



Appeal Decision

Site visit made on 18 September 2023

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.10.2023

Appeal Ref: APP/K2420/W/23/3317828

12 Rodney Gardens, Sheepy Magna, Leicestershire CV9 3SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Guilders and Miss Leanne Carter against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 22/00916/FUL, dated 22 September 2022, was refused by notice dated 30 November 2022.
 - The development is the change of use of agricultural land to domestic garden.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of agricultural land to domestic garden at 12 Rodney Gardens, Sheepy Magna, Leicestershire CV9 3SY in accordance with the terms of the application, Ref 22/00916/FUL, dated 22 September 2022, and the plans submitted with it, subject to the following condition:
 - 1) 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 Part 1, Class E of Schedule 2, and no gates, fences or walls within Part 2, Class A of the same Schedule, shall be erected on the land, except in the event that a further planning permission is expressly granted for that development.

Preliminary Matters

2. The development has already been carried out. The plans before me appear to reflect the extent of the land to which the change of use has taken place. However, the submitted plans do not include the full extent of the development that has been carried out, including the boundary fence or the building that has been installed, for example. For the avoidance of doubt, I have determined the appeal based on the submitted plans.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site is a long narrow rectangular shaped area of land, located to the rear of 12 Rodney Gardens (No 12), which extends beyond the original rear boundary of the property. The side boundary of the site is coterminous with the side boundary of the rear garden of the neighbouring property at 14 Rodney

Gardens (No 14). The land is bound to the rear and side by the existing agricultural land to the rear of the properties in the remaining part of the row. The surrounding grass fields and mature trees contribute positively to the pleasant verdant character of the area.

5. The appeal relates to the change of use of the land from agricultural use to garden to serve No 12. At the time of my visit, the land, which is enclosed by a timber fence comprised a mowed lawn, a timber outbuilding, and various items of domestic paraphernalia located on the part of the site closest to the rear of the dwelling.
6. Policy DM4 of the Site Allocations and Development Management Policies DPD adopted July 2016 (SADMP) seeks to safeguard the countryside from unsustainable development to protect its intrinsic value, beauty, open character and landscape character. It sets out that development in the countryside will be considered sustainable where it falls within the types listed and where it meets specific criteria, including that it does not have a significant adverse effect on the characteristics it seeks to protect.
7. There is no dispute that the land lies outside the development boundary and is therefore in an area of open countryside, which Policy DM4 seeks to protect. Consequently, as the change of use of land to garden does not fall within the specific exceptions listed, it conflicts with Policy DM4 in that regard.
8. 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. The size and layout of the garden reflects that of the rear garden at the adjoining property at No 14. Despite its size, the site benefits from a considerable degree of containment in the wider rural context as a consequence of its position in relation to the adjoining garden and mature woodland beyond. This relationship serves to reduce the effect of the change of use in terms of significant visual encroachment into the surrounding agricultural land. Having regard to these matters, the use of the land as garden has a negligible effect on the qualities of the open countryside setting.
9. I note the Council's concern regarding the potential for the siting of domestic paraphernalia, such as furniture, play equipment, hard surfacing or ponds in connection with the use of the land as garden, which would be more difficult to control. Nonetheless, in the event that this does occur, any such paraphernalia would be likely to be small scale and would not be permanent fixtures. Furthermore, 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. Subject to a suitably worded condition removing such rights the development would not give rise to any tangible harm to the visual qualities or open character of the rural area.
10. For the foregoing reasons, I find that the proposal does not have a significant adverse effect on the intrinsic value, beauty, open character, and landscape character of the countryside. As such, it does not harm the character and appearance of the area.
11. I therefore conclude that the use of the land as garden is in clear conflict with Policy DM4 of the SADMP insofar as it does not constitute a type of development considered to be sustainable and therefore appropriate in the countryside. Nevertheless, I have not identified any actual planning harm

arising from the change of use of the land. Moreover, the development accords with the aims of paragraph 174 of the National Planning Policy Framework, in so far as it seeks to ensure that developments recognise the intrinsic character and beauty of the countryside.

12. Whilst not referred to specifically in the Council's refusal reason, the officer report also alleges conflict with Policy S1 of the Sheepy Parish Neighbourhood Plan Review: Made May 2022 (SNP) due to the effect on the countryside. However, for the reasons set out above I have found that such harm would not arise.

Other Matters

13. I note the Parish Council's comment that the development conflicts with Policy S10 of the SNP. However, this policy relates to the location of new housing development and is therefore not determinative in the appeal.

