

Delegated Report

Planning Ref: 25/01175/CONDIT

Applicant: Karl Maughan

Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: Land West Of Breach Lane Earl Shilton

Proposal: Variation to condition 1 (Plans) and 3 (Hard and Soft Landscaping) of planning permission 24/00343/CONDIT. Amendments to include new gates and means of enclosure

1. Recommendations

1.1. **Refuse planning permission** subject to the reasons at the end of this report.

2. Planning application description

2.1. 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. In this case, planning permission reference 21/00607/FUL granted full planning permission for the erection of 9 detached dwellings. This permission has been varied on two occasions with 24/00343/CONDIT being the most recent permission for the scheme.

2.2. Condition 1 of the planning permission required that the proposed scheme be carried out in accordance with the proposed plans.

2.3. Condition 3 of the planning permission required that the proposed scheme be carried out in accordance with the hard landscaping (Drg No. 22-61 PL08-A) and soft landscaping (landscaping plan sheet 1) scheme and boundary treatments plan (Drg No. 22-61 -PL09) for the site.

2.4. This application seeks planning permission for the variation of condition 1 (Plans) and condition 3 (Hard and Soft Landscaping). The application proposes include new gates and associated means of enclosure as a result, the soft landscaping proposals previously agreed would have to be varied, however, a new detailed soft landscaping plan has not been submitted as part of this S73 application.

2.5. The proposed gates and means of enclosure would be sited to the sites main access to the west of Breach Lane. The proposed gate would be set back from the un-adopted, private highway by 5.65 – 6.95 metres and would measure 5.80 metres in width, and 1.67 - 2.19 metres in height. It would be constructed out of cast Iron and would be supported by brick pillars which would connect to form walls either side of the proposed gate. The proposed pillars/wall would measure 1.67 - 1.86 metres in height, 0.22 - 0.46 metres in depth and would project outwards from the proposed gate for 1.35 metres before arching outwards 4.56 - 7.64 either side.

2.6. A timber feather edged fence is also proposed along the aforementioned boundary to the same height as the proposed brick pillars

3. Description of the site and surrounding area

3.1. The application site is situated outside the settlement boundary within the open countryside (with the exception of the Breach Lane junction). It comprises a previously disused paddock in Earl Shilton, now home to nine two-storey detached residential dwellings. Works subject to this approval (Reference: 21/00607/FUL) were commenced in March 2022.

- 3.2. The site is surrounded by existing dwellings to the north, dwellings along Station Road to the west, a new small residential development to the south and allotments to the east. The Clickers Way bypass south of the application site runs east to west and encloses the south of Earl Shilton, severing the application site from the wider countryside.
- 3.3. The existing dwellings fronting this section of Breach Lane occupy large plots set back from the highway and comprise detached two-storey dwellings of varied designs and finishes. The un-adopted, private highway also provides pedestrian access to the Clickers Way bypass and the countryside beyond.

4. Relevant planning history

18/00530/OUT

- Erection of three dwellings (Outline - access only)
- Planning Permission
- 15.11.2018

19/00607/FUL

- Erection of 3 detached dwellings
- Planning Permission
- 19.03.2020

21/00607/FUL

- Erection of 9 detached dwellings
- Planning Permission
- 10.01.2022

23/00206/CONDIT

- Variation of Conditions 2, 6 and 9 to Planning Application 21/00607/FUL. Amendment to include approved plans, windows, colour and materials, hard and soft landscape works, waste and recycling storage, construction traffic management plan, and time for construction works of the development.
- Planning Permission
- 26.06.2023

24/00343/CONDIT

- Variation of condition 2 (plans) to planning application 23/00206/CONDIT
- Planning Permission
- 03.06.2024

25/00600/FUL

- Proposed brick wall with gate
- Withdrawn
- 14.08.2025

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. Following the publications, no comments have been received.

6. Consultation

Earl Shilton Parish Council:

'In the proposal the applicant states that these gates will improve security to the area. There is no evidence provided that states security is an issue within the immediate area.

The bin collection area would not be accessible for refuse collection.

No provision at the entrance has been made for an intercom to residences, post boxes or parcel delivery.

Each property is freehold and each owner has the ability to secure themselves within the development, as they see fit.'

LCC Highways:

'The LHA have reviewed the further documentation and note that the changes do not impact upon the adopted highway network.

The LHA therefore advise the LPA that it has no objection.'

7. Policy

- 7.1. Earl Shilton and Barwell Area Action Plan DPD (ESABAAP) (2014)

- Policy 22: Development and Design

- 7.1. Core Strategy (2009)

- Policy 2: Development in Earl Shilton

- 7.2. 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 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) (2024)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

- 7.4. Other relevant guidance

- Good Design Guide (2020)
- Leicestershire Highways Design Guide (2024)

8. Appraisal

- 8.1. Key Issues

- Principle of development
- Design and impact upon the character of the area and the wider countryside
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Other matters and personal circumstances

Principle of development

- 8.2 The sustainable principle of development was established under the extant 2022 permission.

