

Delegated Report

Planning Ref: 23/01173/FUL
Applicant: Ms Redford
Ward: Groby



Hinckley & Bosworth
Borough Council

Site: Land Adjacent to 22 Rookery Lane Groby Leicester

Proposal: Construction of two bedroom dwelling

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 full planning permission for the erection of a two bed dwelling. The proposed dwelling would be a staggered floor plan of two storeys with a dual pitched roof form. A small garden and 1 parking space would be situated to the rear. Access is situated to the north-west, which would also serve No's 22 & 24 Rookery Lane. The proposed dwelling would be situated on an undeveloped area of open space.

2.2. The proposed dwelling is of a bespoke design to reflect the characteristics of the site and its immediate surroundings with a roof that slopes away from the neighbouring property No 26 Rookery Lane, a Grade II Listed building.

2.3. The proposed lower ground floor would form 2 bedrooms and a bathroom with the upper floor forming an open plan kitchen and living room area. Proposed materials are render walls under a slate roof with timber casement doors and windows. Apart from a window next to the door on the north-west side elevation no windows are proposed for either side elevation. Sliding doors are proposed for the rear elevation.

2.4. The proposal would retain the low stone wall and set back from the highway boundary that runs across the front of the site. As part of the development it is proposed to suitably landscape this area to retain some of the characteristics of the former green space.

3. Description of the Site and Surrounding Area

3.1. The application site lies to the south side of Rookery Lane within the village of Groby. The site comprises of a small area of private land to the east of a private drive serving a recently developed detached dwelling located to the rear of an older detached cottage No 20 Rookery lane and a modern dwelling No 22 Rookery Lane.

3.2. The application site is situated in an elevated position to the road as land rises to the south. The site is enclosed in part by a metre high stone wall with the remainder of the boundary comprising of a retaining timber wall. The two newly constructed dwellings to the north west of the site have white painted rough cast rendered walls with brick detailing.

3.3. The proposed access also provides access to a car parking area to the rear which is owned by the applicant. Immediately to the east, the site borders Groby Surgery (26 Rookery Lane) which is a Grade II Listed building. The application site itself is at a relatively lower (elevation) level than No26.

3.4. Details of the building as identified by Historic England are:

'House. Late C18 with C20 additions. Paired rubble walling with brick dressings, Swithland slate roof with 2 brick painted gable stacks 2 storey. 3 bay front with central gabled porch with small casement, flanked by single 3 light casements under segment heads. Above 2, 2-light casements to left a lean-to addition, to right a C20 addition with 2 light casement'.

3.5 The boundary of the application site where it abuts the listed surgery building comprises of a 1.8m close boarded fence. The site and the immediate surrounding properties lie within the Groby Conservation Area which covers the village centre and its environs. In addition, the site forms part of an area identified in the Groby Conservation Area appraisal November 2010 as an area of landscaping, and parking provision. That appraisal however being undertaken prior to its adoption in 2010; pre-dates the development of adjacent site including the erection of new dwellings at No 22 and 24 behind.

3.6 In 2017 Planning permission was sought for the development of the site by the erection of a single dwelling Ref: 17/00982/FUL. That application was refused by the Council. A decision subsequently upheld on appeal.

4. Relevant Planning History

14/01084/FUL	Partial demolition of, and extensions and alterations to, an existing dwelling and erection of two new dwellings, alterations to access and erection of a new boundary wall	Approved	03.06.2015
17/01071/CONDIT	Variation of condition 2 of planning permission 14/01084/FUL to amend car parking layout	Approved	01.03.2018
17/00982/FUL	Erection of 1 dwellings	Refused & Dismissed at appeal	30.11.2017

The reasons for the refusal in 2017 were:

- The proposed development would result in the loss of green space within Rookery Lane and the Groby Conservation Area, which is a positive contribution to the area. Given the scale and siting of the proposed development it would result in a prominent and overbearing feature within the streetscene and would have a detrimental impact upon the character and appearance of the conservation area and designated green space which is of importance of the historic setting of the Groby Conservation Area. This would be contrary to Policy DM1, DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Core Strategy Policy 8 of the Core Strategy, and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- The proposed development would be situated forward and in close proximity of the adjacent Grade II Listed Building known as 26 Rookery Lane, and would result in the loss of existing green space, existing and future mature trees, which would have an adverse effect upon the setting of the Listed Building. This would not be outweighed by the Public benefits of the scheme. The proposed development is contrary to Policies DM1, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Paragraph 134 of the National Planning Policy Framework and Section 12 of the National Planning Policy Framework (2012) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Difference between current and previous proposal from agents perspective

When asked to explain what the differences between the previous and the current proposal were and why it is felt the current proposal overcomes the previous reasons for refusal, the agent replied that:

'It is now 6 years since the last application in 2017 was submitted and as a result we believe there have been changes in the character and appearance of this area, which forms part of the Conservation Area.