Conditions

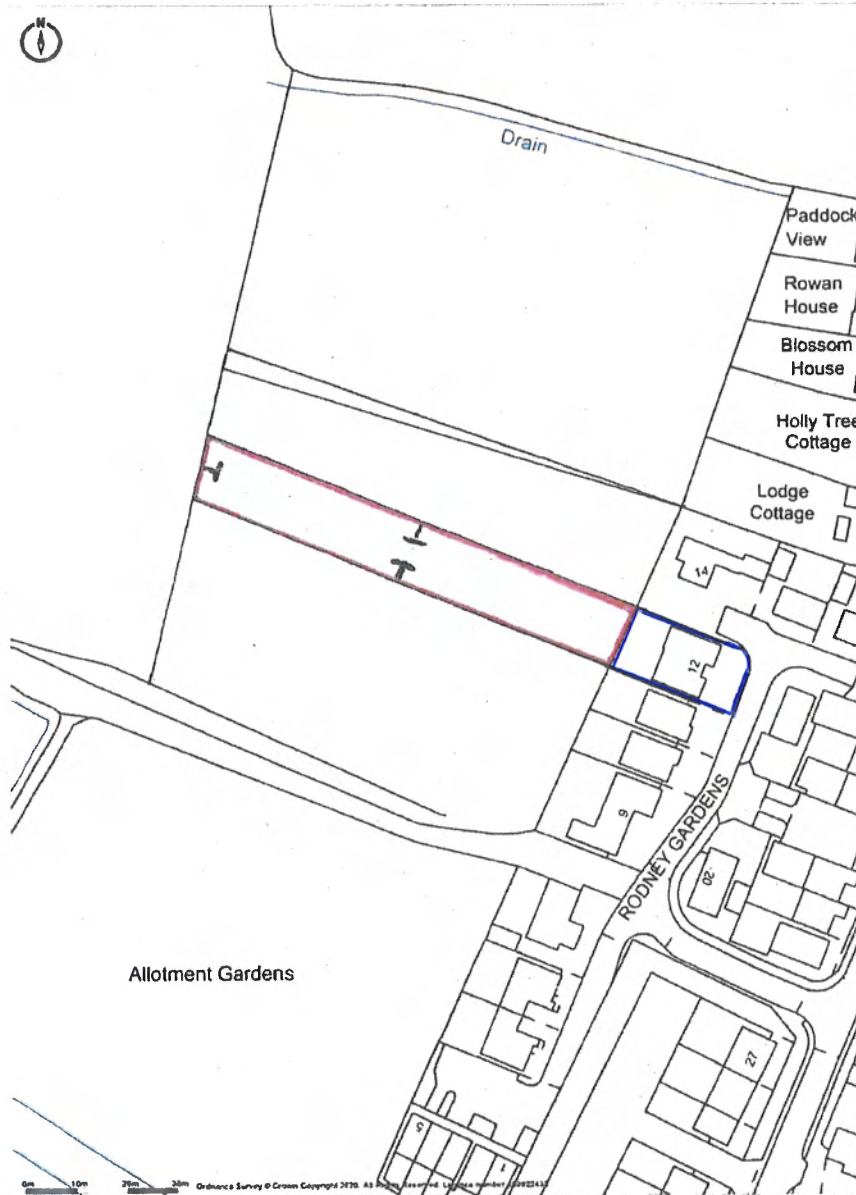
14. A condition is necessary to remove permitted development rights to safeguard the visual qualities and open character of the countryside. A condition requiring adherence to an approved plan is unnecessary when applying the statutory tests.

Conclusion

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise. There is clear conflict with the development plan in that the appeal site lies outside of the settlement boundary for Sheepy Magna. However, as no other planning harm has been identified, the extent of the conflict is limited. Therefore, in the particular circumstances of this case there are material considerations which justify a decision other than in accordance with the development plan.
16. For the above reasons, I conclude that the appeal should be allowed.

E Worley

INSPECTOR





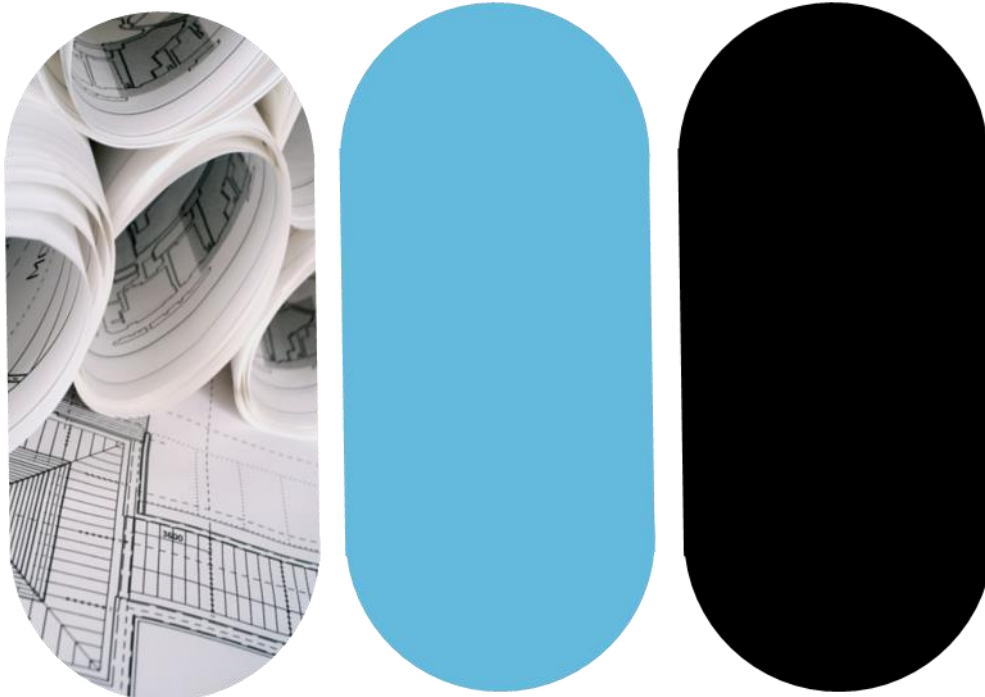
APPEAL STATEMENT

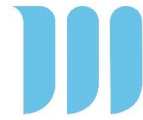
On behalf of

Appellant: Mr Michael Gilders and Miss Leanne Carter

Appeal against the decision of Hinckley & Bosworth Borough Council to refuse planning application (ref: 22/00916/FUL) for the change of use of agricultural land to domestic garden

