

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

STATEMENT FOR THE APPELLANT

APPELLANT: Mr Nathan Proud

APPEAL SITE: Poplar Cottage, Little Shaw Lane, Markfield, Leicestershire, LE67 9PP

LPA REFERENCE: 24/00021/FUL

REASON FOR APPEAL: Refusal for part change of use of site to retail to allow public access to the nursery and the provision of a car park

GHMPLANNING

87 Park Road, Beeston, Nottingham, NG9 4DE
joe@ghmplanning.co.uk
07447 089990

1.0 Introduction

1.1 This statement outlines the Appellant's case in relation to the refusal of the planning application 24/00021/FUL part change of use of site to retail to allow public access to the nursery and the provision of a car park.

1.2 The application was refused on the following ground:

This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 114 and 115 of the National Planning Policy Framework (2023).

2.0 The Appeal Site and Surroundings

2.1 The application site is located in the countryside to the north-west of Markfield and on the north-east side of the A511 dual carriageway. Poplar Cottage is a two-storey dwelling constructed of local stone. There is a domestic garage and ancillary stables and outbuildings to the rear of the dwelling. The access leads to a hard-surfaced parking and turning area in front of the dwelling. The existing access has gates on the highway boundary set back from the dual carriageway by approximately 10 metres with grassed verges and a pedestrian access between. There is a post and rail fence and mature native hedgerows either side of the access on the highway boundary. There is an open/piped drainage ditch running across the site frontage through the grassed highway verge.

2.2 To the north-west of the dwelling is a large field with levels that rise from the highway. This accommodates several buildings including a barn in the north-east corner, a barn to the north-west of this and polytunnels. The site is landscaped by mature hedging and occasional trees along the highway boundary and is heavily treed with hedges planting on all other boundaries. There are fields bordering on all sides other than the south which borders the highway.

2.3 This field is in use for horticultural purposes together with associated buildings.

3.0 The Proposal

3.1 The application comprises a part change of use of the site to retail and the provision of an associated car park.

3.2 The site is operated in conjunction with the main nursery at Rothley. The Rothley site has been open since 2007, employing four full time and three part time staff together with some casual staff during busy months. The site operates 7 days per week, opening 0900-1730 Mondays to Saturdays and 1000-1600 on Sundays. At Rothley approximately 250,000 seasonal bedding plants along with 35,000 perennial plants are produced per year along with a selection of trees and shrubs. The site also produces vegetable plants, herbs, fruit trees-bushes

and wild flowers that are ready to plant straight into gardens. Christmas trees and homemade holly wreaths are available at Christmas.

- 3.3 The Rothley site also sells some brought in plants sourced locally and sell compost, pots and aggregates that go alongside the nursery as well as seed potatoes, seasonal bulbs and some nursery essentials such as a small range of chemicals and tools.
- 3.4 The site at Rothley comprises under cover areas for growing and retail combined of approximately 1400m².
- 3.5 However, the site is leased and this lease will cease as the site is being brought forward for re-development. In order to maintain the business, albeit in a modified form, the Markfield site must evolve to accommodate some of the activities that currently take place at Rothley. These include selling items such as seasonal bedding plants, perennial plants, fruit bushes and trees, vegetable plants, ornamental trees and flowering shrubs. All of these would be grown on the site. Other items for sale would be limited but would include seasonal bulbs, compost, pots etc. The site would not sell non-plant/horticultural items such as birthday gifts, cards etc. and there would be no café. The site would be a plant growing nursery only and not a wider garden centre/point of destination for visitors etc.
- 3.6 The opening hours for the public could be limited to 0930 or 1000 Monday to Friday to avoid the peak traffic. The busiest time for customers at Rothley is between 1030 and 1400 when traffic is likely to be at its lowest level on the adjacent highways.
- 3.7 Suitably worded conditions to control the hours of opening and the goods to be sold on the site would be acceptable in order to ensure the use remains as a nursery.
- 3.8 The application is sought in order to allow the business to continue to operate. Between this and the Rothley site, the business has become successful, employing several people and contributing to the local rural economy. However, with the Rothley site lease coming to an end the Markfield site now needs to assimilate elements of that operation to allow access for the public in order to maintain the business and avoid significant loss of employment.

4.0 Site History

- 4.1 Application reference 18/00272/FUL for a replacement access to the field and dwelling was approved on 31st May 2018. This proposed a new access to the west of the existing access to enter the field and providing a spur into the site of the adjacent dwelling. The existing access would be removed and the pavement crossing reinstated. This permission is extant although has not yet been carried out.
- 4.2 Application 18/01279/FUL for the use of agricultural land for horticultural purposes, the erection of a polytunnel and a storage building, was withdrawn pending a further ecological survey.
- 4.3 Application 19/00623/FUL approved the erection of a polytunnel and associated storage building for horticultural purposes.

- 4.4 Application 20/01363/FUL approved the hay barn, greenhouse and water tank for horticultural use.
- 4.5 Application 22/01127/FUL for the part change of use of the site to retail to allow public access to the nursery (approved under 19/00623/FUL) along with the provision of the car park was refused on the following ground:

This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 110 and 111 of the National Planning Policy Framework (2021).

