

Delegated Report

Planning Ref: 23/00933/CONDIT
Applicant: CHRISTOPHER MCMANUS
Ward: Hinckley



Hinckley & Bosworth
Borough Council

Site: Cold Comfort Inn, Rogues Lane, Hinckley, LE10 3DX

Proposal: Variation of condition 9 of planning permission 22/01009/FUL. To reword condition 9 to request a nocturnal bat emergence and activity survey for the brick barn only

Recommendations

- 1.1. **Grant planning permission** subject to the conditions at the end of this report.

Planning Application Description

- 2.1. Application 22/01009/FUL for the 'Proposed single storey porches, change of use of existing barn to dwellinghouse, proposed basement, garage, two storey rear and side extension to existing farmhouse and alterations (retrospective)' was granted approval on 20/12/2022.

- 2.2. Condition 9 of that permission stated that:

'No development shall commence on any building until 1 nocturnal bat emergence and activity survey to update the existing submitted Preliminary Bat Roost Assessment and Bird Survey dated August 21 by Hillier Ecology has been submitted to and approved in writing by the Local Planning Authority. The updated survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method of protection). No development shall be undertaken except in accordance with the approved scheme of mitigation.'

Reason: In order to protect the protected wildlife species and their habitats that are known to exist on site in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016)'.

- 2.3. Unfortunately the submitted report by Hillier Ecology to discharge that condition was not acceptable for a number of reasons:

1. It does not contain any information on a mitigation scheme, which is required by the condition.
2. The survey work is not of an acceptable standard, and is not in accordance with any of the bat survey good practice guidelines.
3. Hillier Ecology went into liquidation recently.

- 2.4. Even without all the above being an issue, the site requires an EPS licence prior to works being able to start on site. The surveys undertaken so far are not sufficient to enable the applicant's new consultant to apply for a licence this year – three activity surveys between May-September are required, with one only being acceptable in September if the others have been undertaken between May-August. These surveys need to be undertaken within a year of the licence application, meaning that this will not be possible now until late summer 2024.

- 2.5. To undertake a survey in September and providing a mitigation scheme now would be pointless, given the concerns with the previous Consultants work, and the fact that September is a sub-optimal month for bat surveys.
- 2.6. It was decided the best approach was to submit a S73 Application instead to have Condition 9 of 22/01009/FUL reworded as the applicant is seeking to make a meaningful start on site by removing the metal framed barns, clearing the site and start the excavations for the new dwelling (whilst not touching the brick barn).
- 2.7. This application therefore seeks minor material changes to permission 22/01009/FUL. Following correspondence with the Agent it was agreed an acceptable approach would be to reword the Condition 9 to:

‘No works shall commence on the brick barn identified in the Preliminary Bat Roost Assessment and Bird Survey dated August 21, until 1 nocturnal bat emergence and activity survey to update the existing submitted Preliminary Bat Roost Assessment and Bird Survey dated August 21 by Hillier Ecology has been submitted to and approved in writing by the Local Planning Authority. The updated survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method of protection). No works on the brick barn shall be undertaken except in accordance with the approved scheme of mitigation.

Reason: In order to protect the protected wildlife species and their habitats that are known to exist on site in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016)’.

Description of the Site and Surrounding Area

- 3.1. Cold Comfort Farm is located within open countryside to the north of Hinckley. It is accessed via a single width track from Rogues Lane which serves a number of uses including the applicant’s landscaping contractor business; a dog day care centre; various equestrian uses and other residential properties.
- 3.2. The application site is contained within land under the applicant’s wider ownership and includes a number of redundant farm buildings to the north/north east and a mobile home, along with open land used for storage of materials. Within the wider ownership of the applicant there is the original farmhouse; a single storey barn to the south east of the courtyard, a 2-storey barn beyond that; buildings and a yard area used in association with the landscaping contract business; stables and paddock land and fields on the eastern side of the access drive, which is also in the applicant’s ownership. The two-storey barn abuts the rear north-east of the farmhouse with a similar roof ridge. To the north-west of the barn are dilapidated sheds clad with corrugated metal sheeting which are to be demolished as part of any development.
- 3.3. Planning permission for extensions and alteration to buildings on the site has been previously granted under 12/00542/FUL (updated by 12/00893/CONDIT). This was for the conversion of 2 of the existing barns on the site and the extension of one to create a total of two dwellings on the site with shared facilities with the detached single storey brick barn.
- 3.4. Works have been carried out to the detached red brick barn to the south-east of the application site, however, this has not been completed in accordance with the approved plans and as such does not benefit from a valid planning permission and

