

Delegated Report

Planning Ref: 23/00235/FUL

Applicant: Mr Ian Fenny

Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: Marlpit Farm 56 Thurlaston Lane Earl Shilton

Proposal: Continued use of land as residential curtilage, retention of timber building, log store and fencing (retrospective)

1. Recommendations

1.1. Refuse planning permission subject to:

- Planning reasons outlined at the end of this report.

2. Planning application description

2.1. This planning application seeks full planning permission for the continued use of land as residential curtilage, and the retention of timber building, log store and fencing.

2.2. The additional residential curtilage sits within the southern part of the wider site to the rear of the two existing outbuildings, which is approximately 50m from the public highway. The new residential curtilage features new 1.8m high Euroguard style 'V' mesh fencing boundary treatment.

2.3. The timber storage building is single storey in massing with a maximum height of 2.4m. The structure externally measures 7.2m in width x 6.5m in depth, with a total footprint of 43.2sqm. The log store is adjacent to the timber storage building, which externally measures 2.5m in width x 1m in depth x 1.8m in height.

2.4. A Planning Enforcement Complaint was raised in relation to the timber building on the application site on 06 January 2023. In spite of this, the Applicant suggests that the works began on site on 10 January 2023 and were completed on 24 January 2023. Nevertheless, the application is therefore considered retrospective.

3. Description of the site and surrounding area

3.1. The 0.2ha application site comprises a large two-storey, rendered, detached dwelling, and two outbuildings to the south of the site. The dwelling was approved via planning permission 80/00458/4 on 28 May 1980.

3.2. The application site lies to the south of Thurlastone Lane, approximately a kilometre from the centre of Earl Shilton. However, 56 Thurlaston Lane is not considered to be within the identified settlement boundary of Earl Shilton. The siting of the timber building on the other hand is considered to be within Earl Shilton's settlement boundary and Earl Shilton's Sustainable Urban Extension.

3.3. Thurlastone Lane is an adopted and classified 'C' road that is subject to a 30mph speed limit. However, the speed limit changes to 60mph approximately 33m east of the site's access.

4. Relevant planning history

80/00458/4

- Use of land for residential development
- Permitted
- 28.05.1980

5. Publicity

5.1 The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.

5.2 No responses have been received.

6. Consultation

6.1 There have been no objections from the following consultants:

- Hinckley & Bosworth Borough Council (HBBC)'s Drainage Officer
- HBBC's Environmental Services' Pollution Officer
- HBBC's Waste Management Officer
- Local Highway Authority (LHA)

6.2 The Pollution Officer has requested information on the external lighting of the timber store. On 10 May 2023, the Agent stated that the development does not have any external lighting, and therefore the Pollution Officer has raised no objections to the scheme.

6.3 No further responses have been received.

7. Policy

7.1 Core Strategy (2009)

- Policy 2: Development in Earl Shilton

7.2 Site Allocations and Development Management Policies (SADMP) DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- 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 Earl Shilton and Barwell Area Action Plan (AAP) (2014)

- Policy 1: Sustainable Urban Extensions (SUE)
- Policy 6: Earl Shilton Urban Extension
- Policy 7: Housing in Earl Shilton Urban Extension

7.4 National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)

7.5 Other relevant guidance

- Good Design Guide (2020)
- Leicestershire Highway Design Guide (LHDG) (2022)
- National Design Guide (2019)

8. Appraisal

8.1. The key issues in respect of this application are therefore:

- Interpretation of case law
- Principle of development
- Impact upon the character of the countryside
- Impact upon the Earl Shilton Sustainable Urban Extension
- Impact upon residential amenity
- Impact upon parking provision and highway safety

Interpretation of Case Law

8.2 The concept of residential curtilage has relevance as Section 55(2)(d) of the 1990 Act records that the use of any land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken for the purposes of the Act to involve development of the land.

8.3 Although residential curtilage will frequently equate with the residential planning unit, it is not uncommon for land beyond the curtilage, but nonetheless in the same planning unit, to be in use for residential purposes incidental to the enjoyment of a dwellinghouse. Therefore, lawful incidental residential use does not necessarily denote curtilage land.

7.1. The Local Planning Authority are of the view that the incorporation of land into the property of the application site, which was outside of the originally defined planning unit, represents a material change in the use of that land to use for domestic garden purposes. It is an enlargement of the planning unit and a material change of use of that land to use for residential purposes, which requires planning permission.

Principle of Development

8.4 Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the adopted 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. Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the NPPF also identifies that the NPPF is a material planning consideration in planning decisions.

