

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 15 February 2012**

**Page**

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<b>APPLICATION REF. NO:</b>	11/00838/FUL
<b>STATUTORY DECISION DATE:</b>	15 February 2012
<b>WARD/PARISH:</b>	COLLEGE
<b>LOCATION:</b>	Glaisdale Court, Darlington
<b>DESCRIPTION:</b>	Variation of planning permission reference number 02/00937/RM2 dated 20 October 2006 for residential development - to permit substitution of house types on thirteen plots and revise the approved layout (Revised Scheme)
<b>APPLICANT:</b>	Persimmon Homes Teesside Limited

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**APPLICATION AND SITE DESCRIPTION**

This application is a resubmission following the decision by the Planning Applications Committee to refuse permission for a substitution of house types on thirteen plots and revise the approved layout (ref no 11/00468/FUL) for the following reason:

*“In the opinion of the Local Planning Authority, the proposed dwelling on Plot 118 would have an overbearing impact upon the residential amenities of the residents of Nos 58 and 60 Elton Road by reason of its design, increased elevation and close proximity to the plot boundary. The development would be contrary to Policy CS16 (Protecting Environmental Resources, Human Health and Safety) of the Darlington Core Strategy Development Plan Document 2011”*

The scheme has been revised by siting a Keating house type on Plot 118 and repositioning the dwelling further from the shared boundary with the dwellings on Elton Road.

The application site is the former Darlington College of Technology site which is now a residential development currently under construction. Due to the economic climate the completion of the development has taken longer than anticipated and the applicant has revisited the marketability of the site. The proposal involves the substitution of house types on thirteen plots along with a revision to the layout of the development. The new dwellings would be located in the south west corner of the site (seven plots) and on the north boundary (6 plots) with Dale Road. The following house types would be introduced into the development site:

- Two Hogarth house types – Four bedroomed detached dwelling
- Five Potter house types – Four bedroomed detached dwelling

- Two Hilliard house types – Five bedroomed dwellings
- Four Keating house types – Four bedroomed dwellings

The existing accesses to the development site off Cleveland Avenue would remain unchanged. The application site contains trees which are covered by a tree preservation order dated 2006 and the West End Conservation Area runs along the southern boundary of the site.

Prior to the submission of the previous application, the applicant carried out a Statement of Community Involvement exercise which resulted in three residents raising concerns over privacy distances; differences in land levels; flooding; increasing of the number of dwellings and trees. The applicant considered that their original proposal either met or exceeded the Council's guidelines in relation to privacy including taking account differences in levels and results in the loss of no further existing landscaping that the previously approved layout.

## **PLANNING HISTORY**

The relevant entries are:

02/00937/OUT In April 2004 planning permission was GRANTED subject to a Section 106 Agreement for the a residential development with associated open space – in outline

02/00937/RM1 In August 2004 planning permission was GRANTED for the erection of 129 dwellings comprising 3 & 4 storey apartment blocks, 3 storey town houses & single detached dwellings, parking & garages pursuant to outline planning permission 02/00937/OUT dated 30 April 2004 for residential development with associated open space

02/00937/RM2 In October 2006 planning permission was GRANTED for the erection of 114 No. new build dwellings comprising 4 storey apartment block, 3 storey town houses and single detached dwellings, associated parking and garages

11/00461/FUL In November 2011 planning permission was GRANTED, subject to a Section 106 Agreement, for the erection of 9 No additional dwellings within existing residential development and revisions to the layout

11/00468/FUL In November 2011 planning permission was REFUSED for variation of planning permission reference number 02/00937/RM2 dated 20 October 2006 for residential development - to permit substitution of house types on thirteen plots to and revise the approved layout. An appeal against this decision has been lodged with the Planning Inspectorate but currently remains undetermined

## **PLANNING POLICY BACKGROUND**

The relevant development plan policies are:

### **Darlington Core Strategy Development Plan Document (2011) Policies**

- CS1 Darlington's Sub-regional Role and Locational Strategy
- CS2 Achieving High Quality, Sustainable Design
- CS4 Developer Contributions
- CS10 New Housing Development

