

Delegated Report

Planning Ref: 24/00936/FUL
Applicant: Mr Andrew Dabin
Ward: Hinckley Trinity



Hinckley & Bosworth
Borough Council

Site: 15 Aulton Way, Hinckley

Proposal: Change of use of land to domestic garden

1. Recommendations

1.1. Refuse planning permission subject to:

- Planning reasons 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 highway verge land to domestic garden at 15 Aulton Way, Hinckley. To support this change of use, the existing boundary wall is retained and a 0.3m low-level timber knee rail fence, which is supported by Photinia shrub planting is provided along the eastern boundary of the site.

2.2. The proposal is subject to the mandatory biodiversity requirement de-minimis exemption

3. Description of the Site and the Surrounding Area

3.1. The 128sqm application site comprises an area of grassland Way to the west of, but within the identified settlement boundary of, Hinckley. The grassland is part of a wider area that forms part of the highway verge and open space that serves Kintyre Close and the pedestrian route Torridon Way to the east of the application site.

3.2. The surrounding area is wholly residential in character and the site is surrounded by dwellings. The site is immediately adjacent to the brick wall that forms the eastern boundary of the garden area of 15 Aulton Way. 15 Aulton Way is a bungalow within the Applicant's ownership but outside of the red line boundary of this application.

4. Relevant Planning History

4.1 24/00409/HOU

- Construction of a 2.00-metre-high boundary fence to the east boundary line
- Withdrawn
- 16.09.2024

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.

5.2 No responses have been received.

6. Consultation

6.1 There have been no objections from the following consultants:

- Local Highway Authority (LHA)

6.2 The Local Highway Authority (LHA) have confirmed that the application area is not within highway land. As such, the LHA stated that the proposal has no material impact on the public highway and made no further comments.

6.3 No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- Policy 1: Development in Hinckley

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

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design

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)

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
- Planning balance

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 and the adopted Site Allocations and Development Management Policies Development Plan Document (SADMP). 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 The development is within the identified settlement boundary of Hinckley in an area that is characterised by residential uses. Therefore, the change of use of land to domestic garden land is considered to be 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

- 8.5 Paragraph 139 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.
- 8.6 Paragraph 135(a) of the NPPF requires planning decisions to ensure that developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Paragraph 135(c) of the NPPF then confirms that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscaping setting.
- 8.7 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.
- 8.8 The Good Design Guide confirms that boundary treatments are a significant feature of local character, the loss of which can have a highly detrimental impact on local distinctiveness. Whilst fencing is often selected as a cost-effective means of creating boundary treatment, the Good Design Guide advises that consideration should be given to its potential negative impact on the wider street scene, particularly where this would entirely block through views and create dead frontages. For example, the Good Design Guide highlights that long runs of fences

can create a sense of oppression, but low fences used in partnership with soft landscaping can provide a more sensitive form of delineation of boundaries.

- 8.9 Whilst the scheme suggests it includes the retention of the existing brick wall, it is not considered that a planning condition to secure this meets the six tests for planning condition which are identified within Paragraph 56 of the NPPF. This is because this condition is not necessary, nor reasonable, if the application site is granted permission to form part of 15 Aulton Way's residential garden space. Therefore, the proposal represents the loss of the existing brick wall, which is considered to diminish the quality of, and cause harm to, the character of the street scene.
- 8.10 Notwithstanding this, the provision of a new brick wall along the entire eastern boundary of the application site in the new proposed boundary treatment location is not considered to complement or enhance the character of the surrounding area. This is particularly evident given a brick wall's inevitable contrast with the line of 1m high close boarded fencing on the frontages of the properties along Cumbrae Drive to the north of the site.
- 8.11 However, the Applicant has proposed 0.3m high fencing along this boundary with Photinia shrub planting. Whilst low fences with soft landscaping can provide a more sensitive form of delineation of boundaries, the new proposed boundary treatment is in the middle of an area of green space, is 41m in width and is set in front of 47 Cumbrae Drive by 6.8m. Regardless of material finish, this position and this extent of boundary treatment when associated with one dwelling in this area is considered to be incongruous in the context of the character of the area. Although low-level boundary treatment is utilised in residential areas, low-level timber railing fencing is not a predominant boundary treatment within the vicinity of this site, and the extent of this boundary treatment is not considered to add to the overall quality of the area, nor ensure that the proposal is sympathetic to the built environment and the landscape setting of the wider area.
- 8.12 By virtue of the loss of the existing brick wall, the relocation of the boundary treatment, and the use of close boarded timber fencing, the boundary treatment required to support the change of use the land within the application site to a residential use is considered to be contrived and fails to add to the overall quality of the area, nor ensure that the proposal is sympathetic to the built environment and the landscape setting of the wider area. Therefore, the development is considered to result in adverse impacts to the character of the surrounding area, which is contrary to, and in conflict with, Paragraph 135 of the NPPF, Policy DM10 of the SADMP, the Good Design Guide.

Impact upon Residential Amenity

- 8.13 Paragraph 135(f) of the NPPF requires planning decisions to ensure that developments create places that promote health and well-being with a high standard of amenity for existing and future users.

