



Heading:

48/2013/0303
Plas yn Roe
Glascoed Road, St Asaph

12

Graham Boase
Head of Planning & Public Protection
Denbighshire County Council
Caledfryn
Smithfield Road
Denbigh
Denbighshire LL16 3RJ

Tel: 01824 706800 Fax: 01824 706709



Application Site

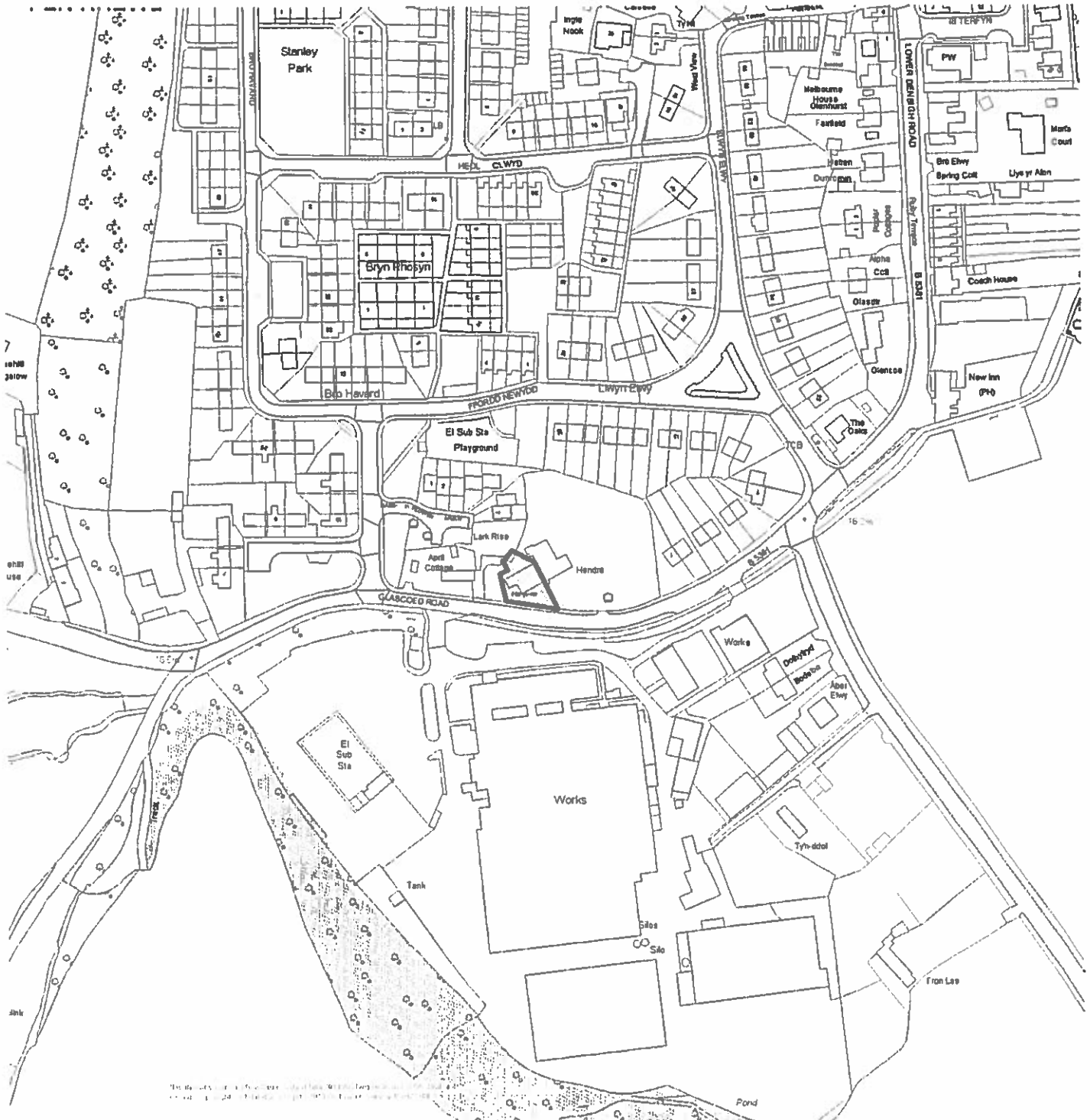


Date 11/7/2013

Scale 1/2500

Centre = 303298 E 373890 N