**Borough of Darlington Local Plan (1997) Policies**

- E2 Development Limits
- E12 Tree and Development

**Other Supporting Documents**

Supplementary Planning Document – Design for New Development  
Darlington Open Space Strategy 2007 - 2017

**RESULTS OF CONSULTATION AND PUBLICITY**

Two letters of objection have been received. The occupier of No 14 Glaisdale Court has raised the following concerns:

- *As the above planning application appears to be being re-considered we would like to re-register our objection to the change of plans for additional properties on the above site and in particular to the change to layout directly behind our own property (plot 13).*
- *When we purchased our property in 2010 we chose to buy a property, which on original Charles Church plans, had only a small section of boundary fencing with building in close proximity to our property. Changes to plans have gradually brought plot 17, new plan, southwards so that two thirds of our back boundary fence now has a two storey building in very close proximity. Our property appears to be one of the most directly affected by these amended plans, in terms of what we bought into and what is now proposed. We object to the change of plans on the basis of;*
- *Effect on light to our garden and property-Our west-facing garden will be significantly overshadowed, as will be our west-facing main rooms. The effect of shadowing on the garden will impact negatively on our use and enjoyment of this amenity. Afternoon and evening shadowing of our home would again significantly affect our enjoyment of this. The dimensions and in particular the height of the new property on plot 17, the Hilliard, are of concern to us. This property appears to be built over its garage. As a result the garage will not only be much nearer our boundary but may be higher than that originally planned for the Tennyson on the plot.*
- *Such close proximity of building will affect the ability to have garden trees because of root problems. Our planted bulbs, shrubs and grass are likely to be significantly affected by the loss of light.*
- *Visual impact/claustrophobic effect - overbearingness/privacy -We chose to move to an attractive property in a leafy area of Darlington, and specifically chose our plot because of the west facing bright aspect and garden .The change of plans will have a very claustrophobic impact on us and will affect our family privacy. It will be very overbearing and the visual impact will be extremely distressing and negative.*
- *We would expect an independent light survey to be undertaken with regard to the effect on our property before a balanced planning decision can be undertaken.*

A detailed letter of objection has been received from the occupier of No 29 Dale Road. The issues mentioned in the letter relate to:

- *The submitted plans (Cross Sections) and associated Reports (tree report and flood risk assessment) are not up to date and do not show or take into account a proposed 1.5m increase in ground level between the site boundaries with Dale Road and the proposed dwellings or the erection of a retaining wall. The Planning Committee is being misled*
- *Visual Impact*

- *Claustrophobic effect*
- *Overbearingness*
- *Effect on sky line*
- *Fumes from traffic*
- *Greater Impact on artificial light*
- *Far higher over shadowing and loss of privacy greatly increased*
- *Impact upon protected trees*
- *Properties on Dale Road and Elton Road have been flooded due to the proposed development*
- *The existing tip of ground materials will be used to increase land levels*
- *A new and accurate Flood Risk Assessment should be required and submitted*
- *The gable elevations of the proposed dwellings should face the properties on Dale Road to reduce overlooking and overbearingness of the development*
- *The developer has failed to submit up to date and accurate plans and reports*
- *There are more houses close to the Dale Road boundary*
- *Moving the houses must have a detrimental impact upon the protected trees. Excavating trenches to hold the retaining walls to hold back the 1.5metres artificial increase in land levels must have a detrimental impact on the protected trees*
- *The effect of the development on the biosphere must be contrary to policy*
- *The developer has already ignored flooding problems already experienced since work began in 2007*
- *Keating north facing back gardens opening out of French doors near to protected trees*
- *Trees have lost branches since the development begun and the small bats have disappeared. Some of the trees on the boundary of the site have disappeared despite being protected*
- *Promises that have been made over the years have been broken and concerns constantly ignored*
- *Proximity distances have decreased between the new dwellings and those on Dale Road*
- *To further request variation of approval on 18 plots and the substitution of house types is a vast alteration to which is basically an 11 acre cul – de – sac*
- *Statement of Community Involvement is totally dictatorial with no room betterment and consideration*

### **Consultee Responses**

**Northern Gas Networks** have raised no objections to the proposal

**Northumbrian Water** has raised no objections to the proposal

The **Environment Agency** has raised no objections to the proposal

The **Council's Environmental Health Officer** has raised objections to the proposal

