

Delegated Report

Planning Ref: 24/00248/FUL
Applicant: Shackerstone Parish Council
Ward: Cadeby Carlton M Bosworth & Shackerstone



Hinckley & Bosworth
Borough Council

Site: St Philip And St James C Of E Parish Church,
Church Lane, Ratby, Leicester, Leicestershire, LE6 0JE

Proposal: Change of use of allotments to expand burial ground

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 planning permission to expand the Burial ground into the adjacent disused allotment area to accommodate further internments as the existing Burial area is approaching capacity. No heavy machinery will be required, possibly the use of a hand cultivator as the land has been used for allotments and in good order apart from weeds. Use as an allotment ended in January 2024.
- 2.2. The allotment area to be changed to a burial ground area measures approx. 10m by 20m and is on the western side of the site, east of Ratby Library boundary. It is estimated that the area of land would provide approximately 20 burial plots. The use of this land as burial ground would allow the extension of the adjacent burial ground which does not have many vacant plots remaining.
- 2.3. The existing trees on the site would be retained.

3. Description of the Site and Surrounding Area

- 3.1. The application site is located within the settlement boundary and Conservation Area of Ratby with primarily low density residential development and open spaces. To the east, the site adjoins an existing burial ground operated by the Parish Council, which adjoins St Philip & St James Parish Church and cemetery. The land occupies an elevated position in relation to the library car park to the west which is separated by a grassed slope and chestnut paling fence and some sparse planting.
- 3.2. The application site forms a rectangular parcel of land. The land is undeveloped with no formal use since its use as an allotment stopped in January 2024. The allotments are used as a holding area ready for when they are used to extend the burial area. Over the years the allotments have been taken over piecemeal for this purpose. There are several trees west of the site and a few large trees scattered through the wider graveyard.

4. Relevant Planning History

09/00241/COU	Change of use from open land to a burial ground	Planning Permission	15.05.2009
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5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.
- 5.2. No letters of representation have been received.

6. Consultation

- 6.1. HBBC's Environmental Health (Pollution)- No objection
- 6.2. Environmental Agency- No objections
- 6.3. HBBC's Drainage- No objection
- 6.4. Conservation Officer – No objection
- 6.6. Ratby Parish Council- No comment received

7 Policy

- 7.1 Site Allocations and Development Management Policies DPD (2016)
 - Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM7: Preventing of Pollution and Flooding
 - Policy DM8: Open Space
 - Policy DM10: Development and Design
 - Policy DM11: Protecting and Enhancing the Historic Environment
 - Policy DM12: Heritage Assets
 - Policy DM25: Community Facilities
- 7.2 National Planning Policies and Guidance
 - National Planning Policy Framework (NPPF) (2023)
 - Planning Practice Guidance (PPG)
 - Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- 7.3 Other relevant guidance
 - Ratby Conservation Area Appraisal and Management Plan (2009)

8 Appraisal

- 8.1 Key Issues
 - Assessment against strategic planning policies
 - Impact upon the character of the area and heritage assets
 - Impact upon neighbouring residential amenity
 - Impact upon highway safety
 - Impact upon pollution
 - Other matters

Assessment against strategic planning policies
- 8.2 Policy DM1 of the SADMP states that where there are no policies relevant to the application then the Borough Council will grant planning permission unless material considerations indicate otherwise, taking into account whether:

Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or

Specific policies in that Framework indicate that development should be restricted.

- 8.3 Paragraph 97 of the NPPF seeks to ensure that to deliver social, recreational and cultural facilities and services the community needs, decisions should ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

- 8.4 St Philip and St James Church is listed as a Community Facility. In terms of the retention of this community facility Policy DM25- Community Facilities states:

Retention of Existing Provision

The Borough Council will resist the loss of community facilities including ancillary areas. The redevelopment or loss of community facilities will only be appropriate where it can be demonstrated that

- a) An equivalent range of replacement facilities will be provided in an appropriate location within a reasonable distance of the locality*
- b) There is a surplus of the facility type within the immediate locality*
- c) The loss of a small portion of the site would result in wider community benefits on the remainder of the site.*

Loss of Existing Facilities

Where replacement facilities will not be provided or a surplus cannot be demonstrated and the scheme would not result in wider community benefits on the remainder of the site, the loss of a community facility would only be considered acceptable where it can be demonstrated that:

- d) The facility has been proactively marketed for a community use for a reasonable period of time at a reasonable marketed rate as supported and demonstrated through a documented formal marketing strategy.*
- e) It has been offered to the local community for them to take ownership of the facility*

- 8.5 The retention and development of accessible local services and community facilities in rural areas is supported in paragraph 88 of the NPPF. Paragraph 97 of the NPPF states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs and ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.
- 8.6 It is the Church and burial grounds that achieved the status of Community Facility rather than the allotments although they all form part of the wider site. Nonetheless the proposal will not lead to the loss of community facilities offered by the church and associated grounds in accordance with Policy DM25.
- 8.7 It is also material that the site was always part of the Church grounds and was given to the public for use as allotments for a temporary period until the time came for the burial ground to be expanded and its use as a burial ground, which was always anticipated, to begin. As well as the Church, use as a burial ground is also a community facility so the proposal is changing from one community use to another.
- 8.8 In terms of open space provision and Policy DM8 the Desford Lane allotments in Groby are to be maintained and will provide the public access to other allotment

space nearby. This open space is to be safeguarded under Policy DM8. Nonetheless the development would still lead to a loss of allotment land and a reduction in the provision of open space, there is therefore some conflict with policy DM8. However, the submission outlines the need for additional cemetery space which in turn is also another typology of open space. In this case the loss of allotments is not judged to warrant refusal of the planning application.