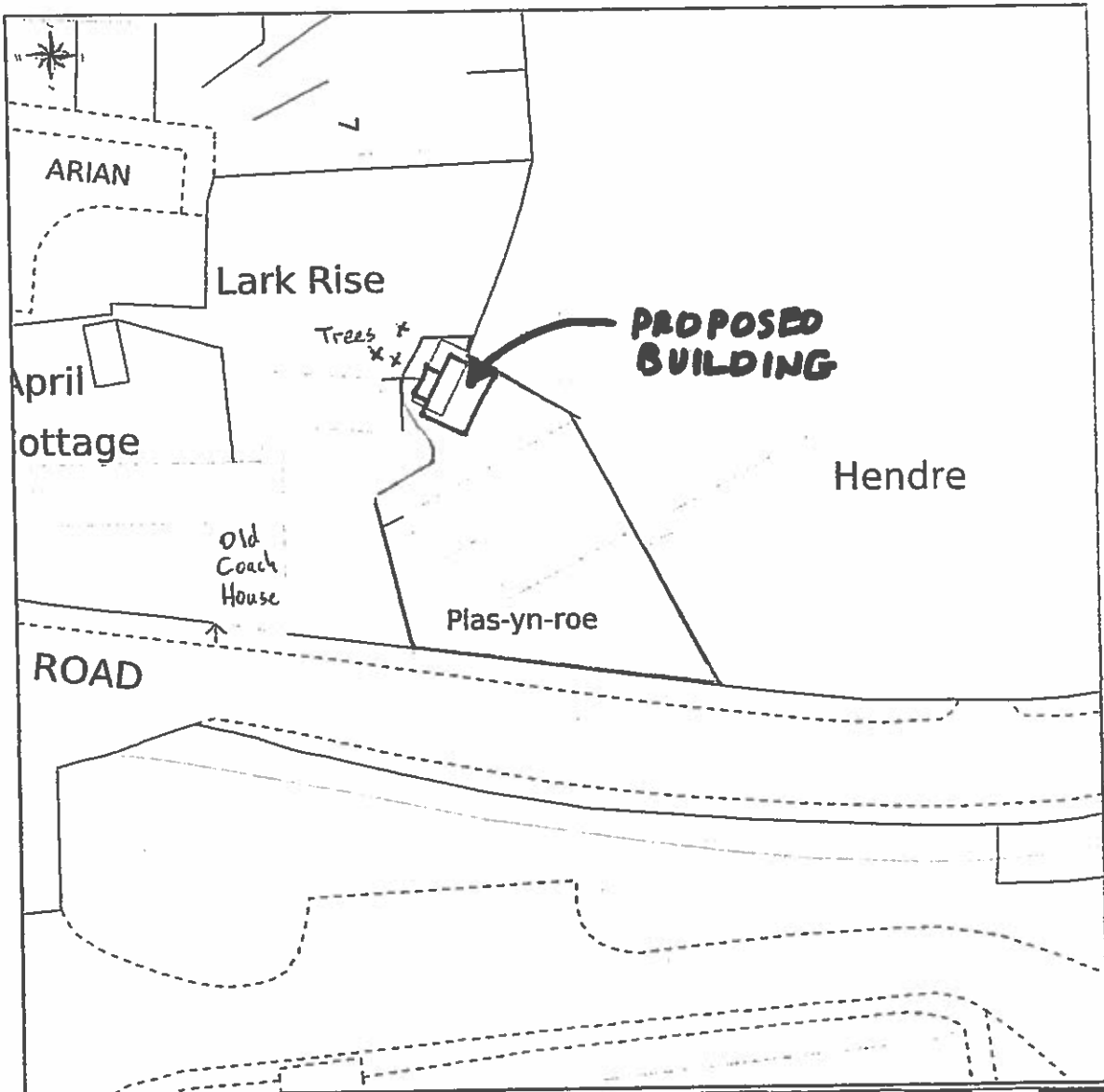
This plan is intended solely to give an indication of the LOCATION of the application site which forms the subject of the accompanying report. It does not form any part of the application documents, and should not be taken as representative of the proposals to be considered, which are available for inspection prior to the meeting.