The designation of this site as part of an area identified as a 'Green Space' dates back as far as March 2010. This is nearly 14 years ago and well before the development of housing on the adjacent site which has resulted in not only the erection of two new dwellings but also an area of on-site car parking. (see photos in the supporting Planning Statement)

It is however also interesting to note that the housing development opposite and further down Rookery Lane was identified within the appraisal as 'Weak Areas', suggesting that whilst being included within the boundary of the Conservation Area their contribution to it character and appearance is somewhat limited.

We believe that the adjacent development has involved the loss of the 'Green Space' in this part of the Conservation Area to the extent that apart from the curtilage of the adjacent Listed Building, the small area that forms the application site does not now perform the function of a green space as designated.

Also in terms of the development proposed we would refer to the bespoke design of the proposed dwelling, which has specifically been designed with regards to its relationship and impact on the character and appearance generally of the Conservation Area but more specifically the adjacent Listed Building.

The previous building design sought to reflect the design characteristics of the approved adjacent development at 22 and 24 Rookery Lane and as a result proposed a fairly standard two storey dwelling with dormers mirroring the design of the adjacent dwellings. As a result we believe it did not take into account sufficient consideration of its impact on the wider area or indeed the adjacent listed building. Our design is specifically bespoke taking as its starting point consideration of the characteristics and limitations of the site itself but also taking into consideration its relationship and impact on the adjacent Listed Building. As a result the height of the building has been kept deliberately low with split level roof and set well forward within the site. As a result although there is sufficient space to the front of the site to retain the existing stone wall, the dwelling sits forward of the adjacent listed building which is largely screened by its own close boarded boundary fencing.

We believe that the proposed development would have a less than substantial harm to the significance of the Listed Building as a designated heritage Asset but in terms of the wider Conservation Area would achieve as required by the National Planning Policy Framework the desirability of sustaining and enhancing the significance of heritage assets and putting the site to viable use consistent with their conservation.

The NPPF guidance requires that any harm to a designated heritage asset should be weighed against the public benefits of the proposals. Our view is that any harm to the Conservation Area or the Listed Building is limited and less than substantial and on balance is far outweighed by the provision of a bespoke well designed residential dwelling which would contribute to the Councils shortfall in housing stock and provide economic benefits in terms of the provision of construction jobs, the social objective of ensuring that sufficient range of homes can be provided and the environmental objective of protecting the built and historic environment; including making effective use of the land.

As such the proposals meet the economic, social and environmental objectives of sustainable development as set out in the NPPF and local plan policies; providing a small residential property that would meet for smaller dwellings not generally catered for in many larger housing developments in an eminently sustainable location.

Finally we would highlight the Government's objective of significantly boosting the supply of homes and reiterate the Councils current housing land supply issues highlighted by the lack of 5 year housing supply and the need to produce a Housing Action Plan due to the Councils failure to provide enough homes to meet their local housing requirement'.

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents.
- 5.2. There have been 8 letters of representation received from third parties, all objecting to the proposal. The summarised points of objections relate to:
 - This is the last bit of green space
 - This is a Conservation Area
 - Impact on wildlife
 - Parking is lacking in the area
 - Visibility from the access point isn't good
 - Disruption of the road which is too busy already
 - Loss of privacy
 - Impact on Grade II Listed building
 - The site is too small and the proposed will not fit in
 - Impact on the character of the area
 - Loss of 2 trees that wildlife use
 - Parking area is too tight
 - Disruption during building
 - Overlooking
 - Impact on light levels

6. Consultation

6.1. Groby PC make the following comments:

'The Planning & Development Committee of Groby Parish Council wish to strongly object to the above application and propose that the application be refused for the following reasons:

1. The proposed construction of a two-bedroom dwelling is considered an overdevelopment of the site and would have a detrimental and overbearing impact on the street scene which is part of a conservation area. The impact would be exacerbated by the fact that the proposed construction is located on the brow of a hill.

2. The proposed construction would require the felling of trees on a green space. The applicant, under the section Biodiversity and Geological Conservation, has stated that there are no designated sites, important habitats or other biodiversity features on the application site which we believe is an incorrect assessment of the site. Birds, bees, bats, butterflies and urban foxes have been sighted on this green space which creates part of the biodiversity for this conservation area. The green space is therefore not of insignificance, and the proposed felling of trees would have a detrimental effect on this wildlife, habitats and overall biodiversity of the area. Given that Hinckley & Bosworth Borough Council have declared a biodiversity emergency, it is felt that this reason for objection is of even more importance. Due to the significant harm to biodiversity which we believe would arise from this proposed development, this adversely challenges Section 15 (paragraphs 180 to 194) of the National Planning Policy Framework - Conserving and enhancing the natural environment.

3. The proposed dwelling is immediately adjacent to the doctors' surgery, 26 Rookery Lane, which is a Grade II listed building. Any major earthworks near to the ancient foundations of number 26 could cause damage to this property.