12 Rodney Gardens, Sheepy Magna





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1. INTRODUCTION

- 1.1. This Appeal Statement is submitted on behalf of Mr Michael Gilders and Miss Leanne Carter (“the Appellants”). This appeal is made against the decision of Hinckley and Bosworth Council (“the Council”). The application was for the change of use of agricultural land to domestic garden (“the Appeal Proposal”).
- 1.2. The appeal procedure sought is for the written representation procedure consistent with Appendix K of the Planning Appeals Procedural Guide; the planning issues can be clearly understood from the appeal documents and the issues raised are not complex.
- 1.3. Planning application ref: 22/00916/FUL was refused on 30th November 2022 for one reason:

The change of use from agricultural land to domestic garden results in encroachment into the countryside beyond the settlement boundary, that causes significant harm to the intrinsic value, beauty, open character and landscape character of the countryside contrary to Policy DM4 of the SADMP and paragraph 174 of the NPPF.

- 1.4. A copy of the planning officer’s report is included at Appendix 3 and a copy of the formal decision notice is provided at Appendix 4 (both submitted as separate attachments with the appeals form). The Appellant disagrees with the Council’s decision and considers that planning permission should have been granted which is why this appeal has been lodged.

2. RELEVANT BACKGROUND

Location and description of the appeal site

- 2.1. The appeal site is edged red on the submitted site location plan (refer Figure 1 for extract).

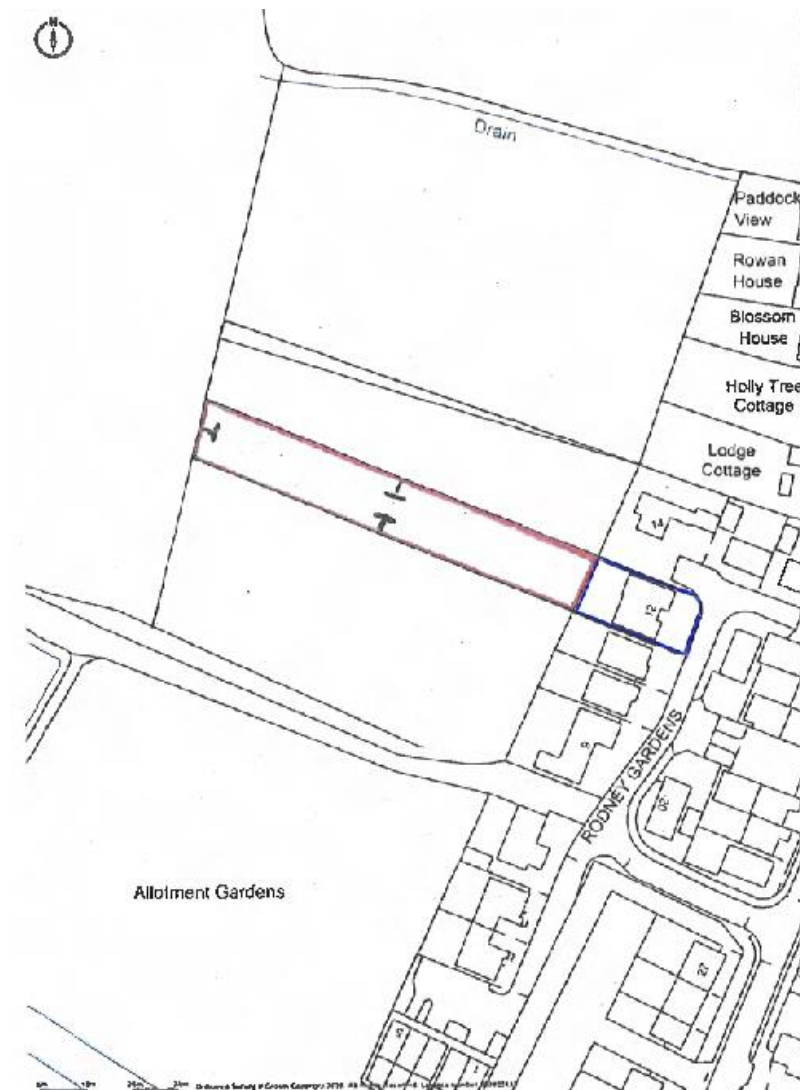


Figure 1 - Site Location Plan

- 2.2. The land subject of this Appeal was part of an agricultural field that lies to the rear of a line of residential properties (9-14 Rodney Gardens) that are part of a development of 24 dwellings given planning permission in 2016. The parcel is now owned by the Appellant and no longer used in connection with the adjacent agricultural field. A vehicular track passes between numbers 8 and 9 Rodney Gardens to the farm house and divides this field from another one behind numbers 1-8 Rodney Gardens.



- 2.3. Under permitted development rights, the Appellants have erected post and rail fencing (i.e. rural in character) and sowed grass seed. In addition, a small shed has also been erected to store a lawnmower. None of this is considered out of character or harmful to the wider countryside, as explained further as part of the Appellant's case in section 4.
- 2.4. Two parcels to the north of the site have also been divided from the wider agricultural field with fencing, featuring sown grass and landscaping, by the adjoining landowners.

