

Delegated Report

Planning Ref: 23/00644/CONDIT
Applicant: MR BARRY HOLDBACK
Ward: Hinckley Castle



Hinckley & Bosworth
Borough Council

Site: 2 Southfield Road, Hinckley, Leicestershire

Proposal: Section 73 application to vary the wording of Condition 2 (approved plans), Condition 5 (Waste), Condition 7 (Noise) and Condition 8 (Electric Vehicle Charging Points) attached to planning permission 22/00274/FUL.

1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

2. Planning application description

2.1. This application seeks to vary Conditions 2, 5, 7 and 8 of planning permission 22/00274/FUL. Application 22/00274/FUL was granted permission for a change of use from a former plumber merchant business to provide a mixed use development comprising a hair salon unit and unit for the sale of hair products at ground floor and residential accommodation at first floor level comprising 1x 2 bed flat and 1x 1 bed flat. Extension work was also granted permission as part of the application details to form a two storey side extension to increase the overall floorspace of the site.

2.2. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission. Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and un-amended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

2.3. A decision notice describing the new permission should clearly express that it is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

2.4. Existing Condition 2 states:

'The development hereby permitted relates to the following approved plans only:

- *Site Location Plan 8470-01-01*
- *Proposed Plans and Elevations drawing number 8470-03-01 Rev F*

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).'

2.5. The proposed re-wording of Condition 2 is as follows:

'The development hereby permitted shall be carried out in accordance with the following details:

- Site Location Plan 8470-01-01
- Proposed Plans and Elevations drawing number 8470-03-01 Rev F
- Party Wall details drawing number 8470-04-07
- As built survey drawing number 4026-01-a Rev A

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).'

2.6. Existing Condition 5 states:

'No development shall commence on site until a scheme that makes provision for waste and recycling storage and collection across the site has been submitted in writing to and approved in writing by the Local Planning Authority. The details should address accessibility to storage facilities and adequate collection point space at the adopted highway boundary. The approved scheme shall be implemented in accordance with the agreed details.'

Reason: To ensure the bin storage on site is not detrimental to the street scene and overall design of the scheme in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).'

2.7. The proposed re-wording of Condition 5 is as follows:

'The provision of waste and recycling storage and collection across the site shall be carried out in accordance with approved drawing 8470-03-01 Rev F and shall be retained as such thereafter.'

Reason: To ensure satisfactory waste storage facilities and means of collection on site in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.'

2.8. Existing Condition 7 states that:

'Development shall not begin until a scheme for protecting the proposed residential units from noise associated with the proposed commercial uses has been submitted to and approved by the Local Planning Authority. All works which form part of the scheme shall be completed before the permitted dwelling is first occupied.'

Reason: To help prevent noise pollution in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.'

2.9. The proposed re-wording of Condition 7 is as follows:

'Provision for protecting the approved residential units from noise associated with the approved commercial uses on site shall be implemented in accordance with drawing number 8470-04-07 and shall be retained as such thereafter'

Reason: To mitigate noise impacts and help protect residential amenity in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.'

- 2.10. Existing Condition 8 states that:

‘Prior to the commencement of development a scheme for the installation of electric vehicle charging points will be submitted to and approved in writing by the local planning authority. The scheme shall identify the number of units to benefit from electric charging points, together with full detail of the location and fitting of the units.

Reason: To ensure that the proposals meet the requirements of Policy DM10 (g) of the Site Allocations and Development Management Policies DPD (2016) and Paragraph 112 (e) of the National Planning Policy Framework’.

- 2.11. The proposed re-wording of Condition 8 is as follows:

‘The electric charging point provision on site shall be implemented in accordance with drawing number 8470-03-01 Rev F and retained as such thereafter.

Reason: To ensure the development meets the low emission, energy charging requirements in accordance with Policy DM10 (g) of the Site Allocations and Development Management Policies DPD 2016 and paragraph 112 (e) of the NPPF’.

3. Description of the site and surrounding area

- 3.1. The site is located to the south east of Hinckley along a main through route of the town. It is within walking distance of the town centre, the railway station and a number of services and facilities. The surrounding area befits its central location, with a mix of uses on show, though largely residential for the most part.