4. It is felt there are highways / parking issues with the proposed construction. The road is already heavily congested with the adjacent doctors surgery and nearby industrial units and double yellow lines on Rookery Lane mean that street parking is not a viable option. The area to the rear of the site has already been block paved (and provides 2 parking spaces for number 22), and the applicant refers to this as the allocated parking space however, the space appears very restricted for 3 cars and if all 3 car parking spaces were to be in use, we envisage that the only option to exit would be to reverse out of the driveway onto Rookery Lane which is not a safe or legal option.

5. Neither the telegraph pole and wires which are situated above the site, nor the streetlight situated directly in front of the site are mentioned in the application which gives cause for concern. The streetlight's position in relation to the proposed plans of the dwelling would be directly in front of the upstairs window.

6. Finally, the applicant acknowledges the historic refusal of planning permission on this site stating that circumstances have since changed. The Committee do not agree with this statement and would argue that there has been no material change to the significant issues which were identified with the previous application, and which led to it being refused, and to the appeal being dismissed. The Committee believe that the reasons on which the refusal was based are all still valid and relevant to this application.

6.2. LCC Highways refers the LPA to current standing advice.

6.3. HBBC Environmental Services (Drainage) have no objection subject to the imposition of a condition

6.4. HBBC Pollution Officer- No objection

6.5. Conservation Officer- Objection

7. Policy

Core Strategy (2009)

- Policy 7: Key Rural Centres
- Policy 8: Key Rural Centres relating to Leicester

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 DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- Policy DM13: Preserving the Boroughs Archaeology
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2023)
- Planning Practice Guidance (PPG)

7.4. 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 area and heritage assets
- Impact upon neighbouring residential amenity
- Impact on Archaeology
- Impact upon highway safety
- Drainage

Assessment against strategic planning policies

8.2. Core Strategy Policy 7 is the policy that covers Key Rural Centres. Groby is allocated as a Key Rural Centre in Policy 8 of the Core Strategy. These policies states that housing will be supported within settlement boundaries. As the site is within the settlement boundary the proposal complies with this policy, subject to all other planning considerations.

8.3. Paragraph 2 of the National Planning Policy Framework February 2023 (NPPF) states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. 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 a planning application conflicts with up-to-date development plan permission should not usually be granted unless other material considerations indicate otherwise. The development plan in this instance consists of the Core Strategy (2009) and Site Allocations and Development Management Policies (SADMP).

- 8.4. 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.
- 8.5. However, the housing policies in the development plan are considered to be out-of-date as they focus on delivery of a lower housing requirement than required by the up-to-date figure and the Council is unable to demonstrate a 5 year housing land supply when using the standard method set out by MHCLG. Therefore, the application should be determined against Paragraph 11(d) of the Framework whereby permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 8.6. This is weighed in the balance of the merits of any application and considered with the policies in the Site Allocations and Development Policies DPD and the Core Strategy which are attributed significant weight as they are consistent with the Framework.
- 8.7. Given the above context, the principle of residential development of the site would be acceptable in terms of strategic planning policies subject to all other planning matters being satisfactorily addressed.

Design and impact upon the character of the areas and heritage assets

- 8.8. The application site is located within Groby Conservation Area and adjacent to a grade II listed building No.26 Rookery Lane, Groby. A Planning Statement (including a Heritage and Design section) and a Design and Access Statement have been submitted to support the application.
- 8.9. Section 72 of the Planning (Listed Buildings and Conservation Area) Act 1990 places a duty on the local planning authority in respect of conservation areas in the exercise of planning functions to require special attention to be paid to the desirability of preserving or enhancing the special character or appearance of conservation areas. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting, to have special regard to the desirability of preserving the listed building's setting and any features of special architectural and historic interest which it possesses.
- 8.10. Section 16 of the NPPF provides national guidance on conserving and enhancing the historic environment. Paragraph 205 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset the greater the weight should be. Paragraph 207 of the NPPF states that where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent unless it can be demonstrated that the substantial harm or loss identified is necessary to achieve substantial public benefits that outweigh that substantial harm

or loss. Paragraph 208 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal, including its optimum viable use. Paragraph 212 of the NPPF states that local planning authorities should look for opportunities for new development within conservation areas and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