8.5 Paragraph 12 of the NPPF states 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. Where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.

8.6 The current Development Plan consists of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016). The spatial distribution of growth across the Borough during the plan period 2006-2026 is set out in the adopted Core Strategy. This identifies and provides allocations for housing and other development in a hierarchy of settlements within the Borough.

- 8.7 Both the adopted Core Strategy and the SADMP are over 5 years old, and Paragraph 33 of the NPPF states that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary. Therefore, this report sets out the relevant adopted Core Strategy and SADMP policies and refers to the NPPF and notes any inconsistencies between them.
- 8.8 Whilst the siting of the timber building is within the identified settlement boundary, the proposal is to associate the land with 56 Thurlaston Lane, which is not considered to be within the identified settlement boundary. Therefore, the application needs to be considered against policies relating to development in the countryside and the Earl Shilton Sustainable Urban Extension.

Impact upon the Character of the Countryside

- 8.9 Section 15 of the NPPF requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 174(b) specifically highlights that this should be achieved by, "Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services."
- 8.10 "To protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development," by the Council via Policy DM4 of the SADMP. Policy DM4 of the SADMP only considers development in the countryside sustainable where:
- a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
 - e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.
- 8.11 To be acceptable, the Policy expects development to not only fall within one of these categories, but also to meet five further criteria:
- i) It does not significantly impact adversely on the countryside
 - ii) It does not undermine separation between settlements,
 - iii) It does not create ribbon development,
 - iv) It does not compromise Green Wedges, and
 - v) It contributes to the National Forest strategy
- 8.12 The application does not comply with any of the requirements of Policy DM4 of the SADMP, and it is considered that only criterion i) is a concern for this application.
- 8.13 The development is not considered to be within the residential curtilage of the 56 Thurlaston Lane, and the delineation between the residential curtilage of the property and the open countryside is evident via historical satellite images from Google Maps. Therefore, the development is regarded as an alien intrusion into the countryside, which is exacerbated by the Euroguard style 'V' mesh fencing that has been erected around the land.

- 8.14 Furthermore, domestic use of land also brings the potential for other alien elements to be introduced on the land associated with living in a dwellinghouse such as: children's play equipment, ponds, sheds, storage, footpaths, amongst others. The domestic use of land, and its highly likely associated paraphernalia, is considered to generate additional works, which encroach upon, and ultimately cause significant harm to the character of this part of the countryside.
- 8.15 Consequently, the development is considered to have a significant adverse impact to the intrinsic value, beauty, open character, and landscape character, which is contrary to, and in conflict with, Policy DM4 of the SADMP, and Section 15 of the NPPF.

Impact upon the Earl Shilton Sustainable Urban Extension

- 8.16 Section 5 of the NPPF requires planning policies and decisions to support the Government's objective of significantly boosting the supply of homes in England. Paragraph 73 of the NPPF states that, "Strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way."
- 8.17 Policy 2 of the adopted Core Strategy requires the Council to allocate land for the development of a mixed use Sustainable Urban Extension to the south of Earl Shilton including 2000 environmentally sustainable homes 10ha of employment, neighborhood shops, a new primary school and children's centre, GP's Neighbourhood Policing, and green space provision.
- 8.18 Policy 1 of the Earl Shilton and Barwell AAP states that the land chosen for the development of the sustainable urban extensions is, "To ensure the greatest benefit to the settlement centres of Earl Shilton and Barwell, to facilitate ease of access between the new homes and the wider Hinckley Urban Area, with its services and employment opportunities, and to maximise the opportunity for joint public transport servicing of the existing and new housing areas, and to make viable routes to serve new development."
- 8.19 Policy 6 of the Earl Shilton and Barwell AAP requires development within the Earl Shilton Sustainable Urban Extension to generally follow the land uses required within Figure 3 of the Earl Shilton and Barwell AAP. Figure 3 designates the application site as a residential area with landscaping buffering. This is also highlighted in Policy 7 of the Earl Shilton and Barwell AAP, which requires a minimum of 1,600 homes within the Earl Shilton Sustainable Urban Extension in four main areas. One of the designated areas within Policy 7 is either side of Mill Lane, as far north as Thurlaston Lane, and as far south as the Wastewater Treatment Works.
- 8.20 The timber lodge building does not support any additional residential housing, as identified within Figure 3 and required by Policy 6 of the Earl Shilton and Barwell AAP. Subsequently, it is considered that the development does not ensure the greatest benefit to Earl Shilton and infringes on land that is required to deliver a sufficient supply of homes within the Borough.
- 8.21 Therefore, the development is regarded as an intrusion into the Earl Shilton Sustainable Urban Extension Area, which is safeguarded for the provision of new residential development to meet the housing needs of the Borough, which is contrary to, and in conflict with Policies 1 and 6 of the Earl Shilton and Barwell AAP, Policy 2 of the adopted Core Strategy, and Section 5 of the NPPF.

