

Delegated Report

Planning Ref: 23/00558/FUL

Applicant: Mrs Teresa Brearley

Ward: Barlestone Nailstone And Osbaston



Hinckley & Bosworth
Borough Council

Site: The Olde Stables Veros Lane Nailstone

Proposal: Change of use of agricultural land and existing agricultural building to dual private use and communal garden use (Use Class F2) (Retrospective)

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 planning application seeks full planning permission for the retrospective change of use of agricultural land and an existing agricultural building to private garden and community garden use (Use Class F2(C)) at The Olde Stables, Veros Lane, Nailstone. The land in relation to this site is to the rear of 20 Main Street, Nailstone, and is accessed via the rear of 30 and 32 Main Street, which is via a shared private drive between this property and 24 Main Street, Nailstone, and an existing gated field access on Veros Lane, Nailstone to the southwest.

2.2. As well as use as a domestic garden the application seeks the use of the site for a community use for up to five visitors at any one time once a week between March and September, and four community fundraising events each year including a summer garden party, a Bonfire event, and a Christmas event.

3. Description of the site and surrounding area

3.1. The 371.25sqm application site lies outside of, but adjacent to, the settlement boundary of the rural village of Nailstone, in the designated open countryside. The development is also 30 metres from the Nailstone Conservation Area. The site currently comprises an agricultural field and an agricultural building that have been utilised in a private garden use since 30 April 2023. Whilst the submitted application form suggests there is a second agricultural building to the southwest of the application site, the Applicant confirmed on 22 August 2023 that the structure was demolished because it was considered to be unsafe.

3.2. The site benefits from a field gate access on Veros Lane. Veros Lane is a long single track, one-way rural lane leading from a junction on the A447, which has 'No Entry' road signs at the junction of Veros Lane and Main Street. Main Street is a classified 'C' Road that is subject to a 30mph speed limit.

3.3. To the southwest of the site is an existing paddock within the ownership of the Applicant, and beyond this are further residential dwellings within Nailstone. To the east of the site are residential dwellings that front onto Main Street, and further properties are to the north of the site along Occupation Road. To the northwest of the site is open agricultural land.

3.4. This close relationship of the countryside to the built form contributes to the wider landscape setting of the village, and the intimate relationship between the built form of the Nailstone Conservation Area, and the unbuilt form of the countryside beyond

both the Nailstone Conservation Area boundary and the rural village's settlement boundary.

- 3.5. The Applicant sought pre-application advice for this development via 23/10044/PREHMO, which suggested that the Local Planning Authority was likely to support the scheme.

4. Relevant planning history

4.1 20/00024/PP

- Erection of two dwellings (outline – all matters reserved)
- Appeal Dismissed
- 22.10.2020

4.2 19/01304/OUT

- Erection of two dwellings (outline – all matters reserved)
- Refused
- 14.01.2020

4.3 18/00942/OUT

- Erection of three detached self-build/custom-build dwellings (Outline – access only)
- Refused
- 14.11.2018

4.4 18/00229/OUT

- Erection of three dwellings (outline – all matters reserved)
- Withdrawn
- 03.07.2018

5. Publicity

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

- 5.2 Six members of the public have responded to the application, three in support of the proposal, and two in opposition to it. However, it is noted that two of the responses in support of the proposal are from the same household.

- 5.3 Whilst one member of the public suggested they supported the scheme, they also commented that they objected to the change of use of the site to residential garden.

- 5.4 The members of the public in support of the application have suggested that:

- The development creates new community facilities.
- The scheme enhances the site.

- 5.5 On the other hand, the members of public objecting to the development have argued that the development results in:

- Harm to biodiversity.
- Harm to the countryside.

- 5.6 No further responses have been received.

6. Consultation

- 6.1 There have been no objections from the following consultants:

- Hinckley & Bosworth Borough Council (HBBC)'s Environmental Services' Pollution Officer (subject to conditions)

- HBBC's Waste Management Officer
- Local Highway Authority (LHA)

HBBC Pollution

- 6.2 The Council's Pollution Officer requested further information on the land's previous use, and what the Applicant intends to utilise the area for.
- 6.3 On 03 August 2023, the Applicant confirmed the location of the change of use and stated that the remaining other land will remain in agricultural use.
- 6.4 In light of the above, the Pollution Officer requested a contamination planning condition on 04 August 2023.