- 8.9 The application site is proposed to be used to provide additional burial plots. The application site is designated as open space in the SADMP (2016) and comprises the existing burial ground and cemetery associated with St Peter's church along with the area now used as allotments. The burial ground would extend the provision of burial grounds in the village. The burial grounds' close proximity to the population to which it would serve would give people the choice to be buried close to where they may have a local connection or near to other family members. The proposed change of use of the application site presents a suitable solution for the future provision of burial grounds.
- 8.10 The proposed change of use is considered to be acceptable in accordance with Policy DM1, DM8 and DM25 of the SADMP and paragraph 92 of the NPPF, unless any material planning considerations, assessed below, are considered to demonstrably outweigh the benefits.

Impact upon the character of the area and heritage assets

- 8.11 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the local planning authority when determining applications for development which affects a listed building or its setting, to have special regard to the desirability of preserving the listed building's setting and any features of special architectural and historic interest which it possesses. Section 72 of the same Act provides that, when determining applications for development which affects any buildings or other land in a Conservation Area, a local planning authority shall pay special attention to the desirability of preserving or enhancing the character and appearance of that area.
- 8.12 Policies DM11 and DM12 of the SADMP seek to protect and enhance the historic environment and heritage assets. The proposed development is within the conservation area and is located in close proximity to the Grade II* listed Church of St Philip and St James. Policy DM10 of the SADMP seeks to ensure that new development should complement or enhance the character of the surrounding area.
- 8.13 The Conservation Officer was consulted and commented that *'this proposal seeks approval to change the use of allotments to a burial ground. The site forms part of the wider churchyard and setting to the grade II* listed building the Church of St Philip and St James and is located within the Ratby Conservation Area. The accompanying Conservation Area Appraisal (2014) identifies it as a key space within the conservation area, providing a small open green space and buffer to the church and churchyard from wider built form within the area.'*

The allotments forming the application site are now redundant. To the north and east of the site the existing church yard has been used for burials. It is considered that using the application site for this purpose would be reflective of the immediate site context and would maintain the character of the open space. The proposal would preserve the significance of the Ratby Conservation Area and be compatible with the significance of the grade II listed Church of St Philip and St James by virtue of its being an appropriate use of the land within its wider setting. Consequently, the proposal complies with Policies DM11 and DM12 the Site Allocations and Development Management Policies DPD, Section 16 of the*

National Planning Policy Framework and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990'.

- 8.14 The visual impact of the change from an allotment to burial would be negligible and would retain the verdant and open character of the site.
- 8.15 Only a small number of burial spaces remain in the existing burial ground which would be used prior to using the proposed burial ground. The use of the site for burials and the introduction of cemetery paraphernalia would be an elongated process aiding a sympathetic transition between the existing and proposed use.
- 8.16 The additional burial ground provision would result in additional funerals and visitors. There would be additional on-street car parking and vehicular traffic movements associated with funerals and visitors. However, the proposed extension of the burial ground would provide for approx. 20 plots and the disturbance associated with a funeral, or future visits to burial plots, for such a number is not considered to be significant or frequent enough to cause harm to the tranquil and peaceful character of the area.
- 8.17 There would be no harm to the character and appearance of the conservation area. The change of use would provide considerable public benefit through the provision of additional burial grounds within the hamlet. The burial ground's close proximity to the population to which it would serve would make it easy for visitors and give people the choice to be buried close to where they may have a local connection or near to other family members. The site presents a suitable solution for the future provision of burial grounds. It is considered that the benefit of securing the land for the use of the community is considerable and no harm would be caused by the introduction of additional cemetery paraphernalia. This conclusion has been reached whilst taking into account that great weight should be given to the asset's conservation as required by Paragraph 193 of the NPPF.
- 8.18 The proposal is not considered to have an adverse impact upon the significance of the adjacent grade II* listed Church of St. Philip & St. James by virtue of being an appropriate proposal located within its setting. Therefore, it is considered that the proposal is in accordance with Policies DM10, DM11 and DM12 of the SADMP. In making the above assessment, special attention has been had to the provisions of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Impact upon neighbouring residential amenity

- 8.19 Policy DM10 of the SADMP seeks to ensure that development proposals do not harm the amenity of neighbouring residential properties.
- 8.20 The change of use of the allotment land would not result in physical development and therefore would not impact on the occupiers of neighbouring properties with regards to overbearing, overshadowing or overlooking. The change of use would result in an increase in the number of visitors to the site over time as the plots are used. Due to the nature of the reason for visiting a burial, it is not considered that visitors to the grounds would cause a level of disturbance that would have an adverse impact on the occupiers of surrounding dwellings. Funerals on the grounds would not cause undue noise or disturbance above the level associated with funerals on the existing, adjacent burial ground.
- 8.21 It is considered that the change of use would not have an adverse impact on neighbouring amenity in accordance with Policy DM10 of the SADMP.