The **Council's Highways Engineer** has raised no objections to the proposal

### **PLANNING ISSUES**

The main issues to be considered here is whether or not the proposal is acceptable in the following terms:

- Planning Policy
- Residential Amenity

- Impact Upon the Visual Appearance of the Surrounding Area
- Highway Safety
- Impact upon Trees
- Contaminated Land
- Flooding and Drainage

### **Planning Policy**

This application has been submitted under the provisions of Section 73 of the Town and Country Planning Act 1990 to vary planning permission reference number 02/00937/RM2. When determining such applications, the Local Planning Authority must consider any national and development plan policies and other material considerations which may have changed significantly since the original grant of planning permission.

The Council has formally adopted its Core Strategy Development Plan Document (DPD). The Core Strategy DPD sets out how the Borough will develop over the next 15 years (2011-2026), and forms part of the Local Development Framework for the Borough. The policies in the Core Strategy replace several policies in the Borough of Darlington Local Plan (1997) that were 'saved' under the provisions of Section 38 of the Planning and Compulsory Purchase Act 2004.

The application site is within the development limits for the urban area and would accord with Saved Policy E2 of the Borough of Darlington Local Plan 1997 and Policy CS1 of the Darlington Core Strategy Development Plan Document 2011. The site forms part of an existing housing development currently under construction and therefore the principle of housing development in this location has already been established but the proposal must accord with the general development control matters outlined below.

### **Residential Amenity**

The development site is surrounded by existing residential properties and the boundary consists of a mix of retaining walls and fencing supported by hedges and a belt of mature trees.

There are changes in ground levels between the existing dwellings on Dale Road, Elton Road and Abbey Road and the more elevated development site and the applicant has submitted Sectional Drawings to reflect the differences in the levels.

The Council's Supplementary Planning Document – Design for New Development (Design SPD) contains the minimum proximity distances that need to be met between existing and proposed dwellings. The minimum acceptable distance from habitable room window to habitable room window between two storey dwellings is 21metres. The minimum acceptable distance from a habitable room window to a non habitable room window or a blank wall between two storey dwellings is 12.5m. However, for every 1 metre difference in finished floor levels between the two dwellings, 2 metres must be added to the aforementioned standards.

### *Elton Road*

The previous submission was refused as Members of the Planning Applications Committee considered that the Bewick house type on Plot 118 would have an adverse impact upon Nos 58 and 60 Elton Road by reason of its design, increased elevation and close proximity to the plot boundary. The scheme has been amended by placing a Keating house type on Plot 118, which is a smaller house type with a reduced footprint. The dwelling would be approximately 12m from the shared boundary and 43m from the actual dwellings on Elton Road. The boundary consists of a low retaining wall and a mature privet hedge (in excess of 2m high) and there are no

principal habitable openings in the gable end of the Keating house type. It is considered that the revision will significantly reduce the potential impact of the proposed development upon Nos 58 and 60 Elton Road and that the reason for the refusal has been satisfactorily considered and overcome in accordance with the Supplementary Planning Document – Design for New Development document

It is also considered that the relationship between the proposed dwellings and a single storey garage block which is located on the shared boundary with the other dwellings on Elton Road is acceptable and will not harm their amenities.

#### *Dale Road*

The applicant has stated that whilst the proposed site levels in this location are generally slightly reduced from the original levels, Plots 15 – 19 to the rear of Dale Road will be increased by between 300mm and 700mm from the original levels due to the site having to be plateaued to ensure that the new dwellings are built on the same level as the larger adjacent detached dwellings already erected on the site. The areas of land to be raised will be restricted to immediately behind the footprint of the dwellings and their front gardens and driveways so the land between the rear of the dwellings and the boundary with Dale Road, which contains the protected trees, would not be raised. This is indicated on the Site Section Plan.