The Appeal Site's planning history

- **Ref. No: 14/00136/FUL:** Erection of 24 new dwellings | Status: Planning Permission
- **Ref. No: 16/00865/CONDIT:** Variation of condition 2 of planning permission 14/00136/FUL for substitution of housetypes to plots 10, 11, 13 and 23 | Status: Planning Permission
- **Ref. No: 21/00112/CLP:** Certificate of lawful proposed development for single storey extension at rear of house | Status: Certificate Of Lawful Proposed Use
- **Ref. No: 21/01418/HOU:** Change the use of land from agricultural to residential curtilage (garden land) | Status: Refused

3. LEGISLATION AND PLANNING POLICY FRAMEWORK

Legislation

- 3.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Statutory Development Plan

- 3.2. The development plan comprises the Hinckley and Bosworth Core Strategy 2006 to 2026, adopted in December 2009 (CS 2009), the Site Allocations and Development Management Policies DPD 2006 – 2026, adopted July 2016 (DPD 2016) and the Sheepy Magna Neighbourhood Plan Review 2018 to 2036, made May 2022 (SMNP 2022). The SMNP Review follows on from the previous Neighbourhood Plan which was made in March 2019.
- 3.3. CS 2009 predates the first NPPF (2012), whilst DPD 2016 predates its latest iteration (2021). In accordance with paragraph 219 of the Framework, the weight given to Development Plan policies in decision making depends on the degree of consistency with the Framework policies; the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

Relevant Development Plan Policy

- 3.4. The reason for refusal refers solely to Policy DM4 of the DPD 2016. No conflict has been identified by the Council with respect to other development plan policies in either the CS 2009 or SMNP 2022.
- 3.5. Policy DM4 (Safeguarding the Countryside and Settlement Separation) seeks to protect the intrinsic nature, beauty, open character and landscape character of the countryside, safeguarding it from unsustainable development. The Policy includes 5 clauses which it considers to be sustainable development in countryside locations. The Appeal Proposal is not considered to be captured by any of these exceptions.



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- 3.6. Policy S1 of the SMNP 2022 does not form part of the reason for refusal but it is in principle protection of the countryside is in general alignment with Policy DM4 of the DPD 2016 and so is considered in the following section.
- 3.7. SMNP 2022 Policy S1 (Countryside) seeks to protect land outside of settlement boundaries, for the sake of intrinsic character, beauty, heritage and wildlife.
- 3.8. The Council have referred to SMNP 2022 Policy S10 (Housing Development) in the Delegated Officer Report. However, this relates only to proposals for new housing, which is not relevant to the appeal proposal.
- 3.9. DPD 2016 Policies DM17 (Highways and Transportation) and DM18 (Vehicle Parking Standards) are mentioned in the officer report and also not considered relevant, as there is no additional parking proposed or change in vehicular access.

NPPF

- 3.10. The NPPF sets out the Government's planning policies for England and how these should be applied. The Framework is a material consideration in planning decisions. The only paragraph referred to by the Council is NPPF174:
- **NPPF174:** *"Planning policies and decisions should contribute to and enhance the natural and local environment..."* This includes criteria to recognise the intrinsic character and beauty of the countryside and to minimise impact on and provide a net gain in biodiversity.

National Planning Policy Practice Guidance (PPG)

- 3.11. National Planning Practice Guidance (NPPG) is also a material consideration, providing guidance in relation to the policies in the NPPF.



4. THE APPELLANT'S CASE

4.1. The Council refused planning permission for one reason:

1. *The change of use from agricultural land to domestic garden results in encroachment into the countryside beyond the settlement boundary, that causes significant harm to the intrinsic value, beauty, open character and landscape character of the countryside contrary to Policy DM4 of the SADMP and paragraph 174 of the NPPF.*

Summary

4.2. Fundamentally, the proposals will not harm the intrinsic value, beauty, open character and landscape character of the countryside, with no conflict with either DM4 (and S1) or NPPF174. The introduction of post and rail fencing and grassland is entirely in-keeping with a rural and countryside character and could be put in place in any event, as accepted by the Council.

4.3. Whilst the Council has raised issue with future alien elements that a change of use could engender, the Council could condition and control against these aspects (e.g. preventing any hard standing and patios) beyond the residential curtilage, as well as removing any further permitted development rights if considered necessary.

Detailed justification

4.4. The Council consider that through the change of use to domestic garden, this results in encroachment into the countryside beyond the settlement boundary. The SMNP 2022 Settlement Boundary is provided at Appendix 1.



Figure 2 - Insert from SMNP 2022 – Settlement Boundaries, including Marrons annotations (12 Rodney Gardens highlighted in blue)

- 4.5. In Figure 2, Marrons has highlighted in purple the areas of domestic garden in the immediate locality which go beyond the defined SMNP 2022 settlement boundary. The dwellings highlighted (3 – 5 Wembrook Coppice, Sheepy Magna, CV9 3RS) appear to regularly mow and maintain these areas for private domestic use, with each parcel fenced off from one another. Domesticating features are consistently visible in historic aerial imagery, including a trampolines, a climbing frames, football goals and paved areas (See Appendix 2).
- 4.6. In these instances, land used for domestic garden is beyond the SMNP 2022 Settlement Boundary. No planning or enforcement issues appear to have been raised for these uses occurring beyond the settlement boundary, including at the two parcels directly to the north of the Appeal Proposal.