SITE PLAN

Ref. 15/0.41 G

Plas yn Roe



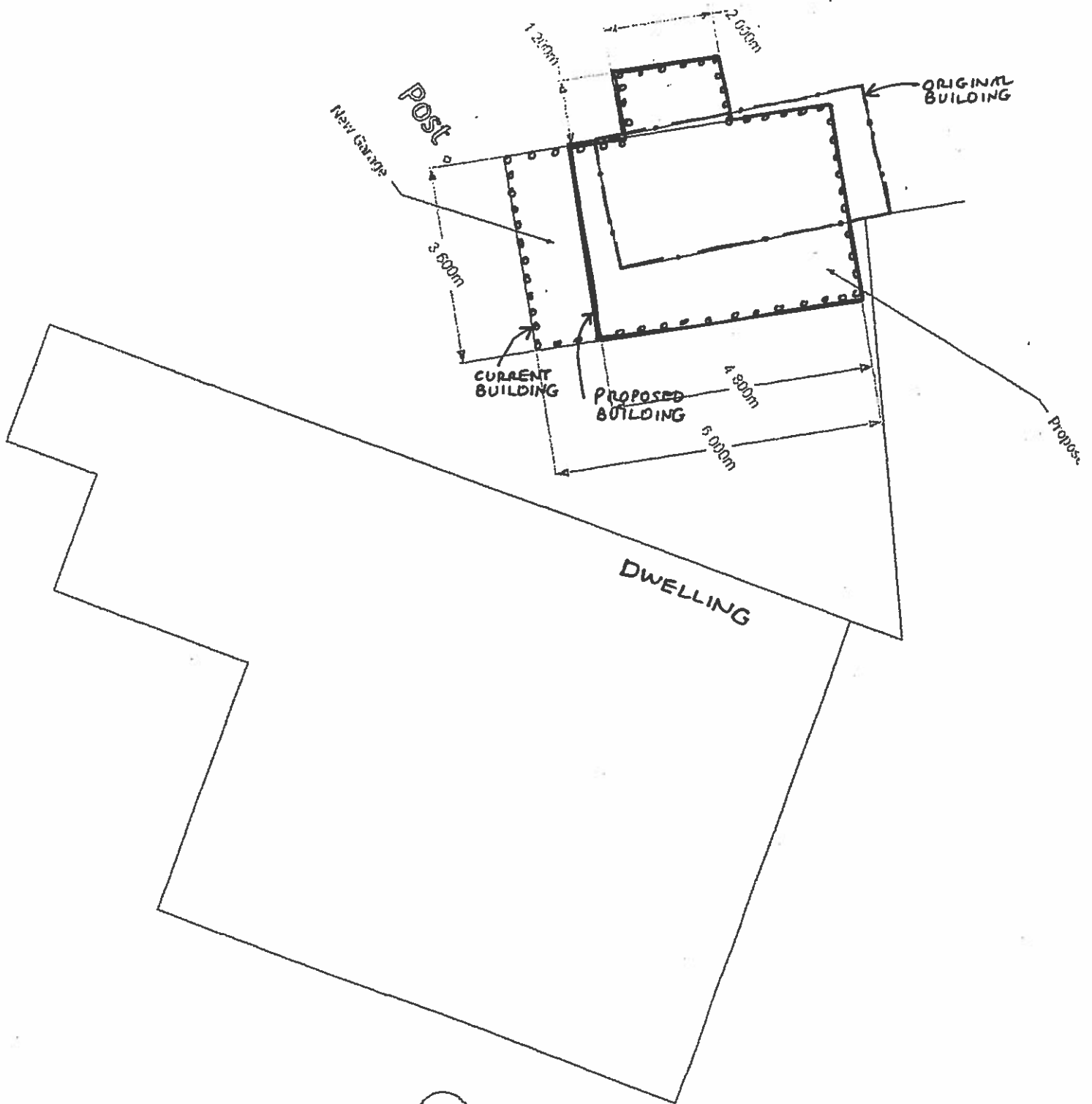
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Scale: 1:500, paper size: A4



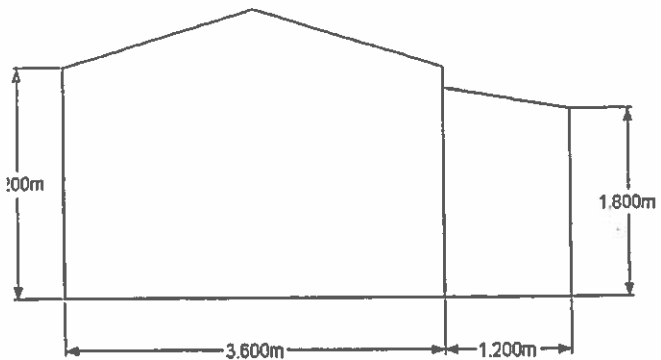
ENLARGED SITE PLAN TO
SHOW EXTENT OF :

- · — · ORIGINAL BUILDING
- · · · · CURRENT BUILDING
- PROPOSED BUILDING

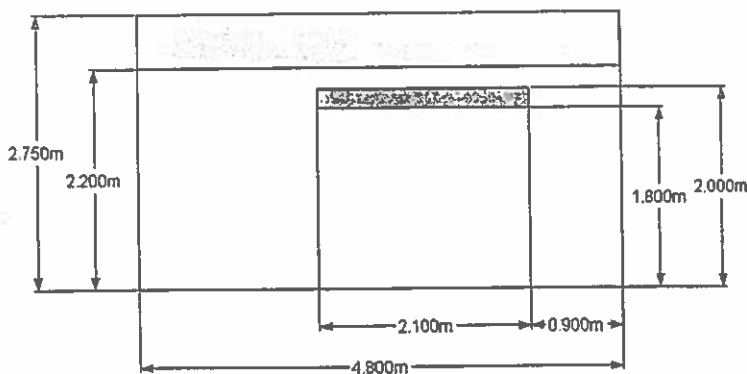


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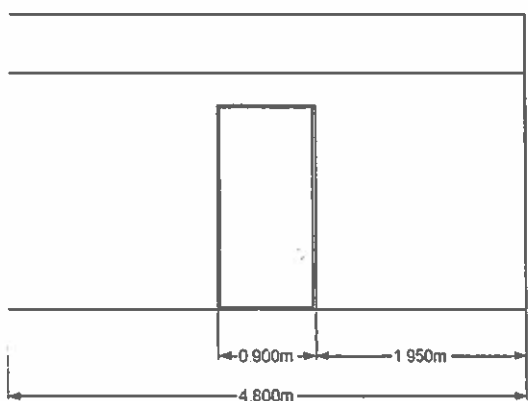
ELEVATION & FLOOR PLANS AS PROPOSED



