

Delegated Report

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



Hinckley & Bosworth
Borough Council

Site: Holly Tree Cottage, Twycross Road,
Sheepy Magna

Proposal: Change of use of agricultural land to domestic garden

1. Recommendations

1.1. Grant planning permission subject to:

- Planning conditions detailed at the end of this report.

2. Planning Application Description

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

3. Description of the Site and the Surrounding Area

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

4. Relevant Planning History

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

4.2 **22/00807/FUL**

- Erection of an agricultural storage building
- Refused
- 02.12.2022

5. Publicity

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

6. Consultation:

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

6.2 There have been no objections from the following consultants:

- Leicestershire County Council (LCC)'s Ecology Department

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

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

6.5 No further responses have been received.

7. Policy

7.1 Core Strategy (2009):

- Policy 12: Rural Villages

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

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

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

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

7.4 National Planning Policies and Guidance:

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

7.5 Other Relevant Guidance:

- Good Design Guide (2020)
- Leicestershire Highway Design Guide (LHDG) (2022)

8. Appraisal

8.1. The key issues in respect of this application are therefore:

- Principle of development
- Design and impact upon the character of the area
- Impact upon residential amenity
- Impact upon parking provision and highway safety

Principle of Development:

8.2 Paragraph 2 of the National Planning Policy Framework (NPPF) identifies that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The NPPF is a material planning consideration in planning decisions.

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

In accordance with Paragraph 225 of the NPPF, due weight should be given to existing policies according to their degree of consistency with the NPPF.

- 8.4 Policy DM4 of the SADMP, which states that the Council will protect the intrinsic value, beauty, open character, and landscape character of the countryside from unsustainable development. To ensure this, Policy DM4 of the SADMP only considers development in the countryside sustainable where:
- (a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
 - (b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
 - (c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
 - (d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
 - (e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.
- 8.5 To support this, Policy S10 of the SPNP confirms that, outside the Sheepy Magna settlement boundary, permission for housing development will be limited to:
- (a) Land allocated for residential development at Hornsey Rise Memorial Home; or
 - (b) Rural worker accommodation; or
 - (c) Replacement dwellings; or
 - (d) The re-use and/or adaption of redundant rural buildings; or
 - (e) Other circumstances as set out in Paragraph 80 of the NPPF [now 84]; or
 - (f) Exception site affordable housing.
- 8.6 Therefore, the proposed development does not relate to, or comply with, any of the criteria above in either Policy DM4 of the SADMP or Policy S10 of the SPNP, but this does not mean that the development is not sustainable.
- 8.7 Importantly, Policy DM4 of the SADMP also requires that development meets five further requirements to be considered as sustainable development. These are discussed in detail further in the report.
- 8.8 Policy S1 of the SPNP states that householder development may be considered sustainable in countryside locations.
- 8.9 Given the above, the Council considers that the proposal is offered no support by Policy DM4 of the SADMP. As such, the application does not accord with Development Plan Policy and is unacceptable in principle, subject to the assessment of all other material considerations. Other material considerations are set out within the next sections of the report.

Design and Impact upon the Character of the Area:

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

Impact upon Residential Amenity:

- 8.17 Policy DM10(a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.18 No structures are proposed within this scheme and therefore the development is unlikely to result in any overlooking, loss of privacy, overbearing, or loss of light impacts to neighbouring occupants. The use of the site as domestic garden for the private use of the Applicant is also not considered to result in any adverse air, light, or noise impacts that are to the detriment of neighbouring residential amenity. By virtue of these factors, the proposal does not result in any adverse impacts to the residential amenity of neighbours or the occupants of Holly Tree Cottage. Therefore, the proposal is in accordance with Policy DM10 of the SADMP.

Impact upon Parking Provision and Highway Safety:

- 8.19 Policy DM17 of the SADMP states that development proposals need to demonstrate that there is not a significant adverse impact upon highway safety, and that the residual cumulative impacts of development on the transport network are not severe.
- 8.20 The development has no impact on the existing access to the site, nor the capacity of the associated existing dwelling or its off-street parking provision. Therefore, the proposal does not create an unacceptable impact on highway safety or the road network in accordance with Policies DM17 and DM18 of the SADMP.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

- 10.1 Taking national and local planning policies into account, and regarding all relevant material considerations, it is recommended that planning permission to be granted, subject to the imposition of appropriate conditions.

11. Recommendation

- 11.1 **Grant planning permission** subject to:

- Planning conditions detailed at the end of this report.

11.2 Conditions and Reasons

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details received by the Local Planning Authority as follows:

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

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

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

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

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

Planning Permission

Name and Address of Applicant

Mr and Mrs D Marshall
Holly Tree Cottage
Twycross Road
Sheepy Magna
Atherstone
Leicestershire
CV9 3RT

Name and Address of Agent (if any)

Mrs Ellie Jones
MPC
58 Spon Lane Grendon
Nr Atherstone
CV9 2PD

Part I - Particulars of Application

Date of Application

26 September 2024

Application No.