- 4.7. Through the use of boundary treatments which reflect its rural character (i.e. the post and rail fencing already installed) and approach to how the area is maintained, with clear separation from the immediate residential curtilage, the Appellants consider that their domestic garden is not incongruous with the wider countryside surrounding the settlement and, in fact, is in harmony with it.
- 4.8. The Appellants seek to demarcate their ownership boundary from adjacent ownerships and can erect a post and rail fence and sow grass-seed without requiring planning permission. Such features are very common in a rural countryside setting. It should be noted that the Council do not consider that the Appeal Proposal conflicts with DPD Policy DM10, as such that the scale, layout and materials complement and enhance the character of the surrounding area.
- 4.9. The landscape character consists of lowland parcels, which are predominantly lined by low hedgerows with mature hedgerow trees. The Appeal Site cannot be appreciated from public vantage points within Sheepy Magna or from footpaths in countryside locations to the east. Whilst the Appeal Proposal does not strictly meet the types of development within Policies DM4 or S1 that are considered sustainable development in countryside locations, the Appeal Proposal clearly has a negligible impact on the intrinsic value of the beauty, open character and landscape character of the countryside. As such, the Appeal Proposal accords with the Development Plan —when read as a whole.
- 4.10. The Council's Delegated Officer Report states that *"Domestic use brings the potential for other alien elements to be introduced on the land associated with living in a dwellinghouse: amongst other things children's play equipment, patio sets, ponds, lawns, sheds, storage, raised beds, footpaths could all be expected. Even domestic use alone would be alien, and would generate the need for walking surfaces which would encroach on the character of this part of the countryside."*
- 4.11. The Council appear concerned with future proposals, rather than the Appeal Proposal that was before them. The Appellants do not wish to introduce alien elements as suggested. This is highlighted by the land having been used as



domestic garden for over 2 years, with no such features having been introduced and with no plans to do so.

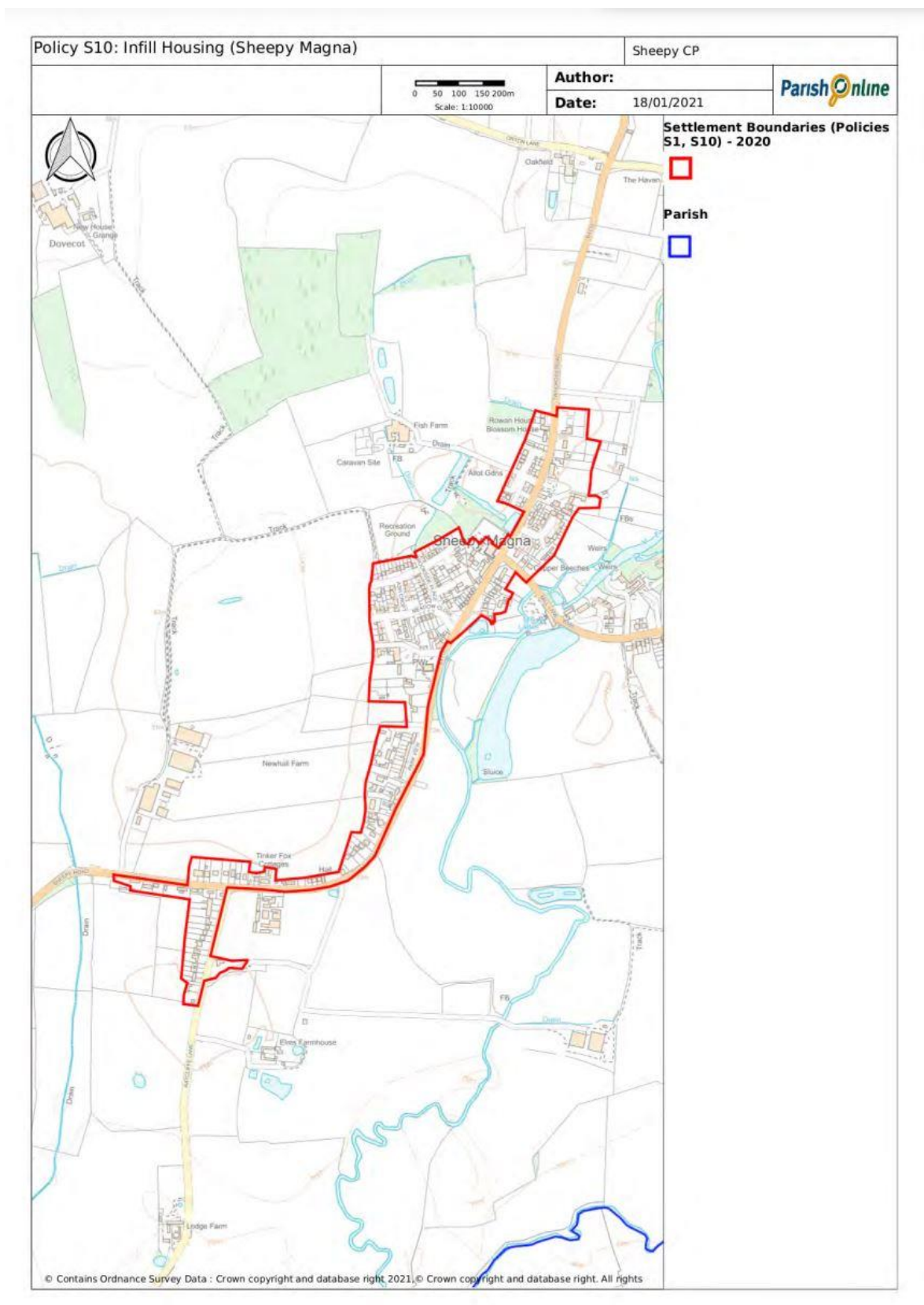
- 4.12. If the Inspector determines that the area subject to this proposed change of use forms part of the residential curtilage of 12 Rodney Gardens and is concerned by the introduction of features, conditions can be attached to remove permitted development rights. If the Inspector considers that the area is garden land but outside of the residential curtilage, no such permitted development rights exist.
- 4.13. The Appellants can also agree to conditions which require landscaping on the boundaries or within the site (including new trees and hedgerow planting), which would further assist in the Appeal Proposal sitting in harmony with the rural character of the wider countryside.