the remainder of the works on the site could not be carried out on the basis of it being extant.

3.5. Relevant planning history

22/01009/FUL

- Proposed single storey porches, change of use of existing barn to dwellinghouse, proposed basement, garage, two storey rear and side extension to existing farmhouse and alterations (retrospective)
- Permitted
- 20.12.2022

20/00485/FUL

- Extensions and alterations to existing barn to form new dwelling
- Refused
- 01.10.2020

12/00542/FUL

- EXTENSIONS AND ALTERATIONS TO EXISTING FARMSTEAD TO FORM TWO COMBINED DWELLINGS
- Permitted
- 15.08.2012

12/00893/CONDIT

- VARIATION OF CONDITION 14 OF PLANNING PERMISSION 12/00542/FUL FOR EXTENSIONS AND ALTERATIONS TO EXISTING FARMSTEAD TO FORM TWO COMBINED DWELLINGS
- Permitted
- 03.12.2012

(The reasons for the refusal of 20/00485/FUL were: The proposal by virtue of the size, scale and mass of the proposed extension, which is not subordinate to the existing buildings on the site, would fail to comply with Policies DM4 and DM15 of the Site Allocations and Development Policies Development Plan Document 2016 and Hinckley and Bosworth Good Design Guide adopted 2020.

No information has been submitted to demonstrate that the building is no longer viable in its current use; or that it is in a structurally sound condition and is capable of conversion without significant rebuild or alteration; or that protected species would not be harmed through the conversion of existing buildings. As such the proposal would fail to comply with Policies DM4, DM6 and DM15 of the Site Allocations and Development Policies Development Plan Document 2016).

Publicity

- 5.1. Neighbouring properties have been notified of the application.
- 5.2. No representations have been received in response to the neighbour notification.

Consultation

- 6.1. LCC Ecology have been consulted and no objections to the proposal have been received but the wording of the suggested Condition should be '**No works** shall commence on the brick barn identified....' rather than No development shall commence on the brick barn identified....'
- 6.2. The planning condition currently states work cannot start on any building, however the Preliminary Bat Roost Assessment and Bird Survey (Aug '21) only refers to the brick barn with no reference to the metal framed barn.
- 6.3. LCC Ecology commented that 'Removing the steel barns will potentially alter how bats use the site, but since they are not suitable for roosting there is no objection to that. It is suggested though that the new wording states not just 'development' of the brick barn but no works. And also no lighting of the barn during the surrounding works'.

Policy

- 7.1. Site Allocations and Development Management Policies 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 DM15: Redundant Rural Buildings
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.2. National Planning Policies and Guidance
 - National Planning Policy Framework (NPPF) (2019)
 - Planning Practice Guidance (PPG)
- 7.3. Other relevant guidance
 - Good Design Guide (2020)
 - National Design Guide (2019)

Appraisal

- 8.1. The principle of development along with other aspects such as design and impact upon the character of the area, impact upon neighbouring residential amenity, impact on highway safety, drainage has been approved under application 22/01009/FUL. The key issues are therefore:
 - Impact on Biodiversity

Impact upon Biodiversity

- 8.2. Policy DM6 of the SADMP requires development proposals to demonstrate how they conserve and enhance features of nature conservation. Paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (in the manner commensurate with the statutory status or identified quality in the development plan)

recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.

