposed site is located to the north of Flowery Leys Lane and encompasses the whole of the school's playing field. There are residential dwellings located adjacent to the school's southern and western boundaries. There is a Public Right of Way (PROW) Bridleway Alfreton AV2/4/1, which runs along the south boundary of the site. This bridleway connects to a PROW Footpath (AV2/70/3) which runs along the east boundary. Also, an unadopted path used by pedestrians stretches from the north-west to the south-east of the site. The site is not located within a Conservation Area or within the setting of a listed building. The site is allocated in the AVBLP (2006) as Playing Fields, Parks and Informal Open Spaces. There is land to the south-east of the school site that is designated as a Village Green.

The Proposal

The application proposes the erection of 2.4m high Betafence Securifor 3D weldmesh fencing finished in Green (RAL 6005) to match the existing fencing at the school entrance. The approximately 330m of new fencing would be erected and would run along the south, east and north boundaries of the school playing field. The existing galvanised palisade fencing to the east and north of the school's main building would be removed; 50m of the removed galvanised palisade fencing would be reused adjacent to the school's existing car parking area. The proposal also includes the installation of double gates to provide a 3m opening for maintenance access. The gates would be located to the north, south-east and west. In addition, two matching Robusta single pedestrian access gates are proposed that would have a 1.5m opening to the east and north of the proposed site. The proposal would also involve the removal of a 2m long section of an existing hedgerow which currently divides the playing field into two.

The application has been amended since its original submission in light of the concerns raised by consultees and in representations. The proposed fencing to the north and east has been stepped in by 2m to allow for the redirection around the site of an unadopted path that currently stretches across the playing field.

Relevant Planning History

- Application Code No. CD6/0313/160 – to develop a free standing classroom block (approved 23 May 2013).
- Application Code No. CD6/1010/106 – erection of an entrance extension to include new office and lobby (approved 3 December 2010).
- Application Code No. CD6/0105/181 – for the erection of an entrance extension to include new office and lobby (approved 14 March 2005).

- Application Code No. CD6/801/15706 – installation of a Storage Container (approved 28 September 2001).

Consultations

Local Members

Councillor Smith has been notified.

Councilor Marshall-Clarke was notified and commented that *“it is clearly identified in the application that, this site has for many years been used as a footpath to both the school and the only public ONLY publicly access to the green space in the east of the Town designated Village Green status. If the fence is erected residents on the Preston Avenue Estate would have almost a mile detour to access the Village Green. If the fence is placed 2m inside the boundary it would allow access to this much used facility.”*

Councilor Marshall-Clarke therefore requested that the access is maintained by this method.

Amber Valley Borough Council

The Council raised no objection to the proposal but identified that the site is next to a PROW that should not be blocked, as well as lying within a high, low risk and surface mining area. In addition, the Council also note that there are trees which benefit from Tree Preservation Orders (TPOs) within the proposed site and provided advice to the applicant regarding excavation works.

Alfreton Town Council

The Town Council made the following comments on the application:

“Whilst the Town Council and residents are very much in support of the safeguarding and security of the children, your proposed fencing puts local residents at significant inconvenience and loss of access and amenity. The area which you propose to fence has been used as public open space for many years; it is particularly used by the residents of the adjoining Flowery Leys Estate and Milton Avenue Estate as a through route, indeed we have evidence that previous senior staff at the school encouraged that use. The photograph enclosed to support the application also illustrates that it has been used for access.

You will be aware that 350 new homes are being built at the adjacent Outseats Farm and also, as part of that development, the Town Council recently acquired much needed public open space in this area.

The access to what will be three surrounding housing estates will be severely curtailed if the current plan for fencing off this area of land is approved. Also, in this regard it is important that you install some access to and over the

adjacent brook site to enable access to the open space and new housing, previously mentioned.

The Town Council is well aware that the 'top field' has been used as public open space for many years and it is important to retain that.

Similarly, the Town Council is aware that this land has been used as a right of way for many years and it is evident that an entrance in both the Milton Avenue and Flowery Leys fencing boundaries has provided this unimpeded access for many years.

Local residents, who have used that access for many years, who are aggrieved by the impending loss off the right of way, tell us that they would be prepared to make a claim for the footpath to be registered on the definitive map under previous user rights; they would be supported in such a claim by the Town Council.