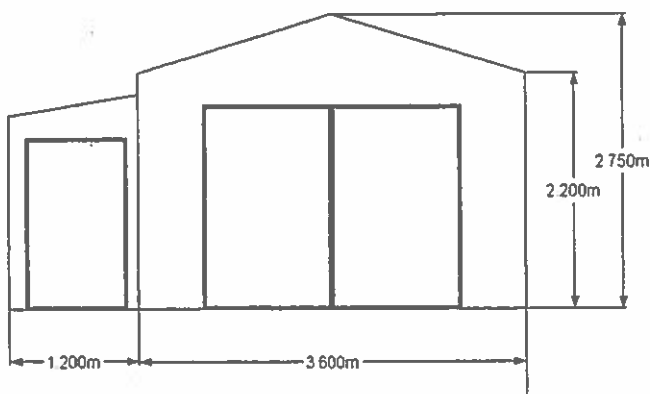
REAR ELEVATION



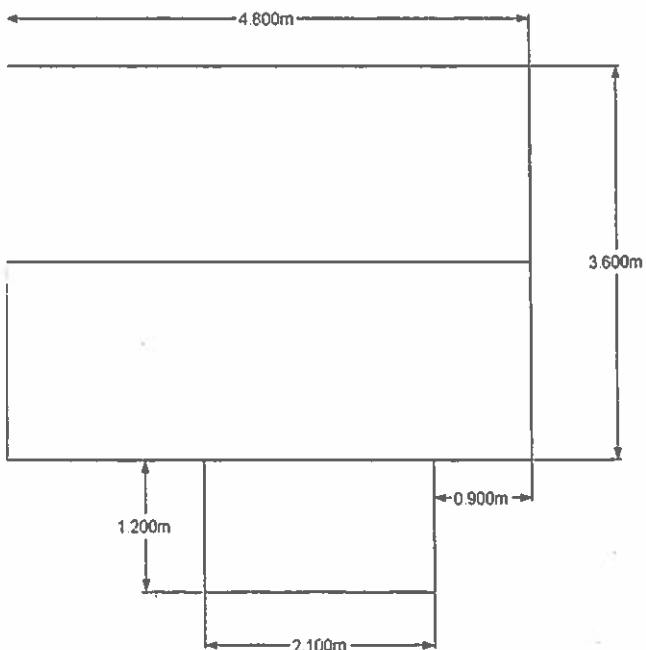
SIDE ELEVATION (LEFT)



SIDE ELEVATION

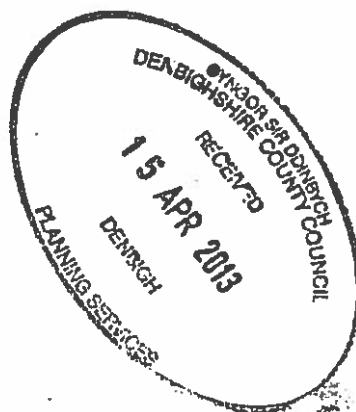


FRONT ELEVATION



PLAN

Ref. JH/Plan 3



ITEM NO: 12
WARD NO: St Asaph West
APPLICATION NO: Councillor Bill Cowie
 46/2013/0303/ PF
PROPOSAL: Erection of replacement timber garage and attached store (Partly in retrospect)
LOCATION: Plas Yn Roe Glascoed Road St Asaph
APPLICANT: Mr John Helm
CONSTRAINTS: Listed Building
PUBLICITY UNDERTAKEN: Site Notice - No
 Press Notice - No
 Neighbour letters - Yes

REASON(S) APPLICATION REPORTED TO COMMITTEE:
Scheme of Delegation Part 2

- Member request for referral to Committee

CONSULTATION RESPONSES:
ST ASAPH CITY COMMUNITY COUNCIL:
 "No objection."

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –
 Conservation Architect:
 Supports the proposal, and does not think that a refusal would be easily defensible given what was on the site before the current building.

