

Delegated Report

Planning Ref: 23/00763/FUL

Applicant: Mrs Jennifer Collighan

Ward: Ratby Bagworth And Thornton



**Hinckley & Bosworth
Borough Council**

Site: Clovelly Merrylees Road Thornton

Proposal: Application for the construction of 9 timber buildings and the change of use of the existing residential garage into a classroom for an educational facility (Use Class F1)

1. Recommendations

- 1.1. **Grant planning permission** subject to:
- Planning conditions detailed at the end of this report.

2. Planning Application Description

- 2.1. This planning application seeks full planning permission for the construction of nine timber buildings and the conversion of an existing garage into classrooms and structures associated with an existing educational facility (Use Class F1) at Clovelly, Merrylees Road, Thornton.
- 2.2. All the outbuildings vary between 2.2m and 3.1m in height and vary in size between 5sqm and 27.7sqm. The structures are constructed with timber and are of varying green and brown finishes with grey felt roofs. The conversion of the existing garage includes the replacement of the existing garage doors with uPVC patio doors and the replacement of the existing side timber door with a uPVC door.
- 2.3. The application is retrospective apart from the change of use of the existing garage.
- 2.4. Following discussions with the Applicant and the Environment Agency, the timber buildings are in the process of being relocated within the site entirely outside of Flood Zone 3 and only partially within Flood Zone 2 in accordance with a revised layout plan.

3. Description of the Site and the Surrounding Area

- 3.1. The 0.3ha application site is 2km south of the Key Rural Centre, Thornton, in the designated open countryside, Charnwood Forest and the National Forest. The application site accessed via Merrylees Road, which is an adopted and classified 'C' road that is subject to a 30mph speed limit when it's adjacent to the application site.
- 3.2. Clovelly is a dormer bungalow that received planning permission for its change of use into a children's home (Use Class C2) for up to three children, and the provision

of an educational facility and use within the site (Use Class F1) in 2016 (c.f. 16/01134/COU.)

- 3.3. The educational use of the site was not restricted by its 2016 planning permission, and therefore the application site has a dual use of Use Class C2 and Use Class F1. The educational facility has 12 full time employees and two part-time employees. In 2018, the site received planning permission via 18/00657/FUL for the roof extensions and alterations to the dwelling to provide first floor accommodation.
- 3.4. There is a selection of ribbon residential development to the north of the site, which is separated from Thornton by several agricultural farm sites and open agricultural fields. To the east of the site is further open agricultural fields. Immediately adjacent to the southern boundary of the site is a tributary of the Rothley Brook, which is a statutory main river.
- 3.5. Due to its proximity to a river that is adjacent to the site's western boundary, approximately 40% of the garden area within the site is considered to be within Flood Zones 2 and 3, which is at a high risk of flooding and surface water flooding.
- 3.6. Further to the south of the site is Henwood Farm, which accommodates several agricultural buildings and poultry houses. A Public Right of Way, Public Footpath R73 also runs to the south of the site in a south-westerly direction. Over 170m to the west of the site, beyond a further agricultural field, is Merrylees Industrial Estate.

4. Relevant Planning History

4.1 20/01049/CLE

- Certificate of Lawful Existing Use for the use of Clovelly as Class C2 (Intensification of 16/01134/COU)
- Refused
- 18.12.2020

4.2 18/00657/FUL

- Roof extension and alterations to children's home to provide first floor accommodation
- Permitted
- 21.09.2018

4.3 16/01134/COU

- Change of use from residential property (C3) to a children's home with education (C2) for up to 3 children and erection of educational facility
- Permitted
- 08.02.2017

5. Publicity

- 5.1 The application has been publicised by sending out letters to local residents twice in August 2023 and again in June 2024 following the inclusion of the conversion of the

garage into the application proposal. A site notice was also posted within the vicinity of the site.

5.2 One member of the public objected to the development on the following grounds:

- Highway safety.
- On-street parking issues.

5.3 No further responses have been received.

6. Consultation

6.1 There have been no objections from the following consultants:

- Environment Agency (subject to conditions)
- Hinckley & Bosworth Borough Council (HBBC)'s Drainage Officer (subject to conditions)
- HBBC's Environmental Services' Pollution Officer
- HBBC's Waste Management Officer
- Local Highway Authority (LHA) (subject to conditions)

6.2 The Health and Safety Executive (HSE) have not commented on the application and referred to their Planning Advice Web App. The National Forest Company have made no comments in support or objection to the scheme.

6.3 Leicestershire County Council's Drainage Department and Children and Young People Services as well as the Friends of Charnwood Forest, and Bagworth and Thornton Parish Council have not responded to the planning application.

