

## Delegated Report

**Planning Ref: 23/00170/OUT**

**Applicant: Mr M Green**

**Ward: Newbold Verdon With Desford & Peckleton**



Hinckley & Bosworth  
Borough Council

**Site: Orchard House 10 Desford Lane Kirkby Mallory**

**Proposal: Outline Planning Permission for one detached dwelling to the garden land of 10 Desford Lane (Access and Layout only)**

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### **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 outline planning permission for the provision of one detached, three-bedroom dwelling on Land associated with 10 Desford Lane, Kirkby Mallory. Only access and layout, are sought for approval within this outline application and all other matters are reserved.

2.2. The precise appearance of the scheme is reserved for later approval; therefore, the extent of the application is described and assessed via the indicative scales and appearance of the submitted plans:

- Proposed Block Plan (23.314.03 A)
- Proposed Site Plan (23.314.02 A)
- Site Location Plan – Drg No. 23.314
- Site Plan – Drg No. 23.314.01

2.3. The property externally measures 10.5m in width x 11.5m in depth, with a total footprint of 99.1sqm.

2.4. The application form suggests that the scheme is constructed with brick.

### **3. Description of the site and surrounding area**

3.1. The 850sqm application site is currently a vacant parcel of land that is utilised as part of the front garden of 10 Desford Lane. The application site is located towards the northeast, and within, the identified settlement boundary of the rural hamlet, Kirkby Mallory. The site is accessed by an existing private road via Desford Lane, which hosts two further dwellings, which are 8 and 10 Desford Lane. Desford Lane is an adopted, but unclassified road that is subject to a 30mph speed limit.

3.2. 10 Desford Lane is a one-and-a-half-storey, brick-built property that is constructed with two front-facing gables on either end of the front elevation and a pitched dormer window in the centre of the elevation. A detached double garage is adjacent to the property, which has a pitched roof with a similar height to that of the host dwelling. The property was approved via outline planning permission 93/01098/OUT, which was for the provision of two bungalows, but the second bungalow was never constructed. 10 Desford Lane then received full planning permission for its original design 97/00134/FUL, and a revised scheme within full planning permission 97/00728/FUL.

- 3.3. 8 Desford Lane is to the north of the application site, and 10 Desford Lane is to the east of the application site. Beyond these two residential dwellings are open agricultural fields. However, the application site is surrounded by other residential properties to the south and west. There are four properties immediately to the south of the site, which are accessed via The Close.

#### **4. Relevant planning history**

##### **4.1 93/01098/OUT**

- Residential development comprising two bungalows
- Permitted
- 24.02.1994

#### **5. Publicity**

- 5.1 The application has been publicised by sending out letters to local residents.
- 5.2 One member of the public has been in touch to express their concerns about the development's impact on the existing boundary treatment to the south of the site that is shared with the residential properties at The Close.
- 5.3 No further responses have been received.

#### **6. Consultation**

##### **6.1** There have no objections to the application from the following consultants:

- Hinckley & Bosworth Borough Council (HBBC)'s Drainage Officer
- HBBC's Environmental Services' Pollutions Officer
- HBBC's Waste Management Officer (subject to conditions)

##### **6.2** The Local Highway Authority (LHA) has referred to standing advice.

##### **6.3** No further responses have been received.

#### **7. Policy**

##### **7.1** Core Strategy (2009)

- Policy 13: Rural Hamlets

##### **7.2** Site Allocations and Development Management Policies (SADMP) DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- 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)
- 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
- Impact upon residential amenity
- Impact upon parking provision and highway safety
- 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, and that the NPPF is a material planning consideration in planning decisions.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.
- 8.6. The development is within the identified settlement boundary of Kirkby Mallory. In addition, the Applicant has justified the provision of an additional dwelling by stating that the principle of a dwelling in this location has already been established under the planning permission 93/01098/OUT, which was for provision of two bungalows. After reviewing the approved plans for 93/01098/OUT, the development appears to be in the same siting and location as the extant planning permission.
- 8.7. Therefore, the scheme 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.

## *Housing Land Supply*

- 8.8 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 8.9 Paragraph 11(d) of the NPPF states that planning decisions should apply a presumption in favour of sustainable development where there are no relevant Development Plan policies, or the policies which are most important for determining the application are out-of-date. Footnote 8 of Paragraph 11 of the NPPF highlights that housing policies are considered to be out-of-date where local planning authorities cannot demonstrate a five-year supply of deliverable housing sites.
- 8.10 Using the standard method as outlined by the Ministry of Housing, Communities & Local Government (MHCLG), Hinckley and Bosworth Borough Council are able to demonstrate 4.89 years of deliverable housing on 01 April 2022. In addition, 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.
- 8.11 Given the above and the change in the housing figures required for the Borough, the 'tilted' balance in Paragraph 11(d) of the NPPF is triggered.
- 8.12 Paragraph 11 (d) of the NPPF requires planning permission to be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. 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.
- 8.13 Section 5 of the NPPF requires planning policies and decisions to deliver a sufficient supply of homes to support the Government's objective of significantly boosting the supply of homes without unnecessary delay.
- 8.14 Paragraph 78 of the NPPF states that planning policies should be responsive to local circumstances and support housing developments that reflect local needs, and Paragraph 69 of the NPPF states that small and medium sized sites, such as windfall sites, can make an important contribution to meeting the housing requirements of an area. Paragraph 79 of the NPPF states that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
- 8.15 The development is for one singular residential property within a rural area, and therefore Policy 15 (Affordable Housing) and Policy 16 (Housing Density, Mix and Design) of the adopted Core Strategy are not applicable for this scheme.
- 8.16 Whilst the provision of one dwelling within this application site is unlikely to be a significant benefit to the housing land supply within the Borough, given the Council's

