

Delegated Report

Planning Ref: 24/00902/FUL
Applicant: Mr and Mrs D Marshall
Ward: Twycross, Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Site: Holly Tree Cottage, Twycross Road,
Sheepy Magna

Proposal: Change of use of agricultural land to domestic garden

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 change of use of agricultural land to domestic garden to the west and rear of Holly Tree Cottage, Twycross Road, Sheepy Magna. No structures are proposed. The area of land subject to this change of use has a width of 67.2m and a depth of 96.7m. This proposal is retrospective and has been on site since between 2019 and 2020, based on historic satellite imagery.

3. Description of the Site and the Surrounding Area

- 3.1. The 6,436sqm application site is a heavily wooded area that is to the north of and adjacent to, but outside of, the identified settlement boundary of Sheepy Magna in the designated open countryside. Sheepy Magna is classified as a rural village within the adopted Core Strategy (2009).
- 3.2. The land is accessed from the rear of the residential property Holly Tree Cottage, which is to the east of the application site. The site is not utilised in association with a farm, nor a wider agricultural holding. The site has been subject to an English Woodland Grant Scheme by the Forestry Commission. Badger setts have been highlighted within and around the application site. The site is bounded by a ribbon of residential development to the east, residential gardens to the south associated with the properties along Rodney Gardens, and open agricultural fields to the west and north.
- 3.3. 12 and 14 Rodney Gardens benefit from planning permission for the change of use of agricultural land to the depth of this current application site into domestic garden space via the allowed appeal decision against the refusal of planning permission 22/00916/FUL, and the delegated decision of application 24/00655/FUL respectively.

4. Relevant Planning History

4.1 The Applicant sought informal advice from a Planning Enforcement Officer in July 2024 and further advice from a Planning Officer in September 2024, who both advised that the Applicant would need to submit a full planning permission to seek approval for the change of use of the land from agricultural to domestic garden.

4.2 **22/00807/FUL**

- Erection of an agricultural storage building
- Refused
- 02.12.2022

5. Publicity

5.1 The application has been publicised by sending out letters to local residents and a site notice was posted within the vicinity of the site. No formal responses have been received.

6. Consultation:

6.1 Sheepy Parish Council objected to the development as the application site is outside of the identified settlement boundary of Sheepy Magna and is therefore not compliant with Policies S1 and S10 of the Sheepy Parish Neighbourhood Plan (SPNP) (2022). The Parish Council have also highlighted that the site is constrained by a badger sett, which is a protected and priority species.

6.2 There have been no objections from the following consultants:

- Leicestershire County Council (LCC)'s Ecology Department

6.3 The County Council confirmed that they have no records of badgers in this area. Notwithstanding this, the change of use of the land from agricultural to residential on its own is unlikely to impact upon badger setts and this is supported by the absence of any tree removal or construction works within this application.

6.4 Leicestershire Badger Group did not respond to the planning application.

6.5 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 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 DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3 Sheepy Parish Neighbourhood Plan 2018 – 2035 (SPNP) (2022):

- Policy S1: Countryside
- Policy S5: Ecology and Biodiversity
- Policy S8: Design
- Policy S10: Housing Development

7.4 National Planning Policies and Guidance:

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

7.5 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

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. The NPPF is a material planning consideration in planning decisions.

8.3 The current Development Plan consists of the adopted Core Strategy, the adopted Site Allocations and Development Management Policies Development Plan Document (SADMP), and the adopted Sheepy Parish Neighbourhood Plan (SPNP).

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.