6.4 No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- Policy 21: National Forest
- Policy 22: Charnwood Forest

7.2 Site Allocations and Development Management Policies Development Plan Document (SADMP) (2016):

- Policy DM1: Presumption in Favour of Sustainable Development
- 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
- Policy DM25: Community Facilities

7.3 National Planning Policies and Guidance:

- National Planning Policy Framework (NPPF) (December 2023)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.4 Other Relevant Guidance:

- Good Design Guide (2020)
- Leicestershire Highway Design Guide (LHDG) (2022)

8. Appraisal

8.1. The key issues in respect of this application are therefore:

- Principle of development
- Design and impact upon the character of the area
- Impact upon residential amenity
- Impact upon parking provision and highway safety
- Flooding

Principle of Development

8.2 Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In accordance with Paragraph 225 of the NPPF, due weight should be given to existing policies according to their degree of consistency with the NPPF.

8.3 Policy DM4 of the SADMP requires the Council to protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development. Policy DM4 of the SADMP considers development in the countryside sustainable where:

- (a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
- (b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
- (c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
- (d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
- (e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.

8.4 The development is outside of any identified settlement boundary and does not relate to, or comply with, any of the criteria (a) to (e) of Policy DM4 of the SADMP. However, this does not mean that the development is not sustainable.

- 8.5 For example, Paragraph 99 of the NPPF states that planning policies and decisions should
- (a) Give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and
 - (b) Work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.
- 8.6 Importantly, Policy DM4 of the SADMP also requires that development meets five further requirements to be considered as sustainable development. These are discussed in detail further in the report.
- 8.7 Given the above, whilst the proposal is offered no support by Policy DM4 of the SADMP, the acceptability of the scheme is subject to the assessment of all other material considerations. Other material considerations are set out within the next sections of the report.

Design and Impact upon the Character of the Area

- 8.8 Policy DM4(i) of the SADMP states that development in the countryside will be considered sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside.
- 8.9 Policy DM10(c) of the SADMP states that developments will be permitted where they complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.10 In light of the existing use of the application site, the conversion of the garage into an educational use and its associated alterations is not considered to result in any harm to character of the site or the surrounding area.
- 8.11 The timber buildings are to the rear of the existing residential property and appear ancillary to Clovelly and the educational use within the site. The structures are all less than 3m in height and they cannot be seen from the public highway. Due to the existing mature vegetation to the southern and western boundaries of the site, there are also limited views from Footpath R73 and from the Merrylees Industrial Estate.
- 8.12 Given the modest size, scale, height, and volume of this proposal, the timber structures are not considered to result in a significant loss of garden space, nor represent the overdevelopment of the site.
- 8.13 By virtue of these factors, the development is not considered to result in a significant adverse impact to the character of the surrounding area or the intrinsic value, beauty, open character, and landscape character of the open countryside. Therefore, the development is in accordance with Policies DM4 and DM10 of the SADMP.

Impact upon Residential Amenity

- 8.14 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.
- 8.15 All the outbuildings are less than 3m in height. As a result, it is not considered that the development results in any overbearing or loss of light impacts, nor any overlooking or loss of privacy impacts to neighbouring residential amenity. Given the existing use of the application site as an educational facility, the provision of the timber classroom buildings within the site and the conversion of the existing garage into a classroom are not considered to result in any significant adverse noise pollution to the detriment of neighbouring residents. This is supported by the fact that the Council's Pollution Officer's did not have an objection to the development. The potential noise impact of the scheme is also reduced by virtue of the limitations of school term times and schooling hours.
- 8.16 The provision of nine timber structures does not result in a significant loss of total garden space, in accordance with the Good Design Guide. Therefore, the development is not considered to result in a significant adverse impact on the occupants of the residential use within the application site.
- 8.17 By virtue of these factors, the proposal does not result in any significant adverse to neighbouring residential amenity. Therefore, the development is considered to be in accordance with Policy DM10 of the SADMP and the Good Design Guide.

Impact upon Parking Provision and Highway Safety

- 8.18 Policy DM17 of the SADMP states that development proposals need to demonstrate that there is not a significant adverse impact upon highway safety, and that the residual cumulative impacts of development on the transport network are not severe. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highway authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.19 Policy DM18 of the SADMP requires developments to demonstrate an adequate level of off-street parking provision.
- 8.20 The Local Highway Authority (LHA) are satisfied that there is a minimum effective width of 4.8m achievable from the site access onto Merrylees Road. Whilst the Applicant has not provided details of pedestrian visibility splays for the site access, the LHA are satisfied that a 2m x 2m pedestrian visibility splay can be achieved on both sides of the site access.
- 8.21 The Applicant's Automatic Traffic Count (ATC) survey calculated 85th percentile speeds of 37mph northeast-bound and 39mph southwest-bound adjacent to the site access. Therefore, in accordance with Table DG4 and Figure DG2a of Part 3 of the

LHDG, vehicular visibility splays of 2.4m x 65m are required in both directions. The LHA are satisfied that such splays can be achieved from the site access.