5. CONCLUSION

- 5.1. A change of use to a residential garden is considered to amount to sustainable development, which follows an existing pattern of deep gardens being outside of the settlement boundary at Sheepy Magna, both adjacent and elsewhere in the village. The proposal thus has negligible impact on the intrinsic value of the beauty, open character and landscape character of the countryside, in accordance with DPD 2015 Policy DM4 and SMNP 2022 Policy S1. The Council accept that the introduction of fencing and sown grass is permitted development and that DPD 2016 Policy DM10 is complied with.
- 5.2. The Council have not alleged any breach of any other relevant policy of the Development Plan, or any other material consideration that would warrant refusal of planning permission. No objections were received from technical consultees or third parties.
- 5.3. For the reasons outlined, the Appeal Proposal is compliant with the Development Plan and relevant paragraphs of the National Planning Policy Framework.
- 5.4. The Appellant therefore respectfully requests their appeal be allowed. I look forward to receiving confirmation from you of your registration and validation of the appeal.

Appendix 1 – SMNP Settlement Boundary 2022



Appendix 2 – 3-5 Wembrook Coppice historic aerial imagery



Figure 3 - Google Earth June 2021 with approx. SMNP Settlement Boundary



Figure 4 - Google Earth April 2018 with approx. SMNP Settlement Boundary



Figure 5 - Google Earth April 2015 with approx. SMNP Settlement Boundary



Figure 6 - Google Earth December 2010 with approx. SMNP Settlement Boundary

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

Refusal of Planning Permission

Name and Address of Applicant

Mr and Miss Michael and Leanne Gilders and Carter
12 Rodney Gardens
Sheepy Magna
Atherstone
Leicestershire
CV9 3SY

Name and Address of Agent (if any)

Mr George Smith
Marrons Planning
Bridgeway House
Bridgeway
Stratford-upon-Avon
CV37 6YX

Part I - Particulars of Application

Date of Application

22 September 2022

Application No.

22/00916/FUL

Particulars and location of development:

Change of use of agricultural land to domestic garden

12 Rodney Gardens Sheepy Magna Atherstone Leicestershire CV9 3SY

Part II - Particulars of decision

In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council refuses to permit the carrying out of the development referred to in Part I hereof for the following reason(s):-

1. The change of use from agricultural land to domestic garden results in encroachment into the countryside beyond the settlement boundary, that causes significant harm to the intrinsic value, beauty, open character and landscape character of the countryside contrary to Policy DM4 of the SADMP and paragraph 174 of the NPPF.

C. Brown.

Christopher Brown MRTPI
Planning Manager (Development Management)

Date: 30 November 2022

IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

NOTES

1. It will be most helpful if the application number shown overleaf is quoted on all correspondence.
2. If you consider that this decision has been made invalidly through the Council failing to follow a procedure correctly, not having the legal power to make the decision in the way it did or through its decision being so unreasonable as no reasonable local authority would make the same decision based on the same facts, then you may enter a claim for judicial review to quash the decision. In order to proceed with a claim for judicial review an initial application for permission will need to be made to the Administrative Court, this application is required to be made "promptly and in any event within three months of the decision". The initial permission application will decide if you have an arguable case, whether you are sufficiently materially affected by the decision to bring the claim. If you are granted permission to bring the claim it will proceed to a full hearing at the Administrative Court. Although there is no requirement for you to do so it is highly recommended that you seek independent legal advice before bringing forward a claim for Judicial Review
3. If you are aggrieved by the decision of the Local Planning Authority to refuse permission you may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. If your appeal is against a Minor Commercial Development, we would advise you to view the guidance on the Planning Portal website under Procedure Guidance, to confirm the time frame for appealing. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, tel. 0303 444 5000 or online at <https://www.gov.uk/planning-inspectorate>). You must use a Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the appeal form you require. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, (or could not have been so granted otherwise than subject to the conditions imposed by them,) having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 14 October 2004 must be made within six months of the date of this notice. If you intend to submit an appeal that you would like examined by inquiry then you must notify your Local Planning Authority (planning@hinckley-bosworth.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details can be found on GOV.UK.
4. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application then, you must do so in accordance with the guidance found using the following link <https://www.gov.uk/appeal-enforcement-notice/>.
5. If permission to develop land is refused whether by the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
6. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

RNOTES (02/07/2014)

Delegated Report

Planning Ref: 22/00916/FUL
Applicant: Mr Michael Gilders and Miss Leanne Carter
Ward: Twycross Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Site: 12 Rodney Gardens, Sheepy Magna

Proposal: Change of use of agricultural land to domestic garden

1. Recommendations

- 1.1. **Refuse planning permission** for the reasons at the end of this report.