There would be four dwellings on the boundary with Nos 23 - 31 Dale Road with the two Keating house types having a rear garden depth of approximately 16m and the two Hilliard house types having a garden depth of approximately 20m. Each of these dwellings would have habitable rooms in their north elevations facing Dale Road. The Sectional Drawings indicate that there would be an increase in land levels of 2.6m between the floor levels of the proposed dwellings and the existing dwellings. The dwellings which are being proposed are staggered but they would be 40m and 45m from the rear elevations of the dwellings on Dale Road. Having taken into account the differences in ground levels Officers can confirm that the proposed proximity distances comply with the requirements of the Supplementary Planning Document – Design for New Development document.

It is considered that whilst there is an increase in the number of dwellings on this boundary than previously approved under planning permission reference number 02/00937/RM2, they are sufficient distance away from the dwellings on Dale Road to not be overbearing and dominant and the existing tree coverage also acts as a screen

#### *Glaisdale Court*

The existing dwellings on Plots 12 to 14 are large detached properties built under the provisions of the original planning permission. The rear elevations of these dwellings face onto the proposed dwellings to be sited on the Plots 15 and 17 (a Hilliard and Potter house type respectively) and they are separated by a boundary fence measuring approximately 1.65m high. These dwellings would be built on the same land levels.

The proximity distance between the rear elevation of the new Hilliard house type and the rear elevation of the existing dwellings (including the objectors dwelling on Plot 13) is approximately 14m. There are no habitable rooms in the rear elevation of this house type (there is a ground floor kitchen window but these are not considered to be principal openings) and therefore this spatial relationship accords with the Supplementary Planning Document – Design for New Development document.

The Hilliard house type does have an elongated rear elevation but the overall height of the building is reduced by a drop in the roof line as it continues from the main two storey element over the 1.5 storey element containing a double garage with living accommodation above. There is also a gap between this dwelling and the new dwelling to the south on Plot 15 which will allow natural daylight to the objectors dwelling and garden

A Potter house type occupies Plot 15 and its gable elevation is overlooked by the rear elevation of the existing dwelling on Plot 14 but there are no openings in the gable and the proximity distance between the two buildings accords with the Supplementary Planning Document – Design for New Development document.

#### *The Remainder of the Site*

The layout and relationship between the proposed dwellings and those that have been built or recently approved elsewhere in the housing development is considered acceptable.

#### **Impact Upon the Visual Appearance of the Surrounding Area**

The house types that would be introduced by this proposal are new to this development site. They are two storey dwellings replacing larger detached dwellings. The majority of the new dwellings have integral garages, but there are some properties requiring separate detached garages. Some of the dwellings would front onto the existing road network and the remaining dwellings would be accessed off shared drives, which is a common feature within the development.

The dwellings have been designed to take account of the Council's Supplementary Planning Document – Design for New Development document

The Core Strategy and the Design SPD sets out broad standards requiring the layout and design of new development to minimise energy consumption and maximise adaptive capacity. To help the Borough tackle climate change, developers will be expected to meet the minimum Code for Sustainable Homes Rating 3 in 2011/2012. Planning conditions can be imposed to secure the submission of a Sustainability Statement prior to the commencement of the development and to secure Final Code Certificate upon completion.

It is considered that the proposed new dwellings would not have an adverse impact upon the visual appearance of the surrounding area but it is appropriate to secure suitable materials via a planning condition, if permission was granted.

#### **Highway Safety**

The development site is accessed from two entrances off Cleveland Avenue which, along with the internal road network would remain unchanged. The Council's Highways Engineer has raised no objections to the proposal

#### **Impact upon Trees**

The trees to the north of Plots 17 to 20 are included within the tree preservation order dated 2006. Three trees would be removed in order to facilitate the dwelling on Plot 20. One of the trees is covered by the Order but a Tree Report states that the tree is of low quality and the remaining two trees are not covered by the Order. These three trees would have been removed to facilitate the development approved by the original planning permission.

The dwellings on the aforementioned plots have been resited further away from the trees to overcome concerns raised by the Council's Arboricultural Officer that the separation distance

was not sufficient and would lead to future requests by the occupiers to prune or fell the trees to aid light penetration. The applicant has confirmed that the land around the trees would not be raised as part of the proposed development.

