

Delegated Report

Planning Ref: 25/00403/CONDIT
Applicant: MR STUART BURTON
Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: 223 Station Road, Earl Shilton, Leicester, LE9 7GG

Proposal: Variation of condition 2 (Plans), condition 3 (Materials), condition 10 (parking) and condition 11 (access) of planning permission 23/00298/FUL. Plot 4 house substitution, and addition of window to first floor of garage Plot 1. Cladding on all garages to change to horizontal silver birch. All windows to change from dark grey to sage green on plots 1 - 4.

1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions outlined at the end of this report

2. Planning application description

- 2.1. This application seeks to vary Condition 2 (approved plans) and Condition 3 (materials), Condition 10 (parking) and Condition 11 (access) of planning permission 23/00298/FUL. Application 23/00298/FUL was granted planning permission for the:

'Erection of 4 dwellings with associated parking and landscaping'.

- 2.2. Section 73 of the Town and Country Planning Act 1990 allows applications to be made for permission to develop without complying with a condition previously imposed on a planning permission. Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and un-amended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.
- 2.3. A decision notice describing the new permission should clearly express that it is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.
- 2.4. In this particular case, a number of conditions have been discharged on the original permission and so these agreed details will be carried forward and set out within the conditions section for this report.
- 2.5. As a section 73 application cannot be used to vary the time limit for implementation this condition must remain unchanged from the original planning permission (23/00298/FUL). In this instance however, the application form states that development has commenced on site.
- 2.6. Existing Condition 2 states:

'The development hereby permitted shall only be carried out in accordance with the following approved plans:

- Site Location Plan drawing 7637-01-01 Rev A received 27 March 2023
- Revised Proposed site plan drawing 7637-03-01 Rev E received 20 April 2023
- Plot 1 Plans & Elevations drawing 7637-03-04 Rev B received 27 March 2023
- Plot 2 & 3 Plans & Elevations drawing 7637-03-05 Rev B received 27 March 2023
- Plot 4 Plans & Elevations drawing 7637-03-06 Rev A received 27 March 2023
- Garage Plans & Elevations drawing 7637-03-07 received 27 March 2023

Reason: To ensure the development is carried out in accordance with the approved details.

- 2.7. The proposed re-wording of Condition 2 is as follows:

'The development hereby permitted shall only be carried out in accordance with the following approved plans received 16 April 2025:

- Drawing number 9053-03-04 Plot 1 plans and elevations-A2 Layout
- Drawing number 9053-03-05 Plots 2 and 3 plans and elevations-A2 Layout
- Drawing number 9053-03-01C Plot 4 plans-A1 Layout
- Drawing number 9053-03-02C Site plan-A1 Layout
- Drawing number 9053-03-03 Material schedule-A3 Layout
- Drawing number 9053-03-06 Plot 1 garage-A3 Layout
- Drawing number 9053-03-07 Plots 2 and 3 garage-A3 Layout

Reason: To ensure the development is carried out in accordance with the approved details.

- 2.8. Condition 3 was formally discharged on 30 October 2024. A Materials Schedule received 10 April 2024 was agreed by the LPA. This application now seeks to approve a revised Materials Schedule Drg No. 9053-03-03 which now includes different materials including cladding on all garages to change to horizontal silver birch and the colour of all windows to change from dark grey to sage green on all Plots (1 – 4).

- 2.9. The proposed re-wording of condition 3 would be as follows:

'The development hereby approved shall be carried out in accordance with the Materials Schedule Drg No. 9053-03-03 received by the local planning authority 16 April 2025.

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

- 2.10. Condition 10 of the original permission (23/00298/FUL) makes reference to a plan for parking purposes on site but the plan reference details have changed and so this condition needs to be varied in order to make reference to the revised plan details.

- 2.11. The proposed re-wording of Condition 10 is as follows:

'The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with HSSP Site

Plan, Drg No. 9053-03-02 Rev C. Thereafter the onsite parking and turning provision shall be kept available for such uses in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2017 and the requirements of the NPPF'.