RESPONSE TO PUBLICITY:

In objection

Representations received from:

Mr. & Mrs. T. Donovan, The Old Coach House, Glascoed Rd., St. Asaph, (also from Mr. B. Robinson, Gamlins Solicitors and Owen Devenport Ltd., on behalf of Mr. & Mrs. Donovan
 H. Waterson, 48, Llyn Elwy, St. Asaph
 P. Parry, 2, Hillside, St. Asaph

Summary of planning based representations in objection:

Visual amenity

The garage/store has a detrimental impact upon the setting of the listed buildings/garage is a somewhat utilitarian structure/the building is overbearing and out of scale with its surroundings and the original building/the proposal has resulted in the site being overdeveloped/loss of view.

Land stability:

Foundation works have caused instability issues, and have resulted in the loss of a tree

and there is evidence of the ground starting to crumble'/this threatens other trees and boundary fences.

Other Matters

Land is in a flood area/Application is retrospective in nature/Questions over the validity of the application (regarding ownership see section 1.6 following)/garage-store has been built in part on land outside applicant's ownership/Certificate B procedures should be followed/there is abuse of rights of access/a hedgerow and tree have been removed to allow for the development, contrary to answers on the application forms/ a new hedge has been planted on land outside the applicant's ownership/ there are Party Wall issues.

In support

Representations received from:

Mrs Christina Cameron, Hendre, Glascoed Road, St. Asaph, LL17 0NR
Swayne Johnson Solicitors, on behalf of the applicant

Summary of planning based representations in support:

The new garage is an improvement on the previous garage.

There is no convincing evidence that the present or recently dismantled garage encroaches on the neighbours land.

EXPIRY DATE OF APPLICATION: 10/6/2013

REASONS FOR DELAY IN DECISION (where applicable):

- timing of receipt of representations
- delay in receipt of key consultation response(s)
- additional information required from applicant
- protracted negotiations resulting in amended plans
- re-consultations / further publicity necessary on amended plans and / or additional information
- awaiting consideration by Committee

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 Members may recall that consideration of the application was deferred at the July 2013 meeting to allow further clarification of the land ownership situation, given receipt of representations challenging the applicant's understanding of the location of site boundaries. (See Section 1.6 following).
- 1.1.2 The application seeks permission for the retention of a timber garage within the curtilage of the dwelling, Plas Yn Roe. The application also proposes some amendments to the garage as built, to reduce its size in order to avoid entrance doors opening over the adjacent property.
- 1.1.3 The garage which is currently in situ measures 3.6 metres by 6 metres, and is 2.75 metres high to the ridge, and 2.2 metres to the eaves. The 'finished' garage would be reduced in length from 6 metres to 4.8 metres.
- 1.1.4 There is a small side extension to the garage which measures 2.1 metres by 1.2 metres and 2 metres high.
- 1.1.5 The roof of the garage is pitched, and the walls are constructed of timber. At present the walls are untreated, but as part of this application it is proposed to stain the timber a darker colour.

- 1.1.6 The garage is a replacement for a smaller garage which had a footprint of 5 metres by 2.2 metres, and a ridge height of approximately 1.90 metres (estimated).
- 1.1.7 Access to the garage from the highway is via a driveway, over which it is understood the applicant has a right of way.
- 1.1.8 The basic detailing is shown on the plans at the front of the report, which may assist understanding of the proposal to reduce the size of the building.

1.2 Description of site and surroundings

- 1.2.1 The garage/store is located to the rear of an existing dwelling within the town boundary.
- 1.2.2 To the north, west and east of the site are other residential properties. South of the site, on the opposite side of Glascoed Road is the Honeywell employment site.

1.3 Relevant planning constraints/considerations

- 1.3.1 The building is within the curtilage of a grade II listed building, Plas Yn Roe.
- 1.3.2 Planning permission for the building is only required because it is located within the curtilage of a listed building. Listed building consent is not required as the garage does not touch any element of the listed building or any associated structures. The garage would be 'permitted development' other than for the location as noted above.

1.4 Relevant planning history

- 1.4.1 None

1.5 Developments/changes since the original submission

- 1.5.1 Since the original submission, and partly in response to representations received, additional information has been submitted to clarify what alterations are proposed to the building, to avoid the main doors opening over adjacent land.

- 1.5.2 The application was subject to a site inspection panel meeting prior to the July Committee. The notes of the meeting were reported to committee in the late representation sheets and are reproduced below:-

The application was subject to a site inspection panel meeting at 11:00 am on Monday 22nd July 2013.

ADDENDUM REPORT

The application was subject to a site inspection panel meeting at 11.00a.m. on Monday 22nd July 2013.

In attendance were:

CHAIR	- Councillor Win Mullen James
VICE CHAIR	- Councillor Meirick Lloyd Davies
LOCAL MEMBER	- Councillor Bill Cowie
CITY COUNCIL	- Councillor Denise Hodgkinson

The Officers present were Paul Mead and Paul Griffin

At the site inspection panel meeting, Members considered the following matters:

- 1. The appearance of the garage.
- 1. The relationship of the garage to surrounding properties.