The plan to close off the schools boundaries seems counter intuitive when there is an encouragement for health activities for children to walk to school and residents to walk between the estates.

Having said all that, the Town Council hopes that it can suggest a way to achieve the need for greater security for the School and still maintain important public access between the estates.

The Town Council's representation is that a pathway is provided on the outer perimeter of the fencing by inseting the perimeter of the fence by say 2 metres, together with access to the 'brook path'. Also it is proposed that the fence is relocated to allow a portion of the 'top field' to be retained as public open space."

Highway Authority

No objection.

Sport England

Raised no objections. Sport England considers that the proposed development falls within scope of the Exception 3 of the Playing Fields Policy and Guidance (March 2018), as the proposed development only affects land which is incapable of forming part of a playing pitch. Sport England further added that there could be benefits from protecting uncontrolled access and increasing flexibility by repositioning sections of the fencing which currently subdivides the playing field, thereby creating more pitch configuration options.

Publicity

The application has been advertised by site notice with a request for comments by 15 February 2018. In response to this publicity, a petition

containing 48 signatures and 3 representations has been received raising objections to the proposal on the following grounds:

Representations – Objections Summary

- The general public would no longer will be able to walk their dogs across the school field.
- Residents of Preston Avenue (and other streets) will be denied access to and from Milton Avenue without a long detour and children will not be able to play on the field or visit their classmates on the other side.
- Children often play football, rounder's, cricket, etc during the evenings, weekends and holidays on the school field because there is no green space/play area close by.
- The school field is used by the locals for family walks, a quiet place to relax, as well as a short cut to places of work and easy access to the school for children. *"It's our green area to have contact with untouchable nature"*.
- People who work on the Clover Nook and Cotes Park Industrial Estates would no longer be able to walk or cycle across to gain access to the footbridge over the A38.
- The builders of the Outseats farm housing development are opening up the overgrown public footpaths, and Amber Valley Borough Council (AVBC) has created a new greenspace, which would not be able to be reached, (without long detours) if the proposed fence/gate is erected.
- The only green space now available is the man-made Alfreton Park which requires people to drive across to the other side of town.

Petition

The petition objects to the erection of a school fence stopping access to public footpaths and greenspace from Milton Avenue.

Planning Considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the development plan unless there are any material considerations which indicate otherwise. In respect of this application, the relevant development plan policies are contained in the AVBLP (2006). The AVBDLP (March 2018), the National Planning Policy Framework (NPPF) (2018) and the associated Planning Practice Guidance (PPG) are also material considerations. The most relevant policies for the determination of this proposal are:

Amber Valley Borough Local Plan (2006)

LS1: Sustainable Development.

LS3: Design.

LC3: Playing Fields, Parks and Informal Open Space.

Amber Valley Borough Draft Local Plan (March 2018)

AVBC submitted a new Amber Valley Local Plan for consideration by the Secretary of State in March 2018. Following a recent suspension by the Inspector of the Examination in Public until April 2019 pending a green belt review, it is not anticipated that the emerging plan will be adopted before 2020. Whilst the policies of the submitted plan are a material consideration in the determination of this application, they are only of limited weight. The policies of the relevance to this application are:

SS1: The Presumption in Favour of Sustainable Development.

EN17: All Development Proposals.

IN4: Green Infrastructure, Parks & Open Space.

IN6: Safeguarded Land for Educational Facilities.

National Planning Policy Framework

The most relevant paragraphs from the NPPF are:

11: The presumption in favour of sustainable development.

38 and 49: Decision-making.

54-55: Planning conditions.

95-98: Promoting healthy and safe communities.

124 -127: Requiring good design.

The main considerations for this proposal are:

- Need for the Development.
- Design and Visual Impact.
- Public Right of Way.
- Playing Field and Open Space.

Need for the Development

The applicant describes the purpose of the proposed development within the application documents and states that *“The school playing field area has recently been used by members of the public for dog walking and as a shortcut between Flowery Leys Lane and Milton Avenue. There are ongoing issues with litter, dog fouling and anti-social behaviour on the playing field. To address the safeguarding and health and safety issues arising from this, the school require the site to be made secure by the erection of a boundary fence... it is proposed to remove and relocate some existing steel palisade fencing, to facilitate improved movement around the school.”*

Paragraph 95 of the NPPF requires decisions on planning applications to *“promote public safety and take into account wider security and defence requirements by:*

a) ... appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security.”