The Local Highway Authority (LHA)

- 6.5 On 18 June 2023, the Local Highway Authority (LHA) expressed concerns regarding the communal use of the site. In light of the appeal decision for the planning application 19/01304/OUT, the Local Highway Authority recommended that further consideration to parking provision for the site as well as where this would be accessed from is required. The Local Highway Authority strongly suggested that any parking provision is accessed via Main Street, subject to a safe and suitable access being demonstrated in accordance with Part 3 of the Leicestershire Highway Design Guide (LHDG).
- 6.6 On 26 June 2023, the Applicant stated that the application site will only be accessed by Main Street and not Veros Lane. In addition, the Applicant has stated that the gardening group comprises of four to eight people and takes place between March and September. There is no requirement for people to attend the site with gardening tools and Nailstone is small enough for participants to walk to the application site.
- 6.7 On 15 September 2023, the LHA did not consider the impacts of the development to result in an unacceptable impact on the highway, nor on the road network.
- 6.8 No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- Policy 12: Rural Villages

7.2 Site Allocations and Development Management Policies (SADMP) DPD (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 DM11: Protecting and Enhancing the Historic Environment
- Policy DM12: Heritage Assets
- 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) (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, including heritage assets
 - Impact upon residential amenity
 - Impact upon parking provision and highway safety
 - Conclusion

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, and that the NPPF is a material planning consideration in planning decisions.
- 8.3 Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the adopted 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.
- 8.4 Paragraph 12 of the NPPF states that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making. Where planning applications conflict with an up-to-date plan, development permission should not usually be granted unless other material considerations indicate otherwise.
- 8.5 The current Development Plan consists of the adopted Core Strategy (2009) and the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document (2016). The spatial distribution of growth across the Borough during the plan period 2006-2026 is set out in the adopted Core Strategy. This identifies and provides allocations for housing and other development in a hierarchy of settlements within the Borough.
- 8.6 Both the adopted Core Strategy and the SADMP are over 5 years old, and Paragraph 33 of the NPPF states that policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years and should then be updated as necessary. Therefore, this report sets out the relevant adopted Core Strategy and SADMP policies and refers to the NPPF and notes any inconsistencies between them.
- 8.7 Paragraph 20(c) of the NPPF states that strategic planning policies should make sufficient provision for community facilities such as health, education, and cultural infrastructure. In addition, Paragraph 84(d) of the NPPF requires planning policies

and decisions to enable the retention and development of accessible local services and community facilities. To achieve this, Paragraph 93 of the NPPF states that planning policies and decisions should plan positively for the provision and use of shared spaces, community facilities, and other local services to enhance the sustainability of communities and residential environments.

- 8.8 In accordance with Policy DM25 of the SADMP, the Borough will seek to support the formation of new community facilities across the Borough. To reduce reliance on private car, where new facilities are to be established it should be demonstrated that they are accessible to the community which they intend to serve by a range of sustainable transport modes.
- 8.9 However, outside the defined settlement boundaries, the countryside is not regarded as a sustainable location for new development. Section 15 of the NPPF requires planning policies and decisions to conserve and enhance the natural and local environment. Paragraph 174(b) specifically highlights that this should be achieved by, "Recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services."
- 8.10 Nevertheless, Paragraph 85 of the NPPF acknowledges that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
- 8.11 To protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development, Policy DM4 of the SADMP only 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".
- 8.12 The proposal utilises the application site, for private and community garden use. Whilst the application does not directly comply with any of the criteria of Policy DM4 of the SADMP, this does not mean that the development is not sustainable. Importantly, Policy DM4 also requires that development meets five further requirements to be considered as sustainable development. These are discussed in detail further in the report.
- 8.13 Furthermore, the application site is adjacent to the identified settlement boundary of Nailstone in accordance with Paragraph 85 of the NPPF. Given the support of Paragraph 20, 84, 85 and 93 of the NPPF, as well as Policy DM25 of the SADMP, in these site-specific circumstances, the development is considered acceptable in

principle 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 including heritage assets

- 8.9 Paragraph 134 of the NPPF states that 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 and supplementary planning documents such as design guides and codes.
- 8.10 Policy DM4 of the SADMP states that development in the countryside will be considered sustainable where:
- i.) It does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside; and
 - ii.) It does not undermine the physical and perceived separation and open character between settlements; and
 - iii.) It does not create or exacerbate ribbon development.
 - iv.) If within a Green Wedge, it protects its role and function in line with Core Strategy Policies 6 and 9; and
 - v.) If within the National Forest, it contributes to the delivery of the National Forest Strategy in line with Core Strategy Policy 21.
- 8.11 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.
- 8.12 Although the Nailstone Conservation Area is 30 metres from the site as the application involves no building works it is considered that the proposal has a neutral effect on the setting of the Conservation Area.
- 8.13 The proposal does not propose any development or extensions, and the application site is 31.9m from the public highway. As the application site is adjacent to residential dwellings in the identified settlement boundary of a rural village, the use of the application site as a private residential garden and community garden use is not considered to result in any significant harm to the character of the surrounding area or the intrinsic value, beauty, open character, and landscape character of the countryside.
- 8.14 By virtue of these factors, the proposal respects the character of the and surrounding area and is in accordance with Policies DM4 and DM10 of the SADMP, and the Good Design Guide.

Impact upon Residential Amenity

- 8.15 Paragraph 130(f) of the NPPF requires planning policies and decisions to ensure that developments 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.
- 8.16 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.