2. The relevance of land ownership disputes in determining planning applications.

In relation to the matters outlined:

1. Members observed the current materials and size, and the proposed alterations to the building (reduction in size, staining of timber) were clarified by Officers.
1. Members observed the location of the garage in relation to the dwellings Plas Yn Roe and The Old Coach House. The approximate location of the previous garage was indicated to Members by Officers.
2. In relation to land ownership disputes, Members were advised by Officers that the Council cannot become involved in such matters or take such disputes into account in determining applications. The current site boundaries were observed by Members.

1.6 Other relevant background information

- 1.6.1 Preceding paragraphs touch on the dispute which has arisen in the course of progressing the application over landownership and rights of access issues, and related questions over the validity of the application.
- 1.6.2 The basis of the dispute between the neighbours and the applicant centres on the neighbour's contention that part of the building which is the subject of the application is on land outside the applicant's ownership, that the access doors of the building open out onto land outside the ownership, and that there may be infringement of rights of access.
- 1.6.3 The inference by and on behalf of the neighbours is that the applicant should serve formal notice on the neighbours in connection with the application, and as part of the application form, complete Certificate B confirming the neighbours have been served the formal notice. The claim is that the application should be deemed invalid in these circumstances and the Planning Authority should not be seeking a determination on it.
- 1.6.4 Factually, in terms of the legal requirements on an applicant with a planning application, Members may be aware that each submission for full planning permission has to be accompanied by a formal statement from the applicant in relation to land ownership. In the majority of cases, this will involve an applicant certifying that nobody other than the applicant is the owner of any part of the land or building to which the application relates. This requires the completion of what is referred to as Certificate A, which is part of the planning application form. Where any part of the land or building to which an application relates is not in the applicant's ownership, the obligation on the applicant is to formally notify the party/parties with an interest through the service of a formal notice, and to certify on the relevant part of the application form the name and address of the owner(s), and the date such notice was served (this requires the completion of what is referred to as Certificate B, as part of the application form). There are other notification processes covering different scenarios, but these do not appear to be relevant to the current application.
- 1.6.5 The application under consideration was submitted in March 2013. The applicant completed Certificate A on the application forms, so certifying nobody other than him was the owner of the land / buildings to which the application relates.
- 1.6.6 Following consultation on the application, representations were submitted by and on behalf of the owner of the adjoining property advising that the garage /store had been erected partly on land in their ownership, and that the use of the building required access over and encroaching on their land, all obliging the Certificate B procedures to be followed. Deed plans and a surveyor's

plan interpreting the position of the boundaries were subsequently submitted in furtherance of the representations.

- 1.6.7 Without prejudice to the Council's position on the issue, the applicant was made aware of the information raising points on ownership / rights of access, and was asked for comment on the situation and whether the Certificate B procedures needed to be followed. The applicant's response prior to the July Committee was to confirm that there was no need to submit Certificate B, as the proposed revised detailing of the garage, reducing its length by 1.2 metres, would ensure no encroachment over the neighbour's land when the doors were opened.
- 1.6.8 Following deferral at the July Committee, Officers contacted the objectors and their Solicitors, offering a final opportunity to forward additional information / plans which may be relevant to resolution of the ownership situation. A further submission was then received from a Planning Consultant acting on behalf of the objectors, reiterating the siting of the garage lies at least in part on their client's land. The letter was accompanied by the same plan as submitted previously (prepared by a surveyor and illustrating their interpretation of the boundary from the title deeds, and the position of the garage). The letter repeats previous claims made by and on behalf of the objectors that as no Certificate B has been issued, the Local Planning Authority should regard the application as invalid.
- 1.6.9 The additional information was then forwarded to the applicant for a final opportunity to comment on the interpretation of the boundary and whether the Certificate B procedures should be followed. The applicant subsequently engaged his own solicitors to respond and a detailed letter has been received providing a summary of the conveyancing history and their interpretation of the deed plans, concluding that there is no convincing evidence that the present or recently dismantled garage encroaches on the land belonging to the objectors. This information in turn has been forwarded to the objectors for information.
- 1.6.10 In fairness to all parties, Officers have sought an opinion from the Legal Officer on the procedural issues raised by the submissions on the application, and whether it is appropriate to continue to process the application and refer it to Planning Committee for determination.
- 1.6.11 The Legal officer has advised in relation to the dispute over the extent of ownership, and the lengthy exchanges with the parties, that the Council cannot arbitrate between competing claims. The applicant has been given opportunity to confirm that the land is in his ownership, and the matter has to be considered on that basis. The applicant is clear that the land is in his ownership and it is not for the Council to look behind that. On the basis of the information, it is not considered there are clear grounds for the Council to conclude the Certificate B procedures need to be followed, and therefore it is not appropriate that the Council should deem the application to be invalid. Notwithstanding this conclusion, the consultation process and exchanges of correspondence have made the neighbours aware of the planning application and have permitted full opportunity to make representations on it including the revised plans which is a basic intention of the Certification process.
- 1.6.12 Having due regard to the above, Officers would advise the Committee that there is no further role the Planning Authority can play in the resolution of what is a private legal dispute over land ownership, and that there are no reasonable grounds to delay determination of the planning application without placing the Council at risk from a non determination appeal and the consequent risk of cost claim for unreasonable behaviour.