- 8.22 The Applicant's Topographical Survey contained within Appendix A of the Flood Risk Assessment indicates a slight fall in land levels towards the public highway at the point of the access. As such, suitable drainage measures at the site access should be provided to prevent surface water from draining into the highway. The LHA is satisfied for this to be secured via planning condition.
- 8.23 The LHA has checked its Personal Injury Collision (PIC) database and there have been no recorded PICs in the last five years that occurred within 500 metres in either direction of the proposed access. The LHA therefore has no existing highway safety concerns in the vicinity of the site.
- 8.24 As the development proposed in the application is retrospective, the Applicant has undertaken a Traffic Count of vehicles accessing and egressing the site access between 04 and 08 September 2023, and 11 and 15 September 2023. The LHA has reviewed the data collected and is satisfied that the traffic generated by the development is unlikely to materially impact the surrounding road network. Consequently, no additional capacity assessment work is required.
- 8.25 The Applicant's Proposed Site Plan provides 15 off-street vehicle parking spaces, which are 2.4m in width x 4.8m in depth. This is considered to be short of the 17 off-street parking provision required under the Highway Requirements for Development section of the LHDG, and less than the dimension requirements for parking spaces within Paragraph 3.165 of Part 3 of the LHDG. However, the LHA note that the dimensions of the parking spaces are in accordance with the absolute minimum requirements of Figure 8.19 of the Manual for Streets.
- 8.26 Nevertheless, when compared to the Existing Site Plan, the LHA is mindful that the proposed parking and turning facilities are an improvement from the current situation. Considering this, in conjunction with the lack of PICs that have been recorded in the vicinity in the last five years, the LHA does not consider that it could demonstrate a severe impact on parking and turning grounds in the context of Paragraphs 114 and 115 of the NPPF.
- 8.27 Given the above, the impacts of the development on highway safety are not considered to be unacceptable, and, when considered cumulatively with other developments, the impacts of the proposal on the road network are not regarded as severe. Therefore, the scheme is regarded as in accordance with Policies DM17 and DM18 of the SADMP, and the LHDG.

Flooding

- 8.28 Policy DM7(h) of the SADMP states that adverse impacts from pollution and flooding will be prevented by ensuring that development proposals demonstrate that they do not create or exacerbate flooding by being located away from areas of flood risk unless adequately managed against, in line with National Policy.

- 8.29 Paragraph 165 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk and that where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 8.30 Paragraph 168 of the NPPF states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
- 8.31 Paragraph 173 states that when determining any planning application, local planning authorities should ensure that flood risk is not increased elsewhere and that development should only be allowed in areas at risk of flooding where it can be demonstrated that:
- Within the site, the most vulnerable development is located in areas of lowest flood risk
 - The development is appropriately flood resistant and resilient;
 - It incorporates sustainable drainage systems;
 - Any residual flood risk can be managed; and
 - Safe access and escape routes are included where appropriate.
- 8.32 Following concerns raised by the Council's Drainage Officer and the Environment Agency a Flood Risk Assessment (FRA) was submitted in support of the application on 18 October 2023. Through discussions with the Environment Agency, this FRA has been revised multiple times since the validation of this planning application.
- 8.33 On 29 February 2024, the Environment Agency confirmed that Buildings A to F within their originally submitted locations within Flood Zone 3 were at significant risk during a flood event and were likely to experience flash flooding events. Based on data from the Environment Agency's Strategic Level Mapping, the Environment Agency considered the structures to be at risk of a hazard rating of 'Danger to Most.' A 'Danger to Most' hazard rating indicates that there is danger of loss of life to the general public.
- 8.34 In light of the concerns raised by the Environment Agency, the Applicant proposed to relocate the structures outside of Flood Zone 3 and submitted a revised Flood Action Plan that included a timetable for these proposed works to take place. The Flood Action Plan advised that all existing structures shall be relocated by the end of September 2024.
- 8.35 On 08 July 2024, the Environment Agency confirmed the updated Proposed Site Plan and revised Flood Action Plan met the requirements of the National Planning Policy Framework, subject to a planning condition which ensures that all cabins are outside of Flood Zone 3 and that where cabins were partially within Flood Zone 2 flood resilience measures were advised, and that the development is carried out in accordance with the mitigation measures detailed within Page 2 of the Flood Risk Assessment (AEG03106), and the emergency response plan within the submitted Risk Assessment.