- 8.11. Policy DM11 of the adopted SADMP seeks to protect, conserve and enhance the historic environment. All development proposals which have the potential to affect a heritage asset or its setting will be required to demonstrate an understanding of the significance of the heritage asset and its setting, the impact of the proposal on the significance of the asset and its setting, how the benefits of the proposal will outweigh any harm caused.
- 8.12. Policy DM12 of the adopted SADMP states that development proposals should ensure the significance of a conservation area is preserved and enhanced through the consideration of important features identified in the relevant Conservation Area Appraisal and Management Plan, including the retention of key spaces, preservation or enhancement of key views and vistas, historic street pattern and plan form where feasible, the use of natural building materials and appropriate boundary treatments. Proposals that affect the setting of listed buildings will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building and its setting.
- 8.13. Policy DM10 of the adopted 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 that the use and application of building materials respects the materials of existing adjoining/neighbouring buildings and the local area generally. Policy 11 of the adopted Core Strategy requires new development in Stoke Golding to respect the character and appearance of the Stoke Golding Conservation Area by incorporating locally distinctive features into the development.
- 8.14. The Groby Conservation Area Appraisal states that the character of the area is in stark contrast to its generally suburban surroundings with aspects of its character are immediately apparent when entering the conservation area from the northwest, the east or south. Trees and green space are an intrinsic part of the character of the Groby Conservation Area. The Groby Conservation Area Appraisal identifies that trees in this conservation have ensured that the area has retained a rural village feel despite its location on the edge of a large modern suburban areas.
- 8.15. The application site is in close proximity to the adjacent grade II Listed Building, No26 Rookery close, a 18th century property which is currently used as a doctors surgery, which is surrounded by a number of mature trees, the application site forms part of the original garden to the listed building. The Groby Conservation Area Appraisal does not refer specifically to Rookery Lane or provide any additional information to support the historic importance of the area, however the Groby Conservation Area Appraisal does identify the site as green space along Rookery Lane. Following the redevelopment of the wider site situated to the north west this is the last remaining parcel of green space within Rookery Lane, which contributes positively to the character and appearance of the Conservation Area, and was to be provided as an area of landscaping to the wider development site, and its loss of this remaining green space would cause harm to the Conservation Area.

- 8.16. The Good Design Guide SPD provides guidance on in-fill sites and requires building plots to be of a similar size and shape to the wider context allowing sufficient space between buildings. Built development should be of a similar footprint, plot position and layout to the wider context, allowing sufficient space between buildings and not adversely impacting upon the prevailing grain of development. Built development should also be of a similar scale, mass and roof form allowing it to sit comfortably within the street scene and where possible respect building lines.
- 8.17. Due to the rise in levels which increase south east as you travel up Rookery Lane, Groby, the application site is situated upon a higher land level to that of to the highway, with a stone wall to the front, retaining. The scheme proposes a two bed two storey dwelling, which would have a ridge height of approximately 5.8 metres. However notwithstanding the low ridge height given the significant change in levels within Rookery Lane, and the application site, being situated within a prominent and raised location within the street, the proposed dwelling would have a dominant and overbearing impact and presence within the street scene.
- 8.18. The proposed dwelling would occupy a constrained plot, with an existing driveway serving the wider developed site to the north-west, with parking to serve the surrounding dwellings to the rear. The proposed dwelling would be 5.8m in width at the front and 4m at the rear. The plot is 7.3m in width at the front and 4m at the rear. The proposed would have an approximate depth of 12.1 metres, set back APPROX 4.8m from the edge of the pavement. The depth of the proposed rear garden would have an effective depth of approximately 3 metres in depth and would have a width of approximately 5.7metres. Whilst the urban grain within the area is tighter than what would be expected in more modern developments, due to the historic pattern of development, the proposed development would appear uncharacteristically tight, and would appear contrived, with a very small rear amenity area of 25sqm when 60sqm is required for a 2 bed dwelling.
- 8.19. The application site, has had a number of trees unlawfully removed which are situated within the conservation area, and were to be retained and protected as part of planning permission 14/01084/FUL, to ensure a positive contribution to the conservation area had been retained and maintained. The remaining trees on site, are limited to those that reside along the south east boundary, between the application site and the neighbouring Grade II Listed building No.26. The proposed south east facing side elevation of the proposed dwelling would be situated to abut this boundary, and forward of the neighbouring Listed Building. Given the close proximity of the proposed development to the remaining trees along the south east boundary of the site. No tree surveys or proposed mitigation measures have accompanied the application; however given the scale of the development, the change of land levels and the lack of distance between the proposed development and the mature trees; it is likely that the development would have a detrimental impact on the health of the existing trees. The development is also likely to have an adverse impact upon the root protection areas of the existing mature trees situated to the front of the Listed Building. Development of this site would result in the loss of the former gardens of the Grade II Listed Building and would result in a wider loss of trees, which would have an adverse impact upon the setting of the Listed Building and would cause a level of harm to its significance.

- 8.20. Conservation Officer comments on the proposal were 'The application site is located within the settlement boundary of Groby, and within the Groby Conservation Area. It forms part of an area of landscaping for the wider development of 3 houses which has been implemented to the north west of the application site (references 14/01084/FUL and 17/01071/CONDIT).

The application site is situated in an elevated position to the Rookery Lane as land rises to the south and east. To the north west of the application site are two dwellings, constructed with white painted rough cast rendered walls with brick detailing. There is a Grade II Listed Building (26 Rookery Lane) that backs on to the south east boundary of the site. There are modern two storey semi-detached dwellings to the north east on Rookery Lane and the rear gardens of modern two storey detached dwellings that front onto Crane Ley Road to the south west.

The application site currently consists of an undeveloped open space to serve the implemented development 14/01084/FUL (as amended by 17/01071/CONDIT) and consists of an area laid to grass with young specimens of silver birch, holly, field maple, hawthorn, a stone boundary wall to the front and retaining timber wall to the access drive to the side. The site forms part of the purposefully implemented landscaping scheme which was secured by the local planning authority to ensure the appearance of the development and the character of the area was enhanced.

