

Delegated Report

Planning Ref: 23/00561/CONDIT
Applicant: Mr Craig Vincent
Ward: Cadeby Carlton M Bosworth & Shackerstone



Hinckley & Bosworth
Borough Council

Site: The Limes, Shackerstone Road, Congerstone

**Proposal: Variation of conditions 2 and 4 of planning permission 21/00661/FUL.
Amendment to include additional access to plot 1**

1. Recommendations

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

2. Planning application description

- 2.1. This application seeks to amend condition 2 and 4 of planning permission 21/00661/FUL to allow for an additional access to serve plot 1 of the approved site. Condition 2 sets out the approved plans, and condition 4 sets out the off-street parking and turning provision pre-occupation condition.

3. Description of the site and surrounding area

- 3.1. The site is located within Congerstone Conservation Area, and is part in and part outside of the settlement boundary at the northern entrance to the village. It is within the grounds of The Limes, a large plot bound by mature trees particularly along the front boundary to the road. The Limes dates from the early twentieth century and has an Edwardian appearance. Site levels slope downwards towards a stream to the North of the village, a tributary of the River Sence to the South of the village.
- 3.2. The site benefits from planning permission under application 21/00661/FUL for the construction of two detached dwellings and demolition of the Foresters Workshop.

4. Relevant planning history

93/00444/4

- Erection of boundary wall
- Planning Permission
- 28.06.1993

01/00159/TPO

- Removal of one lime tree
- Permit Conservation Area TPO Works
- 26.03.2001

15/01031/TPOCA

- Felling of leylandi tree
- Recommendation only
- 03.11.2015

18/01067/FUL

- Demolition of existing glasshouse and outbuilding, erection of two dwelling and new detached garage to serve the existing property
- Planning Permission
- 20.12.2018

19/01030/CLUE

- Certificate of (existing) lawful development relating to: 1. Access track, foresters building and external storage area associated with forestry contracting business; and 2. The use of land as garden land ancillary to The Limes, Main Street, Congerstone
- Certificate of Lawful Existing Use
- 18.11.2019

19/01051/FUL

- Erection of a single dwelling to include demolition of foresters workshop
- Planning Permission
- 18.11.2019

21/00574/HOU

- Demolition of existing one and two storey rear extension and proposed replacement two storey extension
- Planning Permission
- 22.11.2021

21/00661/FUL

- Construction of two detached dwellings and demolition of The Foresters Workshop
- Planning Permission
- 04.01.2022

22/00113/DISCON

- Application to discharge condition 3 (Materials) and condition 6 (Archaeology) attached the planning permission 21/00661/FUL
- Split Decision
- 14.04.2022

22/01226/CONDIT

- Variation of condition 2 and 4 of planning permission 21/00661/FUL to allow for an additional access to serve plot 1.
- Refused
- 17.02.2023

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents.

5.2. A site notice was also posted within the vicinity of the site and the application was publicised in the Hinckley Times.

5.3. No comments have been received.

6. Consultation

6.1. Shackerstone Parish Council: No comments received.

6.2. HBBC Conservation Area Officer: Less than substantial harm caused to the conservation area. Recommended for refusal.

6.3. HBBC Environmental Services (Pollution): No objections.

6.4. LCC Archaeology: No objections.

6.5. LCC Ecology: No objections.

6.6. LCC Highways: No objections.

6.7. Severn Trent Water: Standing advice.

7. 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 DM10: Development and Design
- Policy DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.2. National Planning Policies and Guidance

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

7.3. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the Conservation area
- Impact upon highway safety and parking

Assessment against strategic planning policies

8.2 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. 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.

- 8.3 The development plan in this instance consists of the Core Strategy (2009) and the 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.
- 8.4 Policy DM1 of the SADMP sets out a presumption in favour of sustainable development and states that development proposals that accord with the development plan should be approved without delay unless materials consideration indicate otherwise.
- 8.5 This application is a variation of condition application and the original scheme has been assessed as being sustainable and in accordance with the adopted strategic policies, the principle of an residential development on this site is therefore established and is not for discussion through this application.

Design and impact upon the character of the conservation area

- 8.6 This proposal seeks to vary conditions 2 and 4 of permission reference 21/00661/FUL (erection of two dwellings) to allow for an additional access to serve plot 1. The application site is located within the Congerstone Conservation Area.
- 8.7 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 8.8 Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. Paragraphs 199-202 of the NPPF require great weight to be given to the conservation of designated heritage assets when considering the impact of a proposed development on its significance, for any harm to the significance of a designated heritage asset to have clear and convincing justification, and for that harm to be weighed against the public benefits of a proposal.
- 8.9 Policies DM11 and DM12 of the Site Allocations and Development Management Policies (SADMP) DPD seek to protect and enhance the historic environment. Development proposals should ensure the significance of a conservation area is preserved and enhanced.
- 8.10 Comments received from HBBC's Conservation Area Officer are based on the Tree Retention Plan 10077-7-02-D provided within the Arboricultural Assessment (May 2023) submitted to accompany the application. The proposal for an additional access in a revised location to serve plot 1 of the approved development would result in the loss of a section of a beech hedgerow and the removal of a category B wild cherry tree. This tree and section of hedgerow form an important component of the continuous line of vegetation fronting the application site and the grounds of the Limes which offer amenity value and are an important aspect of the semi-rural character and appearance of Congerstone Conservation Area which can be fully appreciated at its northern entrance.
- 8.11 The proposed additional access would not preserve the character and appearance of the Congerstone Conservation Area and would cause harm to its significance.