I acknowledge the concerns of the applicant and I accept that the issues raised can be a problem on school sites where they are open and can be accessed by the public. I am therefore satisfied that there is a justified need for the proposed development.

Design and Visual Impact

The proposed fencing and access gates to be erected to the east of the existing car parking area would be visible from Flowery Leys Lane. However, the proposed colour finish Green (RAL 6005) of the new fencing would be the same as the existing fencing along the school frontage and in keeping with the school. The proposed colour is recessive and would help to blend the fencing into the landscape and reduce its visual impact. The existing hedgerow along the school site frontage would also provide some screening. However, the proposed fencing which is to stretch from the school access to the existing hedgerow would be visible from the existing PROW which runs along the south and south-east boundary of the site and from the unadopted PROW. The site does, however, benefit from hedgerows and mature trees which provide some screening the site. The proposed fencing along the south, east and north boundary would also be finished in Green (RAL 6005) which would further reduce the visual impact of the development.

The proposed development would result in a loss of a 2m long section of hedgerow along the east and north boundaries of the site, to enable the relocation of the footpath around the site. Whilst it is regrettable that hedgerow would be lost, it is a relatively small section and its removal would enable better security and safeguarding at the school and improve the quality of school playing field site. In respect of the above, I consider that the proposal is in compliance with emerging Policy IN4. A number of the mature trees which screen the site are protected by TPOs which contribute to the visual amenity of the site and I therefore have recommended conditions to protect the trees within the site during the proposed works.

The emerging AVBDLP Policy IN6 safeguards land to the north of the main school building for future school expansion, new school or playing field. The policy safeguards the site from any development that could prejudice the provision. I do not consider that the proposed development would conflict with the policy, as the development does not encroach upon this area.

I am satisfied that the proposed development would comply with policies LS3 and LC3 of AVBLP and would not result in significant visual impact or harm the character or function of the school site.

Public Right of Way

The school site has a Bridleway (Alfreton AV2/4/1) which runs along the south boundary of the site. This Bridleway connects to a Footpath (AV2/70/3) which runs along the east boundary of the school site. These PROWs which provide

access for school pupils would not be obstructed by the proposed development.

There is an unadopted path which crosses the site, from the south of the school site to the north-west corner. The erection of the proposed fencing would prevent the use of this unadopted path and concerns have been raised about the impact this would have on the local community being able to access the PROW network and the public land to the south of the school. In response to these concerns, the applicant has amended the proposal and the fencing proposed along the east and north boundaries has been set back to create a 2m wide strip of land to allow for pedestrian access around the school field boundary, thereby maintaining access to the land beyond. This would retain access from Flowery Leys Lane to Milton Avenue for the local residents.

Playing Field and Open Space

The proposed site is identified in the AVBLP under Policy LC3, as playing field land. The policy relates to proposals for development which would result in the loss of playing field land and states that planning permission should only be granted planning permission if it complies with either sections A or B of the policy. Section A states:

“it can be demonstrated that there is no demand for their continued use either currently or in the foreseeable future, or that they will be replaced by alternative facilities, at least as accessible to current and potential new users, and at least equivalent in terms of size, usefulness, attractiveness and quality, or”

I am satisfied that the proposed development complies with Section B of Policy LC3 which states *“the proposals would not harm their individual character and function”*. The proposal seeks to improve the security of the school playing field and prevent the site being accessed by the general public. This would ensure that it can function as playing field properly and reduce the likelihood of dog fouling and anti-social behaviour activities which have previously resulted in damage to the playing field.

There are objections to the proposal on the grounds that the school field is currently open to the public and it is clearly used by local people for walking dogs and as a play area which, according to the applicant, creates issues with litter, dog fouling and anti-social behaviour which has created the need for the proposed fencing to secure the playing field boundary. However, the pedestrian path across the playing field is not recorded as a PROW on the definitive map of PROW. As has been described above, the fencing would be positioned so as to allow public access for pedestrians to continue, albeit, around the boundary. This would, however, result in the loss of a 2m strip of playing field land along the east boundary.