5.0 Planning Policies

- 5.1 The Development Plan for Hinckley and Bosworth comprises the adopted Core Strategy 2009, the adopted Site Allocations and Development Management Policies 2016 and the Markfield Neighbourhood Plan.
- 5.2 The national planning policy is within the National Planning Policy Framework. This sets out the Government's planning policies for England and how these should be applied. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
- 5.3 The NPPF states the purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives which are an economic objective, a social objective and an environmental objective. It states part of the economic objective is to help build a strong, responsive and competitive economy by ensuring that sufficient land of the right types is available in the right places at the right time to support growth and improved productivity. In addition, it states so that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development.
- 5.4 At paragraph 12 it states local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
- 5.5 At paragraph 38 the NPPF states local planning authorities should approach decisions on proposed development in a positive and creative way.
- 5.6 Paragraph 85 of the NPPF states planning decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. At paragraph 83 it states planning decisions should recognise and address the specific locational requirements of different sectors.

- 5.7 Paragraph 114 of the NPPF states in assessing specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users and 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. Paragraph 115 states 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 would be severe.
- 5.8 The Development Plan comprises the adopted Core Strategy 2009 and the adopted Site Allocations and Development Management Policies 2016. The Core Strategy sets out the aims of the borough and relevant policies include Policy 7 Key Rural Centres, Policy 8 Key Rural Centres relating to Leicester, Policy 21 National Forest and Policy 22 Charnwood Forest. Under Policy 8 an aim is to support additional employment provision to meet local needs.
- 5.9 The main relevant policies in the Sites Allocations and Development Management Policies Development Plan Document are DM1, DM4, DM6, DM10, DM17 and DM18.
- 5.10 Policy DM1 supports sustainable development. Policy DM4 seeks to protect the intrinsic value, beauty, open countryside and landscape character and appearance of the countryside from unsustainable or unjustified development. Policy DM4 also seeks to protect the physical and perceived separation and open character between settlements and prevent adverse impacts on the countryside from the consolidation/exacerbation of ribbon development.
- 5.11 Policy DM6 requires development proposals to demonstrate how they conserve and/or enhance biodiversity.
- 5.12 Policy DM10 requires new development to complement or enhance the character of the surrounding area with regard to scale, layout, mass, design, materials and architectural features and for building materials to respect existing/neighbouring buildings and the local area generally. In addition, new development should not have any significant adverse effects on the privacy or amenity of any neighbouring residential properties.
- 5.13 Policy DM17 and DM18 require development to be provided with satisfactory access arrangements and parking facilities to serve the development.
- 5.14 The Markfield Neighbourhood Plan policy M1 relates to development in the countryside. Policy M2 relates to landscape character, policy M10 relates to design, policy M13 relates to local and neighbourhood centres and policy M23 relates to business conversions of rural buildings.

6.0 The Appellant's Case

- 6.1 The application site lies outside of a defined settlement and as such is located within the countryside. Policy DM4 Safeguarding the Countryside and Settlement Separation seeks to restrict development in such locations to, amongst other things, development that contributes to economic growth and generally supports rural business. The NPPF support local business needs in rural areas. A key objective of the NPPF is to boost the economy, especially in rural areas.

- 6.2 The applicant currently operates a successful enterprise from a base in Rothley (Charnwood Borough Council) where, amongst other things, stock/nursery growing takes place. However, the lease on this site is ending as the site comes forward for re-development and therefore the applicant seeks to amend the permission on the Markfield site. The lease will end August 2025 at which point unless elements of the operation can be transferred to Markfield, the operation will cease with the loss of all jobs.
- 6.3 Permission was granted for the removal of the existing hay barn and the erection of a replacement hay barn and the erection of a greenhouse and polytunnels to provide further plant growing capacity for the nursery.
- 6.4 The proposals were considered horticultural based which comes under the definition of agriculture under section 336 of the Town and Country Planning Act 1990.
- 6.5 The circumstances of the business have now changed with the lease on the Rothley site coming to an. In order to continue to operate, the business must therefore evolve which requires a change of emphasis on this site. This comprises concentrating the nursery operation on this site and opening the plant nursery to the public to a limited degree. The site would be focused solely on the nursery and goods for sale would be limited to plants, bulbs and associated planting goods such as compost and pots. The operation would be strictly limited to these nursery-based goods and no other goods would be sold. There would be no café facility. The client base targeted would therefore be nursery customers only and not the garden centre market. A suitably worded condition to limit the goods on sale would be acceptable. The public areas would be limited to the car park, the polytunnel and part of the storage barn.
- 6.6 The proposal would allow the business to continue. With the plants being grown on the site, a rural site is required and a more sustainable location would not suffice. The principle of using the site as a nursery has already been established and the site has been the subject of significant investment. This application merely seeks to allow limited access to the public to purchase plants and associated goods.
- 6.7 It is considered the proposal meets the tests set in the NPPF and Development Plan in supporting appropriate rural businesses that have to operate from a rural base. The operation is established and this application seeks to amend the approval granted. It is therefore concluded that in principle, the proposal is acceptable.
- 6.8 Section 12 of the NPPF refers to the visual impact of development and design. Policies DM4 and DM10 substantiate the requirements set out in the NPPF.
- 6.9 The proposal comprises the provision of an area of porous granite chippings on a hardcore base to be used for customer parking. The area would be of a limited size with landscaping to the east and south. The area would have no verticality and it is considered the visual appearance of the proposal would not be harmful to the site or surroundings.
- 6.10 The proposal is therefore considered to have a limited visual impact on the site and surroundings and would be of an appropriate appearance and scale for this

countryside location. The proposal complies with the above policies and guidance.