4.0. Relevant planning history

- 4.1. 21/01143/FUL – Mixed use development comprising change of use and part demolition of a former plumbers merchants and showroom to a hair salon and wholesale with side extension to include a first floor 1x bed flat and associated parking and landscaping – APPROVED

22/00274/FUL - Change of use from a former plumber merchant business to provide a mixed use development comprising a hair salon unit and unit for the sale of hair products at ground floor and residential accommodation at first floor level comprising 1x 2 bed flat and 1x 1 bed flat. Extension works to form a two storey side extension to increase the overall floorspace of the site - APPROVED

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents and displaying a site notice.

- 5.2. One third party comment has been received which states the following:

- Living in the house adjacent to this property, I would be concerned that the waste bins in the proposed collection area would cause an obstruction to vision when exiting my driveway onto the highway.

6. Consultation

- 6.1. No objection has been received from the following consultees:
HBBC Waste
HBBC Environmental Health
Local Highway Authority

7. Policy

- 7.1. Core Strategy (2009)
- Policy 1: Development in Hinckley
 - Policy 16: Housing Density, Mix and Design
- 7.2. Site Allocations and Development Management Policies DPD (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM6: Enhancement of Biodiversity and Geological Interest
 - Policy DM7: Preventing Pollution and Flooding
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2021)
 - Planning Practice Guidance (PPG)
 - National Design Guide (2019)
- 7.4. Other relevant guidance
Leicestershire Highway Design Guide (2020)
HBBC Good Design Guide

8. Appraisal

- 8.1. Key Issues
- Principle of development
 - Design and impact upon the character of the area
 - Impact upon neighbouring residential amenity
 - Impact upon highway safety
 - Drainage
 - Other matters

Principle of development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) July 2021) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009)

(CS) the Site Allocations and Development Management Policies DPD (2016) (SADMP).

- 8.4. The principle of development is established through the grant of planning permission for 22/00274/FUL. Since the grant of permission 22/00274/FUL there have been no changes in policy nationally or locally but it is to be noted that the replacement Local Plan for Hinckley and Bosworth has been delayed to 2024 and a further Regulation 19 stage is to be carried out. Therefore this document carries little weight at this time.

Design and impact upon the character of the area

- 8.5. Policy DM10(c), (d) and (e) of the SADMP seeks to ensure that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features and the use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the area generally and incorporates a high standard of landscaping.
- 8.6. Paragraph 134 of the NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance. Local policy is considered to accord with the NPPF.
- 8.7. The proposed variation of condition 2 in this instance seeks to approve a revised drawing which includes the provision of windows within the side elevations of the building and four rooflights. The floorplans show that these windows are for bathrooms and a small room on the first floor (study/office room). It is considered that a condition is required to ensure that the windows to the bathrooms comprise obscure glazing for privacy reasons. With this in place it is considered that the changes do not affect the overall design of the scheme to any greater extent than the existing permission.
- 8.8. There are no new policy/guidance considerations since the grant of the original permission which would alter the assessment of the proposal with respect to design and character.
- 8.9. Overall the scheme is considered to be acceptable and in compliance with Policy DM10(c), (d) and (e) of the SADMP, the Good Design Guide SPD and the requirements of the NPPF.

Impact upon neighbouring residential amenity

- 8.10. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities with in the vicinity of the site.
- 8.11. Paragraph 130 of the revised NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.12. Paragraph 185 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects

(including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

- 8.13. The Environmental Services Team has been consulted on this application and has raised no objections. Further clarification was sought on noise/insulation matters in the initial stages and plans were submitted to show the details on this which have also been approved at the Building Regulation stage of the development. Environmental Services are satisfied with these plans.
- 8.14. The revised floorplans show that new windows are proposed in the side elevations of the building for bathrooms and a small room on the first floor. 4 new rooflights are also shown. It is considered that a condition is required to ensure that the windows to the bathrooms comprise obscure glazing for privacy reasons to help protect amenity.
- 8.15. The plans as submitted are considered to be acceptable with respect to residential amenity considerations specifically in relation to Condition 7 (protecting the approved residential units from noise associated with the approved commercial uses on site). This plan will be added to Condition 2 as an approved plan.
- 8.16. There are no new policy/guidance considerations since the grant of the original permission which would alter the assessment of the proposal with respect to residential amenity.
- 8.17. Therefore, this application is considered to be acceptable in residential amenity terms and in compliance with Policy DM10 a and b of the SADMP, The Good Design Guide SPD and the requirements of the revised NPPF (2021).