- 8.2.1 As is set out in LCCs ecology comments and the above content of the report, the amendment would allow work to commence on site whilst still affording protection to the bats in the brick barn. The amendment continues to ensure compliance with Policy DM6 of the SADMP.

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

- 10.0 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Using the standard method as outlined by MHCLG, Hinckley and Bosworth Borough is able to demonstrate 4.89 years supply of deliverable housing at 1st April 2022. However, the housing policies in the adopted Core Strategy and the adopted SADMP are now considered to be out of date as they focussed on delivery of a lower housing requirement than required by the up-to-date figure. Therefore, the 'tilted' balance in paragraph 11(d) of the Framework applies where permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is weighed in the balance of the merits of the application when considered with the policies in the SADMP and the Core Strategy which are attributed significant weight as they are consistent with the Framework. Therefore, sustainable development should be approved unless other material considerations indicate otherwise.

- 10.1 The application site is located in the countryside where proposals for the change of use, re-use and/or extension of existing rural buildings to secure alternative uses is, taking into consideration nearby services and facilities available at Hinckley, generally considered to be sustainable and therefore supported by adopted strategic planning policies subject to all other planning matters being satisfactorily addressed.
- 10.2 The proposed conversion, extensions and alterations to form 2 new dwellings would be proportionate to the size, scale, mass and footprint of the original building; would lead to the enhancement of the immediate setting; and has been justified through adequate demonstration that the building is in a structurally sound condition and is capable of conversion without significant rebuild or alteration. Satisfactory access and parking and turning provision could be provided such that there would be no significant adverse impacts on highway safety. Protected species would continue to not be harmed through the conversion of the existing building with varied condition.
- 10.3 Policy DM4 is one of the “most important” for determining the application having regard to paragraph 11d of the Framework. The conversion of these agricultural buildings would not have a harmful impact on the character and appearance of the area. Demolishing the unused sheds with the additional landscaping which will be conditioned would improve the appearance of the site and reduce the level of perceived development.
- 10.4 The proposal also complies with Policy DM15: Redundant Rural Buildings.
- 10.5 The benefits of the proposal when taken together would outweigh the harm identified. Therefore, the proposal would not have a significant harmful impact on the character and appearance of the area and would not have a harmful impact on the setting of two Listed Buildings and would accord with Policies DM1, DM4, DM10, DM15, DM17 and DM18 of the SADMP.
- 10.6 The application is therefore recommended for approval subject to conditions and planning obligations.

11 Recommendation

11.1 **Grant planning permission** subject to the conditions below.

11.2 Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of the original planning permission 22/01009/FUL (dated 6 January 2023).

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 not be carried out otherwise than in complete accordance with the submitted application details, as follows:

Site Plan, Drg no: 7970-03-04 C Received on 13th December 22

Existing annex plans & elevations, Drg no: 7970-03-01 D
Existing & Proposed Floor Plans, Drg no: 7970-03-02 D
Proposed Farmhouse Elevations Drg no: 7970-03-03 D
Garage Floor Plans & Elevations Drg no: 7970-03-05 A Received on 25th October 22
Topographical Survey Drg no: 3444-01-0 A Received on 19th October 22
Structural Survey Received by the Local Planning Authority on 19th October 22

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 materials used on the external elevations of the dwelling hereby permitted shall be in accordance with those approved under planning reference 23/00662/DISCON.

