

Delegated Report

Planning Ref: 23/00965/FUL

Applicant: Mr Daniel Swift

Ward: Twycross Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Site: 57 Kennel Lane Witherley Atherstone

Proposal: Change of use of land from paddock (sui generis agriculture) to residential garden and erection of fence (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 to residential garden at 57 and 59 Kennel Lane, Witherley. The total area of land has a width of 31m (the entire width of the plot) and a depth of 10.4m, which has a total size of 326.6sqm. The area of land is bordered by 1.2m high post and rail fencing.

2.2. The change of use began on 04 April 2023 and was completed on 18 August 2023.

3. Description of the Site and the Surrounding Area

3.1. According to the Witherley Conservation Area Appraisal (2007), the 960sqm application site is located outside of the Witherley Conservation Area and the settlement boundary of the rural village of Witherley.

3.2. 57 and 59 Kennel Lane are associated with the historic Atherstone Hunt buildings that are identified within the WNDP and Leicestershire & Rutland Historic Environment Record MLE 24331 as unlisted buildings of local historical or architectural significance. The stables and kennels of the Atherstone Hunt are to the north of the cottages and have recently had planning approval (21/00789/FUL) for the extension and alteration of these former kennels and stables to form eight dwellinghouses.

3.3. On the eastern edge of Witherley's settlement boundary, the application site has a largely rural context, with open countryside to the south and east of the site. However, there are residential properties to the north, northeast, southwest and west of the site. The site is accessed to the south of the cottages.

3.4. Planning permission for application 22/00660/FUL granted full planning permission for the erection of a two-storey rear extension that extended across two existing semi-detached dwellings at 57 and 59 Kennel Lane, Witherley. A further variation of condition application, 22/01232/CONDIT, was approved that reconfigured the off-street parking provision for both dwellings.

4. Relevant Planning History

4.1 22/001232/CONDIT

- Variation of Condition 02 (Approved Plans) and Condition 05 (Parking Spaces) for Planning Permission 22/00660/FUL. Date of Decision: 23/09/2022. Variation to include amendments to location of car parking provision.
- Permitted
- 31.03.2023

4.2 22/00660/FUL

- Proposed two storey rear extensions to existing 2no dwellings
- Permitted
- 23.09.2022

4.3 21/00789/FUL

- Conversion, extension and alteration of former kennels and stables to form 8no. Dwellinghouses, erection of replacement dwellinghouse, conversion of outbuildings to home offices, erection of garaging and formation of new vehicular access and parking for adjacent cottages
- Permitted
- 26.01.2022

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.

5.2 No 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
- HBBC's Waste Management Officer
- Local Highway Authority (LHA)

6.2 Witherley Parish Council suggested that if the garden extended into the ridge and furrow field, the Council would not support the application. However, if the development does not encroach into this field, then it would support the application. Witherley Parish Council have also acknowledged that the scheme must be assessed against Policy DM4 of the Site Allocations and Development Management Policies Development Plan Document (SADMP).

6.3 The Council's Green Spaces Officer did not comment on the application.

6.4 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 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

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 and the historic environment
- 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, 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 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.”*
- 8.8 This is supported by 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. Policy DM4 of the SADMP only considers residential 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”.
- 8.9 Therefore, the proposed development does not relate to, or comply with, any of the criteria above in either Policy DM4, but this does not mean that the development is not sustainable.
- 8.10 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.
- 8.11 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 and the Historic Environment

- 8.12 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.
- 8.13 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.
- 8.14 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.
- 8.15 The proposal results in the change of use of agricultural land, that is outside of the identified settlement boundary, into residential garden. Within the submitted Application Form and a note within the Proposed Site Plan, the Applicant has suggested that the change of use extends the residential curtilage of both 57 and 59 Kennel Lane. However, it is noted that residential curtilage is not a planning use, and the lawful use of land as residential garden space is not always synonymous with land within the residential curtilage of a dwellinghouse.
- 8.16 It is likely that the residential use of the site is visible to the south of the site from Kennel Lane. Notwithstanding this, the extent of the change of use is in line with the building lines of properties to the south and one of the structures associated with Atherstone Hunt to the north. The Atherstone Hunt buildings are currently being converted into residential uses.
- 8.17 In this context and based on a site visit by the Planning Officer, whilst the scheme extends residential garden uses into the open countryside, the use of the land is considered to be clearly associated with the two existing dwellings, and it does not protrude any further into the countryside than any existing structures to the north or south. Furthermore, the use of post and railing is considered to preserve the rural character of the site. A condition though removing permitted development rights in order to preserve this character is required.
- 8.18 Therefore, it is considered that the change of use of this land into residential garden has a negligible effect on the qualities of the intrinsic value, beauty, open character, and landscape character of the countryside. Therefore, despite being contrary in principle to the A to E criteria of Policy DM4 of the SADMP, the scheme is considered to be compliant with Policy DM4(i to v) and Policy DM10 of the SADMP.

Impact upon Residential Amenity

- 8.19 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.
- 8.20 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.
- 8.21 The Good Design Guide requires the way buildings to relate to each other, and their orientation and separation distances, to provide and protect acceptable levels of amenity.

- 8.22 The scheme increases the provision of private outdoor amenity space for both dwellings. This is considered to improve the residential amenity of the future occupants of the scheme.
- 8.23 No development takes place within this application other than the erection of post and rail perimeter fencing, and therefore the scheme is not considered to result in any significant harm to neighbouring residential amenity. Therefore, the development is in accordance with Policy DM10 of the SADMP and the Good Design Guide.

Impact upon Parking Provision and Highway Safety

- 8.24 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.
- 8.25 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)).
- 8.26 Policy DM18 of the SADMP requires developments to demonstrate an adequate level of off-street parking provision.
- 8.27 The scheme has no material impact on the off-street parking or turning facilities, nor the access to either site from Kennel Lane. In light of the above, it is considered that there is already adequate off-street parking for the dwellings and that the proposal does not create an unacceptable impact on highway safety or the road network. Therefore, the scheme is regarded as in accordance with Policies DM17 and DM18 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 residential amenity.
- Does not have a significant adverse impact upon highway safety.
- Provides sufficient vehicle parking spaces for off-street parking.

10.2 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 in complete accordance with the submitted application details received by the Local Planning Authority as follows:

- Site Plan, Block Plan, Site Location Plan, Drg No. 9754. 102 (submitted: 29.09.2023)

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).

2. Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A and E and Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration to the dwelling or erection of alternative boundary fencing shall be carried out unless planning permission for such development has been granted by the Local Planning Authority.

Reason: To protect the character of the surrounding countryside in accordance with Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).