This application seeks full planning permission for the erection of one detached two-bedroom dwelling upon the dedicated landscaping area to serve the development 14/01084/FUL. Parking spaces and an amenity area would be situated to the rear. The dwelling would have a dual pitched roof form with front facing gables and a staggered floor plan of two storeys with a partially subterranean lower ground floor housing bedrooms and a bathroom and an upper floor housing a living area. It would have rendered walls, a slate roof and fenestration of varying styles.

A strong material consideration in the determination of this planning application is an earlier proposal for a single detached dwelling on the application site (reference 17/00982/FUL). This application was refused by the local planning authority due to identified less than substantial harm to affected heritage assets not being outweighed by public benefits arising from the development. The application was appealed to the Planning Inspectorate but dismissed, upholding the local planning authority's decision that there was clear less than substantial harm caused by the proposal to designated heritage assets and the public benefits of the proposal fell a long way short of outweighing the harm caused to them in order for the development be considered acceptable. The Inspectors decision clearly remains relevant to this new proposal and their assessment of the significance of affected heritage assets and how they would be impacted by this new proposal is referenced where relevant in these comments.

Relevant Acts, policies and guidance

Policy DM10 of the adopted Site Allocations and Development Management Policies DPD (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 that the use and appeal of building materials respects the materials of existing adjoining/neighbouring buildings and the local area generally.

Policy DM11 of the adopted SADMP seeks to protect, conserve and enhance the historic environment. All development proposals which have the potential to affect a

heritage asset or its setting will be required to demonstrate an understanding of the significance of the heritage asset and its setting, the impact of the proposal on the significance of the asset and its setting, how the benefits of the proposal will outweigh any harm caused.

Policy DM12 of the adopted SADMP states that development proposals should ensure the significance of a conservation area is preserved and enhanced through the consideration of important features identified in the relevant Conservation Area Appraisal and Management Plan, including the retention of key spaces, preservation or enhancement of key views and vistas, historic street pattern and plan form where feasible, the use of natural building materials and appropriate boundary treatments. Proposals that affect the setting of listed buildings will only be permitted where it is demonstrated that the proposals are compatible with the significance of the building and its setting.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting, to have special regard to the desirability of preserving the listed building's setting and any features of special architectural and historic interest which it possesses.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a conservation area to pay special attention to the desirability of preserving or enhancing the character and appearance of that area.

Section 16 of the National Planning Policy Framework (NPPF) provides the national policy on conserving and enhancing the historic environment. Paragraphs 205-208 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.

Impact of the proposal upon affected heritage assets

The Groby Conservation Area Appraisal (GCAA) (2010) states that the character of the conservation area is in stark contrast to its generally suburban surroundings with aspects of its character being immediately apparent when entering the conservation area from the northwest, the east or south. Trees and green space are an intrinsic part of the character of the Groby Conservation Area. The GCAA identifies that trees in this conservation area have ensured that the area has retained a rural village feel despite its location on the edge of a large modern suburban areas.

The application site is in close proximity to the adjacent Grade II Listed Building, No 26 Rookery Lane. The listing description identifies the building as "House. Late C18 with C20 additions. Paired rubble walling with brick dressings, Swithland slate roof with 2 brick painted gable stacks. 2 storey. 3 bay front with central gabled porch with small casement, flanked by single 3 light casements under segment heads. Above 2, 2-light casements to left a lean-to addition, to right a C20 addition with 2 light casement". The age of the building and its external features provide it with special architectural and historic interest and thus significance. Since the building was statutorily listed in 1977 the building has most recently been used as a doctor's

surgery, but the features that provide it with such interest and warranting listing remain.

Historical Ordnance Survey mapping confirms that the No 26 Rookery Lane was originally located within with a large plot and surrounded by trees, which indicates it was a house of reasonable status. The application site forms part of the original garden to the listed building and a number of the surrounding mature trees remain along the site boundary. Due to the proximity of the application site to the listed building it is considered to fall within its immediate setting and the retention of mature trees along the boundary and its verdant character ensures that the site makes a positive contribution to the significance of the building. Indeed the roofscape and upper sections of the side walls of the listed building can be viewed from the Rookery Lane street scene, over the application site, which forms part of a pleasant landscaped foreground in such views.

The GCAA identifies the appeal site as a green space along Rookery Lane reflecting its use as the remnant garden of the adjacent listed building. Following the redevelopment of the wider site situated to the north-west this is the last remaining parcel of green space within Rookery Lane, and due to its positive contribution to the character and appearance of the Conservation Area it was secured as an area of landscaping to the wider development site approved under planning permission 14/01084/FUL. The importance of the space was further increased by the unauthorised removal of a number of trees through the wider redevelopment site during the implementation of 14/01084/FUL, and the application site being the location for the planting of a number of trees to mitigate their loss, secured via the approval 17/01071/CONDIT. The proposal for a new dwelling on the site would lead to the total loss of this last remaining green space and purposefully planted trees, both of which contribute positively to the significance of the conservation area. The proposal would therefore have an adverse impact, causing a level of harm to the significance of the Conservation Area, which in this case the level of harm is considered to be less than substantial.