The level of harm is considered to be less than substantial. As currently proposed the harm caused to the Congerstone Conservation Area must be carefully weighed up against the public benefits of the proposal as required by Policies DM11 and DM12 of the SADMP DPD and paragraphs 199, 200 and 202 of the National Planning Policy Framework.

- 8.12 Paragraph 199 of the NPPF states that great weight should be given to the conservation of designated heritage assets, and the more important the asset, the greater the weight should be. This is irrespective of the level of harm to the significance of the asset.
- 8.13 Paragraph 200 of the NPPF states that any harm to the significance of any designated heritage asset should require clear and convincing justification. The need for clear and convincing justification is re-iterated in Policy DM12 of the SADMP DPD. No justification has been provided by the applicant for harm caused by the proposal. There is an obvious lack of clear and convincing justification for the harm caused to the conservation area resulting from the proposed new access given that plot 1 could be accessed from the existing approved position.
- 8.14 Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the NPPF (paragraph 8). Public benefits may include heritage benefits as specified in the Planning Practice Guidance (Conserving and enhancing the historic environment – paragraph 20), such as:
- Sustaining or enhancing the significance of a heritage asset and the contribution of its setting
 - Reducing or removing risks to a heritage asset
 - Securing the optimum viable use of a heritage asset in support of its long term conservation
- 8.15 In the opinion of the HBBC Conservation Area Officer, the proposal can demonstrate no heritage benefits. If non-heritage benefits can be identified, then they should be weighed against the harm caused by the proposal as per paragraph 202 of the NPPF and Policy DM11 of the SADMP. In completing this balancing exercise great weight must be given to the conservation of the Congerstone Conservation Area as required by paragraph 199 of the NPPF and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.
- 8.16 Should the balancing exercise not come out in favour of the proposal it should be refused due to its conflict with Policies DM11 and DM12 of the SADMP DPD and section 16 of the NPPF.

Impact upon highway safety and parking

- 8.17 Policy DM17 of the SADMP states that all new development should be in accordance with the highway design standards. Policy DM18 ensures that development provides appropriate parking provision.
- 8.18 The proposal seeks to create a new access serving plot 1 of the approved application 22/00661/FUL. Leicestershire County Council Highways were consulted on the application and confirmed that they have no objections to the scheme and that there are no concerns in relation to off-street parking or highways safety.
- 8.19 As such it is considered that the proposal is in general accordance with Policies DM17 and DM18 of the SADMP.

Planning Balance

- 8.20 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.
- 8.21 If non-heritage benefits can be identified, then they should be weighed against the harm caused by the proposal as per paragraph 202 of the NPPF and Policy DM11 of the SADMP. In completing this balancing exercise great weight must be given to the conservation of the Congerstone Conservation Area as required by paragraph 199 of the NPPF and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.
- 8.22 Additional information was received via email from the applicant of the proposal, which stated that whilst there is a level of harm caused through the delivery of the additional access and through the removal of trees and hedgerow, additional hedgerow is proposed to be planted within the site which would offer a surplus and overall net gain in hedgerow providing public benefit.
- 8.23 It is however considered that this would be considerable enough to outweigh the significant weight afforded to the less than substantial harm to the character of the conservation area and any other public benefits are non-justified and have not been identified. In addition, as the site is evidenced to operate functionally as existing there is less than significant justification for the amended access arrangements. Whilst there are benefits
- 8.24 Overall there is a lack of public benefits to the proposal and the proposal causes less than substantial harm to the conservation area and is therefore in conflict with Policies DM11 and DM12 of the SADMP DPD and section 16 of the NPPF, and therefore is recommended for refusal of planning permission.

Equality implications

- 8.25 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.
- 8.26 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.
- 8.27 There are no known equality implications arising directly from this development.
- 8.28 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).

9. Conclusion

- 10.1. It is considered that the variation of condition to provide a new access to plot 1 entering onto Shackerstone Road would cause significant adverse impacts and less than substantial harm to Congerstone Conservation Area, contrary to Policies DM11 and DM12 of the SADMP DPD and paragraphs 194, 200 and 202 of the NPPF. This harm would not be outweighed by the benefits of the proposal.

10. Recommendation

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

11.2 Reasons

- 10.2. The proposed development would cause significant adverse impacts and less than substantial harm to Congerstone Conservation Area. This harm would not be outweighed by the benefits of the proposal and is contrary to Policies DM11 and DM12 of the SADMP DPD and paragraphs 194, 200 and 202 of the NPPF.

11.3 Notes to applicant

1. In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work 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 as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.
2. This application has been determined in accordance with the following submitted details:
 - Planning Application Form
 - Highways Plan Drg No. CV0223-HP-001A
 - Arboricultural Assessment & Arboricultural Method Statement