- 8.36 Given the above, and subject to planning conditions, the proposal is acceptable in accordance with Policy DM7 of the adopted SADMP.

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 Taking national and local planning policies into account, and regarding all relevant material considerations, it is recommended that planning permission to be granted, subject to the imposition of appropriate conditions.

11. Recommendation

- 11.1 **Grant planning permission** subject to:

- Planning conditions detailed at the end of this report.

11.2 Conditions and Reasons

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details received by the Local Planning Authority as follows:

- Building Plans and Elevations Dwg No. 21/153 02 (submitted: 04.08.2024)
- Existing Garage Elevations and Floor Plans 21-153-03 (submitted: 05.06.2024)
- Existing Site Plan (submitted: 18.10.2023)
- Proposed Garage Floor Plans and Elevations 21-153-04 (submitted: 05.06.2024)
- Proposed Site Plan (submitted: 19.04.2024)
- Topographical Survey Dwg No. A21-4431-1 (submitted: 04.08.2024)

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 permitted shall be carried out in accordance with the submitted Proposed Site Plan (submitted: 19.04.2024) and all cabins must be fully located outside Flood Zone 3 in accordance with the timetable set out within the Updated Flood Action Plan (June '24) that was submitted to the Local Planning Authority on 5 June 2024..

Reason: To ensure that the development doesn't create or exacerbate flooding in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. The development shall be carried out in full accordance with Updated Flood Action Plan (June '24) (submitted: 05.06.2024) and its timetable, all Management Measures detailed at Pages 01 and 02 of the Flood Risk Assessment (AEG03106) (submitted: 12.02.2024), and the controls and actions detailed within the Risk Assessment (submitted: 25.01.2024).

Reason: To ensure that the development doesn't create or exacerbate flooding in accordance with Policy DM7 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. Within three months of the date of this decision notice, drainage details shall be provided in writing to and approved in writing by the Local Planning Authority. Thereafter surface water shall not drain into the Public Highway and thereafter shall be so maintained.

Reason: To reduce the possibility of surface water from the site being deposited in the highway causing dangers to road users in accordance with the National Planning Policy Framework (December 2023).

5. Within three months of the date of this decision notice, the site access shall be amended (as necessary) to have a width of a minimum of 4.8 metres, a gradient of no more than 1 in 12 for a distance of at least 5 metres behind the highway boundary and shall be surfaced in a bound material for a distance of

at least 5 metres behind the highway boundary. The access once provided shall be so maintained at all times.

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 the interests of general highway safety and in accordance with the National Planning Policy Framework (December 2023).

6. Within three months of the date of this decision notice, vehicular visibility splays of 2.4 metres by 65 metres shall be provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/ verge/highway.

Reason: To afford adequate visibility at the access to cater for the expected volume of traffic joining the existing highway network, in the interests of general highway safety, and in accordance with the National Planning Policy Framework (December 2023).

7. Within three months of the date of this decision notice, 2 metre by 2 metre pedestrian visibility splays shall be provided on the highway boundary on both sides of the access with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/ verge/ highway and, once provided, shall be so maintained in perpetuity.

Reason: In the interests of pedestrian safety and in accordance with the National Planning Policy Framework (December 2023).

8. Within three months of the date of this decision notice, the parking and turning facilities as shown on Northern Planning & Design Drawing Number 0723 002 (submitted: 18.10.2023) shall be implemented. 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 the interests of highway safety and in accordance with the National Planning Policy Framework (December 2023).

9. Notwithstanding the provisions of Part 2 of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no gates, barriers, bollards, chains, or other such obstructions shall be erected to the vehicular access.

Reason: To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic, including pedestrians, in the public

highway in accordance with the National Planning Policy Framework (December 2023).

a. **Notes to Applicant:**

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.
2. The Applicant should contact Floodline on 0345 988 1188 to register for a flood warning or visit <https://www.gov.uk/sign-up-for-flood-warnings>. It's a free service that provides warnings of flooding from rivers, the sea, and groundwater, direct by telephone, email, or text message. Anyone can sign up.

Flood warnings can give people valuable time to prepare for flooding. Flood warnings can also save lives and enable emergency services to prepare and help communities.

For practical advice on preparing for a flood, visit: <https://www.gov.uk/pre-prepare-for-flooding>

To get help during a flood, visit: <https://www.gov.uk/help-during-flood>.

For advice on what to do after a flood, visit: <https://www.gov.uk/after-flood>.