- 8.4 Policy DM4 of the SADMP, which states that the Council will protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development. To ensure this, 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.
- 8.5 To support this, Policy S10 of the SPNP confirms that, outside the Sheepy Magna settlement boundary, permission for housing development will be limited to:
- (a) Land allocated for residential development at Hornsey Rise Memorial Home; or
 - (b) Rural worker accommodation; or
 - (c) Replacement dwellings; or
 - (d) The re-use and/or adaption of redundant rural buildings; or
 - (e) Other circumstances as set out in Paragraph 80 of the NPPF [now 84]; or
 - (f) Exception site affordable housing.
- 8.6 Therefore, the proposed development does not relate to, or comply with, any of the criteria above in either Policy DM4 of the SADMP or Policy S10 of the SPNP, but this does not mean that the development is not sustainable.
- 8.7 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.
- 8.8 Policy S1 of the SPNP states that householder development may be considered sustainable in countryside locations.
- 8.9 Given the above, the Council considers that the proposal is offered no support by Policy DM4 of the SADMP. As such, the application does not accord with Development Plan Policy and is unacceptable 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:

- 8.10 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.
- 8.11 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. Policy S8 of the SPNP requires development to work with the scale, form, and character of the location and make a positive contribution to the street scene.
- 8.12 The site is visible in localised views from the rear of the adjoining residential properties and the nearby access track, as well as the adjoining agricultural land and buildings. Limited views of the site are also available from Twycross Road to the north when heading south towards the site due to the existing mature vegetation along the highway boundaries.
- 8.13 It is noted that the change of use of the agricultural land to domestic garden was allowed at appeal on land to the west and rear of 12 Rodney Gardens via 22/00916/FUL and granted planning permission under delegated powers at 14 Rodney Gardens via 24/00655/FUL. Both properties are immediately to the south of the site. These areas of land cover the entire width of their respective associated properties. These permitted changes of use serve to separate the southern views of the application site from the wider agricultural landscape.
- 8.14 Whilst the width of the site is significantly larger than that approved at 12 and 14 Rodney Gardens, the proposal does not domesticate the character of the area beyond the depth approved at these two adjacent properties. In addition, the extent of the residential use of the site does not expand into the countryside to the north beyond Paddock View, which is the final property to the north of Twycross Road. These factors serve to reduce the effect of the change of use in terms of significant visual encroachment into the surrounding agricultural land.
- 8.15 Ultimately, the wooded character of the site provides a visual distinction between the site and the wider agricultural context, which reduces the effect of the change of use and its visual encroachment into the surrounding agricultural land. By virtue of these factors, the use of the land as garden has a neutral effect on the qualities of the open countryside setting.
- 8.16 Permitted Development Rights for any incidental building, or enclosure, swimming or other pool, as well as walls, fences and other means of enclosure can be controlled by planning condition. Therefore, subject to a suitably worded condition removing such rights, the proposal is not considered to give rise to any tangible harm to the visual qualities or open character of the rural area. As a result, the scheme is considered to be compliant with Policies S1 and S8 of the SPNP, and Policies DM4 and DM10 of the SADMP.

Impact upon Residential Amenity:

- 8.17 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.
- 8.18 No structures are proposed within this scheme and therefore the development is unlikely to result in any overlooking, loss of privacy, overbearing, or loss of light impacts to neighbouring occupants. The use of the site as domestic garden for the private use of the Applicant is also not considered to result in any adverse air, light, or noise impacts that are to the detriment of neighbouring residential amenity. By virtue of these factors, the proposal does not result in any adverse impacts to the residential amenity of neighbours or the occupants of Holly Tree Cottage. Therefore, the proposal is in accordance with Policy DM10 of the SADMP.

Impact upon Parking Provision and Highway Safety:

- 8.19 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.
- 8.20 The development has no impact on the existing access to the site, nor the capacity of the associated existing dwelling or its off-street parking provision. Therefore, the proposal does not create an unacceptable impact on highway safety or the road network in accordance with Policies DM17 and DM18 of the 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:

- Site Location Plan, Drg No. TQRQM24269124632202 (submitted: 26.09.2024)

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. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting, substituting, amending, extending, consolidating, replacing, or modifying that Order), no development within Class E of Part 1 of Schedule 2 of the Order, and no gates, fences, or walls within Class A of Part 2 of Schedule 2 of the Order shall be erected on the land, except in the event that a further planning permission is expressly granted for that development.

Reason: To protect the character of the surrounding area and to safeguard the privacy and amenity of neighbouring dwellings from potential overlooking in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).