1.6.13 It is important in the context of this situation to note that the grant of planning permission would not convey any judgement from the Council on the landownership claims, nor would it convey the applicant the right to carry out development or to gain access across land which may be outside his ownership. It is an applicant's responsibility to ensure he can implement a permission without infringing private property rights. Ultimately, boundary disputes are matters which can only be resolved between the parties by agreement and by recording at the Land Registry, or through formal application to either the Land Registration Division of the Property Tribunal, or application to the Court. In these circumstances, in the event of planning permission being granted, a suitably worded cautionary note could be attached to the Certificate of Decision drawing these matters to the applicant's attention.

2. DETAILS OF PLANNING HISTORY:

2.1 None

3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

3.1 DENBIGHSHIRE LOCAL DEVELOPMENT PLAN (adopted 4th June 2013)

Policy RD 1 – Sustainable development and good standard design

Policy VOE 1 – Key areas of importance

3.2 Supplementary Planning Guidance

SPG 24 Householder Development Design Guide

3.3 GOVERNMENT POLICY / GUIDANCE

Planning Policy Wales Edition 5 November 2012

Circular 61/96 – Planning and the Historic Environment: Historic Buildings and Conservation Areas

4. MAIN PLANNING CONSIDERATIONS:

4.1 The main land use planning issues are considered to be:

4.1.1 Principle

4.1.2 Impact on visual amenity/setting of listed building

4.1.3 Impact on residential amenity

4.1.4 Land stability

4.2 In relation to the main planning considerations:

4.2.1 Principle

In relation to the principle of the development, the relevant planning policy in the Local Development Plan is Policy RD 1, which, subject to application of tests to ensure that developments do not have an unacceptable impact on the amenity and appearance of the original dwelling and surrounding area, supports the principle of development within development boundaries.

The proposal for development in a private garden is therefore considered acceptable in principle. Its detailed impacts are addressed below.

4.2.2 Impact on visual amenity/setting of listed building

Test i) of Policy RD 1 requires that development respects the site and surroundings in terms of siting, layout, scale, form, character, design, materials, aspect, micro-climate and intensity of use of land/buildings and spaces around and between buildings. Test iii) requires development to protect and where possible enhance the historic environment. Policy VOE 1 seeks to protect sites of built heritage, which would include listed buildings.

The garage has replaced an older, dilapidated structure, which had been sited on the site for a number of years, and can be seen on the 1979 land registry documents. The replacement garage is approximately 1 metre higher than the original garage, 1.4 metres wider (2.6 metres wider on the side extension), and is approximately the same depth as the original garage. The timber walls are to be stained a dark/black colour. It is located to the rear of the dwelling. Objectors consider the building to be inappropriate, out of scale and affects the setting. The Conservation Architect, on the basis of what was on site before, has not raised an objection to the proposal, and does not consider the garage to have a detrimental impact upon the setting of the listed building.

On the basis of the above details, with regard to the points of objection and the comments of the Conservation Architect, it is considered that the proposal would not have an unacceptable impact upon the character of the area, nor the setting of the listed building. The proposal is therefore considered acceptable in terms of visual amenity and is in accordance with the requirements of planning policies RD 1 and VOE 1.

4.2.3 Impact upon residential amenity

Policy RD 1, Test vi) requires that development does not harm the amenity of neighbouring residents by virtue of increased activity, disturbance, noise and provides satisfactory amenity standards itself.

As noted, the garage is a replacement of an older garage, and is sited adjacent to an area currently and historically used by both Plas Yn Roe and The Old Coach House for vehicle parking/manoeuvring. The boundary side of the garage is immediately adjacent to the garden area of The Old Coach House, and a newly laid hedge runs along this boundary.

Given the historic presence of a domestic garage in this location, it is not considered that the garage as proposed will have an unacceptable impact upon the residential amenity of occupiers of neighbouring dwellings. The height of the garage and its size in relation to the surrounding area is not considered to be over bearing. The use of the garage is not likely to result in unacceptable loss of privacy for neighbouring residents. It is considered therefore that the proposal is acceptable in terms of residential amenity and is in accordance with the requirements of planning policy RD 1.

4.2.4 Land stability

Local Development Plan Policy RD1 test (xi) requires proposals to satisfy physical or natural environmental considerations including land stability. Planning Policy Wales (Section 13.5) provides guidance on dealing with unstable land and requires such physical constraints to be taken into account at all stages of the planning process. PPW does however make it clear that responsibility for determining the extent and effects of instability remains that of the developer, who has to ensure that the land is suitable for the development proposed, as a planning authority does not have a duty of care to landowners.