- 2.12. Condition 11 of the original permission (23/00298/FUL) makes reference to a plan for access purposes for the site but as with Condition 10 the plan reference details have changed and so this condition needs to be varied in order to make reference to the revised plan details.

- 2.13. The proposed re-wording of Condition 11 is as follows:

'No part of the development hereby permitted shall be occupied until such a time as the access arrangements shown on HSSP Site Plan, Drg No 9053-03-02 Rev C have been implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway in a slow and controlled manner in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

3. Description of the site and surrounding area

- 3.1. The application site is located to the east of Station Road, close to the junction with the A47 which lies to the south. It is accessed via Breach Lane to the east, which runs off to the north from the site. There have recently been a number of new dwellings constructed along this part of Breach Lane.
- 3.2. The application site is located within flood zone 1 and is at low risk of flooding.

4.0. Relevant planning history

- 4.1. 19/00644/OUT - Residential development of two dwellings (Outline - access only) - REFUSED.

19/01050/OUT - Erection of one dwelling (outline - access only) – APPROVED

22/00169/OUT – Outline application for 3 detached dwellings with access from Breach Lane – APPROVED

23/00298/FUL - Erection of 4 dwellings with associated parking and landscaping - APPROVED

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents and displaying a site notice.
- 5.2. No third party comments have been received to date.

6. Consultation

6.1. No objection has been received from the following consultees:

HBBC Environmental Health
LCC Highways
LLFA

6.2. No comments have been received from Earl Shilton Town Council, LCC Ecology, the Council's Waste team or Severn Trent Water.

7. Policy

7.1. Core Strategy (2009)

- Policy 2: Development in Earl Shilton
- Policy 5: Transport Infrastructure in the sub regional centres
- Policy 16: Housing Density, Mix and Design
- Policy 24: Sustainable Design and Technology

7.2. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM3: Infrastructure and Delivery
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.4. Other relevant guidance

- Leicestershire Highway Design Guide (2020)
- HBBC Good Design Guide (2020)

8. Appraisal

8.1. Key Issues

- Principle of development
- Design and impact upon the character of the area
- Heritage impact
- Impact upon neighbouring residential amenity
- Impact upon highway safety
- Drainage
- Other Matters

Principle of development

8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms 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.

- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) and the Site Allocations and Development Management Policies DPD (2016) (SADMP).
- 8.4. The principle of development is established through the grant of planning permission for 23/00298/FUL. Since the grant of permission 23/00298/FUL the NPPF has been updated (Dec 2024) and it is to be noted that the replacement Local Plan for Hinckley and Bosworth has been delayed and a further Regulation 18 stage is to be carried out.
- 8.5. Permission 23/00298/FUL has been commenced on site and so the principle of residential development of this scale is established.

Design and impact upon the character of the area

- 8.6. Policy DM10(c), (d) and (e) of the 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 the use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the area generally and incorporates a high standard of landscaping.
- 8.7. Paragraph 139 of the revised NPPF states development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance. Local policy is considered to accord with the NPPF.
- 8.8. The proposed variation of conditions 2 and 3 in this instance seeks to approve a revised materials schedule for the scheme which includes horizontal silver birch cladding on all garages for Plots 1-4 and a change to the originally agreed window/door colour from dark grey to sage green for all Plots.
- 8.9. Changes to the scheme also include a house substitution to Plot 4 with a significantly altered layout and overall design and the insertion of a side window to the 1st floor of the garage for Plot 1.
- 8.10. The revised NPPF (2024) which has been published since the grant of the original permission is a consideration in this instance, however the revised changes are minimal from a design and character perspective and are therefore not considered to alter the assessment of the proposal when considered against the original proposal.
- 8.11. Overall, the scheme is considered to be acceptable and in compliance with Policy DM10(c), (d) and (e) of the SADMP, the Good Design Guide SPD and the requirements of the revised NPPF.