The Inspector for 17/00982/FUL concluded that trees and green space are an intrinsic part of the Conservation Area's character and help to differentiate it from the more recent suburban development in the village. He concluded that the application site forms part of the rural village character of the conservation area and that the value of the site is recognised by the GCAA which identifies it as part of larger green space formed by the gardens to 20 and 26 Rookery Lane. Since the publication of the GCAA the development in the garden of No 20 has served to increase the value and importance of the application site as the only remaining green space along the front boundary separating built development at No 20 from the plot of No 26. The Inspector concluded that the proposed house (17/00982/FUL) would result in the loss of this gap and urbanise the site to the detriment of the character and appearance of the Conservation Area as a whole, and in my opinion the new proposed development would clearly have the same adverse impacts. The Inspector then continued in assessing that the harm caused would not be compensated by the design of the house which would be sympathetic to the appearance of the existing recently built houses and No 20. In my opinion this would remain the case with the new proposed development, which whilst having some aspects of design that follows local characteristics, such as a slate roof and appropriate window detailing, the design of the house overall is clearly insufficient to compensate for the total loss of a valued and important landscaped area within the conservation area.

Due to the rise in levels which increase south east when travelling up Rookery Lane the application site is situated upon a higher land level to that of the highway, with a retaining stone wall to the front. The scheme proposes a two bed two storey dwelling, which would have a ridge height considerably higher than the adjacent dwellings to the west. Whilst an attempt has been made to reduce the height and scale of the dwelling by proposing a partially subterranean lower ground floor given the significant change in levels within Rookery Lane, and the application site being situated within a prominent and raised location within the street, the proposed dwelling would have a dominant and overbearing impact and presence within the street scene. The location of the proposed dwelling to the front of the listed building would also further erode the perception that the dwelling was a house of status by being located further forward within the plot and diminishing the extent of its former garden.

The proposed dwelling would occupy a constrained plot, with an existing driveway serving the wider developed site to the north-west, with parking to serve the surrounding dwellings to the rear. The proposed dwelling would span the width of the plot. Whilst the urban grain within the area is tighter than what would be expected in more modern developments, due to the historic pattern of development, the proposed development would be uncharacteristically tight and would appear contrived.

The proposed development would be situated close to the south east boundary of the site, which is lined with mature trees, with these trees making a positive contribution to the significance of the conservation area and adjacent listed building by being located within its immediate setting. The application is not accompanied by any tree surveys nor proposed mitigation measures to ensure the health and long term protection of the existing trees. Given the close proximity of the proposed development to the trees along the south east boundary of the site, and taking into account the proposed scale of the development and the change in land levels, it is likely that the development would have a harmful impact upon the health of the existing trees. The development is also likely to have an adverse impact upon the root protection areas of the existing mature trees situated to the front of the listed building.

The Inspector for 17/00982/FUL identified that the listed building has a setting within verdant open surroundings, of which the application site forms a prominent part, is characteristic of when it was built and contributes to its significance. The Inspector went on and concluded that the proposed house (17/00982/FUL) would occupy the width of the application site and urbanise it removing the last open undeveloped land that separates No 26 from development associated with No 20; this remains the case with the new proposal. He continued and identified that in the absence of submitted substantive arboricultural evidence to the contrary, as remains the same for this new proposal, it also appears that the proposal would result in the loss of many of the recently planted trees on the site and harm adjacent trees in the vicinity of the boundary with No 26. Consequently, he concluded that the proposed house (17/00982/FUL) would harmfully encroach upon the setting of the listed building. He finally concluded that as in relation to the Conservation Area, the harm caused would not be overcome by the sympathetic design details of the house, and in my opinion this conclusion would again be applied to this new proposal.

In summary the proposed development would be situated forward of the adjacent Grade II Listed Building and within its former gardens. Due to the land levels of the site, which are elevated the proposed development would result in a dominant and

overbearing feature within the street scene, alongside the total loss of the last remaining section of former garden which would diminish an understanding of the status of the listed building, and in addition to the loss of trees and green space which contribute positively to its setting. It is considered that the development of this site would have an adverse impact upon the significance of the Listed Building which would cause a level of harm to its significance. In this case the level of harm is considered to be less than substantial.