Representations from, and on behalf of the owners of the neighbouring property express concerns over the impact of the development on the stability of the ground, referring to the loss of a tree, threats to others and evidence of the ground crumbling.

In acknowledging the points raised on the stability of the land, Officers are not aware of any evidence of a history of unstable land in this area and it would appear that the issue of concern to the neighbour may be the localised effect of works undertaken in close proximity to the boundary. In accordance with

advice in PPW, it would be routine practice to alert applicants to their own responsibilities and liabilities for ensuring development is undertaken in a safe manner. Whilst Officers' understanding is that legal responsibility for damage which may arise from building works close to a boundary rests entirely with a developer, it would be appropriate to consider imposing a condition on any permission to oblige submission and approval of plans showing the detailing of works involved on the foundation/concrete pad.

Other matters

Landownership

Section 1.6 of the report deals in some detail with the landownership matters raised in the course of progressing the application, and the advice from the Legal Officer on the issues relevant to the processing of the submission. There are separate obligations on a developer under the Party Walls Act in relation to notification of neighbours of developments which may involve excavating near or adjacent to a neighbouring building or building walls up to or astride a boundary with a neighbouring property. The Party Walls Act is separate from Planning and Building Control legislation.

Flooding issues

The site is not shown within a flood area on the most recent flood advice maps on the Environment Agency's website. Even if the land was within a flood zone, advice in TAN 15 – Development and Flood Risk in relation to householder applications suggests that applications for minor developments should not raise significant issues unless they are likely to have a direct and adverse effect on a watercourse or its flood defences, impede access to flood defences, or where cumulative impacts of such development could have a significant effect on flood storage capacity or flood flows. The development of the modest garage/store on the site of an older building at Plas yn Roe would respectfully raise no flood issues.

Retrospective application

Members will be aware that whilst such practice is not to be condoned, an applicant has the right to submit a retrospective application for permission, and that the Council's duty is to determine any such application purely on its land use planning merits.

Loss of boundary hedgerow/trees

Concerns are expressed in representations over the loss of trees and a boundary hedgerow which it is claimed is related to the construction of the garage/store in late 2012; at the replanting of a hedgerow by the applicant on land outside his title; and at the statement on the application forms that no trees or hedgerows need to be removed or pruned in order to carry out the proposals. Officers' response here is that in noting the basis of the comments over developments around the property boundary, it is inappropriate to pass retrospective judgement on the links to or culpability for damage to trees or removal of hedgerows prior to the making of an application, or to comment further on matters relating to the boundary dispute, which are civil matters. Factually, there are no landscaping/planting proposals shown on any plans with the planning application, and it is respectfully suggested the determination of the application should rest on assessment of the acceptability of the development as proposed, on its merits in terms of the land use planning considerations, such as the visual and residential amenity impacts outlined in Sections 4.2.2 and 4.2.3 of the report.

5. SUMMARY AND CONCLUSIONS:

- 5.1 Whilst acknowledging the difficult issues which have arisen in the course of progressing the application, the proposal is considered to be acceptable in terms of material planning considerations and adopted planning policy.

5.2 In the event of the Committee granting planning permission, the applicant would be made aware via an advisory note that the decision can not convey any judgement on the dispute over property boundaries, etc, and that it is his responsibility to ensure he has the right to undertake the development and has rights of access to the garage/store.

RECOMMENDATION: GRANT - subject to the following conditions:-

1. The proposed alterations to the garage as shown on the approved plan shall be completed within 3 months of the date of this permission.
2. Within 1 month of the date of this permission, the finished colour of the external walls of the garage shall be agreed in writing with the Local Planning Authority, and the building shall be finished in that colour within 3 months of the date of this permission.
3. Within 1 month of the date of this permission, detailed plans of the constructional details of the garage store, including door opening mechanism and the proposals for the reinstatement of the land around the building shall be submitted for the consideration of the Local Planning Authority, and such details as may be approved in writing by the Local Planning Authority shall be implemented within 3 months of the date of this permission.

The reason(s) for the condition(s) is(are):-

1. In the interest of visual amenity.
2. In the interest of visual amenity.
3. To ensure a satisfactory reinstatement of the land around the building.

NOTES TO APPLICANT:

You will be aware that the Local Planning Authority has received representation on behalf of adjoining property owners, drawing attention to the delineation of ownership in the application documents, and rights of access. You should ensure that you have the legal right to carry out the development before proceeding further as the Local Planning Authority cannot act as an arbitrator in a civil dispute over ownership, and the grant of planning permission does not convey any rights to undertake works on, or gain access through third party land which may be in conflict with the terms of private legal deeds or covenants. There are separate requirements in the Party Walls Act relating to developments up to and astride a boundary with neighbouring property, which you should ensure are or are not relevant to the development. Your attention is drawn to condition 3 of the permission and the need to ensure the land around the building is reinstated within a reasonable time frame.