Impact upon neighbouring residential amenity

- 8.12. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.13. Paragraph 135 of the revised NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.14. Paragraph 198 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.15. The Environmental Services Team has been consulted on this application and has raised no objections.
- 8.16. The revised plans show a plot substitution to Plot 4. This includes a significantly altered layout and overall design but only results in a slight alteration to the position of the footprint of the dwelling within the plot. The details have been checked and separation distances between existing and proposed dwellings is considered to be acceptable with respect to overlooking and back to back and side to back distances. The changes are also not considered to alter the amenity relationship for properties when compared to the original application.
- 8.17. The proposed window to the garage to Plot 1 is to be located within the side elevation of the garage at first floor level. The insertion of this window is located adjacent to the entrance to the site and would look onto the private road providing access to the development. As such this window would not adversely affect residential amenity when compared to the originally assessed application.
- 8.18. Overall, the plans as submitted are considered to be acceptable with respect to residential amenity considerations and in compliance with Policy DM10 a and b of the SADMP, The Good Design Guide SPD and the requirements of the revised NPPF.

Impact upon highway safety

- 8.19. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.20. Paragraph 116 of the revised NPPF outlines that 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.
- 8.21. Paragraph 117 of the NPPF states that development should be designed to enable charging of plug in and other ultra low emission vehicles in safe, accessible and convenient locations.

- 8.22. The local highway authority have raised no objections to the proposed variation of condition application and are satisfied that the revised plans raise no further highway issues/concerns when compared to the original permission 23/00298/FUL.
- 8.23. As such the proposal is considered to accord with Policies DM17 and DM10 (g) and the requirements of the NPPF with respect to highway safety, access and low emission vehicle requirements.

Drainage

- 8.24. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.25. Paragraph 181 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere. Paragraph 182 states that developments should incorporate sustainable drainage systems. The systems used should take account of advice from the LLFA, have appropriate proposed minimum operating standards, have maintenance arrangements for the lifetime of the development and where possible provide multifunctional benefits.
- 8.26. The applicant has confirmed that the application as proposed will have not alter the finished floor levels as agreed by condition for the original application. As such, the agreed details will be carried over to this Section 73 application.
- 8.27. This section 73 application proposes no changes to drainage matters associated with this development. The LLFA have raised no comments or concerns about the revised plans. As such the proposal is considered to accord with Policy DM7 of the SADMP and the requirements of the revised NPPF in drainage terms.

Ecology

- 8.28. Policy DM6 of the SADMP and Section 15 of the NPPF requires development proposals to demonstrate how they conserve and enhance features of nature conservation and ecological value. The original application submission (23/00298/FUL) was supported by an Ecology Report. The county ecologist was consulted on the original application and requested recommendations with within the submitted Ecology report to be conditioned. For this Section 73 application, there are no changes proposed to the Ecology condition. LCC Ecology have not responded to the application within the 21 day consultation period but the details of the agreed ecological requirements have been carried over and reiterated within Condition 15 below for clarity. The application is therefore considered to be in accordance with Policy DM6 of the SADMP and the requirements of the NPPF with respect to ecological matters.

Other Matters

- 8.29. As previously mentioned, since the grant of permission for the original application 23/00298/FUL a number of conditions attached to the planning permission have been partially and fully discharged. The following conditions have been fully discharged:
- Condition 8 – CEMP
 - Condition 9 – Surface Water Drainage
 - Condition 12 – Electric Vehicle Charging Points
 - Condition 13 – Landscaping

- Condition 14 – Finished Floor Levels
- Condition 15 – Bat and Bird Boxes

The following conditions have been partially discharged:

- Condition 4 – Contamination
- Condition 6 – Landfill Gas

The agreed details for the above conditions will be carried over for this application.