failure to deliver a five-year supply of land for housing, it is considered that moderate weight should be given to the provision of the proposed dwelling.

*Design and Impact upon the Character of the Area*

- 8.17 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.
- 8.18 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.
- 8.19 The precise appearance of the scheme is reserved for later approval; therefore, the extent of the application is described and assessed via the indicative scales and appearance of the submitted plans.
- 8.20 The Applicant has stated that the existing boundary treatment is not affected by this proposal and that no trees are removed as a result of the development. To ensure this, a planning condition has been attached to this planning permission to prevent any harm to the existing boundary treatment and trees.
- 8.21 Given the above, and subject to the submission of further details within the Reserved Matters stage of this development, the scheme is considered to respect the character of the surrounding area in accordance with Policy 13 of the adopted Core Strategy, Policy DM10 of the SADMP, and the Good Design Guide.

*Impact upon Residential Amenity*

- 8.22 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.
- 8.23 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.
- 8.24 The Good Design Guide SPD outlines that development will need to demonstrate that it will not result in loss of amenity to neighbouring properties by way of overlooking, overshadowing or noise.
- 8.25 The Good Design Guide recommends that a principal window to a habitable room should ideally be no less than 8m from the blank side of a single storey neighbouring property, rising to 14m for a two-storey property. In addition, the separation distance between two principal windows to habitable windows should be a minimum of 21m. However, the Good Design Guide also states that, "An exception to this rule is in an urban location where it may be acceptable to have a reduced distance where issues of amenity and overlooking are dealt with by good design."

- 8.26 The precise appearance of the scheme is reserved for later approval; therefore, the extent of the application is described and assessed via the indicative scales and appearance of the submitted plans.
- 8.27 Nevertheless, the layout of the development means that the scheme is 14.3m west of the front elevation of 10 Desford Close. This exceeds the separation distances required between two-storey properties in accordance with the Good Design Guide. Whilst there are no proposed elevations at this stage, it is likely that the scheme can be constructed without having a significant adverse impact to the neighbouring residential amenity of the occupants of 10 Desford Lane.
- 8.28 In addition to the scheme is 25.8m south of 8 Desford Lane and 15.4m southeast of 6 Desford Lane. As a result of these distances, the layout of the surrounding area and the siting of these neighbouring properties, the development is not considered to result in any significant adverse harm to the residential amenity of these two properties.
- 8.29 To the west of the site, the rear elevation of 4 Desford Lane is 21m from the side elevation of the dwelling, in accordance with the Good Design Guide. The closest property to the southwest of the site is 1 The Close, which is 17.4m from the development. However, given the siting of 1 The Close, the scheme is not considered to result in any overlooking or loss of privacy. Similarly, to 1 The Close, 4 The Close is 15.1m southeast of the development, but due to its siting, the proposal is not considered to result in any overlooking or loss of privacy.
- 8.30 To the south of the site, the principal elevation of 3 The Close is 25.5m from the rear elevation of the scheme. Due to the distance from the scheme, the existing boundary treatment and existing trees, the scheme is not considered to result in any loss of privacy or overlooking impacts. Given the above, and the separation distances between all surrounding neighbouring dwellings, the scheme is unlikely to result in any significance adverse impacts to neighbouring residential amenity in relation to overlooking or loss of privacy impacts or any overbearing or loss of light impacts.
- 8.31 To comply with the Good Design Guide, three-bedroom houses must also provide a minimum of 80sqm of private outdoor amenity space with a minimum length of 7m.
- 8.32 The private outdoor amenity space for proposed dwelling is 9m in depth and 127.3sqm in overall area, which is in accordance with the requirements of the Good Design Guide.
- 8.33 As a result of these considerations, and subject to further information, the proposal does not result in a significant adverse impact on the residential amenity of neighbouring properties. Therefore, the application is in accordance with Policy DM10 of the SADMP, and the Good Design Guide.

*Impact upon Parking Provision and Highway Safety*

- 8.34 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.