Harm vs benefits assessment and summary

It has been identified that the proposed development would cause less than substantial harm to the significance of the Groby Conservation Area and a Grade II Listed Building No 26 Rookery Lane. There is no clear and convincing justification for the harm caused to these designated assets so the proposal is in conflict with paragraph 206 of the NPPF. In accordance with Policy DM11 of the SADMP and paragraph 208 of the NPPF any harm caused by a proposed development should be weighed against the public benefits. Public benefits could be anything that delivers economic, social or environmental progress as described in the NPPF. Public benefits may include heritage benefits as specified in the Planning Practice Guidance, 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

Of particular relevance in this balancing exercise is a determination of whether the proposal can sustain or enhance the significance of the conservation area and the setting of the adjacent Listed Building, thus demonstrating a heritage benefit. In this case, the proposal does not sustain the significance of the Groby Conservation Area or the adjacent Grade II Listed Building due the dominant appearance a proposed dwelling would have, situated forward of the front elevation, and the loss of trees and a key space which forms the original gardens to the Listed Building and a key component of the conservation area. The retention of the newly erected stone wall to the front of the application site merely maintains a positive feature and no element of the proposal for the new dwelling is considered to enhance the significance of these heritage assets and their setting. No heritage benefits can be demonstrated from the development of this site.

There are most likely some (non-heritage) benefits that can be demonstrated by the proposal, which include the provision of one dwelling towards the housing supply within the Borough and some short-term employment during the construction of the dwelling. Consideration of further benefits and their identification is a matter for the decision-taker. It is worth noting the Inspector for 17/00982/FUL identified a number of non-heritage benefits that would be relevant to this new proposal; noting some construction employment and provide a dwelling within a settlement that has a range of services and facilities, including bus services, within easy access. It would also provide a small, low cost open market house that would increase by a nominal amount the housing stock in the Borough. The Inspector attached moderate weight to these benefits of the scheme in the balancing exercise.

Once the level of public benefits has been determined then the balancing exercise undertaken. In this balancing exercise, great weight must be given to the conservation of these designated heritage assets as required by paragraph 205 of the NPPF in order for the local planning authority to fulfil the statutory duties of

Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990. Should the exercise not come out in favour of the development then this application should be refused.

*It must be noted that the Inspector for 17/00982/FUL concluded that the public benefits of the proposal fell a **long way short** of outweighing the harm that would be caused to Groby Conservation Area and the setting of the Grade II listed building at 26 Rookery Lane. The proposal would therefore be contrary to a policy of the Framework that provides a clear reason for refusing the development proposed, as well as failing the statutory tests. In my opinion due the material similarities between the dismissed appeal scheme and the current proposal are clear'.*

- 8.21. For the reasons outlined and above and as contained within the comments from the Conservation Officer, by virtue of its siting, layout and overall design the development is not judged to comply with policy DM10 (c) in that it does not complement or enhance the character of the area.
- 8.22. In accordance with Policy DM11 of the adopted SADMP and paragraph 134 of the NPPF the harm caused by a proposal should be weighed against any public benefits. In this case, the proposal does not sustain the significance of the Groby Conservation Area and would cause harm to the setting of the adjacent Grade II Listed Building, nor does it demonstrate any other heritage benefits. As identified by the Inspector previously the proposal would provide one new dwelling towards the housing supply which would be considered a minor public benefit due to the level of provision towards the housing target would not outweigh the harm to the designated heritage assets. Other benefits include temporary economic and social benefits arising through the construction of the dwelling. These benefits are judged to be minor considering the scale of development and they would outweigh the harm identified to the setting of the Groby Conservation Area or the impact upon the setting of the Grade II Listed building and therefore the proposal would be in conflict with Policies DM11 and DM12 of the adopted SADMP, Section 12 of the NPPF and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.
- Impact upon neighbouring residential amenity
- 8.23. Policy DM10 of the SADMP states that new development should not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters such as lighting, air quality, noise, vibration and visual intrusion.
- 8.24. The proposed dwelling would be situated to the south east of a recently constructed two storey dwelling, and to the north/north west of No.26, which is a doctor's surgery.
- 8.25. The proposed north-west facing side elevation would face towards the side elevation of the south east facing elevation of the adjacent dwelling with a distance of approx. 5m between the dwellings. There is 1 side window proposed for this elevation which would face towards the adjacent dwelling. There is an existing access which runs between the proposed and existing dwelling to serve the wider site. There are no side facing windows within the existing dwelling which would face onto the application site, and given the proposed relationship between the existing

and proposed dwelling, it is not considered that this dwelling would result in any adverse impacts in terms of overlooking or overbearing impact upon this property.

- 8.26. The proposed dwelling would face across the public highway towards the dwellings on the opposite side of Rookery Lane and by virtue of the separation distance of approximately 20 metres to the front elevation windows would not result in any adverse relationship to these dwelling from either overbearing/overshadowing impact or loss of privacy from overlooking.
- 8.27. To the south of the application site, is the Doctors surgery which serves the village, and therefore given the use of this property there would be no residential amenity impacts to this property.
- 8.28. By virtue of the layout, design, separation distances and existing and proposed boundary treatments, the proposed scheme would not result in any significant adverse impacts on the privacy or amenity of the occupiers of any neighbouring properties or future occupiers of the site and would therefore be in accordance with Policy DM10 of the adopted SADMP.