Impact upon Residential Amenity

- 8.22 Paragraph 130(f) of the NPPF requires planning policies and decisions to ensure that developments 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. Policy DM10 of the SADMP also states that proposals should not adversely affect the occupiers of the neighboring properties or the future occupiers of the property. The Good Design Guide SPD outlines that development will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise.
- 8.23 The retrospective development is not considered to result in any material harm to neighbouring residential amenity in accordance with Policy DM10 of the SADMP.

Impact upon Parking Provision and Highway Safety

- 8.24 Policy DM17 of the adopted SADMP supports development that would not have any significant adverse impacts on highway safety. Policy DM18 requires new development to provide an appropriate level of parking provision to serve the development proposed. Paragraph 111 of the NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the cumulative impacts on the road network would be severe.
- 8.25 The application is not considered to have a material impact on the public highway, and therefore, the scheme is regarded as in accordance with Policies DM17 and DM18 of the SADMP.

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, and the matters specified in Section 149 of the Equality Act 2010 in the determination 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. Conclusion

- 10.1 To summarise, the development of a timber building associated with the residential dwelling, 56 Thurlaston Lane, is located outside of any identified settlement boundary and is considered to be in the open countryside. The structure is also considered to be outside of the residential curtilage of 56 Thurlaston Lane.
- 10.2 By virtue of the incongruous mesh fencing, and the location of the timber outbuilding, the development is regarded as an intrusion into the countryside. Furthermore, the development is considered to introduce domestic paraphernalia into the countryside, which is alien to its character, and causes significant harm. Given the above, the development is contrary to, and in conflict with, Policies DM1 and DM4 of the SADMP, and Section 15 of the NPPF.
- 10.3 In addition, the timber building is regarded as an intrusion into the Earl Shilton Sustainable Urban Extension Area, which is safeguarded for the provision of new residential development to meet the housing needs of the Borough. As the development does not support any additional residential housing, the scheme does not provide any benefit to Earl Shilton, and is contrary to, and in conflict with Policies 1 and 6 of the Earl Shilton and Barwell AAP, Policy 2 of the adopted Core Strategy, and Section 5 of the NPPF.
- 10.4 Given the above, the development has the potential to cause harm to the countryside and to a site that is allocated by the Borough to support the supply of residential dwellings.
- 10.5 Taking National and Local Planning Policies into account, and regarding all relevant material considerations, it is recommended that planning permission is refused.

11. Recommendation

11.1 Refuse planning permission subject to:

- Planning reasons outlined at the end of this report.

11.2 Reasons

1. The development is not considered to be within the residential curtilage of 56 Thurlaston Lane, Earl Shilton, nor the identified settlement boundary of Earl Shilton, within the open countryside. By virtue of the incongruous mesh fencing, and the location of the timber outbuilding, the development is regarded as an intrusion into the countryside. This intrusion is considered to cause significant adverse harm to the intrinsic value, beauty, open character, and landscape character of the countryside, which is contrary to, and in conflict with, Policies DM1 and DM4 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and Section 15 of the National Planning Policy Framework (2021).
2. The scheme is regarded as an intrusion into the Earl Shilton Sustainable Urban Extension Area, which is safeguarded for the provision of new residential development to meet the housing needs of the Borough. As the development does not support any additional residential housing, the development is not considered to provide any benefit to Earl Shilton, contrary to, and in conflict with, Policies 1 and 6 of the Earl Shilton and Barwell Area Action Plan (2014), Policy 2 of the adopted Core Strategy (2009), and Section 5 of the National Planning Policy Framework (2021).

a. Notes to Applicant

1. The application has been determined in accordance with the following submitted details:
 - Application Form (submitted: 13.03.2023)
 - Design and Access/Planning Statement (submitted: 13.03.2023)
 - Floor Plan & Elevation Plan – Drg No. 1003 (submitted: 13.03.2023)
 - Planning Statement (submitted: 13.03.2023)
 - Revised Layout (submitted: 03.04.2023)
 - Revised Location Plan (submitted: 03.04.2023)