- 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. The Good Design Guide confirms that gardens are an important part of the quality of life afforded by a house.
- 8.15 The only neighbouring residential property to the application site, with the exception of 15 Aulton Way, is 47 Torridon Way to the north of the site. The scheme does not involve the provision of any structures or buildings. Whilst the proposal extends the private amenity space of 15 Aulton Way beyond the front elevation of this neighbouring property by 6.8m, this is not considered to result in any overlooking or loss of privacy impacts. Only the front door of 47 Torridon Way faces the application site and therefore the development is not considered to cause any detrimental impacts to neighbouring residential amenity.
- 8.16 Whilst the proposal states that the existing boundary brick wall to 15 Aulton Way is retained, as highlighted above, it is not considered that a planning condition to secure the retention of this brick wall meets the six tests for planning conditions which are identified within Paragraph 56 of the NPPF. A loss of this 2m high boundary wall would result in loss of privacy and overlooking into the only private outdoor amenity space of this dwelling. This would cause significant adverse impacts to the residential amenity of the occupants of 15 Aulton Way. Whilst the height of new boundary treatment could be increased to address these concerns, this is likely to result in further harm to the character of the surrounding area.
- 8.17 In summary, the proposal would cause significant harm to the residential amenity of the occupants of 15 Aulton Way due to overlooking and loss of privacy into their primary private outdoor space. Therefore, the scheme is considered to be contrary to, and in conflict with, Policy DM10 of the SADMP.

Planning Balance

- 8.18 At the heart of the NPPF is a presumption in favour of sustainable development. For decision making, Paragraph 11 of the NPPF confirms that this means that development proposals that accord with an up-to-date Development Plan should be approved without delay. The Local Planning Authority's Development Plan is over five years old and is therefore considered to be out-of-date.
- 8.19 However, in accordance with Paragraph 225 of the NPPF, due weight should be given to existing policies due to their degree of consistency with the NPPF. Policy DM10 of the SADMP is considered to be consistent with Paragraph 135 of the NPPF and therefore significant weight can be given to this Policy.
- 8.20 Nevertheless, Paragraph 11(d)(ii) of the NPPF confirms where the policies which are most important for determining the application are out-of-date, planning permission must be granted unless any adverse impacts of doing so would

significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 8.21 Whilst the change of use of the land within the application site to residential garden is acceptable in principle, the boundary treatment required to support the change of use the land within the application site to a residential use is considered to be contrived and fails to add to the overall quality of the area, nor ensure that the proposal is sympathetic to the built environment and the landscape setting of the wider area. Therefore, the development is considered to result in adverse impacts to the character of the surrounding area, which is contrary to, and in conflict with, Paragraph 135 of the NPPF, Policy DM10 of the SADMP, the Good Design Guide. This harm is considered to attract significant weight in the planning balance.
- 8.22 In addition, the proposed boundary treatment for the development would result in loss of privacy and overlooking into the primary private outdoor residential amenity area of 15 Aulton Way. This is considered to cause significant adverse impacts to the residential amenity of the occupiers of this dwelling, which is contrary to, and in conflict with, Policy DM10 of the SADMP and Paragraph 135(f) of the NPPF. This harm is considered to attract significant weight in the planning balance.
- 8.23 Whilst the height of new boundary treatment could be increased to address these concerns, this is likely to result in further harm to the character of the surrounding area. This further demonstrates the contrived nature of the proposal.
- 8.24 The Applicant has also suggested utilising a 2m high hedgerow as an alternative boundary treatment but vegetation cannot be relied upon to provide permanent or substantial buffers to views because they can be removed without planning permission, they are susceptible to disease, and they are ever evolving and reliant on regular maintenance to retain a consistent form.
- 8.25 Given the scale of the development and its harm to the occupiers of 15 Aulton Way, this proposal for the extension of private residential space is also not considered to provide any social or economic benefits.
- 8.26 By virtue of these factors, the proposal's adverse impacts to the character of the surrounding area and the residential amenity of the occupants of 15 Aulton Way are considered to significantly and demonstrably outweigh any benefits of the scheme.

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 refused.

11. Recommendation

11.1 **Refuse planning permission** subject to:

- Planning reasons detailed at the end of this report.

11.2 Reasons

1. If the application site is granted permission to form part of 15 Aulton Way's residential garden space, the retention of the existing boundary brick wall to 15 Aulton Way cannot be secured via planning condition because it does not meet the necessary six tests identified within Paragraph 56 of the National Planning Policy Framework (December 2023). As a result, the development would result in adverse impacts to the residential amenity of the occupants of 15 Aulton Way as a result of overlooking into and loss of privacy within the primary private outdoor residential space associated with the dwelling. This harm significantly and demonstrably outweighs the benefits of the scheme. Therefore, the proposal is contrary to, and in conflict with, Paragraph 135(f) of the National Planning Policy Framework (December 2023), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and the Good Design Guide (2020).

2. Given the extent, type, and siting of the new proposed knee-high timber fencing boundary treatment required to facilitate the proposed change of use, and the resultant loss of the existing brick wall, the development is contrived and fails to add to the overall quality of the area, nor ensure that the proposal is sympathetic to the built environment and the landscape setting of the wider area. Therefore, the development is considered to result in significant adverse impacts to the character of the surrounding area. This harm significantly and demonstrably outweighs the benefits of the scheme. Therefore, the proposal is contrary to, and in conflict with, Paragraph 135 of the National Planning Policy Framework (December 2023), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), and the Good Design Guide (2020).

a. **Notes to Applicant**

1. The application has been determined in accordance with the following submitted details:
 - Application Form (submitted: 04.10.2024)
 - Highway Extent Plan LCC (submitted: 04.10.2024)
 - Planning Statement (submitted: 04.10.2024)
 - Proposed Fence Elevation (submitted 22.10.2024)
 - Proposed Site Layout (Rev B) (submitted: 19.11.2024)
 - Site Location Plan (submitted: 04.10.2024)