The existing trees on the south west boundary of the site are not covered by a tree preservation order and are not considered worthy of such protection. An Ash tree of low quality on the boundary with Elton Road would be removed however the remainder would be retained as part of the proposal and the dwellings on Plots 119 to 122 have been slightly revised so that they are sited further from these trees.

The trees to be retained would be protected by appropriate fencing which would be secured by the imposition of a planning condition. Also it is considered prudent to impose a planning condition to remove permitted development rights from the dwellings on Plots 17 – 20 and 119 to 122 in order to ensure any enlargement, improvement or other alteration of the dwellings including any additional structures/building within their curtilages do not have an adverse impact upon the trees

The Council's Senior Arboricultural Officer considers that the proposed development is acceptable as it fulfils the requirements of BS: 5837.

### **Contaminated Land**

Previous site investigations have been undertaken at the site. A subsequent remediation statement has been produced and a validation report which covered the removal of certain areas of contamination. Validation of the depth of cover soils is currently ongoing across the site and it would be expected that these Plots will be treated in a similar manner and validated accordingly.

### **Flooding and Drainage**

The original planning submission (ref no 02/00937/RM2) for the whole site was accompanied by a Flood Risk Assessment, which is now dated 2006.

The applicant has confirmed that hard surface areas such as roofs and driveways will be designed to positively drain in the development site's surface water sewer system, which will prevent any surface water run off from the site. The surface water drainage system used at the development site has been designed with adequate storage capacity for flood events up to a 1:30 year storm. The sewers have been approved by Northumbrian Water and the discharge from the site into the public sewers is at a restricted flow rate to prevent any flooding issues downstream of the development.

They have also confirmed that approval from Northumbrian Water will be obtained for the drainage of the development which will effectively reduce the likelihood of flooding to the surrounding area by taking site run off into the development drainage and storage system.

Both Northumbrian Water and the Environment Agency have been consulted on the application and they have not objected to the proposal to substitute dwellings on thirteen plots within the whole site. However, Officers consider that it is appropriate to impose a planning condition to secure the submission a scheme for the disposal of surface water from the site

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to



exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **CONCLUSION**

The application site lies within development limits identified in the Borough of Darlington Local Plan and the Darlington Core Strategy Development Plan Document.

This application is a resubmission following a decision by Members of the Planning Applications Committee to refuse a previous planning application (ref no 11/00468/FUL) for the substitution of house types on thirteen plots and to revise the approved layout.

The revised design and layout of the development accords with the relevant policies in the Core Strategy and the Supplementary Planning Document – Design for New Development and it is considered that the previous reason for refusal of planning permission has been satisfactorily overcome. The proposed dwellings have no significant impact in terms of loss of daylight or sunlight to neighbouring dwellings and maintain adequate levels of privacy. The development respects the amenity and general character of the area. The location of the dwellings has been revised to ensure that the long term health of the trees within the application site will not be adversely affected. The application is not considered to raise any issues in relation to car parking provision, highway safety or crime prevention. The proposal accords with the relevant policies in the development plan set out below:

### **Darlington Core Strategy Development Plan Document (2011) Policies**

- CS1 Darlington's Sub-regional Role and Locational Strategy
- CS2 Achieving High Quality, Sustainable Design
- CS4 Developer Contributions
- CS10 New Housing Development

### **Borough of Darlington Local Plan (1997) Policies**

- E2 Development Limits
- E12 Tree and Development

### **Other Supporting Documents**

- Supplementary Planning Document – Design for New Development
- Darlington Open Space Strategy 2007 - 2017

## **RECOMMENDATION**

PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS

1. A3 – Implementation Limit (Three Years)
2. B4 – Details of Materials (Samples)
3. Prior to the commencement of the development, an Interim Certificate for Code for Sustainable Homes shall be submitted to and approved in writing by the Local Planning Authority. The necessary Code for Sustainable Homes Rating shall be agreed with the Local Planning Authority and the Certificate will include details to show how the approved development will meet the agreed Rating level.

REASON: To ensure that the development accords with the Darlington Core Strategy Development Plan Document 2011 and the Supplementary Planning Document – Design for New Development.