- 8.17 The Good Design Guide SPD outlines that development will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise.
- 8.18 The application site is 14.6m from the rear elevation 20 Main Street and 19.5m from the rear of 24 Main Street.
- 8.19 No extensions or developments are proposed within this development. In addition, the use of the application site for private residential use is not considered to result in any noise pollution impacts.
- 8.20 The community use of the garden is utilised for a gardening group, which is likely to comprise of between four and eight people once a week during March and September. Given the use, the limited scale and frequency of the use, this is not considered to result in any significant noise pollution impacts to neighbouring residential amenity. In addition, whilst the development proposes four larger events throughout the year, given the limited frequency, this is not considered to result in any adverse impacts to neighbouring residential amenity. Furthermore, the Council's Pollution has no objection to the scheme.
- 8.21 In light of the above, the proposal is not considered to result in any adverse impacts to residential amenity in accordance with Policy DM10 of the SADMP and the Good Design Guide.

Impact upon Parking Provision and Highway Safety

- 8.22 Paragraph 110 of the NPPF states that it should be ensured that safe and suitable access to the site can be achieved for all users. Paragraph 111 of the 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.
- 8.23 Section 9 of the NPPF promotes sustainable transport. Paragraph 124(c) of the NPPF states that planning decisions should support development that makes efficient use of land, when taking into account, "The availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use."
- 8.24 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 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)).
- 8.25 Policy DM18 of the SADMP requires developments to demonstrate an adequate level of off-street parking provision.
- 8.26 The Local Highway Authority do not consider the change of use of the site to a private garden to have an impact on the surrounding highway network and it is unlikely to generate any increase in vehicular trips to or from the site.

- 8.27 All access to the application site is via the Applicant's existing driveway between 20 and 24 Main Street. The scheme is not providing any additional, and therefore it is not considered that the access is intensified in use by vehicular traffic.
- 8.28 It is understood this is likely to comprise of between four and eight people visiting together once a week between March and September. The Applicant states the village is small enough for all participants to walk to 30-32 Main Street, which is in the centre of the village. In addition, there is no requirement to bring gardening tools to the site, except for hand tools, which are easily carried and so far, the gardening group have completed several projects around the village, and no one used vehicles to attend. Given the above, the LHA consider the gardening club is unlikely to lead to a significant level of on-street parking.
- 8.29 The Applicant has advised that four community events are also proposed within the community use of the site. The Applicant has also advised that if the pub within the village re-opens next year, this is likely to become the central hub for the above events.
- 8.30 The LHA have considered the above, and while it cannot be guaranteed the pub will hold such events in future years, on balance, the LHA consider that the proposed events are similar to other events held within villages and towns across the county. They also appear to be held on an ad-hoc basis and very low frequency, as stated in the Application Form, which suggests that four events will take place per year. While the Applicant is not providing parking on-site and the LHA is therefore unable to advise a condition for any level of parking provision, it is accepted that the proposals appear to be for village events and the site is located centrally to the village, within an approximate 500m walk from all properties. It is therefore considered reasonable to conclude that a large number of residents would walk to/ from the site.
- 8.31 By virtue of these factors, the proposal does not create an unacceptable impact on highway safety or the road network. Therefore, the scheme is regarded as in accordance with Policy DM17 of the SADMP, and the LHDG.

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 The proposed development is considered to be compliant with the relevant national and local policy as it:

- Is an appropriate scale and design.
- Does not have an adverse impact upon the character and appearance of the area.
- Does not have a significant adverse impact upon the amenity of neighbours.
- Does not have a significant adverse impact upon highway safety.
- Provides sufficient vehicle parking spaces for off-street parking.

10.2. The application has been considered on the basis that it is for a dual use as specified. Should the community use element of the dual use of the application site cease, it is clarified that site does not comprise part of the residential curtilage of 30-32 Main Street, Nailstone. Therefore, the application site does not benefit from Permitted Development Rights, and planning permission will be required to permit any further development taking place within the application site.

10.3 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 outlined at the end of this report.

11.2 Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. 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:

- Site Location Plan (submitted: 20.09.2023)

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).

3. The community events within the community use of the application site hereby permitted shall be restricted to four community fundraising events a year, as detailed within the Application Form (submitted: 06 June 2023,) and as detailed by the Applicant via email on 22 August 2023.

Reason: To protect the amenities of the occupiers of neighbouring residential properties from unsatisfactory noise and disturbance in accordance with

Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

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 in writing 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 first dwelling 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 Development Plan Document (2016).

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. To erect temporary directional signage, you must seek prior approval from the Local Highway Authority in the first instance (telephone 0116 305 0001).
3. Should the community use element of the dual use of the application site cease, the private residential use of the application site is not within the residential curtilage of 30-32 Main Street, Nailstone. Therefore, the application site does not benefit from Permitted Development Rights, and planning permission will be required to permit any further development taking place within the application site.