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 in the consideration 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. **Recommendation**

Grant planning permission subject to the following:

- Planning Conditions

Conditions and Reasons

1. The development hereby permitted shall only be carried out in accordance with the following approved plans received 16 April 2025:

Drawing number 9053-03-04 Plot 1 plans and elevations-A2 Layout

Drawing number 9053-03-05 Plots 2 and 3 plans and elevations-A2 Layout

Drawing number 9053-03-01C Plot 4 plans-A1 Layout

Drawing number 9053-03-02C Site plan-A1 Layout

Drawing number 9053-03-03 Material schedule-A3 Layout

Drawing number 9053-03-06 Plot 1 garage-A3 Layout

Drawing number 9053-03-07 Plots 2 and 3 garage-A3 Layout
7637-03-09A Proposed levels plan-A1 Layout (agreed under reference
24/00342/DISCON 30/10/2024)
EVC Data Sheet – Installation at 2nd Fix Electrics (agreed under reference
24/00342/DISCON 30/10/2024)
7637-03-09A Proposed levels plan-A1 Layout (agreed under reference
24/00342/DISCON 30/10/2024)

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

2. The development hereby approved shall be carried out in accordance with the Materials Schedule Drg No. 9053-03-03 received by the local planning authority 16 April 2025.

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

3. The development hereby permitted shall be carried out in accordance with the following details (agreed under reference 24/00342/DISCON 30/10/2024):

- Ground Investigation Combined Phase I and II Report – Received 10 April 2024
- Gas Protection Letter – Received 2 October 2024

The submission of the final Validation Report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any dwelling hereby approved.

Reason: To safeguard the amenities of adjoining and neighbouring properties in accordance with Policy DM7 and DM10 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

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

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

5. The development hereby permitted shall only be carried out in accordance with the following agreed details in respect of landfill gas (agreed under reference 24/00342/DISCON 30/10/2024):

- Ground Investigation Combined Phase I and II Report – Received 10 April 2024
- Gas Protection Letter – Received 2 October 2024

The submission of the final Validation Report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any dwelling hereby approved.

Reason: In the interests of ensuring against issues arising from land contamination in accordance Policy 7 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

6. Site preparation and construction shall be limited to the following hours:

- Monday - Friday 07:30 - 18:00
- Saturday 08:00 - 13:00
- No working on Sundays and Bank Holidays

Reason: To minimise disruption to the neighbouring residents in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the requirements of the NPPF.

7. The development hereby permitted shall only be carried out in accordance with the following agreed details in respect of Construction Environmental Management Plan details (agreed under reference 24/00342/DISCON 30/10/2024):

- Earl Shilton Design Calcs BP-C0
- Plot 1-3 Garages - Pile & GB Layout T-7-19484-SK05
- Plot 2+3 Pile & GB Layout T-7-19484-SK07
- Plot 1 Pile & GB Layout T-7-19484-SK01
- Construction Management Plan

Reason: To help mitigate adverse impacts from pollution in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

8. Prior to the completion of the development hereby permitted the agreed drainage scheme received 10 April 2024 (agreed under reference 24/00342/DISCON 30/10/2024) shall be implemented in full.

Reason: To prevent flooding by ensuring the satisfactory storage and disposal of surface water from the site in accordance with Policy DM7 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

9. The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with HSSP Site Plan, Drg No. 9053-03-02 Rev C. Thereafter the onsite parking and turning provision shall be kept available for such uses in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

10. No part of the development hereby permitted shall be occupied until such a time as the access arrangements shown on Site Plan, Drg No. 9053-03-02 Rev C have been implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway in a slow and controlled manner in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

11. The development hereby permitted shall be carried out in accordance with the following agreed details in respect of hard and soft landscaping:

- 2401-HSSP-ES-A1-B Site Plan Main Layout 1 & 2 (agreed under reference 24/00342/DISCON 30/10/2024)
- Proposed Site Plan (Walls marked) 7637-03-01E (agreed under reference 24/00342/DISCON 30/10/2024)

The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority.

Reason: To ensure the development has a suitable external appearance in accordance with Policy DM4 and DM10 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.

12. The development hereby permitted shall only be carried out in accordance with the recommendations and requirements contained within the Ecological Review CBE Consulting document dated Feb 2022 and received by the local planning authority 27 March 2023. The development hereby permitted shall only be carried out in accordance with the following agreed details in respect of ecological requirements on site:

- Bird and Bat boxes plan (agreed under reference 24/00342/DISCON 30/10/2024)

Reason: In order to help protect wildlife in accordance with Policy DM6 of the Site Allocations and Development Management Policies DPD (2016) and the requirements of the NPPF.