Design and impact upon the character of the area and the wider countryside

- 8.3 Chapter 12 of the NPPF confirms that good design is a key aspect of sustainable development, and the creation of high quality, beautiful, and sustainable buildings and places is fundamental to what the planning and development process should achieve. Key Policy Paragraph 135 of the NPPF details the six national policy requirements of development to ensure the creation of well-designed and beautiful places. Specifically, development should function well and add to the overall quality of an area, not just for the short term but over the lifetime of the development. Development should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). And planning decisions should establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.
- 8.4 Paragraph 139 states that 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 and supplementary planning documents such as design guides and codes.
- 8.5 Paragraph 140 also states that LPAs should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).
- 8.6 Policy DM4 of the adopted SADMP states that development in the countryside will be considered sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside. It further states that development should lead to the enhancement of the immediate setting.
- 8.7 Policy DM10 of the adopted SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.8 Policy 22 of the EABAAP seeks to ensure that developments do not have a detrimental impact upon the character or appearance of the host building or the surrounding area and respect the scale, proportions, height and materials of the existing building, neighbouring structures and overall street scene.
- 8.9 Considering the scope of the application this report will focus solely on the amendments to the amended means of enclosure and soft landscaping. The design of the dwellings and wider development remain acceptable as previously approved.
- 8.10 The Council's Good Design Guide outlines that *'Boundary treatments are also a critical element of character and quality, with different approaches required for different spaces relative to their type, size and location.'* The Guide states that *"Reflecting local boundary treatments, such as brick or stone walls, hedgerows, railings or soft landscape features can provide a beneficial means of integrating new development into the existing environment and can be critical in the overall creation of character within a scheme. Fencing is often selected as a cost effective means of creating a boundary treatment. Consideration should be given to its potential negative impact on the wider streetscene, particularly where this would entirely block through views and create dead frontages"*.

- 8.11 The aspect of Breach Lane relevant to the application, although subject to new residential development to the west has a rural character. The existing western dwellings are generally set well back from the highway and/or screened by mature hedgerows and trees. Where formal access structures have been constructed these are set back from the highway, open in nature, short in length, low level in height and constructed in timber creating a reasonable rural character to the area. As a result, these are sensitive to and respect, conserve and complement the character and appearance of the area.
- 8.12 Under the extant permission the entrance to the site is to be open characterised by existing/new hedgerows and planting extending into the site and around the corner plots on either side as to remain in keeping with the character and appearance of the area and creating a verdant entrance to the development. This application seeks to install gates, a brick wall/pillars and fencing to the sites main entrance to the west of Breach Lane.
- 8.13 By virtue of their length and height, unsympathetic construction materials, urban appearance and siting immediately adjacent to the highway boundary, the gate and means of enclosure would appear as a stark, incongruous and utilitarian feature within an otherwise rural landscape setting and would fail to retain, enhance, complement or protect the surrounding area and countryside. The proposals harm would further be exasperated by not being physically attached to any built form, appearing isolated.
- 8.14 Throughout the application process the LPA have been made aware of a brick wall constructed to the front of the adjacent site. It is important to note that this is not lawful and was not subject to consideration by the LPA.
- 8.15 In addition the proposed hard landscaping plan would be at odds with the approved soft landscaping plan. The submitted hard landscaping plan and visuals indicate removal of the hedgerow to the south of the access which should be retained and supplemented under the approved soft landscaping scheme. In addition the proposed native mix hedge to the north of the site it not indicated on the plans and only three trees are shown as opposed to six on the approved plan. The requirement for new soft landscaping details could be conditioned but the location of the fence and walls would materially diminish the soft landscaping previously approved and the space would not be available to mitigate the scale, poor material choice and prominence of the proposed fence.
- 8.16 It is clear on the previously approved plans that care was taken to create a soft entrance to the development reflecting the rural setting, this was to be achieved through the retention of existing trees and hedgerows and a high degree of soft landscaping through new hedgerows and trees to the sites frontage. It is clear that care was taken to ensure that the publicly visible/prominent means of enclosure to the front of the site (to the sides of Plot 1 and 9) were brick walls. These walls are set back significantly from the highway (unlike the proposed gates) but present a higher material finish than the timber fencing approved elsewhere on the development. In contrast the currently proposed timber fencing, which would be closer to the highway and highly visible offers a poor material choice and dead frontage to the front of the site in conflict with the Good Design Guide. The changes present clear and unjustified reductions to the quality of the development which paragraph 140 of the NPPF is clear should be avoided.
- 8.17 In light of the above, the proposed scheme is contrary to Policies DM4 and DM10 of the adopted SADMP, Policy 22 of the ESABAAP and the Councils Good Design Guide. It is therefore recommended that planning permission be refused for the reasons at the end of this report.