Impact on archaeology

- 8.29. Policies DM11 and DM13 of the adopted SADMP state that where a proposal has the potential to impact a site of archaeological interest, developers will be required to provide appropriate desk-based assessment and, where applicable, field evaluation detailing the significance of any affected asset. Where preservation of archaeological remains in situ is not feasible and /or justified the local planning authority will require full archaeological investigation and recording by an approved archaeological organisation before development commences.
- 8.30. Paragraph 128 of the NPPF states that where a site has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit appropriate desk-based assessment and field evaluation. Paragraph 141 of the NPPF requires developers to record and advance understanding of the significance of any heritage assets to be lost in a manner proportionate to their importance and the impact and to make this evidence publically accessible.
- 8.31. The application site is situated within the Historic Settlement Core of Groby, and a large part of the garden originally belonged to the adjacent 18th Century Listed Building. There is likelihood that archaeological remains relating to the medieval and post medieval settlement are present within the site. Historic mapping and aerial photographs indicate that the garden does appear to be at its original ground level in comparison with adjacent properties. Therefore there is a likelihood that any archaeological remains present have survived in situ.
- 8.32. Leicestershire County Council (Archaeology) were not consulted for the current proposal but did not object to the previous proposal that was ultimately refused. It sought further information with regard to the archaeological evaluation of the site. This information can be secured by condition and is considered to be a reasonable approach to ensure that any archaeological remains present are treated appropriately. Subject to the inclusion of this condition the development would not have a detrimental impact upon the understanding of the significance of any heritage asset, and would therefore be in accordance with Policies DM11 and DM12 of the SADMP.

Impact upon highway safety

- 8.33. Policies DM17 and DM18 of the SADMP relate to highway safety and vehicle parking standards. DM17 requires, amongst other things, that proposals do not have a significant impact upon highway safety and DM18 requires an appropriate level of parking provision.
- 8.34. The proposed dwelling would be served by the existing access serving the wider site, as approved by planning permission 14/01084/FUL which increased the width of the existing access and improved visibility. The level of additional traffic this proposal would provide using the access is not considered to be on a scale likely to result in any significant adverse impact on highway safety. In addition, adequate parking provision is proposed to serve the dwelling which would be in accordance with the 6C's Design Guidance.
- 8.35. The scheme would not result in any significant adverse impacts on highway or pedestrian safety and would provide adequate off-street parking to serve the development. The proposal would therefore be in accordance with Policies DM17 and DM18 of the adopted SADMP.

Drainage

- 8.36. Policy DM7 of the adopted SADMP seeks to ensure that development does not create or exacerbate flooding. No comments were received from Environmental Health (Drainage) but for the previous application a standard condition was recommended to require the submission for prior approval of a sustainable surface water drainage scheme to serve the development to ensure that the scheme does not result in flooding.

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. Given the very minor benefits arising from the proposal, the level of harm to the significance of the conservation area and the adjacent listed building, the loss of the green space, which contribute positively to the character and appearance of the Conservation Area, the Local Planning Authority do not consider that the benefit of this proposal would outweigh the heritage harm caused. Given that special attention and regard should be paid under statutory provisions, great weight has been given to the conservation of the designated heritage assets. The proposal conflicts with local planning policies on protecting and enhancing the historic environment and heritage assets and overall the design is not judged to complement the character of the surrounding area. Conflict with policies DM10, DM11 and DM12 are therefore identified.
- 10.2. The Council cannot demonstrate a 5-year housing land supply and the housing policies in the adopted Core Strategy and the housing policies of the adopted SADMP are considered to be out of date as they focused on delivery of a lower housing requirement than is now required. It is necessary therefore to consider the 'tilted' balance in paragraph 11(d) of the NPPF, as the development is judged to harm the special significance of heritage assets officers consider this provides a clear reason for refusing the development in line with paragraph 11(d) i). Nonetheless, were paragraph 11(d) ii) applied whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, the adverse heritage and design impacts would outweigh the benefits of the development. The provision of a single dwelling would contribute positively to the Council's housing land supply, furthermore there would be temporary benefits associated with the construction of the dwelling. However, these benefits are limited owing to the small scale of the development and are therefore attributed limited positive weight which would not overcome the harm.

11. Recommendation

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

11.2. Reasons

1. The proposed development would result in the unacceptable erosion of the green space within Rookery Lane and the Groby Conservation area. Given the scale, siting and design of the proposed development it would result in a prominent and overbearing feature within the streetscene and would detrimentally impact upon the conservation area and an area of designated green space which is of importance of the historic setting of the Groby Conservation Area. The proposed development is contrary to Policies DM1, DM10, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Paragraph 208 of the National Planning Policy Framework and Section 16 of the National Planning Policy Framework (2023) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. The proposed development would be situated forward and in close proximity of the adjacent Grade II Listed Building known as 26 Rookery Lane, and would result in the loss of existing green space, existing and future mature trees, which would have an adverse effect upon the setting of the Listed Building. This would not be outweighed by the Public benefits of the scheme. The proposed development is contrary to Policies DM1, DM11 and DM12 of the Site Allocations and Development Management Policies DPD, Paragraph 208 of the National Planning Policy Framework and Section 16 of the National Planning Policy Framework (2023) and the statutory duty of Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.