2. Planning Application Description

- 2.1. Permission is sought to change the use of a strip of agricultural land that runs rearwards to the width of the rear garden of 12 Rodney Gardens (13 metres) for a length of approximately 90 metres. The land has been acquired from the farm by the applicant who also owns 12 Rodney Gardens.

3. Description of the Site and Surrounding Area

- 3.1. The land subject of the planning application was part of an agricultural field that lies to the rear of a line of residential properties (9-14 Rodney Gardens) that are part of a development of 24 dwellings given planning permission in 2016. A vehicular track passes between numbers 8 and 9 Rodney Gardens to the farm house and divides this field from another one behind numbers 1-8 Rodney Gardens.
- 3.2. Under permitted development rights, the applicant has erected fencing and sowed grass seed, so that the existing rear garden of 12 Rodney Gardens and the application land appear difficult to distinguish.

4. Relevant Planning History

14/00136/FUL

- Erection of 24 new dwellings
- Planning permission 11.08.2016

16/00865/CONDIT

- Variation of condition 2 of planning permission 14/00136/FUL for substitution of house types to plots 10, 11, 13 and 23
- Planning permission 21.02.2017

21/00112/CLP

- Certificate of lawful proposed development for single storey extension at rear of house
- Certificate of lawful development (proposed) granted 25.03.2021

21/01418/HOU

- Change the use of land from agricultural to residential curtilage (garden land)
- Refused 05.07.2022

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents and a site notice was erected close to the application site on 03.11.2022. No objections were received.

6. Consultation

- 6.1. LCC Ecology – No objection
- 6.2. Sheepy Parish Council objects, stating:

“Having reviewed the above application 22/00916/FUL - 4 October 2022 (12 Rodney Gardens, Sheepy Magna - Change of use of agricultural land to domestic garden), Sheepy Parish Council is not supportive of this application (OBJECTS) since the land is outside the Sheepy Magna Settlement Boundary and is therefore not compliant with the legally binding Sheepy Parish Neighbourhood Plan ‘made’ 19th May 2022, notably policies S1 (Countryside) and S10 (Housing Development). Furthermore, it must be noted that all policies in the plan should be considered collectively when determining any planning application.”

7. Policy

- 7.1. Sheepy Parish Neighbourhood Plan Review (SNP) Made May 2022
- Policy S1: Countryside
 - Policy S10: Housing Development
- 7.2. Site Allocations and Development Management Policies DPD (SADMP) (2016)
- Policy DM1: Presumption in Favour of Sustainable Development
 - Policy DM4: Safeguarding the Countryside and Settlement Separation
 - Policy DM10: Development and Design
 - Policy DM17: Highways and Transportation
 - Policy DM18: Vehicle Parking Standards
- 7.3. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2021)
 - Planning Practice Guidance (PPG)
- 7.4. Other relevant guidance
- Good Design Guide (2020)
 - National Design Guide (2019)
 - Local Plan Regulation 19 Draft (2022)

8. Appraisal

- 8.1. Key Issues
- Interpretation of case law
 - Assessment against strategic planning policies
 - Visual Impact on the character of the area
 - Impact on highway safety

Interpretation of Case law

- 8.2. The concept of residential curtilage has relevance as section 55(2)(d) of the Town and Country Planning Act 1990 records that the use of any land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse

as such shall not be taken for the purposes of the Act to involve development of the land. Although a residential curtilage will frequently equate with the residential planning unit it is not uncommon for land beyond the curtilage, but nonetheless in the same planning unit, to be in use for residential purposes incidental to the enjoyment of a dwellinghouse. Therefore, lawful incidental residential use does not necessarily denote curtilage land. However, there is no statutory or authoritative definition of the term curtilage. In the absence of this, reliance is placed in interpreting its meaning on case law handed down by the Courts. In *Sinclair-Lockhart's Trustees v Central Land Board* [1950] it was held that for land to constitute curtilage 'it is enough that it serves the purpose of the house or building in some reasonably useful way'. Three criteria for identifying curtilage were laid down by the Court of Appeal in *Sutcliffe v Calderdale BC* [1982], namely the physical layout, the past and present ownership, the past and present use and function of the land.

- 8.3. This definition was also considered more recently by the High Court in *Burford v Secretary of State for Communities and Local Government and Test Valley Borough Council* [2017]. In *Burford*, the judge confirmed that these are matters of planning judgement for the decision maker, and a decision can only be challenged on the grounds of being so unreasonable that no reasonable decision maker would reach the same decision. As such it is entirely dependent on the facts of the case and a matter for the local planning authority, or the Inspector/Courts on Appeal.
- 8.4. The Inspector in *Burford* found that the land was not curtilage because it was not attached to the dwelling house forming one enclosure with it. The Judge's conclusion was that the function of the land in question, whilst being relevant to the question of curtilage, was not conclusive. It must therefore follow that the land forming one enclosure and an absence of a hedge or fencing cannot alone be determinative. It is clear from *Burford* that it is about the individual facts and that the use, function, extent, ownership and any enclosure are all relevant in the assessment of curtilage.
- 8.5. The Local Planning Authority are of the view that the incorporation within the property of the application site which was outside the originally defined planning unit represents a material change in the use of that land to use for domestic garden purposes. It is an enlargement of the planning unit and a material change of use of that land to use for residential purposes which requires planning permission.