Sport England has been consulted on the proposal and has no objections. The loss of playing field land would fall within scope of Exception 3 of Sport England's Playing Fields Policy and Guidance (August 2018), as the proposed development would only affect land which is incapable of forming part of a playing pitch. Also, the proposal does not prejudice the use of any remaining area of playing field on the site or result in the loss of other sporting provision or ancillary facilities on the site.

I am satisfied that the loss of playing field land would comply with Policy LC3 b) of the AVBLP and would not harm the character and function of the school's existing playing field.

Coal Risk

As identified by Amber Valley Borough Council, the site is situated within a high risk and a low risk mining area. However, given the nature of development which results in no significant ground works, the proposal is exempt from the need to provide a desk based Coal Mining Risk Assessment and also the consequential need for the County Planning Authority to consult the Coal Authority on this matter.

Conclusion

In conclusion, I do not consider that the proposed development would cause any significant visual impacts or impact on the character of the school and function of the playing field. There is a justified need for the proposed development to prevent anti-social behavior which currently harms the function of the playing field. The applicant has addressed the concerns raised about access by enabling the pedestrian path to be re-routed around the site. I am satisfied that the proposal would not conflict with the policies of the development plan or the NPPF and it is recommended for approval.

(3) **Financial Considerations** The correct fee of £195 has been received.

(4) **Legal Considerations** This is an application submitted under the terms of the Town and Country Planning General Regulations 1992 for development which the Authority itself proposes to carry out.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 6.543.10

Application documents

Application Form received 1 December 2017, Photograph - Proposed Palisade Fencing and Photograph - Existing Palisade Fencing received 19 December 2017, Tree Survey received 12 June 2018, supporting Statement Revision A received 26 July 2018, Site Location Plan Revision C, Secure Boundary Fencing Revision B and Tree Protection Revision A received 31 July 2018.

Consultation responses from the Highway Authority dated 9 January and 18 June 2018, Amber Valley Borough Council – Planning dated 15 January, 15 February and 6 July 2018, Councillor Marshall-Clarke dated 12 March 2018, Alfreton Town Council dated 8 and 21 March 2018 and Sport England dated 24 September 2018.

Petition received 14 February 2018 and letters of representation various dates.

(7) **OFFICER RECOMMENDATION** That the Committee resolves that planning permission for application code number CD6/1117/68 be **granted**, subject to the conditions set out below:

Form of Development

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

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

- 2) Notice of the commencement of the development shall be provided to the County Planning Authority at least seven days prior to the start of works on site.

Reason: To enable the County Planning Authority to monitor the development in the interests of the amenity of the area.

- 3) The development shall take place in accordance with the details in the 1APP form dated 29 November 2017, Supporting Statement Revision A, Tree Survey, Photograph - Existing Palisade Fencing, Photograph - Proposed Palisade Fencing and the following drawing:

- Drawing no. 1700625/X/100 entitled 'Secure Boundary Fencing', Revision B.
- Drawing no. 1700625/X/101 entitled 'Site Location Plan', Revision C.
- Drawing no. 1700625/X/102 entitled 'Tree Protection', Revision A.

Reason: To enable the County Planning Authority to monitor the development in the interests of the amenity of the area.

- 4) The tree protection measures shall be in accordance with the Tree Protection Plan drawing no. 1700625/X/25 and be erected before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

Reason: To provide adequate protection of any existing trees and safeguard of their roots in the interests of preserving the amenity of the area.

- 5) Excavations within the root protection area of the existing trees, as identified by the Tree Protection Plan drawing no.1700625/X/25, shall be undertaken through hand-dig only and fencepost locations shall be chosen to avoid existing roots. Where locations cannot be repositioned to avoid existing roots, excavation should be kept to an absolute minimum and pre-emptive root pruning should be undertaken.

Reason: To provide adequate protection of any existing trees and safeguard of their roots in the interests of preserving the amenity of the area.

Statement of Compliance with Article 35 of the Town and Country (Development Management Procedure) (England) Order 2015

The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article. The applicant had engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required.

Footnotes

- 1) This permission, granted under the terms of Regulation 3 of the Town and Country Planning General Regulations 1992, is for the sole benefit of Derbyshire County Council and can only be implemented by that Authority.