4. Upon completion of the development a Final Certificate for Code for Sustainable Homes shall be submitted to and approved by the Local Planning Authority to show that the development has been carried out in accordance with condition 3)

REASON: To ensure that the development has been carried out in complete accordance with condition 3) in accordance with the Darlington Core Strategy Development Plan Document 2011 and the Supplementary Planning Document – Design for New Development

5. Prior to the commencement of the development hereby approved (including demolition work), details shall be submitted of a scheme to protect the existing trees shown on the submitted plans to be retained. The submitted details shall comprise generally the specification laid down within BS 5837 and shall include fencing of at least 2.3m high, consisting of a scaffolding frame braced to resist impacts, supported by a weldmesh wired to the uprights and horizontals to dissuade encroachment. The agreed scheme of protection shall be in place before the commencement of any work, including demolition operations. The Local Planning Authority shall be given notice of the completion of the protection works prior to the commencement of any work to allow an inspection of the measurements to ensure compliance with the approved scheme of protection. Notwithstanding the above approved specification, none of the following activities shall take place within the segregated protection zones in the area of the trees:

- (a) The raising or lowering of levels in relation to the existing ground levels;
- (b) Cutting of roots, digging of trenches or removal of soil;
- (c) Erection of temporary buildings, roads or carrying out of any engineering operations;
- (d) Lighting of fires;
- (e) Driving of vehicles or storage of materials and equipment.

REASON - To ensure that a maximum level of protection in order to safeguard the well being of the trees on the site and in the interests of the visual amenities of the area.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order), no enlargement, improvement or other alteration of the dwellings on Plot Nos. 17 – 20 and 119 to 122, including any additional structures/building within the curtilage of the dwellings, shall be carried out without the prior consent of the Local Planning Authority, to whom a planning application must be made.

REASON - In order safeguard the health of the trees contained within the Borough of Darlington Tree Preservation (No 17) Order 2006

7. Prior to the commencement of the development a scheme for the disposal of surface water from the site shall be submitted to and approved in writing by the Local Planning Authority and the development shall not be carried out otherwise than in complete accordance with the approved details.

REASON - To ensure that that discharge of surface water from the site does not increase the risk of flooding from sewers in accordance with the requirements of Planning Policy Statement 25 - Development and Flood Risk.

8. B5 – Detailed Drawings (Accordance with Plan)

**SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION**

The application site lies within development limits identified in the Borough of Darlington Local Plan and the Darlington Core Strategy Development Plan Document.

This application is a resubmission following a decision by Members of the Planning Applications Committee to refuse a previous planning application (ref no 11/00468/FUL) for the substitution of house types on thirteen plots and to revise the approved layout.

The revised design and layout of the development accords with the relevant policies in the Core Strategy and the Supplementary Planning Document – Design for New Development and it is considered that the previous reason for refusal of planning permission has been satisfactorily overcome. The proposed dwellings have no significant impact in terms of loss of daylight or sunlight to neighbouring dwellings and maintain adequate levels of privacy. The development respects the amenity and general character of the area. The location of the dwellings has been revised to ensure that the long term health of the trees within the application site will not be adversely affected. The application is not considered to raise any issues in relation to car parking provision, highway safety or crime prevention. The proposal accords with the relevant policies in the development plan set out below:

**Darlington Core Strategy Development Plan Document (2011) Policies**

- CS1 Darlington's Sub-regional Role and Locational Strategy
- CS2 Achieving High Quality, Sustainable Design
- CS4 Developer Contributions
- CS10 New Housing Development

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**INFORMATIVE TO BE INCLUDED SHOULD PLANNING PERMISSION BE GRANTED**

**Highways**

The applicant is advised that contact must be made with the Assistant Director – Highways, Design and Projects (contact Ms P Goodwill – 01325 388760) to discuss naming and numbering of the development

**Northern Gas Networks**

Northern Gas Networks have stated that they have no gas mains in the area but their records indicate that gas pipes owned by other Gas Transporters may be present in the area. Further enquiries about such pipes should be obtained from the owners. Safe digging practices, in accordance with HSE publication HSG47 "Avoiding Danger from Underground Services" must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is the responsibility of the applicant to ensure that this information is provided to all persons (either direct labour or contractors) working for the applicant on or near gas apparatus