- 8.35 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)).
- 8.36 Policy DM18 of the SADMP requires developments to demonstrate an adequate level of off-street parking provision.
- 8.37 The Applicant does not propose any amendments to the existing site access from Desford Lane or the existing turning facilities from within the site. Given the existing nature of the access, it is not considered that the provision of one dwelling significantly intensifies its use. Therefore, in these site-specific circumstances, it is considered unreasonable to request any alterations to the access.
- 8.38 To accord with Paragraph 3.151 of Part 3 of the LHDG requires one off-street vehicle parking space is required to accommodate a two-bedroom dwelling, and two off-street vehicle parking spaces are required to accommodate a three-bedroom dwelling.
- 8.39 The development provides three off-street vehicle parking spaces, which is in accordance with Paragraph 3.151 of Part 3 of the LHDG. After receiving revised plans from the Applicant, the development can demonstrate that the dimensions of this parking provision are in accordance with the requirements of Paragraph 3.165 of Part 3 of the LHDG (Off-Street Parking Dimensions).
- 8.40 Given the above, it is considered that 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, and the LHDG.

#### *Planning Balance*

- 8.41 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.42 The Council cannot demonstrate a five-year supply of housing land and the housing policies most important for determining the application are out of date. Therefore, it is necessary to consider the 'tilted' balance in accordance with Paragraph 11(d) of the NPPF, where planning permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 8.43 The development is in a sustainable location within the identified settlement boundary of Kirkby Mallory, and the provision of one additional dwelling is not considered to result in a significant adverse impact on the character of the surrounding residential area, nor the residential amenity of neighbouring residents.
- 8.44 Furthermore, it is acknowledged that there are potential social benefits from the scheme such as providing one dwelling towards the Borough's housing land supply, which may also include economic benefits within the construction of the dwelling and the future occupant's opportunity to act as new customers and employees for

local businesses and services. It is considered that these benefits are offered moderate weight within the planning balance.

8.45 However, these benefits when associated with a singular dwelling are modest and are not considered to maintain or enhance the local community. In addition, there are no planning benefits such as affordable housing or essential infrastructure provision as identified within Paragraph 12.13 of the SADMP.

8.46 Nevertheless, it is ultimately considered that the benefits of this proposed dwelling outweigh any harm that is caused by the outline approval of this development. Therefore, the development is considered to be in accordance with Policies DM1 and DM10 of the SADMP, Policy 13 of the adopted Core Strategy, and the Good Design Guide, subject to further assessment at the Reserved Matter stage.

## **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.
- Retains over 80sqm of rear amenity space.
- Does not have a significant adverse impact upon the amenity of neighbours.
- 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. An application for approval of reserved matters shall be made within two years of the date of this permission and the development shall be begun not later than 18 months from the date of approval of the last of the reserved matters to be approved.

**Reason:** To comply with the requirements of Section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence until details of the layout, scale, appearance, landscaping, and access other than vehicular access (hereafter called the reserved matters) have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved reserved matters.

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

3. The development hereby permitted shall not be first used until such time as the scheme makes adequate provision for waste and recycling storage of containers and collection across the site which has been submitted to and approved in writing to the Local Planning Authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and service wheeled containers.

**Reason:** To support the policies within the Wheeled Bin and Container Policy (updated March 2018) and to ensure that there is adequate provision of waste and recycling storage so that the amenity of the occupants of the proposed development are not adversely affected in accordance with Hinckley and Bosworth Borough Council's Wheeled Bin and Contained Policy (updated March 2018), Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and Section 46 of the Environmental Protection Act 1990.

4. The development hereby permitted shall not be occupied until such time as the parking (and turning facilities) have been implemented in accordance with the Proposed Block Plan (23.314.03 A) (submitted: 07.07.2023), and Proposed Site Plan (23.314.02 A) (submitted: 07.07.2023). Thereafter the onsite parking (and turning) provision shall be kept available for such use(s) in perpetuity.

**Reason:** To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety and in accordance with the National Planning Policy Framework (2021).

5. None of the trees or hedges surrounding the site shall be lopped, topped, felled pruned or otherwise severely damaged without the prior written consent of the Local Planning Authority. Any trees found dying or diseased within four years from the occupation of the development hereby approved shall be replaced by trees of a size and species to be agreed therewith.

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

a. **Notes to Applicant:**

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at [buildingcontrol@hinckley-bosworth.gov.uk](mailto:buildingcontrol@hinckley-bosworth.gov.uk) or call 01455 238141.
2. The suitability of the ground strata for soakaway drainage should be ascertained by means of the test described in BRE Digest 365, and the results approved by the Building Control Surveyor before development is commenced. The soakaway must be constructed either as a brick or concrete-lined perforated chamber with access for maintenance, or alternatively assembled from modular surface water storage/soakaway cell systems, incorporating silt traps. Design and construction of all types of soakaways will be subject to the approval of the Building Control Surveyor.
3. Any access drives, parking and turning areas, paths and patios should be constructed in a permeable paving system, with or without attenuation storage, depending on ground strata permeability. On low-permeability sites surface water dispersal may be augmented by piped land drains, installed in the foundations of the paving, discharging to an approved outlet (See Environment Agency guidance on the permeable surfacing of front gardens).
4. Hinckley & Bosworth Borough Council's recycling and refuse collection services are from the boundary to the adopted highway. It will be the responsibility of the occupiers to ensure that all containers/wheeled bins are brought to the collection point.