- 2) The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible, be avoided. In exceptional circumstances where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account all of the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

<https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

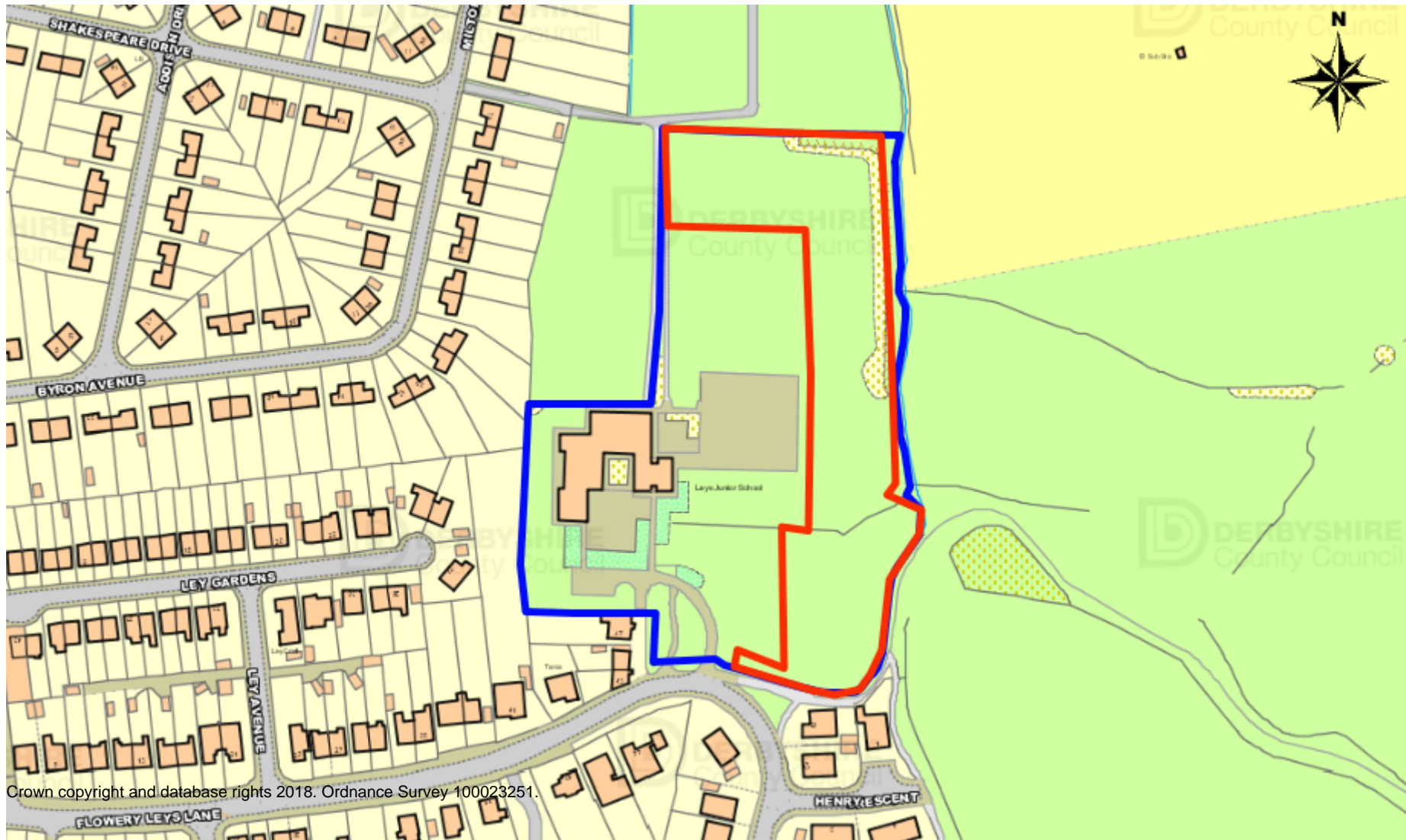
Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com or a similar service provider.

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

- 5) The proposals are immediately adjacent to a PRow. The route must remain unobstructed and on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 01629 533190.
- 6) Prior to any works on site, contact should be made to the Tree and Conservation Officer at Amber Valley Borough Council to ensure no trees covered by the TPOs are damaged during works.

Mike Ashworth
Strategic Director – Economy, Transport and Environment



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Scale = 1 : 2000

29-Aug-2018