24/00902/FUL

Particulars and location of development :

Change of use of agricultural land to domestic garden

Holly Tree Cottage Twycross Road Sheepy Magna Atherstone Leicestershire

Part II - Particulars of decision

In dealing with the application, through ongoing negotiation the local planning authority have worked 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 and this has resulted in the approval of the application. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council grants permission for the carrying out of the development referred to in Part I hereof in accordance with the application form and plans submitted, subject to the following conditions :-

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details received by the Local Planning Authority as follows:

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

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

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

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

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

A handwritten signature in grey ink that reads "C. Brown." with a period at the end.

Christopher Brown MRTPI
Head of Planning

Date : 11 November 2024

NOTES

1. It will be most helpful if the application number shown overleaf is quoted in 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 grant permission subject to conditions, you may appeal to the Secretary of State for the Environment in accordance with Section 78 of the Town and Country Planning Act 1990 within six months (see para 2a below) of the date of this notice. (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/appeal-planning-decision>). 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 the 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 the directions given under the order. He does not in practice refuse to entertain appeals solely because the decision by 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, 5th September 2003 must be made within six months of the date of this notice.
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 granted subject to conditions, 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 or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
7. This permission covers only consent under the Town and Country Planning Acts and does not give permission to demolish a Listed Building, for which separate consent is required. Amongst other things the consent of the Council of the district in which the land is situated may be required under the Building Regulations and if the proposals affect land within the limits of the highway (that is between the highway fences or hedges) the separate consent of the Highway Authority may also be required. Steps to obtain the necessary further consents should be taken before proceeding with the development.

SHOPS, OFFICES, FACTORIES, EDUCATIONAL BUILDINGS & BUILDINGS TO WHICH THE PUBLIC ARE TO BE ADMITTED : ACCESS AND PROVISION FOR THE DISABLED PERSONS

- 1 The Local Planning Authority is required to bring to your attention the requirements of the Disabled Persons 1981, Building Regulations 1991 "Access and facilities for Disabled People" document M and the Chronically Sick & Disabled Act 1970 (as amended 1976) (Sections 4.7.8 and 8A) requiring the provision of access facilities, car parking and toilets for the disabled and the provision of signing indicating what provision has been made for disabled persons within the building. Your attention is also drawn to the Code of Practice B.S 5619 "Design of Housing for the convenience of Disabled People", 1978 and Code of Practice, B.S. 5810 : 1979, "Access for the Disabled to buildings" available from the British Standards Institution, 2 Park Street, London W1A 2BS. (Tel 071-629-9000) and (in so far as educational buildings are concerned), to Design Note 18 "Access for the Physically Disabled to Educational Buildings."
- 2 The buildings to which these requirements apply are :-
 - a) Buildings to which the public are to be admitted to which Section 4 of the Chronically Sick & Disabled Act 1970 (as amended 1976) applies.
 - b) Offices, Shops & Railway Premises as defined in the Offices, Shops & Railway Premises Act 1963 or premises deemed to fall within the Act.
 - c) Factories as defined by Section 175 of the Factories Act 1961.
Educational Buildings as defined by Section 29B of the Disabled Persons Act 1981.

PPNOTES (02/07/2014)



Hinckley & Bosworth
Borough Council

Start Notice

Important Information – Please keep this with your decision notice

Please read the above decision notice carefully and ensure that you understand and comply with the requirements of any planning conditions imposed.

If you require any further information about why a particular planning condition has been imposed or in respect of what information is needed to discharge your condition please contact the case officer who will be happy to advise of the requirements and information required.

We carry out a programme of site monitoring to check compliance with conditions in order to proactively manage the development and to ensure development is carried out in accordance with the planning permission granted.

Please ensure that any application for the discharge of pre-commencement conditions are carried out in a timely manner as this may take up to 8 weeks depending on the requirements of the condition. Please also be aware there is a charge to discharge conditions per request which means you can discharge conditions individually or group details together as a single request to discharge multiple planning conditions. The fee for discharging these pre-commence conditions, can be found on the [planning portal](#).

We would be grateful if you could email the development address and application reference number with your contact details and the intended start date by email to planning@hinckley-bosworth.gov.uk or complete the form on the reverse.

Hinckley & Bosworth Borough Council
Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR
TEL: 01455 238141 EMAIL: planning@hinckley-bosworth.gov.uk



Hinckley & Bosworth
Borough Council

Development Details

Planning application ref:	24/00902/FUL
Proposal:	Change of use of agricultural land to domestic garden
Site Location:	Holly Tree Cottage Twycross Road Sheepy Magna Atherstone Leicestershire

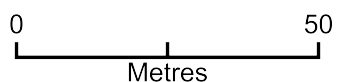
Date when work is intended to start:	
Have all pre-commencement conditions been discharged?	
Signed:	Print Name:

Your contact details (or attach letterhead/business card):

Name:	
Address:	
Telephone:	
Mobile:	
Email:	

Hinckley & Bosworth Borough Council
Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR
TEL: 01455 238141 EMAIL: planning@hinckley-bosworth.gov.uk

Location Plan



Plan Produced for: Holly Tree Cottage

Date Produced: 25 Sep 2024

Plan Reference Number: TQRQM24269124632202

Scale: 1:1250 @ A4