Reason: To ensure that the development has a satisfactory appearance in the interests of visual amenity in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. The development shall be carried out in accordance with the scheme for waste and recycling storage of containers approved under planning reference 23/00662/DISCON.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4, DM6 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. The development shall be carried out in full accordance with the hard and soft landscaping scheme approved under planning reference 23/00662/DISCON. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Reason: To ensure that the development has a satisfactory external appearance in accordance with Policies DM4, DM6 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

6. The development hereby permitted shall not be occupied until such time as car parking provision (with turning facilities) has been provided and hard surfaced in accordance with implemented in accordance with amended Site Plan 7970-03-04 Rev C received by the Local Planning Authority on 13th December 2022. Thereafter the onsite parking and turning provision shall be so maintained in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with Policy DM17 and DM18 of the adopted Site Allocations and Development Management Policies DPD (2016) Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

7. Before first occupation of the new dwelling hereby approved, the access drive shall be surfaced with tarmacadam, concrete, or similar hard bound material (not loose aggregate) for a distance of at least 10 metres behind the highway boundary and shall be so maintained at all times.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in the interests of highway safety and in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies DPD (2016) and Paragraphs 108 and 110 of the National Planning Policy Framework (2019).

8. Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A-C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling shall be carried out unless planning permission for such development has been granted by the Local Planning Authority.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

9. No works shall commence on the brick barn identified in the Preliminary Bat Roost Assessment and Bird Survey dated August 21, until 1 nocturnal bat emergence and activity survey to update the existing submitted Preliminary Bat Roost Assessment and Bird Survey dated August 21 by Hillier Ecology has been submitted to and approved in writing by the Local Planning Authority. The updated survey shall be accompanied by a scheme of appropriate mitigation measures (including precise details of the timing and method of protection). No works on the brick barn shall be undertaken except in accordance with the approved scheme of mitigation.

Reason: In order to protect the protected wildlife species and their habitats that are known to exist on site in accordance with Policy DM6 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

10. a) If during development, contamination not previously identified is found to be present at the site, no further development shall take place until a scheme for the investigation of all potential land contamination is submitted to and approved in writing by the Local Planning Authority which shall include details of how the unsuspected contamination shall be dealt with. b) Any remediation works so approved shall be carried out prior to the site first being occupied.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted site allocations and development management policies development plan document (2016).

11. Notwithstanding the provisions of Article 3, Schedule 2, Part 1 of the Town & Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), the bathroom

window in the south-eastern 1st floor of the extended barn shall be glazed in obscure glass before the development hereby permitted is first occupied and shall thereafter be permanently retained in this approved form.

Reason: To safeguard the amenities of neighbouring properties in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development plan Document (2016).

Notes:

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.
2. Application forms to discharge conditions and further information can be found on the planning portal website www.planningportal.gov.uk
3. Surface water should be managed by sustainable methods, preferably those which disperse runoff by infiltration into the ground strata: i.e. soakaways, pervious paving, filter drains, swales, etc. and the minimisation of paved area, subject to satisfactory porosity test results and the site being free from a contaminated ground legacy. If the ground strata are insufficiently permeable to avoid discharging some surface water off-site, flow attenuation methods should be employed, either alone or in combination with infiltration systems and/or rainwater harvesting systems.
4. Access drives, parking and turning areas, paths and patios should be constructed in a permeable paving system, with or without attenuation storage, depending on ground strata permeability. On low-permeability sites surface water dispersal may be augmented by piped land drains, installed in the foundations of the paving, discharging to an approved outlet (See Environment Agency guidance on the permeable surfacing of front gardens).
5. Any bat maternity roost present within the roof void of the brick barn conversion. is protected by law from harm, disturbance or obstruction, as are any individual bats. Any works to this building, however minor, that could affect these roof voids or access to them (all parts of the roof structures, internal and external, including tiles, ridge, flashing, eaves, gables, soffits, bargeboards, chimneys, under-tile area, felting, joists, rafters, beams, boarding and ceilings, etc.) are likely to require a European Protected Species Licence. Failure to obtain this in advance of such work could lead to criminal prosecution.
6. The collection point for domestic recycling, garden waste and refuse is from the adopted highway boundary. Please refer to the following downloads on the website.

http://www.hinckley-bosworth.gov.uk/downloads/file/2952/wheeled_bin_information_for_developers_and_planning_officers

https://www.hinckley-bosworth.gov.uk/downloads/file/4647/wheeled_bin_and_container_policy_updated_march_2018