- 6.11 The site occupies a relatively isolated location in terms of assessing the impact on the residential amenities of adjacent land users and buildings. The approved operation, the growing of stock, is a quiet operation which does not result in any significant noise and disturbance to any nearby property or land use. Traffic as a result of customers visiting the site would generate additional noise and disturbance; however, the amount of traffic generated would be limited and with the background noise of the adjacent highway, there would be no undue harm to the amenity of neighbouring sites or properties.
- 6.12 As such, the proposal would comply with the above policies and guidance and would not be harmful on the grounds of residential amenity.
- 6.13 The proposal would utilise the existing access which was recently approved. Policy DM17 of the adopted SADMP states that development proposals will be supported where they demonstrate that there is not a significant adverse impact on highway safety. Policy DM18 of the adopted SADMP requires an appropriate level of parking provision to be provided and of appropriate design.
- 6.14 The proposal would result in the intensification in use of the existing access on to a Class A road where the speed of traffic is above 40mph. The Highway Authority policy relating to access states they will normally seek to resist the intensification of accesses; however, it does not state that they will always seek to resist applications. The policy refers to A and B roads where the speed of traffic is above 40mph, and in this instance the site access is located on a stretch of road where as vehicles pass the access they are likely to be travelling above 40mph. However on the approach to the site access, due to the location of the roundabout the speed of vehicles as they would first come into view would be below 40mph and therefore there is a potential argument than in this case the policy should not apply.
- 6.15 In terms of the existing access the width of the access is suitable to allow two vehicles to pass. The available visibility out of the access is very good, and vehicles can be seen as they leave the roundabout over 160 metres away. This splay is above that required for the speed of traffic as they enter the visibility splay envelope. Therefore, whilst the access is located on to a section of a Class A road, the visibility splays are very good and therefore vehicles should be able to safely turn into and out of the access.
- 6.16 In terms of the proposal, the intention is that nursery sales would take place directly to the public. The site would also continue to sell the plants grown on site to the trade as at present. It is not intended to sell imported goods, other than perhaps compost, and the proposal would be very low key with no actual shop but some tills and no café on the site.
- 6.17 It is considered that the proposal would not result in a large number of customers and the majority of those that do arrive are likely to be outside of the normal peak hours. The experience at the associated Rothley site is that the busiest period is between 1030 and 1400.
- 6.18 The proposal would therefore be in accordance with Policies DM17 and DM18 of the adopted SADMP.

- 6.19 A Phase 1 Habitat Survey has been carried out to assess the potential ecological effects of the proposed construction of a new polytunnel and shed and use of the land for horticultural purposes. The development area is a section of an existing field comprising species-poor grassland which is not considered to be of ecological value and is unlikely to support protected or notable species. Therefore, the proposal is unlikely to have a significant ecological effect.
- 6.20 The proposed site is situated within the Rothley Brook Catchment. The river leads east and joins the River Soar near Rothley. There is history of flooding within this catchment and Leicestershire County Council has stated any development has the potential to cause or aggravate flooding and it is essential that all forms of flooding are taken into consideration within any planning application.
- 6.21 The proposal would introduce run-off from the additional area of hardstanding. Ground water would be collected and drained into soakaways within the field. The proposal would therefore ensure there would be no additional runoff from the development. A condition to implement the drainage scheme would be acceptable.
- 6.22 Notwithstanding the case above, the Council refused the application on the grounds that the proposal would lead to an intensification of vehicular movements turning onto and off the A511 Shaw Lane, which is a busy high-speed dual carriageway, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety, and is contrary to Policy IN5 of the Leicestershire Highway Design Guide, Policy DM17 of the Site Allocations and Development Management Policies DPD (2016), Policy M10 of the Markfield Parish Neighbourhood Plan (2021) and paragraphs 114 and 115 of the National Planning Policy Framework (2023).
- 6.23 The Council supported the proposal on the grounds of the principle of the development, visual amenity, residential amenity and ecology. As such, the only issue related to highway safety.

7.0 Grounds of Appeal

- 7.1 The Appellants case is set out in the attached Edwards and Edwards Consultancy Ltd document Highways Appeal Statement

8.0 Conclusion

- 8.1 It has been demonstrated above that the proposed development is acceptable in principle, could be carried out without harm to the amenity of neighbouring occupants and highway safety and that the proposal is acceptable in terms of visual amenity. It is also considered that the proposal accords with the Government's document Unleashing Rural Opportunity
- 8.2 It is therefore respectfully requested that the appeal is allowed.