Impact upon highway safety

- 8.22 Policy DM17 of the SADMP seeks to ensure that development proposals ensure convenient and safe access for walking to facilities and demonstrate that there is not a significant adverse impact upon highway safety.
- 8.23 The proposal would increase the capacity of the burial ground. The vehicular and pedestrian access would remain unchanged from the existing arrangements with a path allow pedestrian access from Church Lane.
- 8.24 Burial rates and funerals are anticipated to continue at the existing rate. These events are likely to generate additional vehicular traffic and car parking within the vicinity of the site. There is on-street car parking available in the vicinity of the site that could be used by those attending the events. Due to the expected frequency of these events it is not considered that the additional vehicular movements and on-street car parking would have a significant adverse impact on highway safety.
- 8.25 The proposed change of use would not have an adverse impact on highway safety and would retain safe and convenient pedestrian access to the site in accordance with Policy DM17 of the SADMP.

Impact upon pollution

- 8.26 Policy DM7 of the SDAMP seeks to ensure that development does not have adverse impacts from pollution.
- 8.27 A 'Covering email to depth to groundwater plan' was submitted on 06.10.2024. The EA were re-consulted following their previous objection. The assessment concluded that the site presented a low risk of impacting on groundwater and that the site offered a very good potential site for cemetery development. Environmental Health (Pollution) and the Environment Agency have been consulted and have raised no objections to the proposed change of use.
- 8.28 It is considered that the change of use to a burial ground would not have an adverse impact with regard to pollution and is in accordance with Policy DM7 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 The application site is located within the settlement boundary of Ratby. The change of use would secure future provision of burial plots for people in the area wishing to be buried where they have a local connection or near to family members. The change of use would preserve the character and appearance of the conservation area and would not have an impact on the setting of the Church of St. Philip & St. James. The proposed would also be of wider public benefit. Other allotment space is available on Desford Lane, Groby and the proposed would maintain the use of the site as a Community Facility. The use would not have unacceptable impacts on groundwater quality, neighbouring amenity or highway safety. Therefore, in accordance with Policy DM1 of the SADMP and the provisions of the National Planning Policy Framework, it is not considered that there are any adverse impacts of granting planning permission that would demonstrably outweigh the benefits. Additionally, the proposal is considered to be in accordance with Policies DM7, DM8, DM10, DM11, DM12, DM13 and DM25 of the SADMP. In the assessment of the impact on heritage assets, the local planning authority has paid special attention to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

11 Recommendation

11.1 Grant planning permission subject to

- 11.1.1 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 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, details and materials: Site Location Plan received 27.03.2024.

Reason: To ensure a satisfactory impact of the development to accord with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

Notes to Applicant

1. Operators of cemeteries should take appropriate measures to manage their sites to ensure they do not cause an unacceptable risk to groundwater quality. These measures are set out in our comments below. The local planning authority should consider whether they wish to secure specific measures through appropriate planning conditions. The development of new cemeteries in high vulnerability areas should be avoided, except where the thickness and nature of the unsaturated zone, or the impermeable formations beneath the site, protect groundwater; or where the long-term risk is mitigated by appropriate engineering methods. We recommend that reference should be made to cemetery section in the 'The Environment Agency's approach to groundwater protection' and information on the Natural Death Centre website. A hydrogeological risk assessment must be undertaken to show that there are minimal risks to the environment either at time of burial, or in the future.

Reference should be made to the Environment Agency document 'Assessing the Groundwater Pollution Potential of Cemetery Developments'. Relevant best practice guidance must be followed, and the design should be appropriate for the local circumstances and should be based on-site investigation.

In principle any new cemetery or the extension of any existing cemetery must:

- be at least 250 metres from a well, borehole or spring used to supply water that is used for human consumption, or for use in dairy farms
- be at least 30 metres from any other spring or watercourse and at least 10 metres from any field drain
- have at least one metre of subsoil below the bottom of the burial pit, allowing a hole deep enough for at least one metre of soil to cover the remains
- have at least one metre of unsaturated zone (the depth to the water table) below the base of any grave. Allowance should also be made to any potential rise in the water table (at least one metre should be maintained)

If you wish to discuss any of these issues the Environment Agency can be contacted on 03708 506 506 or by enquiries@environment-agency.gov.uk. Environment Agency guidance on 'Cemetery Developments' is set out in our Approach to Groundwater Protection. More information can be found here: Low environmental risk cemeteries: exemption conditions - GOV.UK (www.gov.uk)

NGW I 05 'The Environment Agency's approach to groundwater protection' We would like to refer the applicant/enquirer to our groundwater position statements in 'The Environment Agency's approach to groundwater protection', available from gov.uk. This publication sets out our position for a wide range of activities and developments, including:

- Waste management
- Discharge of liquid effluents
- Land contamination
- Ground source heat pumps
- Cemetery developments
- Drainage