Impact upon neighbouring residential amenity

- 8.18 Paragraph 135(f) of the NPPF requires planning policies and decisions to ensure that developments create places that are safe, inclusive, and accessible, which promote health and well-being, and a high standard of amenity for existing and future users.
- 8.19 Policy DM10 of the adopted SADMP requires that development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings.
- 8.20 Policy 22 of the Earl Shilton and Barwell AAP seeks to ensure that developments do not adversely affect the privacy and amenity of nearby residents and occupiers of adjacent buildings.
- 8.21 By virtue of its siting, scale and separation distances the proposal would not result in any adverse impacts on the residential amenity of the occupiers of any neighbouring properties according with Policy DM10 of the adopted SADMP, Policy 22 of the ESABAAP and Paragraph 135(f) of the NPPF in this regard. No neighbouring objections have been received.

Impact upon highway safety

- 8.22 Paragraph 115 (b) of the NPPF states that planning decisions should ensure that developments provide safe and suitable access to the site for all users. In accordance with Paragraph 115(d) of the NPPF, any proposal should ensure that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree through a vision-led approach.
- 8.23 Ultimately, 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, following mitigation, would be severe, taking into account all reasonable future scenarios in accordance with Paragraph 116 of the NPPF.
- 8.24 To support this, Policy DM17 of the SADMP states that development proposals need to demonstrate that there is not a significant adverse impact upon highway safety, and that the residual cumulative impacts of development on the transport network are not severe. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highway authority (currently this is the Leicestershire Highway Design Guide (LHDG) (2024). The access to the site would remain unaltered.
- 8.25 The LHDG requires that inward opening gates are situated a minimum of 5.50 metres from any highway boundary.
- 8.26 The proposed gate would be inward openings and set back from the un-adopted, private highway by 5.65 – 6.95 metres satisfying the LHDG.
- 8.27 The Local Highways Authority (LHA) have further reviewed the documentation and note that the changes do not impact the highway network. The proposal would therefore remain in accordance with Policies DM17 and DM18 of the adopted SADMP, the NPPF and the LHDG.

Other matters and personal circumstances

- 8.28 In support of the scheme, the applicant's agent states that the proposal would have public benefits by providing security for the residents of the development.
- 8.29 Whilst the LPA acknowledge that the applicant seeks to improve the privacy and security of the site, the security benefits raised are not public benefits, but private benefits to the occupants of the dwelling(s). Personal circumstances rarely outweigh

general planning matters because the effect of the development would remain long after the personal circumstances no longer apply. The personal circumstances used to justify the development would inevitably change over time, but any identified harm would remain.

- 8.30 No evidence has been submitted demonstrating issues with security or crime in the area as also highlighted by the Parish Council. Furthermore, the development appears to be nearing completion with some units appearing to be occupied and indicating that the lack of gates and boundary walls would have not and would not jeopardise the delivery of the development and the realisation of the planning benefits previously attributed to the development of the 9 units (as inferred in the Supporting Statement).
- 8.31 The submission also states that the gates would improve the overall sense of community within the development, however, they would not improve the overall sense of community with the wider area of Earl Shilton.
- 8.32 The benefit to the occupiers of the site therefore carries very limited weight and would not outweigh the significant harm to the character of the area. Finally, it is considered that alternative, sympathetic, rural style fencing and gates with retained and enhanced soft landscaping could provide the benefits described without harming the character of the development or its surroundings.

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.

10. Conclusion

- 10.1. The development would not adversely affect neighbouring properties amenity or have a detrimental impact upon highway safety or operation. Despite this, by virtue of their scale, location, finish, appearance the proposed gate/wall/fence would have a significant detrimental effect on the area, failing to complement or enhance the character or appearance of the site, area or surrounding countryside. By virtue of the design and lack of soft landscaping the amendments would also materially diminish the quality of the approved development. The development would therefore be contrary to Policies DM4 and DM10 of the adopted SADMP, Policy 22 of the ESABAAP, the Council's Good Design Guide and paragraphs 135 and 140 of the National Planning Policy Framework (2024). It is therefore recommended that planning permission be refused for the reasons at the end of this report.

11. Recommendation

11.1 Refuse planning permission subject to the reasons at the end of this report.

11.2 Reasons

1. By virtue of the siting, height, length, and appearance of the proposed gate, wall and fencing and due to inadequate soft landscaping the proposal would have a significant adverse impact on the character and appearance of Breach Lane failing to complement or enhance the character or appearance of the site, surrounding area or countryside. Furthermore the amendments would materially diminish the quality of the approved development. Therefore the development is contrary to Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy 22 of the Earl Shilton and Barwell Area Action Plan (2014), the adopted Good Design Guide (2020) and paragraph 135 and 140 of the National Planning Policy Framework (2024).