Assessment against strategic planning policies

- 8.6. There is a presumption in favour of sustainable development under Policy DM1 of the SADMP and the wider policies of the NPPF. The sustainable principle of development is subject to all other material planning matters being appropriately addressed.
- 8.7. Whilst the existing residential property of 12 Rodney Gardens falls within the settlement boundary of Sheepy Magna as defined in the Sheepy Neighbourhood Plan 2019 (SNP), the agricultural land subject of the change of use planning application lies outside. The SNP settlement boundary supersedes that of the SADMP 2016. As such the proposed change of use needs to be considered against policies relating to development in the countryside.
- 8.8. Policy DM4 of the SADMP plan seeks to protect the intrinsic value, beauty, open character and landscape character of the countryside from unsustainable development. It goes on to list five types of development considered sustainable: a) outdoor sport and recreation, b) change or use of existing buildings, c) significant

contribution to economic growth, d) renewable energy or e) rural worker accommodation. The proposed change of use of agricultural land to domestic garden land does not fit into any of these categories. To be acceptable, the Policy expects development to not only fall within one of these categories, but also to meet five further criteria: i) not significantly impact adversely on the countryside, ii) not undermine separation between settlements, iii) not create ribbon development, iv) not compromise Green Wedges, and v) contributes to the National Forest strategy. It is considered that it is only criterion i) that is a concern for this change of use proposal.

- 8.9. Criterion i) of Policy DM4 says that development will only 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”

- 8.10. The policy is very similar to Policy S1 “Countryside” of the SNP. This states that the countryside (land outside Settlement Boundaries as defined on the Policies Map) will be protected for the sake of its intrinsic character, beauty, heritage and wildlife, the wealth of its natural resources and to ensure it may be enjoyed by all. It goes on to list types of development that would be considered acceptable in the countryside, and change of use of agricultural land to domestic garden is not one of them.
- 8.11. Policy S10 “Housing Development” of the SNP says that outside the Sheepy Magna Settlement Boundaries, permission for housing development will be limited to a set of instances: a) the allocation at Hornsey Rise, b) rural worker accommodation, c) replacement dwellings, d) re-use of redundant rural buildings and e) affordable housing exceptions. The proposed change of use of agricultural land to domestic garden is not one of these instances.
- 8.12. The proposal needs to be judged on whether it would have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. This policy requirement is echoed in policy of the National Planning Policy Framework NPPF 2021. Paragraph 174 expects planning policies and decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
- 8.13. Domestic gardens are a residential use, part of the curtilage of dwellings. With one or two exceptions they are regarded as a feature of settlements rather than the countryside. The Borough’s Settlement Boundary Review sets out long established principles for determining settlement boundaries. Principle 1 is that boundaries are drawn tightly around the built form of settlements, informed by defining features such as walls, fences, hedgerows etc. It is explained that the built form largely includes the curtilages of properties in recognition of the combined status of properties and their curtilages as a single planning unit. Principle 3c is to include curtilages of buildings which closely relate to the character of the built form and have enclosing features. It is explained that the curtilages of buildings which clearly relate to associated buildings by proximity and character should be within settlement boundaries.
- 8.14. In this case it is considered that the boundary between residential gardens and countryside should be defined by the permission (ref 14/00136/FUL) for the 24 dwellings. The red line boundary of the approved site location plan and the line of the extent of rear gardens of numbers 9-14 Rodney Gardens on the approved site layout plan run as a continuation of the rear garden line of the adjoining properties (Lodge Cottage, Holly Tree Cottage and Blossom House). This is consistent with the settlement boundary for Sheepy Magna of the SNP. Beyond this line is countryside.

- 8.15. The proposed change of use of a strip of land extending approximately 90 metres into the field would harm the intrinsic value, beauty and open character of the countryside. Already a wooden fence has been erected to delimit the land in question and a wooden building has been erected. These appear as intrusions into the countryside. Domestic use brings the potential for other alien elements to be introduced on the land associated with living in a dwellinghouse: amongst other things children's play equipment, patio sets, ponds, lawns, sheds, storage, raised beds, footpaths could all be expected. Even domestic use alone would be alien, and would generate the need for walking surfaces which would encroach on the character of this part of the countryside. As such the proposed change of use would be contrary to Policy DM4 of the Site Allocations and Development Management Policies DPD 2016 and Policy S1 of the SNP.

Other Considerations

- 8.16. As a change of use of open land, there are no design impacts associated with built structures and it is not considered that a larger garden would have a material impact on residential amenity of neighbours or the need for additional car parking provision. As such the proposal would not conflict with policies DM10, 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. The introduction of domestic garden use to the strip of agricultural land behind 12 Rodney Gardens is considered an unacceptable incursion into the countryside which would have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside contrary to Policies DM4 of the SADMP and Policy S1 of the SNP.

11. Recommendation

Refuse planning permission for the following reasons:

- 11.1. The change of use from agricultural land to domestic garden results in encroachment into the countryside beyond the settlement boundary, that causes significant harm to the intrinsic value, beauty, open character and landscape character of the countryside contrary to Policy DM4 of the SADMP and paragraph 174 of the NPPF.