Impact upon highway safety

- 8.18. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.19. Paragraph 111 of the NPPF (2021) outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.20. Paragraph 112 of the NPPF states that development should be designed to enable charging of plug in and other ultra low emission vehicles in safe, accessible and convenient locations.
- 8.21. The local highway authority have raised no objections to the proposed variation of conditions and are satisfied with the electric vehicle charging point details as submitted with this application.
- 8.22. A neighbouring property has raised concerns that the location of the bin storage will obscure visibility when exiting their property. The waste team are satisfied with the location of bin storage as is the local highway authority.

- 8.23. As such the proposal is considered to accord with Policies DM17 and DM10 (g) and the revised NPPF 2021 with respect to highway safety, access and low emission vehicle requirements.

Drainage

- 8.24. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.25. Paragraph 167 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 169 states that major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should take account of advice from the LLFA, have appropriate proposed minimum operating standards, have maintenance arrangements for the lifetime of the development and where possible provide multifunctional benefits.
- 8.26. The application proposes no changes to drainage matters associated with this development. As such the proposal is considered to accord with Policy DM7 of the SADMP and the requirements of the NPPF.

Other Matters

- 8.27. A Section 73 application cannot be used to vary the time limit for implementation, this condition must therefore remain unchanged from the original permission 22/00274/FUL.

9. Equality implications

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application.
- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. **Recommendation**

Grant planning permission subject to the following:

- Planning Conditions

Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of 22/00274/FUL (Three years from the granting of original planning permission).

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following details:

- Site Location Plan 8470-01-01
- Proposed Plans and Elevations drawing number 8470-03-01 Rev F
- Party Wall details drawing number 8470-04-07
- As built survey drawing number 4026-01-a Rev A

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. The vehicular access on Southfield Road to the northeast of the site that becomes redundant as a result of this proposal, shall have been closed permanently and reinstated within one month from occupation in accordance with details first submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of highway and pedestrian safety in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD and the National Planning Policy Framework (2021).

4. The development hereby permitted shall not be occupied until such a time as the parking and turning facilities have been implemented in accordance with approved drawing number 8470-03-01 Rev F.

Reason: In the interests of highway and pedestrian safety in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD and the National Planning Policy Framework (2021).

5. The provision of waste and recycling storage and collection across the site shall be carried out in accordance with approved drawing 8470-03-01 Rev F and shall be retained as such thereafter.

Reason: To ensure satisfactory waste storage facilities and means of collection on site in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

6. The ground floor commercial uses hereby permitted shall not open other than between the hours:
 - 07:30 to 19:30 Monday to Saturdays

- 08:00 - 12:00 Sundays
- And at no time on bank holidays

Reason: To protect residential amenity in accordance with Policy DM10 of the Site Allocations and Development Management Policies DPD 2016.

7. Provision for protecting the approved residential units from noise associated with the approved commercial uses on site shall be implemented in accordance with drawing number 8470-04-07 and shall be retained as such thereafter.

Reason: To mitigate noise impacts and help protect residential amenity in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

8. The electric charging point provision on site shall be implemented in accordance with drawing number 8470-03-01 Rev F and retained as such thereafter.

Reason: To ensure the development meets the low emission, energy charging requirements in accordance with Policy DM10 (g) of the Site Allocations and Development Management Policies DPD 2016 and paragraph 112 (e) of the NPPF.

9. The first floor windows to bathrooms on the side elevations of the development hereby approved shall be fitted with obscure glazing to a minimum of level 3 of the Pilkington scale. Once so provided the windows shall be permanently maintained as such at all times thereafter.

Reason: To safeguard the privacy and amenity of neighbouring dwellings from potential overlooking in accordance with Policy DM10 of the Site Allocations and Development Management DPD 2016 and the requirements of the NPPF.

INFORMATIVES

In dealing with the application, through ongoing negotiation the local planning authority have worked with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application and this has resulted in the approval of the application. The Local Planning Authority has therefore acted proactively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).